



## **Society of District Council Treasurers**

### **Response to Restricting Exit Payments in the Public Sector: Consultation on Implementation of Regulations**

This is the **Society of District Council Treasurers** (SDCT) response to the consultation paper issued by the Government on restricting exit payments in the Public Sector.

The SDCT endorses the consultation response which has been submitted by the Local Government Association (LGA) and we ask that you consider those responses as part of our submission. In addition, we make the following responses to the consultation.

#### **Question 1**

**Does draft schedule 1 to the regulations capture the bodies intended (described in section 2.1 above)? If not, please provide details.**

District and Borough Councils have a track record of sound financial management and exercise sound financial judgement in determining exit pay. The proposal to introduce an arbitrary and artificial cap fetters devolved powers.

#### **Question 2**

**Do you agree with the current list of bodies in scope, for the first round of implementation? If not, please provide reasons.**

We are concerned to see a two stage approach. The cap should only be introduced when ready to do so for the whole of the public sector. If the cap will be applied to local government, and the two-stage approach is taken forward, then local government should be excluded from the first round of implementation, given the need for changes to be made to the Local Government Scheme Pension Regulations before the regulations can be applied. The SDCT strongly disagrees with the proposal to include pension strain costs as part of the exit payment for the reasons set out in responses to Q3 and Q7. Local government is already having difficulties recruiting and retaining staff and is competing with the private sector to attract and retain talent. The draft regulations will exacerbate this situation.

### Question 3

**Do you agree with the exemptions outlined? If not, please provide evidence.**

Yes. However, we believe that some elements currently proposed to be covered by the Regulations should be excluded from its scope. Payments in scope should be limited to those applicable to genuine exit payments, such as redundancy payments.

We propose that payments made as a result of restructuring from the implementation of a Local Government re-organisation determined by a Ministerial decision, and therefore outside of the control of the employer, should be out of scope of this cap.

**Pension strain costs should be exempt. Unlike the other elements within the Regulations, the pension strain cost is NOT a payment to an individual.** These are provided to the pension fund to ensure that the individual receives the pension they have earned up to the point of exit. There is a misunderstanding about the use of the phrase “unreduced”. This does not mean that the strain is to enable someone made redundant from receiving the pension they would have received at their expected retirement date and the terminology is misleading. “Unreduced” is used to compare to the situation where an employee chooses to take early retirement and is subject to an additional reduction in their pension benefit.

It will be difficult to include pension strain costs in an equitable and fair way. Employees will be more adversely affected by the Regulations depending on their age at the time the employee is being made redundant. The variables affecting what an employee’s pension strain cost are age, length of service, salary and the performance of the particular pension fund. This means that an employer with employees who are comparable in age, salary and length of service will be treated differently if they are an employee of a council that has a different fund administering the local government pension scheme. For example, there will be a different pension strain cost for an employee at one council compared to an employee of the same age, salary and length of service working in a council within a neighbouring county.

The inclusion of pension costs will bring into scope relatively low-paid employees over 55. Because of the pension regulations, if made redundant at 55+ they have no option and are forced to access their pension. Employees in professions that would be in scope would include planners, housing advisers, environmental health officers which are difficult jobs to recruit to. Local government is already in the situation of using agency staff and contractors and/or paying additional amounts in market supplements to compete with the private sector. This is particularly the case in occupations within legal services and planning. The ability to resource effectively functions such as planning is key to unlocking development, housing and economic growth. The proposed Regulations will make local government even less attractive when compared to private sector employment opportunities.

The provisions of the regulations are out of line with the Local Government Pension Scheme Regulations, which will need to be amended. To fit with the proposals, the LGPS Pension Regulations will need to be changed to:-

- Remove the legal requirement for councils to pay the cost of pension strain
- Allow the employee to choose to defer access to the pension so as to avoid the employer incurring pension strain costs, and/or
- allow the employee to take a reduced pension so there is no strain

Until the Pension Regulations are amended the exit pay cap regulations should not apply to local government, or as argued above, pension strain costs should not be within scope.

We support relaxing the cap in cases of whistleblowing or discrimination (where it might result in a finding favourable to the employee) as this would enable an effective resolution without further costly litigation. However, further clarity and understanding of the process for securing an exception needs to be provided i.e. the regulations as currently drafted refer to 'Treasury sign off' – how would this work in practice and in what time scale? The practical implications of this are likely to mean that the process is too long to enable a negotiation/settlement to be achieved and will signal to a complainant the strength of their case, which could then compromise the local authority within its negotiations – potentially leading to increased costs.

We also believe that this relaxation should also apply to other potential employment tribunal claims, not just those relating to whistleblowing and discrimination.

We would want to see outside of the scope of the Regulations any payment made pursuant to an award of compensation under ACAS arbitration, or a settlement or conciliation agreement.

#### **Question 4**

**Does the guidance adequately support employers and individuals to apply the draft regulations as they stand? If not, please provide information on how the guidance could be enhanced.**

There is a level of ambiguity and scope for misinterpretation.

It appears that many of the practical issues have not been considered and what has been produced falls far below what is needed.

There are a number of discrepancies between the guidance documents and the draft regulations. For example, there appear contradictions in terms of whether the cap applies on an aggregate basis or to individual exit payments.

As stated earlier, pension strain costs and the implications for the exit cap could differ widely for LGPS members. The proposals and guidance could address this by introducing a standard method of calculation. However, this could result in strain costs being overpaid by some employers and lead to a reduction in employer contribution rates.

The LGA's response gives further examples where the documentation lacks clarity.

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## Question 5

**Is the guidance sufficiently clear on how to apply the mandatory and discretionary relaxation of the regulations, especially in the case of whistleblowers?**

The mandatory and discretionary relaxations are a welcome amendment to the original proposals, but the guidance as currently drafted is open to interpretation and ambiguity.

Clarification is required on whether or not the mandatory relaxation for payments that are protected terms and conditions under TUPE will also apply in “TUPE-like” situations. This is particularly of concern where there is Local Government Reform and where there are “TUPE-like” transfer of staff from existing councils to form new unitary authorities. We believe that structural reforms such as this should fall outside of the scope of the exit pay cap regulations.

Further clarification is needed to define urgent workforce reforms.

The mechanisms for the discretionary relaxation of the regulations are overly bureaucratic, remove local decision-making and would not work in practice. The cap and the proposals for relaxation will hinder councils’ ability to redesign services to achieve improvements and efficiencies.

In addition, a requirement for an organisation to seek approval from HM Treasury indicates a protracted process which in itself could hinder the achievement of ‘urgent workplace reforms’ in a timely manner. What further guidance and support will be provided to ensure consistency of interpretation of ‘hardship’ and ‘workforce reform’? How will the discretions operate in practice in a way that will enable councils to restructure and change service delivery approaches through workforce reform to make improvements and reduce costs?

Full council meetings do not take place frequently enough to enable decisions to be made on workforce reform.

In terms of relaxing the regulations on compassionate grounds owing to genuine hardship – what evidence will be required and how will hardship be defined? Council meetings are open to the public and there will be issues of confidentiality.

We have concerns that the requirements may lead to a breach of privacy, if cases are required to go before Council and/or be published.

## Question 6

**Is there further information or explanation of how the regulations should be applied which you consider should be included in the guidance? If so, please provide details.**

If would be helpful to see worked through examples to demonstrate how and when the £95k could be exceeded and then, what processes are available to organisations to reduce the exit payment within statutory rights and regulations.

FAQ's would be useful along with a more practical scenario based guidance on how and when to apply it.

Further details should be provided on the implications of non-compliance – penalties, recovery, and how any tax implications would be managed.

Suggested improvements to the guidance include:-

- More clarity on the detail,
- A centrally produced reporting template to ensure all details are captured in the same format for consistency.
- Greater clarity on the order of priority for different payments e.g. redundancy pay, outstanding annual leave, pension strain costs, other payments.
- Clarification regarding data sharing between employers particularly with regard to GDPR.
- Clarity regarding pension strain costs in Local Government as these are incurred locally by the employing authority which is not the case with NHS and Central Government where costs are centralised. This could unfairly impact on the Local Government workforce.
- Should there be differentiation between voluntary and compulsory severance packages, e.g. inclusion of pension strain in voluntary cases but not in compulsory severance.
- It is currently too focused on Central Government which doesn't easily translate to Local Government, LGPS and the autonomous role of directly elected councils.
- Clear date of when coming into force needed with sufficient lead-in time to make necessary adjustments, policy changes and communications.

Information and explanation is required regarding the pension strain costs for the Local Government sector, specifically:

- the interaction with the pension regulations for the Local Government Pension Scheme, where those over 55 who are made redundant are required to automatically access the pension they have earned to that point. No account appears to have been made for the fact that this is not cash in the pocket of an employee but rather the amount that would have been paid into the pot by

the employer had the employee continued to work. It does not give an entitlement to a better pension than the employee has earned.

- Pension strain costs in Local Government are dependent on the Local Authorities pension liabilities rather than the employee's circumstances in redundancy cases. The inclusion of pension strain costs in the cap could, therefore, result in identical employees who happen to work for different councils being treated differently. This isn't an issue in an unfunded pension scheme such as the NHS scheme. This issue will need to be addressed within the Regulations and any guidance.

## **Question 7**

### **Are there other impacts not covered above which you would highlight in relation to the proposals in this consultation document?**

The cap has been set as a fixed figure and not index linked to a measure of inflation. It is therefore not future-proof.

If pension strain costs are to be included within scope, the cap is too low, as this captures employees on lower salary levels who have long service. The decision to include payments made relating to pension strain costs will impact on a group of employees who were not perceived to be at a level which would be included when originally proposed.

The consultation proposals bring pension strain costs into the exit pay calculation; this will significantly increase the number of employees who will reach the £95k cap. This is misleading as employees aged 55 and over who are in the LGPS will receive a lower exit payment owing to the need to deduct pension strain costs. Where the employee is not a member of the LGPS no deductions will be required and they will receive a higher cash exit payment than those employees in the LGPS- this does not encourage employees to be members of the LGPS, indeed it punishes them for membership, which will run counter to government's objectives of encouraging pension fund membership across the workforce nationally and could see a reduction in the number of employees in the LGPS resulting in funding challenges for the pension fund.

The consultation seems silent on how pension strain costs in excess of £95k would be funded, if the expectation were that costs in excess of £95k were funded by the employee this would mean rather than receive a redundancy payment the employee could be making a payment for being made redundant – clearly this would not seem equitable – clarification to this important would be welcomed.

The LGA in their response have clearly highlighted that the cap would be reached in a number of scenerios – based on the following assumptions;

- a female scheme member at age 55 on 31 March 2019
- with statutory redundancy pay based on a maximum weekly pay of £525 and
- severance payment of statutory weeks x actual weekly pay x 1.5
- earning the following amounts with the following amount of service

<b>Length of Service (Years)</b>	<b>Annual Salary which yields total exit cost of £95,000</b>
35	£23,500
30	£25,500
25	£27,900
20	£30,700
15	£34,600
10	£46,300
5	£81,300

The table clearly illustrates employees that would reach the £95k cap owing to the inclusion of pension strain costs being included in the exit pay calculation.

We are concerned that the regulations will negatively impact on organisations ability to make changes to the workforce and achieve outcomes to improve the service and cut running costs through managed exits.

The older workforce is particularly impacted and there are concerns that the regulations equality impact assessment needs to be revisited given the potential risks of challenge from an age discrimination perspective.

The regulations will impact on employees' decisions to volunteer for redundancy. Age and length of service will become a significant factor and could lead to age discrimination.

The cap will significantly reduce our ability to achieve the necessary workforce reductions and savings targets through voluntary means and will therefore lead to more contentious negotiations with the attendant increase in costs and time associated with that, as well as the likely negative impact on the workforce in terms of morale and motivation.

In order to avoid the cap, many valued and skilled workers may look to exit prior to its implementation.

The impact of the cap on the lower paid, long service members of the workforce is likely to have a negative impact on the image of Local Government as a trusted employer of choice as workers will no longer be able to access all the benefits that they have earned.

A major concern is that the regulations and guidance on the implementation will remove local decision-making and the autonomous role of directly elected councils.

## **Question 8**

**Are you able to provide information and data in relation to the impacts set out above?**

The LGA have provided some examples and we would be willing to provide further examples when Government has provided further clarity around how the scheme would operate.

### **Summary**

A fundamental point that seems to be missing in all of this is that it is the decision of the organisation to make an employee redundant, in most instances there is a need for organisational change and staff restructures which enviably leads to a redundancy situation, which ensures the organisation remains fit for purpose.

As a result the employee receives a redundancy payment (compensation for loss of office), based on their age, length of service and salary – however when the employee is 55 years of age or older this can have a significant impact of the cash payment they may receive- which seems to undermine the purpose of an exit payment.

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