Local Government Pension Scheme England and Wales

Scheme Advisory Board (SAB)

HM Treasury

Public Sector Exit Payments: a new controls process for high exit payments

Workforce, Pay and Pensions Team
HM Treasury
1 Horse Guards Road
London SW1A 2HQ

exitpaymentsconsultation@hmtreasury.gov.uk

Response to consultation

This response is submitted on behalf of the Local Government Pension Scheme Advisory Board (England and Wales) which 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 Board's purpose is to:

- Provide advice to the Secretary of State and to administering authorities on "the desirability of changes to the scheme" and "in relation to the effective and efficient administration and management" of the LGPS
- Provide a framework to encourage best practice, increase transparency and coordinate technical and standards issues across the sector

Membership of the Board includes equal number of voting members representing employers and employees. The Board is also supported by non-voting members and advisors.

There are around 18,000 employers participating in the Scheme and therefore there are representatives of some of the larger employer groups (further education colleges and academy schools) on the Board and its sub-committees.

Secretariat services are provided by the Local Government Association and separate Advisory Boards have been established for the LGPS in Scotland and in Northern Ireland.

This response was compiled by the Board Secretariat in consultation with members of the Board's Cost Management Benefit Design and Administration committee.

Yours sincerely,

Cllr Roger Phillips
Chair of the Board

Scheme Advisory Board Secretariat

18 Smith Square, London SW1P 3HZ
The Board secretariat is provided by the Local Government Association

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Response to consultation questions

Preliminary remarks

Before moving onto the consultation questions the Board would wish to state that it supports the need for accountability and transparency in the use of public money. It also accepts that there has been genuine public concern over a small number of large-value exit payments for senior staff, whose exit seems to have been motivated by personal or political reasons.

Generally speaking, though, exit payments in local government have fallen consistently since data on them first started to be collected in 2014/15. The amount spent on them in 2021/22 is less than half what it was in 2014/15.

According to the latest Government figures, the average exit package in local government is now worth just under £22,000 and 90% of exit payments are worth less than £20,000. There were only seven reported cases in local government where payments over £100,000 were made last year.

Responses

Question 1: do you agree with the proposed scope of bodies covered? If not, please give reasons.

The Board feels that it is positive that this consultation recognises that local government workers are not in scope of this new process and guidance. As noted above, the latest data show that exit payments in local government are very modest by any standard and in no way warrant a similar process to that being consulted on applying to them. There are already extensive arrangements in place for local government to allow for transparency and accountability for the use of public money.

However, the Board is concerned that it isn't clear to what extent academy school staff are covered and that should be clarified as soon as possible. Non-teaching staff in academies are eligible to join LGPS and benefit from some of the redundancy protections contained in its rules. A number of other employers in the scheme have also contacted us to ask whether they will need to follow this process and there should not be that level of doubt. Terms used in the guidance like "central government" may have different definitions for different purposes and so should be avoided. Whatever the merits of the process, there needs to be a clear definition or test set out in the guidance, so that employers are in no doubt about their obligations.

Question 3: do you agree with the proposed categorisation of the types of exit payment? If not, please give reasons.

The guidance should be explicit at paragraph 2.9 that strain costs that arise as a result of exits that fall under 30(7) of the Local Government Pension Scheme Regulations 2013 are statutory payments.

These are payments which an employer would need to make to an LGPS administering authority if a member of the scheme is made redundant between the ages of 55 and their pension age. In such circumstances the rules of the scheme entitle the member to early payment of their accrued pension benefits without reduction. The employer is obliged to fund the extra value of the benefits so awarded.

For LGPS employers to whom this process may apply, like academy schools and some NDPB's, including strain costs will potentially lead to unequal treatment as these costs are not calculated on the same basis by all funds - they are calculated locally by the pension fund's actuary. That means that members in different funds leaving with exactly the same benefits may see them costed differently, causing them to fall on different sides of any hard cut off point.

The Board recommends that pension strain costs be excluded from the calculation. Evidence from Government's own latest data release shows that while most strain costs associated with early exits are not huge (the average payment is just over £30k) there may be cases where due to a combination of long service and the age at which the member is made redundant, the value of the benefit to the fund is quite large. This may be the case even at modest salary levels, around £30,000pa, and it is important to note that the member will only receive their accrued pension benefit and not this strain cost.

Question 4: do you agree with the proposed approval process for high value exit payments? If not, please give reasons.

If Ministerial approval is not given for an exit package largely or entirely due to contractual or statutory elements then the only option for the employer is not to release that person. That is despite them having demonstrated in a business case that there would be negative value for money consequences of keeping that person on – will Ministers meet those extra costs? If not and if cost savings are still required, the employer will have to look to retaining an employee in a role which may no longer be needed and dismissing other staff and so potentially reopening reorganisations and selection criteria. Further, if that person meets the statutory test of being redundant then if there is no suitable alternative employment available the employer will have a legal obligation to make full payment. Not being allowed to do so, places employers in an impossible position.

Consequently, where the exit payment is largely or entirely due to statutory or contractual payments, the Board believes that they should be exempted from this approval process.

In terms of process, ministerial scrutiny of exit packages could lead to greater delays, uncertainty and anxiety in what are already stressful circumstances. The Board is concerned as to whether HMT or DFE officials are sufficiently resourced to deal with any cases with the necessary urgency.

Where there are delays in gaining approval, then that could lead to the value of exit payments changing. LGPS related benefits are based on age and length of service, calculated in days. Likewise statutory redundancy pay and in most cases contractual or discretionary redundancy/severance pay is calculated based on age and length of service albeit to a less time sensitive degree based on completed years. Therefore, the value of benefits may increase or decrease when finally calculated with a definite leaving date. If that is the case then does the approval granted or refused, need to be reconsidered?

This is particularly relevant when paragraph 4.12 of the draft guidance gives a timescale of 20 working days for HMT to assess special severance payment cases, but no similar commitment is given in relation to timescales for high value exits cases.

If the Government does not agree with the Board's suggestion that strain costs are to be excluded, then it should consider allowing tolerances to be built into the decision-making processes as estimates of benefits may be subject to change.

Question 6: do you agree with the proposed £95,000 threshold for approval? If not, please give reasons.

The Board is concerned that it remains to be evidenced that £95k is an appropriate level for exit payments to be subject to this extra scrutiny. We understand that Ministers have committed to ending "six-figure payouts" but that is simply a rhetorical statement.

Our understanding was that Ministers' concerns was mainly around more senior staff who were leaving with very large exit payments, and not payments being made to lower or middle-ranking staff who were genuinely at risk of redundancy. There is no evidence that £95k is an appropriate level to set for the policy to differentiate between these cases.

The £95k threshold is the same value that has been in place for some years without being uprated in line with inflation or earnings, which means that more and more junior staff will be affected. Ministerial scrutiny of these more junior staff's exit packages would be disproportionate and add little extra value.

Question 7: do you agree with the proposed criteria for approval of high value exits? If not, please give reasons.

No, as stated above the decision before a minister where the exit payment is largely or entirely due to statutory or contractual payments would not in reality be about the amounts paid, but to the decision of whether to continue the employment or terminate it. That is not an appropriate decision to be taken by a Minister, who is not a party to that employment relationship. Where the exit payment is largely or entirely due to statutory or contractual payments the Board believes that they should be exempted from this approval process.

Question 13: are there any additional impacts which you would highlight in relation to the proposals above, including equality impacts? Please give details. Question 14: are you able to provide information and data in relation to the impacts set out above?

The Board is not convinced that the equalities assessment is adequate in discharging the Government's Public Sector Equality Duty. There are some general assumptions about the characteristics of staff who may be covered but these are generalisations. Very little evidence is offered for the workforces affected, and which should be looked at in their own terms, i.e. the assumptions made of the demographics of the civil service may not apply equally to staff of academy schools.

Also, there needs to be more careful balancing of the impact of the policy against the public purpose pursued. The assertion that the guidance is not intended to reduce levels of exit payment awarded or who is selected for an exit payment is not credible - what other purpose does it serve if not to have a chilling effect on exit payments or to affect decisions about who is to be dismissed? If this policy were to result in employers actively choosing only to approve lower value exit payments, then potentially that could result in those dismissed being more likely to be younger, lower paid, and potentially more likely to be women or staff from ethnic minorities.