Resources & Pensions

Buckinghamshire County Council
Pensions & Investments Team
County Hall, Walton Street
Aylesbury, Buckinghamshire HP20 1UD

Head of Finance
Pensions, Investments & Projects
Mark Preston

Telephone 01296 383755
www.buckscc.gov.uk/pensions

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

Date: 3 July 2019
Ref: Exit Cap/CLS

Dear Sir/Madam

Restricting exit payments in the public sector

Thank you for the Department's consultation seeking views on the proposed draft regulations.

I am responding on behalf of Buckinghamshire County Council in its capacity as administering authority of Buckinghamshire County Council Pension Fund in relation to the Local Government Pension Scheme (LGPS).

Guidance and directions

We are concerned that there is no implementation period set out in the guidance and directions section of the consultation. On 1 April 2020, Buckinghamshire County Council, Aylesbury Vale District Council, Chiltern District Council, South Bucks District Council and Wycombe District Council will be abolished and a new unitary authority, Buckinghamshire Council will be established. The councils are in the process of transitioning over to the new council and there will be significant changes to the workforce and redundancies are to be expected. We would propose that a minimum implementation period of nine months from the date the Regulations are passed is necessary to enable guidance and Regulations to be enacted efficiently and to also provide the actuaries, software providers, payroll providers and employers with sufficient time to comply with the guidance and Regulations.

There is an area of inconsistency that exists within the LGPS regarding the calculation of pension strain costs. Currently the calculation of pension strain costs is set locally by the fund actuary. When assessing strain costs, we would support the introduction of a standard approach to the calculation to ensure fairness across the Scheme.

We would also seek an amendment to the LGPS Regulations to provide Scheme members with a fair choice between accepting a reduced pension and the cash alternative referred to in the Regulations. We do not believe fairness will be achieved under the current LGPS

Regulations whereby it is mandatory for Scheme members to receive immediate reduced benefits if they are over the age of 55 and leave on grounds of redundancy or business efficiency. An option to defer if they do not wish to suffer an actuarial reduction should be introduced.

The consultation is silent as to whether the figure of £95,000 will be subject to indexation. This figure was set out in an earlier consultation which ran from 31 July to 27 August 2015. This figure has not increased four years on and there is no provision within the proposed guidance and directions to increase this figure once implemented, resulting in more employees being subject to the cap going forward. We would suggest the inclusion of some form of indexation.

Comments on the Regulations proposed

Regulation 1 – in accordance with our previous comments, we do not consider an implementation date of the day after the day on which the Regulations are made will provide adequate time for changes to be implemented and for appropriate communication to Scheme members to take place. Software providers will need sufficient time to configure systems to comply with the new requirements. If systems are not configured in time, manual calculations will be required which will delay payment of benefits to Scheme members and add significantly to administration workloads. A reasonable implementation period as suggested of nine months would ensure that the cap can be applied consistently and correctly in the LGPS.

Regulation 4 – (a) does not specify that individual exit payments are aggregated.

Regulation 6 – (b) is difficult under existing provisions for the calculation of pension strain costs. As already stated in this response, a standard calculation method is not currently applied across the LGPS. If this situation prevails, the effect of the cap would be based upon the Scheme member’s location and would lead to inconsistent practice across a national Scheme which is locally administered.

Regulation 7 – (e) the word ‘service’ has no relevance to a period of annual leave that is not taken.

Regulation 7 – (g) clarity is required regarding pay in lieu of notice. It is not clear whether only pay in lieu of notice that is less than one quarter of a member’s salary is excluded from the cap, or in cases where a quarter is exceeded, the amount up to the limit of one quarter is excluded and the excess over and above the quarter is included.

Regulation 9 – states that where Scheme Regulations do not permit the making of an exit payment an alternative cash payment **must** be made. This is contrary to section 4.1 of the guidance which states that an equivalent cash sum **may** be made.

Comments on LGPS Regulation changes required

The LGPS Regulations 2013 do not currently facilitate the operation of the exit payment cap so amendments to the LGPS Regulations would be required. If changes are made after the introduction of the exit payment cap, there would be a period of time where members of the LGPS would be treated differently under the cap, dependent on the date of exit.

LGPS Regulation 68(2) allows an administering authority to require a Scheme employer to make additional payments to the fund in respect of any extra charge resulting from retirement benefits becoming immediately payable to a member on grounds of early retirement (Regulation 30(5)), flexible retirement (Regulation 30(6)), or on grounds of redundancy or business efficiency (Regulation 30(8)). Not all administering authorities insist on additional payments and instead, choose to increase the employer's contribution rate, or apply a combination of both. Confirmation is sought as to whether the alternative arrangement of increasing an employer's contribution rate can still apply once the exit cap is introduced.

As previously stated, to ensure consistency across the LGPS, a standard method to calculate pension strain costs would be welcomed. If implemented, an amendment to Regulation 68(2) would be required, specifying that the pension strain costs must be calculated in accordance with GAD guidance, rather than calculated by an actuary appointed by the administering authority. The guidance would also need to ensure that the costs reflect the different tranches of membership accrued in the LGPS and the various protected retirement ages and tapered protections that can apply. Guidance will also need to set out how divorce debits or Scheme Pays debits are accounted for in relation to an annual allowance tax charge that occurred in a year prior to leaving.

Within the LGPS, members can be awarded additional pension by an employer up to six months from their leaving date if the reason for leaving was redundancy or business efficiency. There are also members who are purchasing additional years of scheme membership who if made redundant, have up to three months (or such longer period as their employer allows) to pay a lump sum equal to the capital value due to complete the contract. Both of these will result in benefits changing after the date of leaving which in turn, would result in the pension strain cost changing.

Other considerations

On 27 June 2019, the Supreme Court refused the Government permission to appeal against the decision reached by the Court of Appeal in the McCloud case. Scheme reforms were due to take effect from 1 April 2019 due to the cost cap mechanism exercise and these have been on hold pending the leave to appeal decision. The case will now be referred back to an employment tribunal for remedy. If the exit payment cap is introduced before the required changes in respect of the McCloud ruling are implemented, there is a risk that subsequent backdated changes to member benefits can affect how the exit cap has been applied to members in the interim period. Guidance would be welcome on the action administering authorities would need to take where the cap was applied but the cost of that exit increases, where the exit cap was not exceeded at date of leaving but due to the application of backdated changes, the member now exceeds the cap and where approval to relax the cap was given but due to backdated changes the costs have increased.

The introduction of the cap will present additional complexity to what is already an increasingly complicated scheme to administer. The options to be made by Scheme members will need to be explained, these include but are not limited to decisions on whether to claim a reduced/partially reduced pension immediately or defer payment to a later date, whether to apply the partial reduction to their pension or lump sum, whether to pay extra to buy out all/part of the partial reduction, whether to pay an annual allowance charge directly to HMRC or to elect for the Scheme Pays option and whether to opt for a reduced pension or lump sum in order to pay a lifetime allowance tax charge.

We would welcome changes to the Regulations and guidance prior to the introduction of the exit payment cap as detailed in this response.

Yours faithfully

Claire Lewis-Smith
Pensions Administration Manager
Pensions & Investments Team
Email: clewissmith@buckscc.gov.uk
Tel: 01296 383424