Nottinghamshire County Council

Report to The Nottinghamshire Local Pension Board

10 December 2020

Agenda Item: 7

REPORT OF SERVICE DIRECTOR – CUSTOMERS, GOVERNANCE, AND EMPLOYEES.

LOCAL GOVERNMENT PENSION SCHEME – REFORM OF LOCAL GOVERNMENT EXIT PAYMENTS

Purpose of the Report

1. The purpose of the report is to inform Pension Board on the implementation of the reform of local government exit payments on scheme members and the implications for scheme employers.

2. The report also seeks approval for the funds proposed solution for dealing with cases impacted for an interim period prior to a change in pension regulations.

Information

Background

3. In 2015 the government first announced plans to introduce a cap on exit payments in the public sector. The cap applies to the total amount payable when someone exits and so applies to the total of severance payments, any pension strain cost and notice payments in excess of three months. The cap, set at £95,000 was legislated for in the Enterprise Act 2016, which amends the Small Business, Enterprise and Employment Act 2015, but required secondary legislation to be introduced.

4. On 10 April 2019, HM Treasury (HMT) opened a consultation on draft regulations, directions and guidance to implement the exit cap. This included provisions about the circumstances in which, and by whom, the cap could be waived. The consultation closed on 3 July 2019.

5. The Local Government Association (LGA) response to the cap consultation made detailed comments on the practical and statutory complexities of introducing the cap and its effects.

6. On 21 July 2020, HMT published the government's response to the consultation and laid the implementing regulations in Parliament. These were approved by the House of Lords on 23 September and the House of Commons on 30 September. They were officially made on 14 October and came into effect from 4 November 2020.

7. This law change has created an issue for employers and the Pension Fund as the Exit Cap Regulations and the Local Government Pension Scheme (LGPS) Regulations currently do not align. The proposals are that the LGPS will be amended to align these with the Exit Cap Regulations in future.

8. The Exit Cap regulations, laid by HMT, set out the general rules that must be applied to the public sector, and consultation ended on 9 November, with the ability to provide further comments on how the 95K cap should apply specifically to local government, alongside wider reforms on exit payments.

9. The proposals, set out by the Ministry of Housing Communities and Local Government (MHCLG), are of relevance to the LGPS, and therefore communication has been provided to scheme employers to make them aware of the potential changes.

10. There are a few key points to highlight as part of the consultation on the changes:

    a. The Government has decided to no longer proceed with a staged approach to implementation, the cap will now apply across all the public sector when implemented to ensure value for money as soon as possible.

    b. HMT has confirmed that employer funded early access to pensions (strain cost) will be within scope of the exit payment although the cap will not apply to all employers in funds as it currently stands.

    c. The Government is committed to strong governance and that any exceptions process for the cap not to apply will be fit for purpose and not cause any unnecessary delays.

    d. Whilst there are no current plans to uprate the £95K cap each year the government has committed to “making decisions on the level of the cap with reference full contextual factors” and any changes can be implemented through secondary legislation.

11. Under the current LGPS provisions, where a member’s employment is terminated on redundancy or efficiency grounds the member must have access to their unreduced pension benefits.

12. In cases where the cap is breached, then the member may have to take a reduced pension. Consequently, MHCLG is looking at options to introduce choice to allow members in this position to opt for a deferred pension instead.

13. The Government Actuaries Department (GAD) has produced draft factors and strain cost guidance for administrators to calculate the pension strain for retirements on both redundancy and efficiency grounds so that the cap can be applied equally to members across the LGPS.

Impact on Scheme Members

14. Within the new proposals there are a number of options of how members can be paid by scheme employers their redundancy payments, which will lead to reduced payments, and complexity for members who will now have to make a choice on their redundancy benefits.

15. 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.

16. 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.

17. The Fund has taken legal advice and followed the LGA’s guidance and proposes to adopt the following solution for cases where the members retires from the 4 November 2020;

For Cases that breach the £95,000 cap

18. For redundancy cases that breach the exit cap the pension fund will offer either:

    a. Fully reduced benefits, or
    b. A deferred benefit

    It is anticipated across the LGPS nationally that this position will generate appeals from pension members caught up in this process and the LGA have indicated that cases will be fast tracked to the Ombudsman.

19. As part of the process the Pension Fund will explain its reasoning to the member and make it clear to them that they have the right to claim under the regulations for underpayment of benefits.

20. The Pension Fund anticipates that it will receive claims from members as a result of this approach. If it does so, and those claims are successful, so that the member is entitled to an unreduced pension in the absence of any clarifying guidance or regulations, it may be required under the LGPS Regulations to approach employers for additional strain payments at a later date.

21. As part of fund communication scheme employers will need to be made aware that they will need to carefully consider the position of not making a payment of a “cash alternative” up to the exit cap to employees who are made redundant as this will create an additional unnecessary risk of overpayment.

22. This communication is designed to avoid overpayments or the need to reclaim amounts from scheme members. If an employer makes a payment of a 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.

For Cases that do not breach the £95,000 Cap

23. The Pension Administration Team will continue to produce estimates for employers related to members retiring on redundancy and efficiency grounds who are under the £95,000 Cap, up to and including a retirement date of the 31 March 2021, based on the current scheme rules (as at 10 December 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.

24. It is anticipated there will be a protection period, but it is unclear as yet when this will be but will follow the implementation of the new regulations sometime in early 2021.

Impact on the Fund and Scheme Employers

25. The issue for the funds and employers is wide ranging, as the proposals will affect governance arrangements, retirement processes, information flows, calculations, and communications with both employees and employers. It is envisaged that the practicalities of implementation will be onerous from the fund’s perspective.

26. The reforms apply to all employers set out in the overarching HMT regulations who are designated a public sector employer. The reforms will not affect employees of employers outside of the public sector. The proposals will change severance packages and impact workforce planning, as the provisions go much further than the overarching public sector exit regulations and affect all members regardless of the £95K exit payment cap

Summary of Proposals on the changes to the LGPS Regulations

27. The consultation which is due to cease on the 18 December 2020 changes to the LGPS Regulations sets out the following proposed approach:

    a. A general reform of redundancy payments, to involve a maximum of three weeks’ pay per year of service, an overall ceiling of 15 months’ pays and a maximum salary of £80,000p.a. which can be used in the calculation.

    b. Inclusion of pension strain in the overall payment cap of £95K.

    c. A waiver process to allow for relaxation of the £95K cap in exceptional circumstances, requiring ratification and approval of the business case by MHCLG.

    d. Strain costs and the related pension enhancements will be reduced by the value of any statutory redundancy which the employee will receive.

    e. In general, where a scheme employer pays’ discretionary redundancy payment over the statutory redundancy payment, this will not be payable where there is a strain cost to the scheme employer.

Statutory and Policy Implications

28. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance, finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

29. 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 sometime in early 2021, the new regulations require the Pension Fund to reduce the pension strain by the redundancy payment, so the scheme member receives an element of their pension reduced.

Data Protection and Information Governance

30. N/A

Financial Implications

31. The costs of early release of pension benefits are currently met by employers through a strain payment. In the event that the £95k cap applies, the benefits will be reduced so there will be no additional costs to the pension fund.

RECOMMENDATIONS

It is recommended that the Pension Board:

1) Acknowledge the proposals on implementing the interim arrangements for the Pension Fund.

Marjorie Toward
Service Director – Customers, Governance and Employees

For any enquiries about this report please contact:
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Constitutional Comments (GR30/11/2020)

32. Pursuant to the Nottinghamshire County Council constitution both the report and recommendation contained within it fall within the remit of the Board.

Financial Comments (KRP 30/11/2020)

33. There are no direct financial implications as a consequence of the change in process identified in the report.

HR Comments ()

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Links to Consultation on Exit Payments:

https://www.gov.uk/government/consultations/restricting-exit-payments-in-the-public-sector

https://www.gov.uk/government/consultations/reforming-local-government-exit-pay

Electoral Division(s) and Member(s) Affected

- All