Exit cap information for LGPS administering authorities

The information below is for redundancy and business efficiency exits that occur from 4 November 2020 until revised LGPS regulations are in place. It applies to exits of **LGPS members who are aged 55 or over**. Information about other circumstances where a pension strain cost is payable will follow.

Immediate policy decision for administering authorities

You must decide on your policy for paying pensions where the exit payment cap is breached.

There is a conflict between the exit cap regulations and the LGPS regulations if the cap is breached when an LGPS member age 55 or over exits. The LGPS regulations still require the member to take payment of an unreduced pension, but the exit cap regulations prevent the employer from paying the full strain cost.

As an administering authority, you need to decide whether to pay an unreduced pension in line with regulation 30(7) or provide the option of either a deferred pension under regulation 6(1) or an immediate reduced pension under regulation 30(5) in line with the Government's recommendations.

To assist you with this decision, the Scheme Advisory Board (SAB) has obtained legal advice. You can read a commentary on that legal advice on the Public Sector Exit Payments page of the SAB website. You should also have regard to the letter from MHCLG to LGPS administering authorities dated 28 October 2020.

You must take your own decision regarding the pension to be paid. The SAB recommends that you offer a deferred or immediate reduced pension based on the considerations that follow.

If you decide to pay an unreduced pension, there is a risk that you could end up in the position of having to try and recover monies from the employer and/or the member:

- You will not be able to obtain the whole strain cost from the employer. The employer will be restricted to a maximum of £95k for all exit payments including the strain cost. If the employer has paid a cash alternative, they are unlikely to be able to pay any strain cost. The recommendation to the employer is that they do not pay the cash alternative to the member. If the employer decides to pay the cash alternative, they must notify you.
- If you cannot obtain a strain cost at the time of the exit, you should discuss with your actuary what options are open to you to ensure the benefits are fully funded in the future. You should be aware that there is a serious risk that you will not be able easily or quickly to make good the absence of the strain cost.
- You may also be at risk of challenge under the doctrine of implied repeal which, if proven, would result in you having to seek repayment of the overpaid element of the pension. The doctrine of implied repeal provides that where a piece of legislation conflicts with an earlier one, the later legislation takes precedence.

Offering a deferred or reduced pension also risks challenge, this time from the member seeking to enforce their rights under regulation 30(7). Regardless of the outcome of any challenge, this approach should result in the member receiving additional monies as:

- an unreduced pension, or
- a cash alternative payment to the member, or
- a cash alternative paid to you to provide additional pension under regulation 31 or waive reductions under regulation 30(8).

Given the legal, financial and reputational risks involved it will be important to ensure that any policy decision is cleared at the relevant level within your organisation.

Other immediate considerations for administering authorities

- Liaise with your actuary on the appropriateness of current strain cost calculations. There may be risks associated with making a change, particularly if the new methodology results in lower strain costs. Adopting the GAD methodology may be a reasonable approach, however, this is not without risk. If you adopt a new method of strain cost calculation that results in lower costs, there is a potential for challenge from employers who have recently paid higher strain costs based on the current methodology. The change could also be challenged if it is perceived as a means of avoiding the exit payment cap.

- If you change your strain cost methodology, ensure that new strain costs are provided to employers for all relevant exits where the leaving date is on or after 4 November 2020, including those already in progress.
- Ensure that your employers are aware of their status and obligations under the exit cap regulations (you can refer them to exit cap information for employers on www.lgpsregs.org) and how you will deal with pensions for capped members.
- Review your forms and processes for redundancy and efficiency exits to ensure that the employer is aware of the strain cost in good time and notifies you of the member's status under the exit cap regulations.
- Review your estimate process to ensure it matches your policy.
- Maintain close contact with your LGPS employers throughout the exit process.

Exits in progress

- Ask your employers to check and confirm the status of any exits already in progress where the leaving date is on or after 4 November 2020
- If you have adopted a new method of strain cost calculation, provide the employer with the new cost and ask whether the total exit package exceeds the cap
- If you have already provided a member with a formal pension quotation, you will need to contact them to advise them of their options if:
  - the employer notifies you that the cost of that exit would exceed the cap and
  - you have made a policy decision to offer members the option of deferred benefits or immediate reduced pension in this event.

Administering authority process for new exits

Follow these steps when you are notified that an LGPS member age 55 or over has left due to redundancy or business efficiency on or after 4 November 2020.

Step 1: Ask your employers to confirm whether or not they are covered by the cap (they can check the Schedule at the end of the Restriction of Public Sector Exit Payments Regulations 2020). If they are not, you should proceed as normal. The member is entitled to unreduced benefits and you should request a strain cost in line with your current process.

Step 2: If the employer is covered by the cap, you should calculate a full strain cost quote in respect of new exits for members who would normally qualify for benefits under regulation 30(7). Provide the cost to the employer and ask:

- Does the member's total exit package exceed the cap?
- If it does, have you applied for a waiver?

You should not become involved in any decision regarding the breaching of the cap as those regulations apply to the employer alone and any sanctions for a breach will be on the employer alone.

You should ensure that you are **notified of any waiver request,** and whether the waiver application has been successful**.** Until and unless the employer confirms that any waiver has been successful you should continue to assume the member exceeds the cap.

If the employer informs you that the total value of the exit payments (including strain cost) is less than or equal to £95,000, or that a waiver application has been successful, go to **step 3**. If the employer informs you that the total value of the exit payments (including strain cost) is more than is more than £95,000 go to **step 4**.

Step 3: If the employer informs you that the total of the exit payments is less than or equal to £95,000 or that a waiver request has been successful, process the exit as normal. The member is entitled to unreduced benefits and you should request a strain cost in line with your current process.

Step 4: The employer informs you that the total exit payment is over £95,000 and the cap will not be waived.

If your policy is to pay an unreduced pension go to **step 5**. If your policy is to offer a deferred or reduced pension go to **step 6**.

Step 5: If your decision is to pay an unreduced pension, you must inform the employer, ask them not to pay a cash alternative and request the full strain cost. It will be for the employer to determine how much, if any, of that cost it can meet under the exit cap regulations. Please be aware you will not be able to recover the full strain cost. Depending on what other payments the employer has made, you may not be able to recover any of the strain cost in these cases.

Step 6: If your decision is to offer the member the option of a deferred pension or a reduced pension, you must inform the employer of that decision. The employer must decide whether to make a cash alternative payment under regulation 8 of the exit cap regulations. We recommend that you remind the employer that decisions made by the administering authority and employer are open to challenge and could be reversed.

It is important that the employer understands that a successful legal challenge could result in a request for a strain cost payment. The employer should understand the implications of making an immediate cash alternative payment, or deferring payment until the result of any legal challenge is known. You may wish to direct them to the Exit cap information for LGPS employers and the SAB commentary on legal advice published on 30 October 2020 on the SAB Public Sector Exit Payments page.

You must notify the member of their option for either a deferred or a reduced pension and their right of appeal. You should maintain a record of all cases where an appeal might be received. You will need to revisit these cases once a resolution is known.

- If there is no claim or the member is unsuccessful in that claim, you must inform the employer who can then pay the cash alternative:
  - to the member or
  - to you to purchase additional pension for the member under regulation 31 or
  - to you to waive early payment reductions under regulation 30(8), if the member has elected for immediate payment.
- If the outcome of the claim is an order to pay the unreduced pension, you must inform the employer and request the full strain cost. It will be for the employer to determine how much, if any, of that cost it can meet under the exit cap regulations.

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