

Exit Pay Consultation
Local Government Workforce and Pay Team
Ministry for Housing, Communities and Local Government
2nd Floor, Fry Building
2 Marsham Street
London SW1P 4DF

Your Ref:

Date: 30 October 2020

Sent by e-mail to: LGExitPay@communities.gov.uk

Dear Sirs,

Local Government Pension Scheme (England and Wales) Reforming local government exit pay

The Essex Pension Fund welcomes the opportunity to comment on the government's proposals on the reform of exit payments in local government. We are responding in our capacity as an Administering Authority within the scheme.

Whilst we generally welcome the proposals to amend the Local Government Pension Scheme (LGPS) regulations to introduce the flexibilities required to implement the exit payment cap, we believe the proposals go beyond what is necessary to implement the exit payment cap in the LGPS.

The proposals for wider reform are extremely unhelpful to employers and administering authorities at this time, go beyond the government's original policy objective of curbing excessive exit payments in the public sector and do not meet the second stated objective relating to fairness and consistency across the public sector.

Also, the proposals will have a significant and unnecessary detrimental effect on the compensation package for low paid employees whose exit payments are already less than £95k. see our answer to questions 1 and 5 for further details.

Conflict between legislation

As the responsible authority for the LGPS, MHCLG has a duty to ensure that the LGPS regulations remain fit for purpose and comply with the law.

The Restriction of Public Sector Exit Payments Regulations 2020 were signed off into law on 14 October 2020 and are effective from 4 November 2020. This means that from 4 November 2020 the LGPS Regulations 2013 will conflict with the requirements of the Restriction of Public Sector Exit Payments Regulations 2020. This will leave local government employers and LGPS administering authorities in an impossible position and open to legal challenge whatever they do until such time as the LGPS regulations are amended, which is not expected to be for several months.

We urge the Secretary of State to engage with his colleagues at HM Treasury without delay and persuade them of the critical need to revoke or pause the

Restriction of Public Sector Exit Payments Regulations 2020 whilst the necessary changes are made to the LGPS regulations.

A step too far

The Government's original policy objective was to curb excessive exit payments in the public sector. The additional reform was about fairness and consistency across the public sector workforce, the other parts of which have, as yet, seen no changes.

Currently local government has lower severance calculations outside pensions than the rest of the public sector and MHCLG's proposals restricts these even further.

We believe these proposals are, in their current form, grossly unfair to local government workers as members of other public sector pension schemes will not have their exit payment double capped in the manner proposed by MHCLG. See our answer to questions 1 and 5 for further details.

These proposals go far beyond the government's original policy objective of curbing excessive exit payments in the public sector and do not meet the second stated objective relating to fairness and consistency across the public sector.

We strongly urge the Secretary of State to consider removing from the final regulations the proposals to (a) reduce the strain on fund payment by the statutory redundancy payment regardless of the amount of the strain on fund payment and (b) remove any entitlement that an employee will have to their employer's discretionary compensation payment. Applying the £95k exit payment cap alone will achieve the Government's policy objective.

However, we strongly believe that the wider reform of exit payments should be delayed until after the exit payment cap has been successfully introduced and then only necessary changes, to allow for the implementation of the cap, should be made to the LGPS.

Response to the consultation questions

Question 1:

Are there any groups of local government employees that would be more adversely affected than others by our proposed action on employer funded early access to pension?

The Government Actuary's Department has published a draft impact assessment of these proposals. It provides that more female members are affected by the proposed reforms because they make up a greater proportion of the workforce affected by the changes. By the very fact that this proposal will impact on those aged 55 or over, it will also adversely affect older workers.

The proposal around statutory redundancy pay being either deducted from the pension strain cost resulting in a lower pension for life, or paid to the employee and then paid into the pension fund in order to part-pay the strain on fund cost (even where the payments would not otherwise breach the £95,000 cap) will have a greater impact on lower paid workers, who are most in need of a cushion when made redundant. A greater proportion of those will be women and/or part-time workers. This is because their statutory redundancy pay entitlement will be closer to

their actual pay than it will for higher paid workers whose weekly pay exceeds the cap on a week's pay (currently £538) for the purposes of calculating statutory redundancy pay. Therefore, the employer's strain on fund payment will, under this proposal, be reduced by a disproportionately greater percentage for lower paid workers than for higher paid workers.

We understand there are no proposals to introduce such a measure for any other public sector workers, such as NHS staff and teachers; this being the case, we do not believe there is any justification for this proposal for local government workers. We urge the Secretary of State to remove this proposal from the final regulations.

As an example of the impact on a low earner, if we take an LGPS member aged 55 or over whose total package would be £65k under the current rules (£50k pension strain, £5k statutory redundancy and £10k discretionary compensation). Under the proposals, this employee would see his package reduced to £50k (if he took an unreduced pension) or just £15k (if he takes a reduced pension or defers his pension).

Question 2:

What is the most appropriate mechanism or index when considering how the maximum salary might be reviewed on an annual basis?

The maximum salary should be increased in line with national average earnings.

Question 3:

Are there any groups of local government employees that would be more adversely affected than others by our proposed ceiling of 15 months or 66 weeks as the maximum number of months' or weeks salary that can be paid as a redundancy payment?

The Government recognises that it is harder, and takes longer, for older people to find work. Therefore, the proposed ceiling of 15 months' pay will adversely affect older employees more than younger ones as the compensation will, in many cases, be insufficient to sustain them whilst they strive to obtain alternative employment.

To mitigate this, the government could consider a ceiling based on age possibly starting lower for younger employees and increasing by age to 24 months' pay for older employees.

Question 4:

Are there any groups of local government employees that would be more adversely affected than others by our proposal to put in place a maximum salary of £80,000 on which an exit payment can be based?

£80,000 is a significant salary in local government so this will affect the most senior positions. Considerable experience and skills will be required for such posts and so this will be more likely to affect older workers, (more of them who are likely to be male) although not exclusively so. It will affect professions and roles that are hard to recruit in the sector and as such will weaken the reward package that local authorities are able to offer.

In respect of the level of the cap, no other part of the public sector has yet implemented reforms in addition to the proposed £95,000 cap and we would wish to see if this level of cap is reflected in other sectors. Our understanding is that in the Civil Service Compensation Scheme there is a salary cap of £149,820 and the reform proposals put forward by the government do not seek to alter this. We do not see why a salary limit so much lower is appropriate for local government.

It is difficult to see how the impact could be mitigated, as any steps to enhance compensation payments in another way, such as allowing a greater week's pay multiplier for employees earning more than £80,000 could leave the employer vulnerable to discrimination claims from lower paid employees, who are likely to be younger and of whom a greater proportion may be female. A waiver process would allow local authorities to take individual circumstances into account and should be considered.

Question 5:

Do you agree with these proposals? If not, how else can the Government's policy objectives on exit pay be delivered for local government workers?

The original policy objective was to curb excessive exit payments in the public sector. The additional reform was about fairness and consistency across the public sector workforce, the other parts of which have, as yet, seen no changes. These new proposals will impact on all local government employees in two ways, before there has been any wider public sector reform and regardless of salary level:

1. by reducing the strain on fund payment by the statutory redundancy payment regardless of the amount of the strain on fund payment; and,
2. by removing any entitlement that an employee will have to their employer's discretionary compensation payment (which unlike other parts of the public sector are modest).

The result will be a reduced pension going forward and only statutory redundancy pay to support them during a time in which older workers may find it increasingly difficult to find alternative employment. In particular, the provisions around statutory redundancy pay being either deducted from the pension strain cost resulting in a lower pension for life, or paid to the employee and then paid into the pension fund in order to part-pay the strain on fund cost will hurt the poorest paid who most need a cushion when made redundant. It also introduces a layer of unnecessary administrative bureaucracy disproportionate to the situation.

The second stated objective relates to fairness and consistency across the public sector. Currently local government has lower severance calculations outside pensions than the rest of the public sector. However, MHCLG's proposal restricts these further, for example through the introduction of a salary cap of £80,000 while the proposals for the civil service contain both higher calculation limits and a higher salary cap of £149,820. In this light MHCLG's proposals seem out of line with the consistency objective.

We believe the proposal that 'strain cost will be further reduced by the value of any Statutory Redundancy Payment' goes far beyond the Government's policy objective

and is not necessary. For the reasons given in our answer to question 1, we urge the Secretary of State to remove this provision from the final regulations.

Alternatively, there could be powers to waive elements of the further reform proposals where they are likely to create undue hardship or create legal conflicts in relation to disputes under statute or contract law that a local authority should have the discretion to exercise (subject to appropriate transparency and reporting provisions).

Question 6:

Do you agree that the further option identified at paragraph 4.8 should be offered?

Yes, we agree with the proposal to grant employees the option to defer their pension benefits and to receive the discretionary redundancy payment under their employer's redundancy scheme. We feel this is a necessary flexibility to allow employees a fair choice.

Question 7:

Are there any groups of local government employees that would be more adversely affected than others by our proposals?

As mentioned in our answers to questions 1, 3 and 5, the proposals will more adversely affect both older employees and the poorest paid, impacting not just high earners but low paid employees too.

The proposals will adversely affect all employees over the age of 55 in the LGPS. Those with long service will be particularly affected because of the interrelationship between strain on pension fund payments and other discretionary and statutory redundancy payments.

As set out in our response to question 1, the majority of employees in local government roles are women and many will be at the lower ranges of pay. The proposals will affect all salary ranges as the GAD impact assessment illustrates. They will have a greater effect in purely financial terms on longer serving higher earners but may have a more significant impact on lower paid workers (and so women and part-time workers) who may have greater need for a financial cushion.

To mitigate this adverse impact, we urge the Secretary of State to remove the proposal that 'strain cost will be further reduced by the value of any Statutory Redundancy Payment' from the final regulations and to consider a sliding scale ceiling based on age, rising to 24 months' or 104 weeks' pay for older employees, as the maximum number of months' or weeks salary that can be paid as a redundancy payment.

Question 8:

From a local government perspective, are there any impacts not covered at Section 5 (Impact Analysis) which you would highlight in relation to the proposals and/or process above?

There is concern that a full impact assessment was not available at the commencement of the consultation. The GAD impact assessment has since been published in draft. However, that assessment does not identify the greater proportionate impact that statutory redundancy pay being either deducted from the pension strain cost, resulting in a lower pension for life, or paid to the employee and then paid into the pension fund in order to part-pay the strain on fund cost, will have on lower paid and part-time workers. In 5.6, there is no mention of the administrative and systems costs to administering authorities which will be substantial, particularly the added complexities which would result from the unfair and unnecessary proposal that "Strain cost will be further reduced by the value of any Statutory Redundancy Payment".

Question 9:

Are these transparency arrangements suitably robust? If not, how could the current arrangements be improved?

The transparency requirements in local government are established and would seem adequate but we cannot speak of the consistency with similar requirements in other parts of the public sector or across all workforces covered by these reform proposals.

Question 10:

Would any transitional arrangements be useful in helping to smooth the introduction of these arrangements?

These reform proposals will have a dramatic effect on some employees who will have built current severance arrangements into their long-term planning. Therefore, transitional provisions are appropriate.

Existing employees who prudently joined the Local Government Pension Scheme will have based their retirement and contingency planning on the current rules of the LGPS in respect of access to pension and their employer's scheme in respect of a redundancy payment. Those who are approaching, or are already in, the age bracket whereby they are entitled to an unreduced pension and redundancy payment will be particularly adversely affected by these proposals should they be made redundant, particularly in the current economic climate. While no one has a right to be made redundant, the current local government severance terms are an important part of the benefits package and so of retaining some key staff. If the severance benefits are removed, they might leave the sector for jobs in other areas with the immediate benefit of higher pay.

In any event, in order to avoid a chaotic situation, there should be provision for dealing with those employees already in redundancy/reorganisation situations. Employers need some certainty when attempting to reorganise their workforces. Major restructuring requires statutory periods of consultation with staff and recognised trade unions under the provisions of the Trade Union and Labour Relations (Consolidation) Act 1992, which includes details of severance packages and also notice of any dismissals. Many employees, including those with long service, will then require 12 weeks' notice of dismissal. However, aside from those statutory and contractual timescales, large scale reorganisation proposals can

overall take more than a year to negotiate with employee representatives and implement and it is crucial that there is a smooth transfer in leadership and governance.

We note the draft Local Government Pension Scheme (Restriction of Exit Payments) (Early Termination of Employment) (Discretionary Compensation and Exit Payments) (England and Wales) Regulations 2020 contain transitional provisions which would disapply the restrictions in the regulations where prior to the regulations coming into force the parties had entered into an agreement to terminate employment within six months of the regulations coming into force. However, that exemption should apply where consultation processes have commenced prior to the regulations coming into force, not just where an agreement has been entered into. The reason for this is that many people may have already put in an immediate expression of interest to take voluntary redundancy shortly after a consultation was launched, and that would have been based on pre-reform redundancy payment rights. Having had those expressions of interest the employer will then plan on that basis and remove others from being 'at risk' under the redundancy process. However, it is often the case that the actual agreement to terminate those taking voluntary redundancy is not entered into until much closer to termination, which for the reasons set out above could be some time later. If the transitional provisions remain as they are some employees may withdraw their consent to take voluntary redundancy meaning employers would have to go back and consult again, potentially putting 'at risk' again employees who thought they were not going to be made compulsorily redundant. That has the potential to create a chaotic and uncertain situation for all employees subject to the redundancy consultation, not just for those who were to take voluntary redundancy.

Further, for the reasons set out above, in some cases a six-month time transitional period will not be long enough. Accordingly, there needs to be a 12-month transitional period. Six months is too short and will undermine a significant number of redundancy exercises that are currently live or will be imminently live as authorities seek to balance their 2020-1 budgets or undertake reforms under Local Government Reorganisation plans. Given the demands councils face in the COVID-19 response and preparing for EU transition, a failure to provide adequate transitional provisions will result in a major distraction from providing frontline support to their communities for authorities.

As the £95,000 cap will come into force before the MHCLG further reforms then, subject to any HMT Directions which provide suitable transitional provisions and waivers, guidance will be required for the interim period between the £95,000 cap implementation and the MHCLG/LGPS further reform changes as it appears to cause conflict between two sets of regulations.

Question 11

Is there any other information specific to the proposals set out in this consultation which is not covered above which may be relevant to these reforms?

The stated aims include consistency and fairness across the public sector and so a comparison with other public sector severance schemes would be beneficial. In local

government a sensitive balance is achieved between the rules of the Local Government Pension Scheme which provides a contingency membership benefit to contributing members who lose their job at an age when they may find it harder to continue their career, and local authorities' redundancy policies which provide, in most cases, only a moderate sum to cushion the immediate blow of losing a job. These proposals will mean that employees will have to choose between one or the other.

One aim of this government policy was for greater consistency across the public sector. To that end we would expect the proposals put forward by MHCLG to closer reflect the proposals put forward by the Cabinet Office for the Civil Service. No argument has been put forward that justifies significantly worse provision for the local government sector. In comparison the three-week proposed limit on week's multiples will have little effect in the local government sector as severance provision in that form is currently significantly below that limit, however, the higher salary limit of £149,820 for the Civil Service will have a much more limited impact in that sector to the £80,000 limit proposed by MHCLG.

Question 12

Would you recommend anything else to be addressed as part of this consultation?

It should be made clear that the restrictions do not apply to TUPE protected benefits and those transfers conducted in the spirit of the TUPE regulations 'TUPE-like transfers' that are a common feature of reorganisation in local government.

As with the £95,000 cap, there should be scope for relaxation of the restrictions where:

- a. not exercising the power would cause undue hardship;
- b. not exercising the power would significantly inhibit workforce reform;
- c. commitments have legitimately been made by an authority in redundancy/re-organisation processes before the changes come into force;
- d. there is a value for money case.

Yours sincerely

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