Consultation on Exit Payment Cap
Workforce, Pay and Pensions Team
HM Treasury
1 Horse Guards Road
London SW1A 2HQ

Ask for: Alan South
Telephone: 01225 395283
Email: alan_south@bathnes.gov.uk
Our ref.: Pens/AGS

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Dear Sir

Consultation on Exit Payment Cap

Bath and North East Somerset are the administering authority for the Avon Pension Fund [APF] under the Local Government Pension Scheme [LGPS]. This response is made as an overview from the Fund, All our scheme employers have been notified of this consultation to submit responses from an employer perspective if they so wish.

The main concerns regarding the introduction of an exit cap are

- whether local authorities are already making costing decisions because of the reduction in budgets and this merely complicates matters
- that considerable care is exercised in how it will it be implemented within the LGPS regulations. Some issues may lead to over complicated legislation
- particular care must be made to incorporate how it will affect all the different types of employer within the LGPS
- in ensuring that use of waiving the cap is both fair and consistent and that this is independently monitored
- that conditions for exemptions should be in public interest and specific bodies not allowed to self-regulate [e.g. BBC, Banks, MPs]

Comments regarding the issues raised in the consultation are set out in Annex A

There are many different areas of concern involved with these proposals and once the consultation period has concluded, it will be imperative that all interested parties have an opportunity to input into any changes to schemes and the implementation from an administration perspective.

Failure to do so could have severe consequences for employers at a time when redundancies are very much an important tool in addressing budget issues.

Yours sincerely

Alan South
Technical and Compliance Manager
Avon Pension Fund

Annex A

Comments on Exit Cap Consultation

As some questions are linked with others, these comments have been assessed as a whole from the following questions from the consultation

Question 3: Do you agree that the payments listed should be subject to a cap on exit payments under the terms set out above? If you believe certain payment types should be excluded please provide a rationale and examples.

Question 8: Do you agree that the government has established the correct scope for the implementation of this policy?

Question 9: How do you think the government should approach the question of employees who are subject to different capping and recovery provisions under TUPE rules following a transfer to (or from) the private sector and whether there should be consistency with public sector employees in general?

Question 10: Do you agree with the proposed approach for waivers to the cap on exit payments?

Comments

The LGPS has altered significantly over the past few years in the number and types of employers that now participate in the scheme. Any introduction of an exit cap must be considered carefully as changes to the scheme although relevant to the majority of members may impact on a significant number of employers to administer.

The LGPS has recently been changed as a result of Lord Hutton's review along with other public sector schemes. All interested stakeholders were included in the discussions for deciding the new scheme details. This was therefore an opportunity for the LGPS to have been aligned with other public sector schemes where receipt of an immediate pension on redundancy for those over age 55 is only allowed where the member elects and takes a reduction in benefits for the early payment. As this was not actioned there must have been some rationale as to why and HM Treasury did not insist that this change should be made. It does seem strange that HM Treasury now want to restrict the amount this costs the employers.

It could therefore be taken that if kept as before the decision on cost would be entirely down to the employers. Under the LGPS there are a number of discretions that employers have to make as a policy statement. In the large majority of cases employers will usually state that the provision will only be used where there is no cost to the employer. Would a similar policy requirement be made for any exit cap? Who will monitor the exceptions?

Experience has shown that employers will request strain cost estimates before proceeding with redundancies and will then make their decisions on whether such a redundancy will be cost effective. This will have been highlighted in recent years with local authority budgets being cut and the need to downsize the workforce.

Annex A (Cont)

When going through this exercise of reducing costs, the larger savings will always be from reducing those at the highest levels. Exit costs are relative throughout the workforce and higher earners have worked through to attain their level.

From the figures shown in 3.3 it shows that only 660 members exceeded the proposed cap out of 38,406. Is this not just penalising the few who have earned their position and entitlements? These members are already paying higher contributions and having restrictions imposed with regards taxation on their benefits

In the short term with critical retirement ages still around the age 60 mark, this cap could easily affect members whose pay is around £40-50k where service is at a sufficient level.

By introducing a cap there could be some interference with the selection process by releasing someone whose exit payment is below the cap in preference to one who exceeds it, regardless of other criteria.

Would the member be compelled to take capped benefits or have any other options?

In the more high profile individual cases an employer will be seeking to terminate employment and these cases even involve compromise agreements so it is likely that these cases may still exceed any cap. Full Council approval is already generally sought in such cases so any cap here may become irrelevant. Will there be any monitoring by an outside auditor of decisions made?

Exactly how will the £95k be assessed when dealing with strain on fund cost for early receipt of benefits? Strain costs are set out by fund actuaries so are different throughout the country whereas the exit cap is a standard rate so will there be a standard strain cost issued by Government Actuary to ensure consistency among funds?

There will also be the requirement of information from employer to administrator as if the starting figure is £95k what order will all exit payments be taken and what will constitute any level of strain on the fund cost still allowed. Will this be open to agreement with the member whether one exit payment is given up to retain another?

Where TUPE transfers have occurred always seems to raise problems. Indeed there are two procedures that relate to pensions in such cases, Fair Deal and those in local government subject to a Direction Order. Again it must be dealt with to ensure that protections are maintained and that no area is either advantaged or disadvantaged. The problem will be that many of the scheme employers are outside contractors and not subject to the requirements of TUPE in this respect. Any introduction of an exit cap must make provision of this and be included in the legislation.

One area not raised is imposing a restriction on members drawing their pension on redundancy and immediately obtaining employment elsewhere. This should be reviewed when assessing the full picture on redundancy payments.