Manchester City Council
Report for Information

Report to:	Personnel Committee – 11 November 2020
Subject:	Exit Pay Cap
Report of:	Director of HROD

Summary

The exit pay cap which establishes an overall cap on a range of public sector bodies including local authority exit payments of £95,000 became law on 4 November 2020. Further regulations which were subject to consultation via the Ministry of Housing, Communities and Local Government (MHCLG) close on 9 November 2020. The combined effect of both the exit regulations and the consultation regulations which relate to changes within the Local Government Pension Scheme Regulations are to limit the value of public sector exit packages.

There is a distinct level of concern around the process, drafting, and substantive legality of the regulations. This has resulted in a number of challenges to Government from a variety of different organisations. In line with this a response to the MHCLG consultation and concerns relating to the implementation of the reforms has been provided on behalf of Manchester City Council. The letter was submitted prior to 9 November in line with the consultation deadline.

Recommendation

To note the representations made to Government in response to the implementation of the exit pay cap and the MHCLG proposals for reforms to local government exit pay.

Wards affected: All

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1.0 Overview

1.1 In 2015 the Government announced that it intended to consult on cross-public sector action on exit payment terms to reduce the costs of redundancy payments for the taxpayer and ensure greater consistency around the value of exit payments. The headline element of these reforms was a proposed cap of £95,000 on exit payments for all relevant bodies, inclusive of the cost of pension strain. Wider reforms to redundancy payments were also proposed.

1.2 Consultation relating to this took place in April 2016 and, following a period of hiatus, the Government released a further consultation on 10 April 2019. This included draft regulations and associated guidance. A response to this consultation was published on 21 July 2020.

1.3 The regulations specifically relating to the overall cap of £95,000 have now been passed in Parliament and became law on 4 November 2020.

1.4 The Ministry of Housing, Communities and Local Government (MHCLG) have undertaken a further consultation relating to the effects and impacts of the proposals on the local government workforce and specifically the implications for the Local Government Pension Scheme (LGPS). The proposed changes to the pension scheme regulations have a wide reaching impact on those who leave the organisation aged 55+ via early retirement. This consultation closed on 9 November 2020 and the changes relating to the pension regulations will come into force at a date not yet determined.

2.0 Details of the proposals

2.1 The absolute cap on exit payments applies to most payments made as a consequence of termination of employment. This includes redundancy payments (including statutory redundancy payments), severance payments, and pension strain costs (capital costs) which arise when an LGPS pension is paid unreduced before a member's normal pension age.

2.2 In addition to the overall cap on exit payments the government is also proposing a number of maximum tariffs for calculating exit payments. These are outlined below:

- Maximum of 3 weeks pay per year of service
- Maximum of 15 months pay on the redundancy amount
- Maximum salary of £80,000 on which exit payments can be based

2.3 The MHCLG consultation centred on the Local Government Pension Scheme regulations and changes which will potentially impact a large proportion of employees. The proposals are summarised below and are relevant to all employees aged at least 55 in the pension scheme who leave the organisation either via dismissal from employment on redundancy or business efficiency grounds, or termination of employment by mutual consent on business efficiency grounds:

1. The strain cost (capital cost) cannot exceed the overall cap contained in the Exit Payment Regulations (£95,000)
2. The pension strain cost (capital cost) will be reduced by the value of any Statutory Redundancy Payment required to be paid
3. If there is a capital cost to be paid the employer cannot offer a discretionary severance payment in addition (unless the discretionary amount is more than the capital cost then the difference can be paid which is rare)
4. Any reduction in the strain cost due to the above limitations may be made up by the worker from their own resources
5. The member will receive an actuarially adjusted pension benefit in line with the revised strain cost under these provisions.

2.4 In a redundancy situation the employee will receive their statutory redundancy payment and may then use this amount to offset the capital cost paid by the employer in order to mitigate the pension reduction.

2.5 Discretionary severance payments are made to MCC employees who leave via the Efficiency Early Release Scheme (Early Retirement) where either there is no capital cost to pay or where the capital cost is less than the affordability limit (in previous schemes this has been set at 1.5x the employee's salary). In the second instance the difference is paid as severance to the employee.

2.6 When the regulations become law employees will have a choice to defer their pension to normal retirement age or to take it at any date before then in which event there may still be a reduction to their pension. In this case the employee would be entitled to a discretionary payment as no capital cost would be payable.

3.0 Key issues

3.1 There are a number of issues related to the above which present an immediate challenge for local authorities. The first issue relates to the fact that bringing the Exit Regulations into force before the outcome of the MHCLG consultation is known creates a situation where for an unknown period of time the cap will be partly implemented for those in the Local Government Pension Scheme. It is worth reiterating that the introduction of these changes was over 4 years ago, so the reasons for this sudden approach and timing are unclear.

3.2 The two sets of regulations in force conflict dependent upon their interpretation, and the disparity in the implementation dates make it extremely difficult for employers to manage workforce reform in the interim.

3.3 There is nothing in the Exit Regulations which has the effect of altering or removing the entitlement to an immediate, unreduced pension where that entitlement arises under r.30 of the Local Government Pension Scheme Regulations 2013 in redundancy and efficiency dismissals of those aged 55+. The Exit Regulations potentially remove the ability of an employer to make a pension strain payment where that would breach the cap. It therefore follows that in a case where the employee's exit package exceeds the cap, the employee concerned will still be entitled to an immediate, unreduced pension but the administering authority may not be able to call upon the employer to make the full strain payment for cases breaching the £95,000 cap under r.68 of the LGPS Regulations as a result, so that the relevant cost may fall on the pension fund instead.

3.4 This places a burden on the pension fund and in the longer term this burden will need to be recovered. One likely outcome will be an increase in future employer rates which places the financial burden back on the employer in the form of increased contributions and defeats the purpose of the cap as the cost comes back to the employer in another format.

3.5 Furthermore, the regulations reduce the pension benefits that an individual would receive significantly below the level that he or she could have had in the recent past and therefore have the effect of removing a past entitlement. An employee's service accrues certain pension rights and any change to accrual rules for a retrospective period in effect takes away what the employee has already earned and may be a breach of their rights.

4.0 Equality considerations

4.1 The proposals mean that serving local government staff will suffer potentially significant adverse impacts on their financial position if made redundant, compared to previous long-standing arrangements which were part of the pension scheme reforms negotiated and agreed with employers and unions in 2013. The impact of the regulations goes beyond those impacted by the cap. A draft assessment by the Government Actuary’s Department shows that 86% of staff who were made redundant in the period from 2013-2016 would have received lower benefits as a result of the proposals, with an average negative impact of £13,000. Additionally, the top 10% of people impacted by the proposals would suffer an average impact of 47.5%.

4.2 The regulations will have an adverse effect on particular groups including: anyone over the age of 55, with an even more severe impact for those who are closer to 55 (for whom pension strain will, on average, be higher than those who are closer to normal retirement age); and anyone approaching the age of 55 in the next few years.

4.3 In addition to the above, it is clear that those on average salaries with long service are likely to be impacted by the cap. Models have been done which show how including pension strain within the cap would affect long-serving staff earning well under £40,000. The pension strain for staff in their mid- to-late 50s in one council, with service in the range of 35 to 39 years and earning between £31,000 and £34,000 would exceed £100,000 if made redundant. The redundancy payments in each case would be well under £20,000. The Treasury regulations which cap exit payments at £95,000 would mean that they would all suffer a reduced pension, for the rest of their lives.

4.4 It must also be noted that the specific proposals within the MHCLG consultation mean that local government staff will be treated more severely than others across the public sector. Government is not proposing or implementing similar reforms for other public sector workers.

5.0 Recommendations

5.1 There is a distinct level of concern around the process, drafting, and substantive legality of the regulations. This has resulted in a number of challenges to Government including British Medical Assocation's (BMA) application for judicial review. GMB is considering action, and UNISON are sending a pre-action letter as have Lawyers in Local Government (supported by ALACE and SOLACE).

5.2 Personnel Committee is requested to note the letter attached (Appendix 1) which outlines the concerns that the authority has in relation to the introduction of the exit pay cap and specifically the timing of the legislation, and the impact that the proposed changes will have on a large number of local government employees. The letter also includes response to the MHCLG consultation. This letter was submitted prior to the closure of the MHCLG consultation on 9 November 2020.

6.0 Conclusion

6.1 The implications of the changes in law in respect of public sector exit payments go way beyond the original intention of the legislation. They will serve to impact a large proportion of long serving local authority employees, affecting particular groups more than others. The drafting of the legislation and the timing of the separate regulations create both distinct and substantial immediate challenges for the authority. On this basis the response to the consultation and wider concerns relating to the exit payment cap have been provided to Government.

7.0 Comments from Trade Unions

7.1 It is with great disappointment and anger that UNION are having to respond to this item. Our national union has sent a before action letter to the Treasury Secretary regarding this matter outlining breach of contract and discrimination.

7.2 The decision to impose this exit cap on council staff in the local government pension scheme is callous and contemptible.

7.3 Staff in local government have, through years of austerity cuts, always delivered first class services for our residents.

7.4 Throughout the initial lockdown staff stepped up and were delivering services to residents in unprecedented ways and our staff will do the same again when we go into the second lockdown on tomorrow 5.11.20.

7.5 It is shameful that this government has chosen to reward council staff with this further attack by bringing this cap into law, it will impact so many hard working staff who may consider leaving the council to support the budget decisions that are being currently consulted on, staff who do not earn the national average salary will see their pensions reduced.

7.6 The government has not produced an equality impact assessment to support their horrendous decision. It is yet another knee jerk reaction by this government, who only 11 months ago promised, prior to the election that there would be a levelling up across the country, but clearly not for council workers.

7.7 We welcome the letter sent by Manchester City Council and hope this woeful decision to penalise council staff will be reversed.

7.8 The government can no longer hide behind the mantra there is no money as they have handed out billions of pounds worth of contracts during this pandemic, without a transparent tender process, to inadequate companies who can not deliver, and are now suggesting the responsibility of the work that is need to be done from these failing contracts may fall to local councils to deliver. The government promised councils at the start of the pandemic that they should spend whatever is needed to to keep residents safe, councils were mindful with their spend as they know that the money spent is from the public purse but yet again this government has failed to stick to what they promised.

7.9 So it is with great anger we note this report and it’s appendices.

MANCHESTER CITY COUNCIL

Telephone:
e-mail:
Address:

Date:

Dear Sir/Madam,

Re: EXIT PAYMENT CAP AND MHCLG PROPOSALS FOR REFORMS TO LOCAL GOVERNMENT EXIT PAY

I am writing on behalf of Manchester City Council in formal response to the Ministry of Housing, Communities and Local Government (MHCLG) consultation 'Reforming Local Government Exit Pay' and to set out our specific concerns relating to the introduction and timing of the exit pay cap and reforms specific to local government employees.

Exit pay cap and timing of the proposals

The Restriction of Public Sector Exit Payments Regulations 2020 (Exit regulations) came into force on 4th November 2020. We are concerned that bringing the Exit Regulations into force before the outcome of the MHCLG consultation is known creates a situation where for an unknown period of time the cap will be partly implemented for those in the Local Government Pension Scheme. It is worth reiterating that the introduction of these changes was over 4 years ago, so the reasons for this approach and timing are unclear.

The two sets of regulations in force conflict dependent upon their interpretation, and the disparity in the implementation dates make it extremely difficult for employers to manager workforce reform in the interim.

The Exit Regulations do not change the entitlement to an immediate, unreduced pension where that entitlement arises under r.30 (7) of the Local Government Pension Scheme Regulations 2013 in redundancy and efficiency dismissals of those aged 55+. We do not accept the suggestion in the letter dated 28th October from Luke Hall that Authorities can rely on a combination of Regulation 8 of the Exit Payments and section 30(5) of the Pensions Regulations until the Pension Regulations are amended. The Exit Regulations may simply remove the ability of an employer to make a pension strain payment where that would breach the cap and do not affect the employee's entitlement to an immediate unreduced pension.

This places a burden on the pension fund and a conflict between employers and the pension fund and in the longer term this burden will need to be recovered. One likely outcome will be an increase in future employer rates which places the financial burden back on us as a local authority, in the form of increased contributions.

At a time when many local authorities are facing unprecedented financial challenge and are having to consider workforce reform the uncertainty created by the implementation of the Exit Regulations without the corresponding changes to the Pension Regulations is particularly unhelpful.

Finally and importantly, the regulations reduce the pension benefits that an individual would receive significantly below the level that he or she could have had in the recent past and therefore have the effect of removing a past entitlement. An employee's service accrues certain pension rights and any change to accrual rules for a retrospective period in effect takes away what the employee has already earned.

We call on Government to reflect on the united opposition from employers and unions to the exit cap regulations and their damaging impact on local government’s ability to implement reform. If the Government wishes to proceed with regulations, to hold urgent discussions with representatives of employers, and relevant unions in order to address the concerns that have been raised.

Response to the MHCLG consultation

In response to the questions set out as part of the consultation, Manchester City Council echoes the responses made by the Association of Local Authority Chief Executives (ALACE) with specific points and concerns outlined below.

Manchester calls on MHCLG not to proceed with its proposals and not to make the regulations as drafted. Any regulations following this consultation should be limited to the bare minimum to implement the £95,000 cap (but removing the retrospective element by making clear that only pension strain for service on or after 4 November 2020 can count towards the cap).

The other proposals to reduce exit payments in local government should not be progressed because they have an adverse impact on local government employees. Such proposals have not been implemented in this way for other parts of the public sector. The Government should bring forward simultaneous proposals for all public sector workers if it wishes to proceed. In line with this Manchester City Council opposes the principle of including pension strain within the exit payment cap.

These proposals form part of the most damaging attacks on the terms and conditions of local government staff for decades, dismantling long-established norms and without full consideration of the serious impact that they will have on individuals. We have serious concerns about many aspects of the Ministry’s proposals and believe that, if the exit payment reforms are not abandoned altogether in the light of the legal objections now being raised by several organisations, a fundamental rethink is required alongside appropriate transitional non-discriminatory arrangements and introduction of flexibilities for individuals.

Our principal concerns are:

(a) The Ministry's proposals go far beyond the approach that Parliament has authorised or required in respect of the £95,000 cap. If someone's exit payment on redundancy would be over £95,000 under current rules, they should receive direct or indirect benefits worth £95,000 and not a penny less. No one whose exit costs are less than £95,000 should suffer any impact: they should receive a redundancy payment in accordance with the amended rules on discretionary compensation plus their immediate, unreduced pension. The draft assessment by the Government Actuary's Department shows that 86% of staff who were made redundant in the period from 2013-2016 would have received lower benefits as a result of the proposals, with an average negative impact of £13,000. This is particularly pertinent to this argument and shows clearly the impact on most local government employees, not just high earners.

(b) In addition to the above, those on average salaries with long service will be impacted by the cap. Models have been done which show how including pension strain within the cap would affect long-serving staff earning well under £40,000. The pension strain for staff in their mid- to-late 50s in one council, with service in the range of 35 to 39 years and earning between £31,000 and £34,000 would exceed £100,000 if made redundant. The redundancy payments in each case would be well under £20,000. The Treasury regulations which cap exit payments at £95,000 would mean that they would all suffer a reduced pension, for the rest of their lives.

(c) In addition, the maximum range of flexibilities is required for anyone affected by the exit payment cap in managing the impact on their pension. This will include changes being made to the taxation regime for pensions.

(d) The exit payment cap urgently needs to be uprated from £95,000 and uprated annually thereafter.

The implications of the changes in law in respect of public sector exit payments go way beyond the original intention of the legislation. They will serve to impact a large proportion of long serving local authority employees, affecting particular groups more than others. We call on Government to carefully consider the points raised in this letter. If the Government wishes to proceed with regulations, to hold urgent discussions with representatives of employers, and relevant unions in order to address the concerns that have been raised.

Yours sincerely,

Deb Clarke
Director of HR and OD
Manchester City Council