My Ref: LGPS Exit Cap Consultation

Date: 2 July 2019

Please ask for: Mark Whitby

Cambridgeshire Pension Fund Northamptonshire Pension Fund

LGSS Pensions
One Angel Square
4 Angel Street
Northampton
NN1 1ED

01604 366537

pensions@northamptonshire.gov.uk

Workforce, Pay & Pensions Team,
HM Treasury,
1 Horse Guards Road,
London
SW1A 2HQ

Dear Madam/Sir

Restricting exit payments in the public sector:
Consultation on the implementation of regulations
Local Government Pension Scheme

With reference to the consultation launched on 10 April 2019, as Head of Pensions I respond on behalf of both Cambridgeshire County Council and Northamptonshire County Council in their roles as Local Government Pension Scheme (LGPS) administering authorities for the Cambridgeshire Pension Fund and the Northamptonshire Pension Fund respectively.

We are aware that the Local Government Association's (LGA) Head of Workforce has submitted a detailed response setting out very serious concerns regarding the consequences of implementing the policy as set out in the documents issue as part of this consultation and I would like it recorded that both County Councils concur with the LGA's views as expressed in their response, which is attached for reference.

In relation to the 8 specific questions posed in the consultation, I set out below our comments:

Question 1: Does draft schedule 1 to the regulations capture the bodies intended?
Exempting the Secret Intelligence Service, the Security Service, the Government Communications Headquarters and the Armed Forces from scope entirely, rather than excluding specific payments (such as the resettlement payments mentioned) seems at odds with the intention of the introduction of the restriction in exit payments across the entire public sector.

Question 2: Do you agree with the current list of bodies in scope, for the first round of implementation? If not, please provide reasons.
LGA in their response have highlighted potential inequities in the treatment of outsourced employees that are covered by TUPE, those that are not but whose transfers were TUPE-like and those employees not transferred.

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Bearing in mind the as yet undecided nature of how the provisions will impact on LGPS benefits and the amendments to the LGPS Regulations and associated actuarial guidance that will be required to implement the Exit Cap provisions, there are significant concerns about the timescale for introduction.

A single implementation date at the point clear and workable Regulations and guidance are in place, and taking into account an appropriate lead time for pension administration and other software providers to reflect what are to be the available benefit options would be our recommendation. A period of nine months from the date The Restriction of Public Sector Exit Payments Regulations 2019 are passed is suggested, so long as relevant amendments to the LGPS Regulations 2013 are made promptly after the Regulations are passed.

Question 3: Do you agree with the exemptions outlined? If not, please provide evidence.
The exemption of the Secret Intelligence Service, the Security Service, the Government Communications Headquarters and the Armed Forces is covered in the response above to Question 1.

Question 4: Does the guidance adequately support employers and individuals to apply the draft regulations as they stand? If not, please provide information on how the guidance could be enhanced.
The major issue from the perspective of an LGPS administering authority is that the LGPS Regulations do not currently provide an appropriate basis for a 'fair' implementation of the restriction in exit payments and they therefore require amendment in order for the provisions to be workable in a practical manner.

The following matters should be addressed to enable smooth and consistent implementation of the changes:

- The calculation of strain costs – at present different LGPS Pension Funds do not use a single set of factors to determine strain costs; in order to provide consistency of approach in relation to the Exit Cap calculation a single set of factors would be required.
- The current compulsion on a LGPS member aged 55 or over to take immediate payment of their LGPS pension if their employment is terminated on grounds of redundancy or business efficiency – with no guarantee that their LGPS benefits will be paid without early payment reductions, due to the prospect of the Exit Cap restriction impacting on the ability of the scheme employer to cover the full strain cost, it is recommended that a member is able to make a choice over whether or not to take payment of their benefits, potentially with a full or a partial early payment reduction applying, or to take a cash payment.
  In order to simplify the options available to scheme members and lessen the burden on administrators in presenting and explaining them, it would be helpful to:
  - Prescribe that other exit payments, over and above statutory payments such as the statutory redundancy payment, be capped before any strain cost;
  - Direct that any partial reduction apply proportionately across a member's benefits; and

    - Not permit buy-out of a partial reduction unless the member elects for immediate payment of benefits.
- Confirmation of whether a LGPS administering authority has any statutory duty in relation to monitoring its scheme employers are operating within The Restriction of Public Sector Exit Payments Regulations.

Question 5: Is the guidance sufficiently clear on how to apply the mandatory and discretionary relaxation of the regulations, especially in the case of whistleblowers?
While outside of both County Council's administering authority functions I wish to highlight that LGA in their response have expressed the view that health and safety reporting related cases should be included in the mandatory exemption provisions alongside whistleblowing and discrimination cases.

In addition LGA have expressed concerns over the complex and bureaucratic approval processes regarding both mandatory and discretionary relaxation of the cap, as well as identifying inconsistencies between the guidance and Regulations themselves.

There is a need for a process that is both practical and timely, and addresses concerns about requiring approval of Full Council when timings of such meetings may not provide the degree of flexibility, or indeed the protection of an employee's identity when hardship cases are discussed, if this is required at a public meeting.

Question 6: Is there further information or explanation of how the regulations should be applied which you consider should be included in the guidance? If so, please provide details.
Clarification of whether it is the intention that Employer's National Insurance Contributions (NIC) on exit payments in excess of £30,000 from 6 April 2020 will form part of the Exit Payment tested against the Cap would be appreciated.

Question 7: Are there other impacts not covered above which you would highlight in relation to the proposals in this consultation document?
The fact that the sum of £95,000 was originally proposed for the cap when the original consultation was launched in July 2015, the sum remains the same in this consultation that closes in July 2019, and there is no clear indication as to how, or indeed whether, the sum will be indexed over time is a concern. As the illustrative examples in Appendix 1 to the LGA response show, LGPS members on relatively modest annual salaries could be impacted by the cap depending on their length of pensionable service in a way that was perhaps not envisaged.

Like the LGA, both County Councils supports indexation of the cap and also consideration of the introduction of a 'salary floor' below which an employee would not be impacted by the cap.

Question 8: Are you able to provide information and data in relation to the impacts set out above?
The illustrative examples set out in Appendix 1 to the LGA response provide this information.

I trust that this response proves helpful and look forward to the outcome of the consultation in due course.

Yours faithfully,



Mark Whitby FPMI, CPFA
Head of Pensions
LGSS Pensions