

LGA DRAFT RESPONSE TO THE [MHCLG](#) [CONSULTATION](#) ON REFORMING LOCAL GOVERNMENT EXIT PAY

October 2020

Authorities may want to use this draft response to assist them in responding to the MHCLG consultation on reforming local government exit pay. However, authorities should ensure that they adapt their response to include any particular points they may have. In that respect, authorities are also encouraged to provide examples of the impact the proposals will have on their employees. Further information on the consultation is also available in [Advisory Bulletin 683](#).

*Details of how to respond are in the [consultation document](#) and responses should be sent to LGExitPay@communities.gov.uk with the subject heading 'Consultation on Exit Payment Cap', by the closing date of **9 November 2020**. We should be grateful for views and where a copy of any response is sent directly to MHCLG please could it also be forwarded to us at eru@local.gov.uk*

Question 1

Are there any groups of local government employees that would be more adversely affected than others by our proposed action on employer funded early access to pension?

The Government Actuary's Department has published a draft impact assessment of these proposals. It provides that more female members are affected by the proposed reforms because they make up a greater proportion of the workforce affected by the changes. By the very fact that this proposal will impact on those aged 55 or over, it will also adversely affect older workers.

The proposal around statutory redundancy pay being either deducted from the pension strain cost resulting in a lower pension for life, or paid to the employee and then paid into the pension fund in order to part-pay the strain on fund cost (even where the payments would not otherwise breach the £95,000 cap) will have a greater impact on lower paid workers, who are most in need of a cushion when made redundant. A greater proportion of those will be women and/or part-time workers. This is because their statutory redundancy pay entitlement will be closer to their actual pay than it will for higher paid workers whose weekly pay exceeds the cap on a week's pay (currently £538) for the purposes of calculating statutory redundancy pay. Therefore, the employer's strain on fund payment will, under this proposal, be reduced by a disproportionately greater percentage for lower paid workers than for higher paid workers. The option of forgoing the pension enhancement to instead receive an actuarially reduced pension and a discretionary redundancy payment under the employer's compensation arrangements will not in most cases mitigate that disproportionate impact. This is because in the great majority of cases, local authorities' discretionary compensation payments will not exceed the employer's strain on fund payment and statutory redundancy pay.

- If so, please provide data/evidence to back up your views?

The Government Actuary's Department has already provided some illustrations of the likely effects, but local authorities will provide direct any further data or evidence they have on the impacts of the proposals.

- How would you mitigate the impact on these employees?

It seems that the only way to mitigate the full effects if the proposals are introduced without amendment would be not to dismiss people which is unrealistic, however, it should be recognised that these proposals will make agreed departures harder to achieve.

This policy will impact on all workers aged over 55 in the pension scheme, including those who are lower paid and with a comparatively small pension, a greater proportion of whom are likely to be women and/or part-time workers. One way to mitigate the impact would be to allow the relaxation of the proposed restriction to enable the employer to pay statutory redundancy pay in addition to the full strain on fund costs, where that would not breach the £95,000 cap.

The proposal also introduces a layer of unnecessary administrative bureaucracy disproportionate to the situation with which local authorities and administering authorities will have to deal. It will also be confusing for employees and may need appropriate amendments to be made to the statutory redundancy regime in the Employment Rights Act 1996.

Question 2

What is the most appropriate mechanism or index when considering how the maximum salary might be reviewed on an annual basis?

The most appropriate mechanism would be to link it to the local government collectively agreed pay awards under the National Joint Council (NJC) for Local Government Services. This is because the majority of local authority employees will be covered by that award, and even if not, any pay award agreed for them is likely to mirror or be close to the NJC award. Therefore, uplifting on this basis would mean it would accurately reflect actual increases in pay in local authorities. Using average earnings may be a reasonable proxy, however, basing it on CPI or RPI would not provide that direct link.

Question 3

Are there any groups of local government employees that would be more adversely affected than others by our proposed ceiling of 15 months or 66 weeks as the maximum number of months' or weeks' salary that can be paid as a redundancy payment?

Typically, local authority discretionary severance schemes, (which apply not just to redundancy dismissals but also those on grounds of business

efficiency) use the statutory redundancy calculator to determine the number of week's pay and then apply a small multiplier and so do not reach these limits although it is possible some will be affected.

Aside from the question of which groups are most adversely affected, the proposal to set a ceiling of 15 months or 66 weeks is inconsistent with the statutory redundancy calculation method under the Employment Rights Act 1996. Ultimately that limits the amount of service that can be taken into account for those purposes to 20 years, which if the maximum weeks multiplier is limited to 3 weeks' pay per year of service means that the maximum payable under that method is 60 weeks, so 6 weeks short of 66 weeks. That means that if an employer departed from that and paid additional sums they would be departing from the statutory redundancy calculator method and so losing the automatic exemptions from age discrimination which apply under the Equality Act 2010 if your calculation method mirrors that for statutory redundancy pay.

- If so, please provide data/evidence to back up your views?

Local authorities will provide direct any data/evidence they have.

- How would you mitigate the impact on these employees?

The proposed ceiling itself would not impact on most employees for the reasons set out above. There are other areas of the proposals which are of more significance and mitigation should be considered in respect of those – please see the response to question 5.

Question 4

Are there any groups of local government employees that would be more adversely affected than others by our proposal to put in place a maximum salary of £80,000 on which an exit payment can be based?

£80,000 is a significant salary in local government so this will affect the most senior positions. Considerable experience and skills will be required for such posts and so this will be more likely to affect older workers, (more of them who are likely to be male) although not exclusively so. It will affect professions and roles that are hard to recruit in the sector and as such will weaken the reward package that local authorities are able to offer.

In respect of the level of the cap, no other part of the public sector has yet implemented reforms in addition to the proposed £95,000 cap and we would wish to see if this level of cap is reflected in other sectors. Our understanding is that in the Civil Service Compensation Scheme there is a salary cap of £149,820 and the reform proposals put forward by the government do not seek to alter this. We do not see why a salary limit so much lower is appropriate for local government.

- If so, please provide data/evidence to back up your views?

Local authorities will provide direct any data/evidence they have.

- How would you mitigate the impact on these employees?

It is difficult to see how the impact could be mitigated, as any steps to enhance compensation payments in another way, such as allowing a greater week's pay multiplier for employees earning more than £80,000 could leave the employer vulnerable to discrimination claims from lower paid employees, who are likely to be younger and of whom a greater proportion may be female. A waiver process would allow local authorities to take individual circumstances into account and should be considered.

Question 5

Do you agree with these proposals? If not, how else can the Government's policy objectives on exit pay be delivered for local government workers?

The original policy objective was to curb excessive exit payments in the public sector. The additional reform was about fairness and consistency across the public sector workforce, the other parts of which have, as yet, seen no changes. These new proposals will impact on all local government employees in two ways, before there has been any wider public sector reform and regardless of salary level:

1. by reducing the strain on fund payment by the statutory redundancy payment regardless of the amount of the strain on fund payment; and,
2. by removing any entitlement that an employee will have to their employer's discretionary compensation payment (which unlike other parts of the public sector are modest).

The result will be a reduced pension going forward and only statutory redundancy pay to support them during a time in which older workers may find

it increasingly difficult to find alternative employment. In particular, the provisions around statutory redundancy pay being either deducted from the pension strain cost resulting in a lower pension for life, or paid to the employee and then paid into the pension fund in order to part-pay the strain on fund cost will hurt the poorest paid who most need a cushion when made redundant. It also introduces a layer of unnecessary administrative bureaucracy disproportionate to the situation.

There are powers which will be set out in HMT Directions and Guidance in relation to the £95,000 cap to waive the cap in certain circumstances. Similarly, there should be powers to waive elements of the further reform proposals where they are likely to create undue hardship or create legal conflicts in relation to disputes under statute or contract law that a local authority should have the discretion to exercise (subject to appropriate transparency and reporting provisions).

The second stated objective relates to fairness and consistency across the public sector. Currently local government has lower severance calculations outside pensions than the rest of the public sector. However, MHCLG's proposal restricts these further, for example through the introduction of a salary cap of £80,000 while the proposals for the civil service contain both higher calculation limits and a higher salary cap of £149,820. In this light MHCLG's proposals seem out of line with the consistency objective.

Question 6

Do you agree that the further option identified at paragraph 4.8 should be offered?

The option of deferring pension benefits and receiving a discretionary redundancy payment under the employer's discretionary severance scheme, rather than taking a reduced pension with statutory redundancy pay only, will be a flexibility that could assist some employees depending on their financial situation and it seems sensible that it should remain as an option.

Question 7

Are there any groups of local government employees that would be more adversely affected than others by our proposals?

The proposals will adversely affect all employees over the age of 55 in the LGPS. Those with long service will be particularly affected because of the interrelationship between strain on pension fund payments and other discretionary and statutory redundancy payments.

As set out in our response to question 1, the majority of employees in local government roles are women and many will be at the lower ranges of pay. The proposals will affect all salary ranges as the GAD impact assessment illustrates. They will have a greater effect in purely financial terms on longer serving higher earners, but may have a more significant impact on lower paid workers (and so women and part-time workers) who may have greater need for a financial cushion.

See also the response to question 8 below.

Question 8

From a local government perspective, are there any impacts not covered at Section 5 (Impact Analysis), which you would highlight in relation to the proposals and/or process above?

There is concern that a full impact assessment was not available at the commencement of the consultation. The [GAD impact assessment](#) has since been published in draft. However, that assessment does not identify the greater proportionate impact that statutory redundancy pay being either deducted from the pension strain cost, resulting in a lower pension for life, or paid to the employee and then paid into the pension fund in order to part-pay the strain on fund cost, will have on lower paid and part-time workers.

Question 9

Are these transparency arrangements suitably robust? If not, how could the current arrangements be improved?

The transparency requirements in local government are established and would seem adequate but we cannot speak of the consistency with similar requirements in other parts of the public sector or across all workforces covered by these reform proposals.

Question 10

Would any transitional arrangements be useful in helping to smooth the introduction of these arrangements?

These reform proposals will have a dramatic effect on some employees who will have built current severance arrangements into their long-term planning. Therefore, transitional provisions are appropriate.

Existing employees who prudently joined the Local Government Pension Scheme will have based their retirement and contingency planning on the

current rules of the LGPS in respect of access to pension and their employer's scheme in respect of a redundancy payment. Those who are approaching, or are already in, the age bracket whereby they are entitled to an unreduced pension and redundancy payment will be particularly adversely affected by these proposals should they be made redundant, particularly in the current economic climate. While no one has a right to be made redundant, the current local government severance terms are an important part of the benefits package and so of retaining some key staff. If the severance benefits are removed, they might leave the sector for jobs in other areas with the immediate benefit of higher pay.

In any event, in order to avoid a chaotic situation, there should be provision for dealing with those employees already in redundancy/reorganisation situations. Employers need some certainty when attempting to reorganise their workforces. Major restructuring requires statutory periods of consultation with staff and recognised trade unions under the provisions of the Trade Union and Labour Relations (Consolidation) Act 1992, which includes details of severance packages and also notice of any dismissals. Many employees, including those with long service, will then require 12 weeks' notice of dismissal. However, aside from those statutory and contractual timescales, large scale reorganisation proposals can overall take more than a year to negotiate with employee representatives and implement and it is crucial that there is a smooth transfer in leadership and governance.

We note the draft Local Government Pension Scheme (Restriction of Exit Payments) (Early Termination of Employment) (Discretionary Compensation and Exit Payments) (England and Wales) Regulations 2020 contain transitional provisions which would disapply the restrictions in the regulations where prior to the regulations coming into force the parties had entered into an agreement to terminate employment within six months of the regulations coming into force. However, that exemption should apply where consultation processes have commenced prior to the regulations coming into force, not just where an agreement has been entered into. The reason for this is that many people may have already put in an immediate expression of interest to take voluntary redundancy shortly after a consultation was launched, and that would have been based on pre-reform redundancy payment rights. Having had those expressions of interest the employer will then plan on that basis and remove others from being 'at risk' under the redundancy process. However, it is often the case that the actual agreement to terminate those taking voluntary redundancy is not entered into until much closer to termination, which for the

reasons set out above could be some time later. If the transitional provisions remain as they are some employees may withdraw their consent to take voluntary redundancy meaning employers would have to go back and consult again, potentially putting 'at risk' again employees who thought they were not going to be made compulsorily redundant. That has the potential to create a chaotic and uncertain situation for all employees subject to the redundancy consultation, not just for those who were to take voluntary redundancy.

Further, for the reasons set out above, in some cases a six-month time transitional period will not be long enough. Accordingly, there needs to be a 12-month transitional period. Six months is too short and will undermine a significant number of redundancy exercises that are currently live or will be imminently live as authorities seek to balance their 2020-1 budgets or undertake reforms under Local Government Reorganisation plans. Given the demands councils face in the COVID-19 response and preparing for EU transition, a failure to provide adequate transitional provisions will result in a major distraction from providing frontline support to their communities for authorities.

As the £95,000 cap will come into force before the MHCLG further reforms then, subject to any HMT Directions which provide suitable transitional provisions and waivers, guidance will be required for the interim period between the £95,000 cap implementation and the MHCLG/LGPS further reform changes as it appears to cause conflict between two sets of regulations.

Question 11

Is there any other information specific to the proposals set out in this consultation, which is not covered above which may be relevant to these reforms?

The stated aims include consistency and fairness across the public sector and so a comparison with other public sector severance schemes would be beneficial. In local government a sensitive balance is achieved between the rules of the Local Government Pension Scheme which provides a contingency membership benefit to contributing members who lose their job at an age when they may find it harder to continue their career, and local authorities' redundancy policies which provide, in most cases, only a moderate sum to cushion the immediate blow of losing a job. These proposals will mean that employees will have to choose between one or the other.

One aim of this government policy was for greater consistency across the public sector. To that end we would expect the proposals put forward by MHCLG to closer reflect the proposals put forward by the Cabinet Office for the Civil Service. No argument has been put forward that justifies significantly worse provision for the local government sector. In comparison the three-week proposed limit on week's multiples will have little effect in the local government sector as severance provision in that form is currently significantly below that limit, however, the higher salary limit of £149,820 for the Civil Service will have a much more limited impact in that sector to the £80,000 limit proposed by MHCLG.

Question 12

Would you recommend anything else to be addressed as part of this consultation?

It should be made clear that the restrictions do not apply to TUPE protected benefits and those transfers conducted in the spirit of the TUPE regulations 'TUPE-like transfers' that are a common feature of reorganisation in local government.

As with the £95,000 cap, there should be scope for relaxation of the restrictions where:

- a. not exercising the power would cause undue hardship;
- b. not exercising the power would significantly inhibit workforce reform;
- c. commitments have legitimately been made by an authority in redundancy/re-organisation processes before the changes come into force;
- d. there is a value for money case.

Contact

Naomi Cooke

LGA Head of Workforce

Email: naomi.cooke@local.gov.uk