

Scheme Advisory Board

Meeting of the Board 8th July 2019

Item 5 Paper C ANNEX 1

Response to Restriction of public sector exit payments consultation

The Board

The Local Government Pension Scheme Advisory Board (SAB) is a body set up under Section 7 of the Public Service Pensions Act 2013 and The Local Government Pension Scheme Regulations 110-113.

The purpose of the Board is to be both reactive and proactive. It will seek to encourage best practice, increase transparency and coordinate technical and standards issues.

It will consider items passed to it from the Ministry for Housing, Communities and Local Government (MHCLG), the Board's sub-committees and other stakeholders as well as items formulated within the Board. Recommendations may be passed to the MHCLG or other bodies. It is also likely that it will have a liaison role with the Pensions Regulator. Guidance and standards may be formulated for local scheme managers and pension boards.

The Board has membership representing both employers and scheme members although its members may have different views of the merits in principle of the proposals this response seeks to address both policy and practical issues contained in the consultation.

The Response

The SAB has very serious concerns regarding the consequences of implementing this policy as set out in these consultation documents. Most notably:

- i. The proposed change will represent a significant reduction on the potential benefits of LGPS members which will frustrate workforce planning. Examples are provided later in this response.
- ii. Employees in scope to have their exit payments capped are much lower earning than the consultation suggest.
- iii. Current pension strain calculations differ across the county which would lead to a 'post code lottery' for pension benefits
- iv. As drafted, these regulations present a range of potential legal risks that could increase the occurrence of tribunals
- v. That there are a number of changes to other legislation - most notably the regulations governing the Local Government Pension Scheme - that are required before these regulations can reasonably be applied; and,
- vi. 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.

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In particular the SAB would wish to raise the following concerns regarding the consultation

- i. The lack of any review or indexation of the £95,000 figure means that over time, more people with salaries below the UK average will be affected. The SAB strongly suggests amendments to these regulations to introduce indexation revisions.
- ii. When originally proposed, the concept of a salary floor was suggested but there is no mention of that in this consultation. The SAB strongly suggests amendments to these regulations to introduce a salary floor.
- iii. No implementation period is set out in this consultation. Due to the volume of consequential regulation changes required and the substantial changes needed to administrative systems the SAB is of the view that a minimum of nine months from the date the regulations are passed is required for the necessary reforms to the Local Government Pension Scheme to be introduced and the actuaries, payroll providers and others to respond accordingly.
- iv. The SAB has significant misgivings about the discretionary exemptions process set out in this consultation. The overly bureaucratic process outlined which potentially requires three central government post holders (two civil servants and one Minister) to ratify a full council decision will frustrate employer engagement with employees and inhibit the responsiveness of local authorities to changing situations.
- v. The SAB supports the mandatory exemption provision for those with whistleblowing and discrimination cases however, the omission of health and safety reporting related cases seems inappropriate and inconsistent, bearing in mind tribunal awards for such cases are also unlimited. Therefore, we would strongly suggest the extension of the mandatory exemption to cover those cases.
- vi. The discretionary exemption process for other tribunal cases is problematic and, we envisage, will increase costs resulting from tribunal cases as individuals will be reluctant to accept a settlement when the cap means they could achieve a higher award in tribunal.
- vii. The absence of a robust Equalities Impact Assessment is a cause for concern and is one of several areas where the SAB is concerned that these Regulations increase legal risks facing councils.
- viii. Currently exit payments in local government are predominantly related to unreduced pension access for those above minimum benefit age and, particularly when compared with the wider public sector, the severance cash payments are low: generally 1.5 weeks per year reflecting the statutory system of accrual and actual weekly pay. As these regulations will inhibit pension access for some individuals earning considerably below UK average earnings, there will be understandable pressure to improve the severance framework in response.

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- ix. Substantial clarification on the impact of the cap on the Local Government Pension Scheme is needed in order to make these Regulations workable. In particular there is no clarity on the application of the cap in a way which provides a 'fair choice' for the member between a reduced pension and the cash alternative referred to in the draft regulations. Also, there will be disputes due to the differing methods around the calculation of strain payments across the country and resultant inconsistencies in who is capped and to what extent.
- x. Excluding outsourced employees from these regulations, as well as other areas of local government related employment creates a two tier workforce that will be exacerbated by the inclusion of an exemption for TUPE cases but not 'TUPE-like' cases resulting, for example, from government mandated reorganisations. There is significant confusion around coverage in these regulations which is made worse by the prospect of an iterative process gradually extending the range of organisations covered.

Examples of impact on individuals affected by the cap

All examples are based on a female aged 55 with 35 years membership in the LGPS when made redundant. Strain costs are estimated as those required for a 'standard' national calculation. The methodology for projecting part reduced benefits is based on the proportion of strain cost available as no current methodology exists.

Example 1 annual salary £30,000

| Current benefits | | |
|---------------------------------|----------------|-----------|
| Pension | £15,061 | per annum |
| Lump Sum | £27,000 | |
| Severance (inc stat redundancy) | £23,365 | |

| Proposed Part Reduced Benefits | | |
|---------------------------------|----------------|------------------|
| | | Reduction |
| Pension | £14,033 | -£1,028 |
| Lump Sum | £26,470 | -£530 |
| Severance (inc stat redundancy) | £14,175 | -£9,190 |

Example 2 annual salary £40,000

| Current benefits | | |
|---------------------------------|----------------|-----------|
| Pension | £20,082 | per annum |
| Lump Sum | £36,000 | |
| Severance (inc stat redundancy) | £31,154 | |

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| Proposed Part Reduced Benefits | | |
|---------------------------------|----------------|-----------|
| | | Reduction |
| Pension | £17,096 | -£2,985 |
| Lump Sum | £34,462 | -£1,538 |
| Severance (inc stat redundancy) | £14,175 | -£16,979 |

Example 3 annual salary £50,000

| Current benefits | | |
|---------------------------------|----------------|-----------|
| Pension | £25,102 | per annum |
| Lump Sum | £45,000 | |
| Severance (inc stat redundancy) | £38,942 | |

| Proposed Part Reduced Benefits | | |
|---------------------------------|----------------|-----------|
| | | Reduction |
| Pension | £20,160 | -£4,942 |
| Lump Sum | £42,454 | -£2,546 |
| Severance (inc stat redundancy) | £14,175 | -£24,767 |

Example 4 annual salary £75,000

| Current benefits | | |
|---------------------------------|----------------|-----------|
| Pension | £37,653 | per annum |
| Lump Sum | £67,500 | |
| Severance (inc stat redundancy) | £58,413 | |

| Proposed Part Reduced Benefits | | |
|---------------------------------|----------------|-----------|
| | | Reduction |
| Pension | £27,818 | -£9,835 |
| Lump Sum | £62,434 | -£5,066 |
| Severance (inc stat redundancy) | £14,175 | -£44,238 |

Example 5 annual salary £75,000

| Current benefits | | |
|---------------------------------|----------------|-----------|
| Pension | £50,204 | per annum |
| Lump Sum | £90,000 | |
| Severance (inc stat redundancy) | £77,885 | |

| Proposed Part Reduced Benefits | | |
|--------------------------------|----------------|-----------|
| | | Reduction |
| Pension | £35,477 | -£14,727 |

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| Lump Sum | £82,414 | -£7,586 |
| Severance (inc stat redundancy) | £14,175 | -£63,710 |

Technical Response

The LGA as a member of the SAB has produced a full and comprehensive technical review of the consultation which can be found at Part 2 of its response to this consultation. The SAB endorses the findings of that technical review and in particular would question how the regulations could possibly be implemented given the significant issues it has identified.

SAB
3rd July 2019