

Workforce, Pay & Pensions Team,
HM Treasury,
1 Horse Guards Road,
London
SW1A 2HQ

Date: 3 July 2019

Dear Sirs,

**Restricting exit payments in the public sector:
consultation on implementation of regulations**

The Essex Pension Fund welcomes the opportunity to comment on the proposals for implementation of an exit payment cap arrangement in the public sector. We are responding in our capacity as an Administering Authority within the Local Government Pension Scheme.

We have very serious concerns about the consequences of implementing the policy as set out in the consultation documents. If implemented as proposed, this will detrimentally impact on employers' ability to recruit, retain and motivate staff.

Bodies in scope

Firstly, we believe Local Authorities should be exempted bodies as they are outside the operational control of central government, are democratically accountable for their decision making, and exit decisions do not impact financially on the Treasury as they are met from within budgets set locally.

Whilst we appreciate the value for money considerations, it is our view that the draft regulations are a disproportionate and poorly designed solution to the issue that they purport to resolve. Essex County Council already has in place a strong internal governance framework and democratic oversight which ensures that all payments are an effective and legitimate use of public monies.

The Local Government Pension Scheme is funded through investments, and scheme employer and member contributions; it is not an unfunded scheme. Therefore, it is appropriate for Local Government bodies (and other organisations that are governed by locally elected members) to retain the ability to make local decisions that are in the best interests of local communities and the employer. Local Government bodies are locally accountable for their financial and other decision making and should therefore be outside the scope of this legislation.

Level of the cap

We strongly urge the government to give proper consideration as to the appropriate level of any cap rather than proceed based on an arbitrary figure.

We believe the employees likely to be affected by the proposed cap are much lower earning than the consultation suggests. The consultation document says, “The government does not believe that the majority of six figure exit payments.....are proportionate”. However, we strongly believe the opposite to be the case and that, therefore, the majority of six figure exit payments are proportionate as they predominantly reflect long service rather than high pay.

Essex County Council (ECC) assessed its workforce aged 55 or over and the cap, as proposed, would potentially affect nearly 3.5 times more employees (77%) earning less than £65k than employees earning over £65k (23%).

Bearing in mind that an LGPS member earning £65k is not a higher rate tax payer then this clearly shows the cap, as proposed, would have a far greater impact on employees who are not high earners, than those who are high earners.

It needs to be recognised that other factors such as the age of the employee and length of pensionable service, and not just salary, determine the cost to the employer of the pension strain. As such, including pension strain within the calculation of the exit cap will result in individuals who are of the same age and / or salary being impacted very differently. It will also, in some instances, create the perverse result of reducing the pension of moderate or low earners whereas individuals with higher salaries could be unaffected by the exit cap.

It is the view of the Fund that the pension strain should be omitted altogether – as is now understood to be the case in regulations due to be implemented in Scotland.

We strongly believe this shows there is a need for the government to consider the appropriate level of the cap and to set it at a level which impacts high earners and not long servicing moderate and low earners. This could be achieved, for example, by having a sliding scale of cap which relates to an employee’s length of service.

Draft regulations

There is some poor/unnecessary drafting in draft regulations 6(1)(g) and 7(g);

It seems both confusing and unnecessary to define “any payment in lieu of notice due under a contract of employment” as an exit payment only to then partially exempt it by including “a payment in lieu of notice due under a contract of employment that does not exceed one quarter of the relevant person’s salary” under payments exempt from restriction.

It would make more sense to add the wording “which exceeds one quarter of the relevant persons annual* salary” to the end of draft regulation 6(1)(g) so that it reads “any payment in lieu of notice due under a contract of employment which exceeds one quarter of the relevant persons annual salary”.

Draft regulation 7(g) can then be deleted.

*we have added the word “annual” before salary as we believe this is necessary because, although salary is often expressed as an annual sum, the dictionary definition does not specify it as such. We note this has been defined in the draft guidance but believe it is more important to be defined in the regulations.

Responses to questions not answered above

Question 1

Does draft schedule 1 to the regulations capture the bodies intended (described in section 2.1 above)? If not, please provide details.

Yes, we believe schedule 1 to the regulations captures the bodies described in section 2.1 but we reiterate our belief that local authorities should be exempted bodies as they are outside the operational control of central government, are democratically accountable for their decision making, and exit decisions do not impact financially on the Treasury as they are met from within budgets set locally.

Question 4

Does the guidance adequately support employers and individuals to apply the draft regulations as they stand? If not, please provide information on how the guidance could be enhanced.

No, the guidance is incomplete and needs further clarity in several areas.

With 3.2 of the guidance, concerning calculating the capped amount, there are several issues which require further consideration and guidance.

In the LGPS, the statutory regulations governing the scheme require automatic payment of unreduced pension benefits if a member is made redundant aged 55 or over, regardless of the amount of the pension top-up payment/financial strain required from the employer.

Substantial clarification on the impact of the cap on the Local Government Pension Scheme is needed in order to make these Regulations workable. In particular there is no clarity on the application of the cap in a way which provides a fair choice for the member between a reduced pension and the cash alternative referred to in the draft Regulations. Changes to the scheme regulations would be necessary and those changes would have to be legislated for before the introduction of the cap.

Also, more thought needs to be given to how the pension top-up payment/financial strain is calculated or valued for the purposes of the cap. There needs to be a level playing field across the public sector which would require an agreed single method of calculating the financial strain payment, or value, for the purposes of the cap.

There would be an added complexity with the LGPS because individual Fund actuaries may determine the amount of a pension top-up payment/financial strain needed to be paid into the fund by an employer, so the payment required could differ from fund to fund for the same benefits. To ensure fairness to individuals, and avoid a postcode lottery, the pension top-up payment/financial strain used for the purposes of the exit payment cap should be calculated using a common agreed method even if this differs from the actual payment required.

The Fund is particularly concerned about the proposal for the cap and associated provisions to come into force the day after the Regulations are made. Given the need for the draft Regulations to be clarified and amended this provides far too little time for employers to change their policies, communications and potentially offers to individuals exiting over this period. There are a substantial number of issues to be addressed before determining what exit payment can legitimately be paid to an individual once these Regulations come into force. Employers will need to procure advice from legal advisers, administering authorities and others before they are in a position to proceed with making exit payments. The discretionary exemption for

agreements to exit made before the coming into force of the Regulations does not address this issue, as the parties to the agreement cannot be sure that the discretion will be exercised so as to allow the payment.

Local Government has, arguably, shouldered the biggest share of the austerity burden and continues to plan further transitions in line with HM Government's objectives. To have to put these on hold, and potentially withdraw plans and offers that have been made in order to ensure compliance with Regulations that have not been in a state to be anticipated will be a major challenge for employers and a notable cost. We strongly urge government to allow employers a reasonable period for implementation after the Regulations are made AND the necessary consequential changes to other Regulations (most notably the Local Government Pension Scheme Regulations) have been introduced. Presuming these changes to the LGPS are introduced promptly after these Regulations pass through Parliament, we believe nine months would be an appropriate period. Any delay to changes to the LGPS, however, will necessitate more time.

Question 5

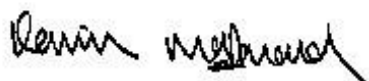
Is the guidance sufficiently clear on how to apply the mandatory and discretionary relaxation of the regulations, especially in the case of whistle-blowers?

No, we believe further clarity is needed on several points and the whole process extremely bureaucratic.

We have significant reservations regarding the complexity of these Regulations and the cumbersome approval processes outlined in these consultation documents for the application of exemptions.

At its most extreme, business cases appear to need approval from full council, the permanent secretary at MHCLG, a Minister of the Crown and HM Treasury. This would be time consuming, costly and is overly bureaucratic. We cannot see how this is feasible let alone an efficient and appropriate approach.

Yours sincerely.



Kevin McDonald

Director for Essex Pension Fund
Essex Pension Fund
Corporate & Customer Services
Essex County Council



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Supporting information

The following information was provided by ECC and has been used for the figures in the 3rd paragraph in the 'Level of the cap' section of the Fund's draft response, i.e. "Essex County Council (ECC) assessed its workforce aged 55 or over and the cap, as proposed, would potentially affect nearly 3.5 times more employees earning less than £65k than employees earning over £65k.";

The table below shows the scenario whereby the existing workforce over 55 were made redundant on 31/03/19 and the number of ECC employees impacted if the £95K cap had been in place.

Salary Ranges of those impacted by £95k cap

(calculations include Pension Strain)

Salary Range	No. of employees affected	Percentage profile
£30,000 to £38,000	5	5%
£38,001 to £50,000	32	34%
£50,001 to £65,000	36	38%
£65,001 to £81,000	11	12%
£81,001 to £170,000	10	11%