

## HAMPSHIRE COUNTY COUNCIL

### Report

<b>Committee:</b>	Pension Fund Panel and Board
<b>Date:</b>	20 November 2020
<b>Title:</b>	Governance: Exit payment reforms
<b>Report From:</b>	Director of Corporate Resources

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#### Purpose of this Report

1. The purpose of this report is to update the Pension Fund Panel and Board on the impact of the new Restriction of Public Sector Exit Payments Regulations 2020 on administrative processes for Pension Services and Scheme Employers.

#### Recommendation(s)

2. It is recommended that the Pension Fund Panel and Board note the contents of this report.

#### Executive Summary

3. This report seeks to:
  - set out the background to the new regulations
  - explain the conflicts between the new regulations and the current LGPS regulations
  - describe the current actions being taken to mitigate the conflicts
  - briefly consider the next steps.

#### Contextual information

4. The current LGPS regulations entitle members who leave on the grounds of redundancy or business efficiency over the age of 55 to immediate payment of their unreduced pension benefits. The employer has to pay an upfront charge to fund this unreduced pension, known as a pension strain charge.

5. The Restriction of Public Sector Exit Payment Regulations 2020 came into force on 4 November 2020. These limit the total amount payable by the employer for the exit of an employee on redundancy or business efficiency grounds to £95,000. The definition of an exit payment in the regulations include any pension strain charge payable by an employer to fund an employee's unreduced pension, as well as any statutory or discretionary compensation.
6. The inclusion of the pension strain charge in the definition of an exit payment brings many LGPS members into the scope of the exit payment regulations, although it is important to note that some Scheme Employers are exempt from these regulations (such as colleges, universities and charities).
7. The LGPS regulations are going to be changed to remove the automatic entitlement to an unreduced pension on redundancy and business efficiency. The amended regulations will instead allow a member to choose to take an actuarially reduced pension or to defer their pension benefits. However the consultation on these regulations does not close until 18 December 2020 meaning that the amended regulations will not be in place until 2021.
8. Until such time as the amended LGPS regulations are in force, there is a potential conflict between the exit payment regulations which limit the total amount an employer can pay for an exit and the LGPS regulations which entitle members to an unreduced pension for which the employer must pay a strain charge.

### **Approaches to managing the interim period**

9. There has been different advice received from the government minister, Luke Hall, and the Scheme Advisory Board (SAB) about how Funds should administer redundancy and efficiency retirements in this interim period. The government recommends that a 'capped' member should only receive a fully actuarially reduced pension or a deferred pension, together with a 'cash alternative' payable by the employer up to the £95k limit. SAB has advised Funds that the course of action presenting the least risk to both LGPS administering authorities and scheme employers is for the LGPS administering authority to offer the member the opportunity to take a deferred benefit or a fully actuarially reduced pension and for the employer to delay the payment of a cash alternative.
10. The reason for SAB to be more cautious about employers paying a cash alternative is that the regulations are likely to be challenged and employers may find that they have to pay a strain charge or other cost in addition to the cash payment. However, administering authorities cannot dictate what approach employers should take.

11. Therefore because the approaches recommended by the Government and SAB differ, and the legal advice obtained by SAB in reaching this conclusion was not directly for the benefit of administering authorities, Hampshire has joined the other administering authorities in the Access Pool to directly commission advice from Squire Patton Boggs (SPG) as to how to proceed in this interim period.
12. In the meantime, employers have been advised that if they are subject to the exit payment regulations, and have a case where the £95k cap would be breached if the employee receives their unreduced pension, this case will be put on hold and not processed until such time as the SPG advice has been received and considered.
13. Estimates for redundancy and business efficiency retirements will continue to be processed as normal, although the letters have been amended to make it clear to employers that the estimates only reflect the existing LGPS regulations and may quickly be out of date. The reason for continuing to provide estimates is to allow employers to work out if the exit payment will be in breach of the £95k cap.
14. Redundancy and business efficiency retirements from employers who are not subject to the exit payment regulations, or where there is no breach of the £95k cap will continue to be processed as normal.
15. Pension Services do not have any cases already in the system which are affected by the exit payment regulations, nor have they been notified of any exits impacted by the regulations prior to January 2021.

### **Challenge to the regulations**

16. The consultation on the proposed amendments to the LGPS regulations closes on 18 December 2020 and the new regulations are expected to be in force in early 2021. However there are already four potential challenges to the Exit Cap Regulations by means of Judicial Review. Pre-action correspondence has been issued by the BMA, UNISON, GMB and Lawyers in Local Government /SOLACE/ALACE. It is likely therefore that there will be a significant period of uncertainty for Funds and members until these issues have been fully resolved.

### **Next steps**

17. On receipt of the legal advice from SPG, the Director of Corporate Resources will implement the least risk approach for the interim period for the Fund. A further update will be provided to the Panel and Board at their meeting in December.

## **Conclusions**

18. The exit payment regulations came into force on 4 November 2020 and are in conflict with the current LGPS regulations which are not likely to be amended until early 2021 at the earliest.
19. Hampshire has joined the other administering authorities in the Access Pool to commission legal advice from Squire Patton Boggs on the best actions to take in the interim period before the LGPS regulations are amended.
20. Until this advice has been received and considered, Pension Services will not process redundancy and business efficiency retirements where to do so would mean an employer was in breach of the exit payment regulations.
21. Once the legal advice has been received, the recommended approach for dealing with this issue in the interim will be implemented for the Fund.

**REQUIRED CORPORATE AND LEGAL INFORMATION:**

**Links to the Strategic Plan**

**This proposal does not link to the Strategic Plan but, nevertheless, is being reported to the Panel and Board so they can fulfil their statutory role under the LGPS regulations.**

**Section 100 D - Local Government Act 1972 - background documents**

**The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)**

Document

Location

None

## **EQUALITIES IMPACT ASSESSMENT:**

### **1. Equality Duty**

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant protected characteristic that are connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

### **2. Equalities Impact Assessment:**

Equality objectives are not considered to be adversely affected by the information in this report as it affects all scheme members.