

**PENSIONS COMMITTEE****Tuesday, 2 February 2021**

<b>REPORT TITLE:</b>	<b>LGPS UPDATE</b>
<b>REPORT OF:</b>	<b>DIRECTOR OF PENSIONS</b>

**REPORT SUMMARY**

This report updates Members on the judicial review of the 'Restriction of Public Sector Exit Payments Regulations 2020', and the publication of the Ministry of Housing, Community and Local Government (MHCLG) guidance on employer applications for the relaxation of the exit cap for local government employees.

In addition, the report raises awareness of communication materials produced by LGA to assist scheme members, administering authorities and employers in understanding the implications of the public sector exit cap on redundancy packages, operational processes, and legal obligations.

**RECOMMENDATION**

That Members note the report and the resource implications in administering the Public Sector Exit Payment Regulations.

**1.0 REASON/S FOR RECOMMENDATION**

- 1.1 There is a requirement for Members of the Pension Committee to be kept up to date with legislative developments as part of their decision-making role.

**2.0 OTHER OPTIONS CONSIDERED**

- 2.1 Not relevant for this report.

**3.0 BACKGROUND INFORMATION**

**Judicial Review of the 'Restriction of Public Sector Exit Payment Regulations 2020'**

- 3.1 As covered in a verbal update at the committee meeting of 2 November 2020, a number of requests for judicial review to retract the Public Sector Exit Payment Regulations have been lodged by ALACE/LLG, UNISON and GMB/Unite contesting the regulations on a number of grounds including their effect on the existing LGPS regulations.
- 3.2 On 22 December 2020, the review requests were granted permission to be heard together in the latter half of March 2021. It is noteworthy that until the proceedings are complete the Pensions Ombudsman will not issue any directions on appeals with regard to the lawfulness of payment of reduced LGPS benefits in circumstances where redundancy packages exceed the £95k exit cap.
- 3.3 Scheme members will, however, still be able to bring claims against employers and LGPS administering authorities even if these are subsequently 'stayed' during the judicial review process.

### **Exit Cap Waiver Guidance**

- 3.4 On 16 December, MHCLG published waiver guidance for the £95k exit cap in compliance with HM Treasury Directions for circumstances where mandatory or discretionary waivers may apply. The guidance is largely directed at employers and provides information on the process MHCLG will follow in deciding whether to approve a request for a waiver. This document can be accessed at:  
<https://www.gov.uk/government/publications/local-government-exit-pay/local-government-exit-pay-a-guide-for-local-authorities-for-the-interim-period-until-mhclg-regulations-come-into-force#process>
- 3.5 To apply for a waiver, employers are required to submit a business case to MHCLG, and this must contain information on strain costs from the Fund.
- 3.6 The guidance states that Funds will have up to two weeks to provide information on the strain cost whether or not the waiver were granted.
- 3.7 However, at the current time, if the waiver is not granted members cannot receive a partially reduced pension as the LGPS regulations have not yet been amended to permit such a payment.
- 3.8 The LGA have raised a number of concerns regarding this guidance in terms of clarity and interpretation; including but not limited to the following:
- concerns that despite what is implied in the guidance, the information listed for record keeping and that required by regulations for publication are different and that the resultant confusion may lead to disclosure of personal data
  - clarification on whether 'TUPE like' movements on local government reorganisation are covered by mandatory waivers.
- 3.9 LGA has provided advice that administering authorities should only provide the full strain costs, as it is the employer's responsibility to determine the amount of any

cash payment that may be payable where the member is capped and only receives a reduced or deferred pension.

- 3.10 It is LGA's view that if administering authorities are involved in determining any cash amount, they could be liable if the employer exceeds the cap or the employee challenges payment of a reduced pension benefit.

### **National Communication Materials**

- 3.11 Fund officers sit on LGA's Communication Group and fed into the drafting of the national communications to explain the implications of the £95k exit cap for use by scheme members, employers, and funds.

### **Information for Scheme Employers**

- 3.12 The scheme employer document seeks to guide employers step-by-step through their obligations and decisions under the exit cap regulations. In particular, it sets out the risks of making a cash alternative payment before any decision is made regarding the pension or the outcome of any potential litigation. This document can be accessed at:

<https://lgpslibrary.org/assets/gas/ew/Exit%20cap%20Emp%20v2.0c.pdf>

### **Information for Administering authorities**

- 3.13 This document seeks to set out the decisions which authorities need to take as a result of the exit cap regulations coming into force. It also provides a step-by-step guide for revising their processes and liaising with scheme employers. This document can be accessed at:

<https://lgpslibrary.org/assets/gas/ew/Exit%20cap%20AA%20v2.0c.pdf>

### **Information for Scheme Members**

- 3.14 Designed as a series of 'Frequently Asked Questions' on the exit cap for pension scheme members. The Fund website has been updated and employer news alerts have been issued to raise awareness of the documents and to assist all stakeholders in making decisions related to exit packages.

<https://mpfmembers.org.uk/content/public-sector-exit-cap-faqs-lgps-members>

## **4.0 FINANCIAL IMPLICATIONS**

- 4.1 There are none arising from this report.

## **5.0 LEGAL IMPLICATIONS**

- 5.1 The conflicting provisions of the LGPS Regulations and the HM Treasury 'Restriction of Public Sector Exit Payments Regulations 2020' along with the Fund's decision to pay a fully reduced pension benefit in the event of a member exceeding the exit cap (in-line with the legal opinion sourced by LGA) may lead to a legal

challenge from a Scheme member.

## **6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS**

- 6.1 The Introduction of the 'Restriction of Public Sector Exit Payment Regulations 2020' will affect the Fund's governance arrangements with the need to segregate its employer base, as some employers are not subject to the public sector exit cap, for example, Higher Education establishments.
- 6.2 There is significant impact on the retirement process, information flows and communications that Fund officers will need to assess and implement as appropriate during 2021.

## **7.0 RELEVANT RISKS**

- 7.1 There are none arising from this report.

## **8.0 ENGAGEMENT/CONSULTATION**

- 8.1 The relevant consultations are set out in this report.

## **9.0 EQUALITY IMPLICATIONS**

- 9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone.

An Equality Impact Assessment is a tool to help council services identify steps they can take to ensure equality for anyone who might be affected by a particular policy, decision, or activity.

- 9.2 MHCLG and HMT undertake equality impact assessments with regard to the statutory reform of the public sector pension schemes and LGPS.

## **10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS**

- 10.1 There are none arising from this report.

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## **APPENDICES**

## **BACKGROUND PAPERS**

**The LGPS Scheme Advisory Board information page on Public Sector Exit Payments:**

<https://www.lgpsboard.org/index.php/structure-reform/public-sector-exit-payments>

**SUBJECT HISTORY (last 3 years)**

**Council Meeting**

**Date**

**The LGPS Update is a standing agenda item on Pensions Committee**