Report of the Section 151 Officer

Pension Fund Committee – 12 November 2020

Exit Payment Reform – Response to Government Consultation

Purpose:	To approve the Administrating Authority response to Government consultation on Exit Payment Reform
Policy Framework:	LGPS Administration Regulations
Consultation:	Legal, Finance and Access to Services.
Recommendation:	It is recommended that The Pension Fund Committee approves the response to Government consultation on exit payment reform at Appendix 2
Report Author:	Jeff Dong
Finance Officer:	Jeff Dong
Legal Officer:	Stephanie Williams
Access to Services Officer:	R Millar

1 Background – The £95k Cap

1.1 The legislation implementing the £95k cap on exit payments has now been signed and came into force on 4 November 2020. Administering Authorities are still awaiting the Guidance and Directions to accompany the regulations; these will set out the discretionary waiver process and the position of exits agreed before 4 November where the date of leaving is after.

1.2 In parallel, Ministry of Housing Communities and Local Government (MHCLG) have opened a consultation seeking views on proposals for further reforming exit payment terms (see below in 2.0). The consultation proposes changes to the LGPS regulations in order to accommodate the £95k exit payment cap. It also proposes a limit on cash severance payments and for the strain cost to be reduced by the value of any statutory redundancy payment made.

1.3 Clearly the amendments to the LGPS will not be in place when the £95k cap comes into force. HM Treasury and MHCLG have been made aware of the predicament this puts local government employers and LGPS administering authorities in. MHCLG have sent the letter outlining their position attached at Appendix 1. In the meantime the SAB is obtaining legal advice as to the risk of challenge to LGPS authorities during this period which will be published in good time for the 4th November.

Please note, in the period between 4 November and the date the LGPS regulations are amended:

- only exits where the cost exceeds the £95k cap will be impacted.
- the statutory guidance on standard strain cost will not be effective i.e. you will continue to calculate strain cost on a local basis.
- the proposals in the MHCLG consultation around limiting cash severance payments and the strain cost being reduced by the value of any statutory redundancy pay will not apply.

2 Further Exit Reform

2.1 Employees of all local authorities are covered by both the cap and compensation regulations, so employees will see a range of limitations to scheme redundancy benefits. There will also be LGPS scheme employers who are not covered by either the cap or compensation regulations where employees will see different outcomes.

2.2 HMT regulations set out the bodies covered by the £95k cap – 'capped employers' - while revised compensation regulations (as yet unpublished) will set out the bodies covered by the further reform changes – 'reform employers'. Some scheme employers will be both capped and reform employers but others will fall into one or neither camp. Due to the timing of the HMT regulations there will be a period from 4th November when employers are covered by the cap but not yet by the revised compensation or pension regulations.

3 Exit Reform Proposals in the Consultation

3.1 These proposals will limit the payments made to, or in relation to, employees of 'reform employers' in addition to statutory entitlement as follows:

- The actual pay used in severance calculations will be limited to £80,000;
- The maximum severance (including statutory redundancy pay) will be limited to 3 weeks' pay per year of service or 15 months' pay, whichever is the lower
- No severance will be payable if the member receives an immediate pension with a payment by the employer to cover the cost of early release of pension - the strain cost - except in the case of the severance amount exceeding the strain cost in which case the excess

would be payable
- The amount available for any strain cost will be reduced by the statutory redundancy payment

3.2 The major impact of the regulations will be on LGPS members aged 55 or over who currently qualify for an unreduced pension because of redundancy or efficiency retirement as well as a severance payment under The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006. Once both the cap and further reform is in place for members whose employers are both capped and subject to further reform the effect of the proposals will be significant as they would receive statutory redundancy pay and one of the following options:

- An immediate actuarially reduced pension calculated using a strain cost reduced by the amount of the statutory redundancy payment and capped at £95k. In this case no severance is payable; or,
- An immediate fully reduced pension (no strain cost to the employer), plus statutory redundancy pay plus severance in excess of statutory redundancy limited to £95k, or,
- A deferred pension (no strain cost to the employer), plus statutory redundancy pay plus severance in excess of statutory redundancy limited to £95k.

However in the period between 4th November and prior to revised pension and compensation regulations being in place the only change will be the application of the cap to strain costs.

There are circumstances, as set out in draft HMT Directions, when the cap must be or may be relaxed by a minister or the authority. However, most are subject to consent by HM Treasury even if passed by full council. Employers are required to record and publish information about any decisions made to relax the cap. There will be a different process for Welsh councils where consent for a waiver will come from Welsh ministers rather than Westminster.

4 Practical Considerations of both the cap and exit reform

4.1 The exit payment cap is set at a total of £95,000 with no provision for this amount to be index-linked. Exit payments include redundancy payments (including statutory redundancy payments), severance payments, pension strain costs – which arise when an LGPS pension is paid unreduced before a member's normal pension age – and other payments made as a consequence of termination of employment. The cap applies to all exit payments that arise within a 28 day period and the regulations cover the process to follow if an individual has multiple exits from public sector employment within 28 days.

4.2 Payments related to death in service or ill health retirement, pay in lieu of holiday, payments made in compliance with an order made by a court or tribunal and payments in lieu of notice that do not exceed a quarter of a person's salary are not exit payments for the purposes of these regulations. Although statutory redundancy is included as an exit payment it cannot be reduced. If the cap is exceeded, other elements that make up the exit payment must be reduced to achieve an exit payment of £95,000 or less.

4.3 Proposals for the cap were first published in 2015. If the cap had been indexed by CPI since then it would now be in excess of £110K. There is however no intention to index the cap although the response states that it will be kept under review.

4.4 Currently the strain cost for an early payment of pension is calculated by each LGPS fund. This is of no concern to employees at present as a full pension is paid regardless of any differential in cost. Under the new proposals, strain costs that are capped result in reduced pension and therefore any differential in strain costs across funds would lead to different outcomes for scheme members.

4.5 The MHCLG consultation proposes that a standard methodology is to be used to calculate strain cost across all funds in respect of capped employers, but that some flexibility will be available when calculating strain costs for non-capped employers. Use of the standard strain cost may have implications for employer contributions at the following valuation depending on its relationship to the actual liability impact on the particular employer as calculated by the fund actuary.

4.6 However standard strain cost calculations will only come into force with revised pension regulations. Until that time existing strain cost calculations should continue to be used when calculating if strain costs should be capped.

5 Response to consultation

5.1 The consultation process did not invite general commentary on exit payment reform but on the specifics and effects of the proposals and required response to a series of questions. The Administering Authority's response is attached at Appendix 2 having reviewed and incorporated responses from the LGA and technical advisors.

6 Judicial Review

6.1 It should be noted that a pre action protocol letter has been lodged with HM Treasury and The Ministry of Housing Communities and Local Government notifying of the proposal to request a judicial review into the Exit Reform regulations. This claim has been lodged on behalf of LLG (Lawyers in Local Government) . Anecdotally, a number of unions are also apparently lodging similar claims.

6.2 At point of writing, local authorities have received a letter from Welsh Government indicating they are reviewing their position and taking legal advice with a view to invoking their devolved powers in the matter of the £95k cap, principally to not take into account the LGPS pension strain cost in exit cap calculations, a similar approach to Scotland and the consequential impact on these exit reform proposals.

7 Legal Implications

7.1 There are no direct legal implications arising from this report.

8 Financial Implications

8.1 There are no financial implications arising directly from this report.

9 Equality and engagement Implications

9.1 There are no equality implications arising from this report.

Appendices

Appendix 1 - MHCLG have sent the letter outlining their position.
Appendix 2 – Administering Authority Response.