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Please ask for: Yvonne Murphy

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Date: 3 July 2019

Dear Sirs

Restricting Exit Payments in the Public Sector: Consultation on Implementation of Regulations

I refer to the above mentioned consultation document and I am responding to the invitation for comments on behalf of Wirral Council in its capacity as the Administering Authority for Merseyside Pension Fund (MPF).

The Fund is part of the Local Government Pension Scheme (LGPS) and the 4th largest of the 88 funds in England and Wales, with assets of £8.5bn. MPF undertakes the LGPS pension administration and investments on behalf of the five Merseyside district authorities, over 180 other employers on Merseyside and elsewhere throughout the UK. The Fund has over 130,000 active, deferred and pensioner members.

1/ Our Response

The Fund supports the comments made by the LGA relating to the technical inconsistencies throughout the draft regulations and guidance as to the impact on the operation of £95,000 exit cap and the alignment of the policy intent with the LGPS regulations. For example, regulation 6 lists elements defined as exit payments but does not specify that the total of these payments should be measured against the cap. In addition, the order in which exit payments should be capped is not specified and to avoid variation in the application of the exit cap across the LGPS, the sequence of exit payments to be assessed should be specified in the regulations.

The primary focus of MPF with regard to the proposals is how the restrictions on Exit Payments are implemented in the LGPS Regulations given the current position is that members who exit the Fund age 55 or over on Redundancy or Efficiency grounds have a right to immediate pension scheme benefits unadjusted for early payment; this has a cost that needs to be allowed for in the Exit Payment Cap calculation.

Therefore, the policies and processes will need substantially updating to cope with the implementation of the exit cap with a need for a consistent approach across the LGPS, to ensure fair treatment for the employees affected. In addition, the software providers will need time to update systems to deal with the impact of this new legislation. This will lead to substantive setup costs and an increase in the ongoing administration costs; especially given that employers in scope of the Regulations will need to be treated differently to those out of scope.

More detail on the practical issues are set out in the attached note (Appendix A), provided by our Actuary and adviser (Mercer Ltd). This note sets out clearly the issues the Fund and our employers will have to contend with in administering the proposed restriction on exit payments.

2/ Key Concerns

The Fund shares the concerns highlighted in the formal LGA response, that the proposed draft regulations which include payments made to a pension scheme will capture members with long service earning less than £23,500 per year, resulting in personal financial hardship during retirement. This is exacerbated by the removal of the anticipated salary floor together with the absence of a proposal to index the £95,000 limit – so more people with salaries below the UK average will be affected in the future years.

Substantial clarification is required on the impact of the cap for the LGPS, as there are no clear guidelines on the application of the cap to provide a "fair choice" for the member between a reduced pension and the cash alternative referred to in the draft regulations. In addition the LGPS regulations should be amended to permit members to defer access to benefits if reductions apply due to the cap.

The reliance of an Equality Impact Assessment undertaken during the previous consultation in 2015 may not meet obligations under the Public Sector Equality Duty 2010 and therefore the draft Regulations are at risk of legal challenge; causing confusion and potential additional costs for local authorities, particularly in circumstances where employees proceed with action through the Employment Tribunal Service.

A further issue is that the processes outlined to secure exemptions to the cap are overly bureaucratic and challenge the capacity of local government to make decisions in the interests of local taxpayers. The layered process will frustrate employer engagement with employees and inhibit the responsiveness of local authorities to changing situations.

The Fund is concerned that there will be the potential of a new statutory requirement on administering authority to undertake an oversight and governance role on an employing authority's correct application of the exit payment restrictions. We are resolute that it is not the Pension Fund's responsibility to validate whether an employer's relaxation of the cap is in accordance with the HM Treasury Direction and any relevant guidance.

3/ Specific Questions within the Consultation

We set out below our position to each of the questions, although several of the questions raised are a matter of Government policy so are not an area where the Fund has a view or standpoint.

However, our participating public sector employers (including Wirral Council) may have a view on these matters.

	RESPONSE
Q 1	
Does draft schedule 1 to the regulations capture the bodies intended (described in section 2.1 above)?	These are a matter of Government policy so not an area where the Pension Fund has a particular view. Our participating public sector employers may have a view on these matters either individually or through collective forums e.g. the Local Government Association.
Q 2	
Do you agree with the current list of bodies in scope, for the first round of implementation?	However, on a practical basis the restrictions will not cover all employers who participate in our Fund leading to different pension Fund policies and processes being required.
Q 3	
Do you agree with the exemptions outlined?	

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Q 4	RESPONSE
<p>Does the guidance adequately support employers and individuals to apply the draft regulations as they stand?</p>	<p>This is strictly a matter for employers and individuals (principally through their representative bodies) so is not an area where the Pension Fund has a particular view except that the guidance must allow the employers to develop appropriate and clear policies on how the exit cap is applied.</p> <p>We would however note that the application relies on a significant amount of data being readily available to all parties to govern the application of the exit cap. In particular, the final assessment in relation to pension strain costs in the LGPS would need to be carried out after the final data is collated around pay and non-pension exit payments. Otherwise, this could result in some cases that were thought to be under the cap actually then exceeding it if the final data is materially different.</p> <p>The final guidance and processes therefore need to deal with the flow of data adequately. This is especially important as the decisions an individual will need to make in respect of their LGPS pension entitlement would likely be different if they are under/over the exit cap (based on our interpretation of the application). All parties therefore need clarity on when the cap applies and also the information needed to apply it consistently and in line with the final regulations.</p> <p>In relation to the Regulations as they apply to the LGPS (as introduced by the Enterprise Act 2016, albeit not yet in force), there is at present no clarity on how the process would work in applying the exit cap restriction in respect of early retirement pension benefits, so there is a danger of different LGPS Funds and employers applying the restriction in different ways. In our view, it would be more helpful if, in cases where the restriction applies, members could be given the choice of taking the value of the (restricted) pension enhancement in cash form, but with the member then being given the option of using their exit payment to buy-back part of the pension enhancement.</p> <p>Given that we feel that the amending Regulations under the exit cap are somewhat ambiguous in their operation, we would prefer to see these particular provisions removed, and the MHCLG tasked with producing a set of amending Regulations and guidance to give full effect to the exit cap restrictions.</p> <p>The Regulations will still require an exiting member who is over age 55 to commence his LGPS pension. This seems to us overly restrictive in a case where a member is not able to take a full unreduced pension and we would prefer to see some flexibility for the member to take deferred benefits instead if that suited their particular circumstances. Again, this adds weight to the view that the Enterprise Act Regulations as they apply to the LGPS should not be brought into effect in their current form.</p>

Q 5	RESPONSE
Is the guidance sufficiently clear on how to apply the mandatory and discretionary relaxation of the regulations, especially in the case of whistleblowers?	This is strictly a matter for Government and employers so is not an area where the Pension Fund has a particular view except that the guidance must allow the employers to develop appropriate and clear policies on how any relaxations of the exit cap is applied.
Q 6	
Is there further information or explanation of how the regulations should be applied which you consider should be included in the guidance?	<p>We would welcome the guidance making it clearer that it is not the responsibility of the pension fund to consider if the relaxation has been applied in line with the guidance and directions. The pension fund should only implement the pension benefits as per the LGPS Regulations as directed by the employer on whether a relaxation is applied.</p> <p>One technical aspect that needs to be incorporated into these Regulations or separately into changes to the LGPS Regulations is the option for a member to defer taking their reduced pension benefits (due to the exit cap restriction) if they choose to do so. This, in our view, is critical as supports the general abilities for members to make choices in how they receive pension benefits. It is also possible that taking reduced benefits may not be in the best interests of the member at that time as they may not then adequately meet the basic level of income required to maintain living standards throughout their retirement.</p>
Q 7	
Are there other impacts not covered above which you would highlight in relation to the proposals in this consultation document?	Please see attached document (Appendix A) in relation to the impact on the Fund and the practical/technical issues that need resolution in the application. This forms part of our response to the consultation and has been prepared in conjunction with our adviser (Mercer Ltd).
Q 8	
Are you able to provide information and data in relation to the impacts set out above?	We can provide an analysis of the pension strain cost amounts for the Fund where they exceed the cap of £95k if this would be helpful. We note that allowing for statutory redundancy payments (which must be paid) will reduce the headroom to apply to pension strain costs below the £95k when determining if a member's benefits need to be reduced in order to ensure that all payments remain within the exit cap.

4/ Conclusion

The Fund has considered the formal LGA consultation response and is in support of all its findings and points made therein. In addition, I hope the information and responses above are useful and assist the Ministry in formulating the final policy and regulatory position.

Consideration should be given to the level of complexity that will result from the introduction of exit payment restrictions as the Fund will have the daunting task of communicating to members the numerous options and the associated impact on pension benefits.

The Fund would welcome measures to simplify the application of the restrictions; for example, provisions should prescribe that non-statutory exit payments are accounted for within the cap before any pension strain cost, and remove any member choice in regard the application of partial benefit reductions. Offering multiple options of benefit reduction from tranches of membership will lead to member confusion, payment delays and will have an adverse impact on the already stretched resources of Pension Funds.

Finally, we recognise that there is a requirement to amend the LGPS regulations in order to implement the exit cap, from an operational perspective, it is imperative that there is a reasonable lead in time for the regulatory changes to be drafted, consulted on and enacted along with ample opportunity for the actuaries and system providers to respond accordingly to technical matters.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Yvonne Murphy'. The signature is written in a cursive style with a large initial 'Y' and a long horizontal stroke extending to the left.

Yvonne Murphy
Head of Pensions Administration
Merseyside Pension Fund