Greater Manchester Pension Fund

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Dear Local Government Workforce & Pay Team,

REFORMING LOCAL GOVERNMENT EXIT PAY:
A consultation on the reform of exit payments in local government

This response to the consultation named above is on behalf of the Greater Manchester Pension Fund (GMPF), which is the largest Local Government Pension Scheme (LGPS) fund in England and Wales with approximately 380,000 members, 600 contributing employers and assets with a value of approximately £25 billion.

Summary

We strongly believe that the proposals which are being consulted on go far beyond the original stated policy intention of limiting '*six figure payouts*' for well-paid public sector workers. These proposals potentially impact almost all Local Government workers, with the lowest paid workers likely to face a proportionately greater reduction in redundancy benefits than many higher earners.

In addition, the proposals also:

- Introduce significant additional administration and complexity for both Local Government employers and LGPS administering authorities (see response to Question 5 for further details).
- Make it more difficult for relevant employers to restructure their workforce.
- Require LGPS members to make a complex and highly material decision on the form that their exit payments should take. Many members may make sub-optimal decisions or will need to obtain expensive independent financial advice.

The proposed changes are planned to come into effect after the effective date of the Her Majesty's Treasury (HMT) Exit Payment Regulations. It is not clear how the potentially competing requirements of paying an immediate unreduced pension in accordance with Regulation 30(7) of the LGPS Regulations 2013, but capping an exit payment at £95,000 can be reconciled. This will create significant difficulty for administering authorities, relevant employers and members and seems likely to result in legal challenge. In order to avoid a chaotic situation, there should be provision for dealing with those employees who will be in redundancy/reorganisation situations until the legislation no longer conflicts.

In our view, to avoid the problems listed above, the best approach would be not to include pension strain costs within the exit benefits to be measured against the £95,000 cap. Or, if strain costs must be included, not to require the deduction of the value of statutory redundancy payments from a members' pension or the restriction on receiving any discretionary redundancy payments if benefitting from a strain cost (assuming payment of these elements do not take the members above the £95,000 threshold).

Depending on the final forms of implementation in other parts of the public sector, Local Government workers could potentially be subject to less favourable exit terms than comparable staff elsewhere in the public sector as a consequence of being part of a funded scheme where strain costs are relevant consideration.

It remains unclear how bodies connected to local government such as local sports and leisure trusts should be treated by the exit cap, given their status as private enterprises that are mainly publicly funded. A situation could arise where staff were transferred (under transfer of Undertakings (Protection of Employment) Regulations (TUPE)) from a Local Authority to such a body and could enjoy seemingly better exit terms than staff remaining at the Local Authority doing ostensibly the same job.

Our answers to specific questions raised in the consultation are provided below. We have not commented on questions that do not have a direct impact on LGPS funds.

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 proposal regarding 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 cost (even where the payments would not otherwise breach the £95,000 cap) will have a proportionately greater impact on lower paid workers, who are those most in need of adequate redundancy benefits. A majority of the lower paid workers will be women and/or part time workers.

Lower paid workers are proportionately more adversely affected because their statutory redundancy pay entitlement will be closer to their actual pay than it will be 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 pension strain cost 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 local authorities' discretionary compensation payments will generally not exceed the pension strain cost.

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

The Government Actuary's Department has provided some illustrations of the likely effects.

- How would you mitigate the impact on these employees?

This policy proposal will impact all public sector employees aged over 55 who are active members of the LGPS, 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.

The most obvious way to mitigate the impact would be to continue to allow an employer to pay statutory redundancy pay in addition to the pension strain cost, where that would not breach the £95,000 cap.

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 all local government employees in two ways, before there has been any wider public sector reform and regardless of salary level:

(a) by reducing the pension strain cost by the statutory redundancy payment, regardless of the amount of the strain cost; and,
(b) by removing any entitlement that an employee will have to a discretionary compensation payment.

The result will be a reduced pension going forward and only statutory redundancy pay to support individuals during a time in which older workers may find it increasingly difficult to find alternative employment.

We strongly believe that the proposals which are being consulted on go far beyond the original stated policy intention of limiting '*six figure payouts*' for well-paid public sector workers, to now potentially impacting almost all Local Government workers. Under these proposals the lowest paid workers are likely to face a proportionately greater reduction in redundancy benefits than many higher earners.

The proposals also introduce significant additional administration and complexity for both Local Government employers and LGPS administering authorities. For example:

- Administering authorities will need to undertake more complex retirement calculations for employees of employers affected by the £95,000 cap compared to those unaffected (eg netting off the amount of the Statutory Redundancy Payment from the pension strain cost).

- Relevant employers will need to provide administering authorities with details of statutory redundancy payments in order to enable the retirement calculations to be performed; this is information that administering authorities have not required previously and would be a wholly new process that needs creating.

- LGPS administration software will not be configured to deal with the above changes. Therefore, in the short term increased reliance will have to be placed on manual processes, which causes further stress on fund resources. This is exacerbated by the likely high number of employers who either are or will be restructuring their workforces in response to the coronavirus pandemic and its financial impact.

- The number of options available to impacted employees will increase, which will increase the burden of communication on administering authorities. Employees will be more likely to seek more detailed guidance regarding their various retirement options which will result in more time spent liaising with financial advisers and dealing with member queries.

- Some employers would inevitably struggle to effectively implement and administering the payroll/HR aspects of the proposed new arrangements and will likely look to their administering authority for specialist assistance in this area.

- The proposed changes are planned to come into effect after the effective date of the HMT Exit Payment Regulations. It is not clear how the potentially competing requirements of paying an immediate unreduced pension in accordance with Regulation 30(7) of the LGPS Regulations 2013 but capping an exit payment at £95,000 can be reconciled. This will create significant difficulty for administering authorities, relevant employers and members alike.

Due to the significant reduction in benefits for members, the proposals will make it much more difficult for relevant employers to effectively restructure their workforce. There is a risk that the proposed changes are in fact a false economy and actually result in higher ultimate costs for taxpayers, with lower pension strain costs being more than offset by less efficient local government employers and higher social security benefits to former local government employees.

The proposals require relevant LGPS members to make a complex and highly material decision on the form that their exit payments should take. Many members may make sub-optimal decisions or will need to obtain expensive independent financial advice. This will also act to reduce the effectiveness of workforce restructuring.

In our view, to avoid the problems listed above, the best approach would be not to include pension strain costs within the exit benefits to be measured against the £95,000 cap. Or, if strain costs must be included, not to require the deduction of the value of statutory redundancy payments from a members' pension or the restriction on receiving any discretionary redundancy payments If benefitting from a strain cost (assuming payment of these elements do not take the members above the £95,000 threshold).

In addition, 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).

QUESTION 6
Do you agree that the further option identified at paragraph 4.8 should be offered?

In our view, the best approach would be not to include pension strain costs within the exit benefits to be measured against the £95,000 cap. Or, if strain costs must be included, not to require the deduction of the value of statutory redundancy payments from a members' pension or the restriction on receiving any discretionary redundancy payments if benefitting from a strain cost (assuming payment of these elements do not take the members above the £95,000 threshold).

If the proposed changes are implemented, 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. However, please note our concerns expressed in the response to question 5 regarding the potential complexity of members.

QUESTION 7
Are there any groups of local government employees that would be more adversely affected than others by our proposals?

LGPS members with long service will be particularly affected because of the interrelationship between pension strain costs 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. Women represent 95% of school crossing patrols and midday supervisors. Local and national government administrative workers are closest to the public sector average, with 68% of them being women.

https://www.ons.gov.uk/economy/governmentpublicsectorandtaxes/publicspending/articles/whoworksinthepublicsector/2019-06-04 refers.

The proposals will have a greater nominal effect on longer serving higher earners; but will likely have a more significant proportional impact on lower paid workers (and so women and part time workers) for whom statutory redundancy pay will be a higher proportion of their total pay.

See also the response to question 8 below.

Whilst the intention and aims of the policy to ensure fairness and protect the public purse seem legitimate the approach and impact are disproportionate and irrational the proverbial hammer to crack a nut with the subsequent collateral damage that it will cause.

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 Government Actuary Department (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 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 joined the LGPS 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.

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 notice of any dismissals.

We note the draft LGPS (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.

There is a material risk that the proposed reforms 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 Ministry of Housing, Communities and Local Government (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.

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 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; or
(d) there is a value for money case.

Please do not hesitate to get in touch if you wish to discuss any of the matters covered by this consultation.

Yours sincerely,

Sandra Stewart
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Greater Manchester Pension Fund