Exit payments cap: a summary for local government employers

The government first announced plans to cap exit payments in the public sector in 2015. On 10 April 2019 HM Treasury (HMT) launched a consultation on draft regulations, guidance and Directions to implement the cap.

This document summarises the proposals as they relate to local government employers.

Who is covered?
The cap will apply to all public sector employers and is to be implemented in two stages. Local government employers will be covered in the first stage.

The cap
The exit payment cap is set at £95,000 and the regulations do not include provision for this amount to be index-linked. Redundancy payments (including statutory redundancy payments) severance payments, pension strain costs – which arise when a Local Government Pension Scheme (LGPS) pension is paid unreduced before a member's normal pension age – and other payments made as a consequence of termination of employment are included in the cap.

Payments related to death in service or ill health retirement, pay in lieu of holiday and payments made in compliance with an order made by a court or tribunal are not exit payments for the purposes of these regulations.

The statutory redundancy element of an exit payment **cannot be reduced**. If the cap is exceeded, other elements that make up the exit payment must be reduced to achieve an exit payment of £95,000.

The cap applies to exit payments that arise within a 28 day period and the regulations cover the process to follow if an individual has multiple exits from public sector employment within 28 days.

Applying the cap in the LGPS
The impact of the regulations on a LGPS member if the cap is exceeded and the exit payment includes pension strain cost is unclear. We understand that the policy intent is for the member's pension benefits to be reduced to the extent that the exit payment cap is not breached, with the member having the option of paying extra to buy-out some or all of the reduction.

Amendments to LGPS regulations would be required to facilitate this change, plus guidance from the Government Actuary on calculating the pension reduction and operating the buy-out process.

Relaxing the cap
There are circumstances when the cap must be (mandatory cases) or may be (discretionary cases) relaxed by the 'Decision Maker', and these are described in HMT Directions.

Mandatory cases: relating to TUPE regulations or exits that would otherwise be considered by an Employment Tribunal under whistleblowing or discrimination legislation.

Discretionary cases: to avoid undue hardship, to effect workforce reforms or exits agreed before the regulations take effect.

The 'Decision Maker' is a Minister of the Crown, but this power is delegated to Welsh Ministers, full council of a local authority, a fire and rescue authority or the London Assembly. Depending on the reason for the relaxation of the cap, HMT approval may also be required.

Employee, employer and Decision Maker responsibilities
A person who receives an exit payment must inform any other public body that employs them about that payment. Employers and Decision Makers are required to record and publish information about capped exit payments and any decisions made to relax the cap.

Further details about the regulations, the consultation and how to respond can be found in the consultation documents and in the consultation briefing produced by the LGPC Secretariat.