



LOCAL PENSION COMMITTEE – 27 NOVEMBER 2020

REPORT OF THE DIRECTOR OF CORPORATE RESOURCES

RESTRICTION OF PUBLIC SECTOR EXIT PAYMENTS

Purpose of the Report

1. The purpose of this report is to inform the Local Pension Committee of the Fund's reply to the consultation on the Restriction of Public Sector Exit Payments and to seek approval for the Fund's proposed solution for dealing with cases impacted.

Background

2. On the 7 September 2020 Government published their consultation reforming Local Government Exit Pay. This followed several consultations in this area going back four years.
3. Initial proposals were principally aimed at senior managers, and sought to limit exit packages to £95,000, however there are further measures included that are far more reaching.
4. On the 30 September 2020 the House of Commons approved the Exit Cap change, and this was subsequently signed by Government officials, with the Restriction of Public Sector Exit Payments Regulations becoming law on the 4 November 2020.
5. This law change has created an issue for employers and the Pension Fund as the Exit Cap Regulations and the LGPS Regulations currently do not align. The Pensions Manager believes the intention is that the LGPS Regulations will be amended to align these with the Exit Cap Regulations in future. It is expected this will take place in quarter one of 2021 with six months transitional protection inbuilt, if the employee and employer have entered into an agreement to terminate before the LGPS Regulations come into force.

Impact on Scheme Members

6. Currently under the LGPS Regulations; when an active scheme member retires on either redundancy or efficiency grounds age 55 or over in the LGPS a pension strain cost is created and paid by the employer to the Pension Fund. This funds the Pension Fund's early release of unreduced pension benefits to the scheme member.

7. Since the 4 November 2020, as per the new Exit Cap Regulations, if a scheme member breaches the £95,000 cap their total benefit package must be reduced.
8. The Fund has taken legal advice and followed the Local Government Association's guidance and proposes to adopt the following solution for cases where the members retires from the 4 November 2020;
9. For Cases that Breach the £95,000 Cap
The Pension Fund will offer either;
 - a. Fully reduced benefits, or
 - b. Preserved benefit
 - i. It is fully anticipated this will generate appeals and it is likely a case will be fast tracked to the Ombudsman.
10. The Fund will suggest to employers not to make payment of a "cash alternative" as this creates an additional unnecessary risk and is designed to avoid overpayments or the need to reclaim amounts from scheme members. If an employer makes payment of the cash alternative and then the ultimate regulatory position requires payment of a pension strain cost, the cash alternative will then need to be reclaimed (in full or in part) from the member. Employers will need to have a legal agreement in place with the scheme member to enforce repayment of the cash alternative, should this become necessary.
11. For Cases that Do Not Breach the £95,000 Cap
12. The Pension Section will amend its processes and letters and inform the Fund's employers of these changes. On the basis that both sets of legislation are aligned during 2021. The Pensions Manager will continue to produce estimates for people retiring on redundancy and efficiency grounds who are under the £95,000 Cap, up to and including a retirement date of the 30 June 2021, based on the current scheme rules (as at 18 November 2020). This means members will continue to receive fully unreduced benefits. This is on the understanding the employee and the employer have entered into an agreement to terminate before the LGPS Regulations come into force and the members retirement date falls within the 6 months protection period (which is broadly estimated to be 6 months from the 1 January 2021). When the LGPS Regulation change is made, and the transitional arrangements are finalised, the Pensions Section will adjust its processes to reflect this.
13. The Exit Cap Regulations which were consulted on until the 9 November 2020, require further changes to that detailed above. For cases that take place from the point when the LGPS Regulations change, (unless the employer has entered into an agreement with the employee and the employee's termination date is within 6 months of the Regulation change) require the Pension Fund to reduce the pension strain by the redundancy payment, so the scheme member receives an element of their pension reduced. This is likely to be cases where members

retire from the 1 July 2021 onwards, or before this date, without the employee and employer having entered into an agreement.

14. The Pension Section will add a new caveat to estimate letters for cases impacted based on the dates detailed in the report.
15. There are other proposed options for scheme members in the consultation including preserving their pension benefit. The preserved benefit option means the members pension will not be paid until a date in future when the member chooses to claim payment. Actuarial reductions will be applied if this is paid before their normal retirement age.

Consultation

16. The Ministry of Housing Communities and Local Government are aware of the discrepancy between the Exit Cap Regulations and the LGPS Regulations and HM Treasury have provided guidance to employers and Funds on how to proceed.
17. The Pensions Manager is aware of several legal reviews that have been submitted challenging the change in legislation.
18. The Pensions Manager wrote to all the Funds employers making them aware of the change, informing them they must contact any staff impacted.
19. Hymans Robertson, the Leicestershire Fund Actuary has produced a useful document covering how the proposals would impact on employers, scheme members and the Fund. This is included as Appendix A.
20. The Pension Fund replied to the consultation that closed on the 9 November 2020. Due to timing, the consultation was shared in advance of the Local Pensions Committee meeting with Chairs of both the Local Pensions Board and Local Pensions Committee. This is included as Appendix B
21. Leicestershire County Council (as a Fund employer) has submitted a separate reply to the consultation.

Recommendation

The Committee is asked to

- a. note the Fund's reply to the consultation on the Restriction of Public Sector Exit Payments;
- b. approve the Fund's proposal for dealing with impacted cases from the 4 November 2020.

Equality and Human Rights Implications

None specific

Appendix

Appendix A – Hymans document detailing the impact of the changes.
Appendix B– The Fund’s reply to the consultation.

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