Agenda Item 3

Portfolio Holder Decision – Response to Government consultation on the reform of exit payments in local government

Portfolio Holder	**Portfolio Holder for Customer & Transformation, Portfolio Holder for Finance and Property**
Date of decision	**23 October 2020**
	Signed

Decision taken

Note the report and approve the proposed strategic response to the current MHCLG consultation on LGPS Regulations.

Reasons for decisions

The implementation of the Restriction of Public Sector Exit Payments Regulations 2020 create significant governance risks for the County Council which are difficult to mitigate, particularly while changes to the Local Government Pension Scheme Regulations remain outstanding. It is therefore recommended that WCC takes the opportunity to submit its detailed responses to the MHCLG consultation as part of West Midlands Employers (WME), and independently a strategic response to the risk and governance issues created. It is further recommended that WCC's redundancy policy be reviewed in light of the impact of the exit payment cap and future changes to the LGPS regulations once those are known.

Background information

The Restriction of Public Sector Exit Payments (RPSEP) Regulations 2020 apply a cap on exit payments that may be made to employees in most public sector organisations. This cap applies not only to money paid directly to the employee on exit, but also other payments due, such as pension strain payments. In some situations, the pension strain payments can be well in excess of the cap on their own. The cap may be disapplied only in very narrow circumstances and with the consent of HM Treasury.

The RPSEP Regulations were approved by Parliament on 30 September 2020 and will come into force 21 days after being signed by the Minister. In spite of strong representations from the local government sector, it appears this will likely be before corresponding changes can be made to

Local Government Pension Scheme (LGPS) Regulations. Consequently, in taking decisions regarding leavers aged 55 and over, local authorities will be forced into non-compliance with either one set of regulations or the other.

Local authorities are awaiting guidance on how to deal with affected individuals aged 55 or over, who will now be impacted by the new RPSEP Regulations. WCC has a number of such cases, which it is reviewing.

Currently Pension Funds are advised by their own actuaries on the factors to apply to calculate pension strain costs. The new Regulations will require a consistent national set of factors to be applied. In addition, Funds' pension system software will need to be updated for these new factors.

While in the case of local authorities it may be possible either to expedite such decisions before the RPSEP Regulations come into effect, or alternatively delay implementation of such decisions until there is greater clarity, this may not be possible for some smaller employers within the LGPS, who are also within scope. In these cases, the Pensions Administration Service is in an impossible position, being unable to provide those employers with accurate and reliable information on exit payments or pension benefits.

A consultation by the MHCLG on changes to the LGPS Regulations (together with the redundancy payments legal framework) is ongoing, closing on 9 November 2020. However, given that the RPSEP Regulations have now been approved by Parliament, the outcome will not change the implementation of the exit payment cap. Rather, the present consultation concerns options for bringing the current legislation in line with the RPSEP Regulations. It is proposed that WCC takes the opportunity to respond to the consultation as part of West Midlands Employers (WME). This can be made available, should the Portfolio Holders wish to see it. Given the technical nature of the consultation, any detailed responses require specialist pensions and actuarial expertise and time. Organisations such as WME and the LGA will be better placed to respond on behalf of the sector, and their representations may carry more weight. Nevertheless, the Portfolio Holders are asked to endorse a strategic response expressing WCC's concerns for the governance risks and implications brought about by the implementation, as set out in Appendix A.

The RPSEP Regulations and regulatory changes being consulted upon by MHCLG are likely to make early retirement / voluntary redundancy significantly less attractive for employees, who may now have to choose between (i) forgoing some or all of their non-statutory redundancy payment, (ii) foregoing an element of their pension benefits, (iii) deferring their pension to normal pension age, or (iv) making an up-front payment to offset reduced pension benefits, depending on the outcome of the present consultation.

This in turn is likely to impact on future reorganisations, where we can expect greater resistance to change, less flexibility in terms of acquiring volunteers for redundancy and increased potential for legal challenges in the employment tribunal or civil courts. In addition, there may be a spike in legal challenges in the short term, if employees are offered an exit package which then has to be retracted.

Further, the advent of the cap on exit payments precipitates the need for a review of our current discretionary redundancy payments policy which was implemented in 2011. The scheme currently applies a taper in terms of the multiplier applied to a week's pay, according to age, for LGPS members over 55. Any discriminatory impact of this taper has previously been offset by the immediate access to unreduced pension for those members and the taper is intended to avoid a windfall in those circumstances. A cap on pension strain costs which affects a member's pension will need to be taken into account in considering the proportionality of the taper.

Financial implications

On the face of it, the exit payment restrictions have the potential to reduce costs to the local authority, through capped redundancy costs, and the longer-term impact on employer pension contribution rates.

However, set against these potential cost reductions are the implications arising from the difficulties they are likely to create in, for example, the implementation of restructures, cost of employment tribunals, cost of implementing change and additional workloads, management of changes with other employers in the LGPS, communication with LGPS scheme members.

Environmental implications

None

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Assistant Director	Assistant Director for Finance
Lead Director	Strategic Director for Resources
Lead Member	Portfolio Holder for Customer & Transformation, Portfolio Holder for Finance and Property

Urgent matter?	*No*
Confidential or exempt?	*No*
Is the decision contrary to the budget and policy framework?	*No*

List of background papers

1. MHCLG: Reforming local government exit pay A consultation on the reform of exit payments in local government

Members and officers consulted and informed

Portfolio Holder – Councillors Kam Kaur and Peter Butlin, 23rd October 2020

Corporate Board – 14th October 2020

Legal –- Jane Pollard - Legal Services Manager, Sarah Cowen – Senior Solicitor, David Leach – Employment Solicitor

Finance – Andrew Felton, Assistant Director, Finance

Equality – Keira Rownsley. EDI Practitioner

Democratic Services – Helen Barnsley, Democratic Services Officer

Councillors – Staff and Pensions Committee, 14th September 2020

Local Member(s): N/A