£95k exit cap update – 13 November 2020

As we move into the transitional period in which the Treasury regulations are in force (having commenced on 4 November) and before the LGPS regulations have been released, there remain a number of issues for both employers and administrators.

Most importantly, make sure you have read the information note published by the LGA last week (if you missed it you can read it here). The document sets out clearly the current position we're in. The LGA have also released a recording of their webcast held on 6 November which you can listen to here.

It is vitally important that you check not only whether you as an employer are effected, but also to check the status of your members as some may be within scope of the legislation even though you as an employer may not be. Your fund cannot help you determine this and any sanctions resulting from a breach of the cap will be wholly the responsibility of the employer.

If you are considering postponing a redundancy because of this legislation please bear in mind that the further reforms planned by MHCLG may further reduce the options available to some members, even those whose exit costs are below the £95k cap.

Estimates

From today we are temporarily suspending any estimates that result in an employer cost (redundancy/efficiency/flexible etc). We're in discussion with our shared partner Funds about this and AON, WYPF's actuary has advised us that all estimates should be calculated using the new GAD factors in force from 4 November. We're assessing how quickly we can load these factors into our systems and re-start estimates.

Employers in Hounslow and Lincolnshire should contact their relevant Fund Manager if they would like specific information about their Fund's position. Actuarial advice from Hymans and Barnet Waddingham may be different.

Once we're in a position to re-start estimates, we may restrict how far into the future we'll do them and will confirm our policy at that time. We expect the following process to apply during the transitional period before new LGPS regulations are brought in.

For cases subject to the cap where the member is 55 or over:-

Identify whether you as an employer or the member are subject to the exit cap -

- If the regulations apply, does the total exit payment exceed the cap?
- If under the limit, proceed as normal.
- In cases where the cap is breached, consider whether a mandatory or discretionary waiver applies.
- If no waiver is to apply, can you reduce any elements of the payment to bring it below £95k? If yes, consider doing so; the normal process can then apply.
- If the total exit cost still exceeds £95k the conflict between Treasury and scheme regulations exists. **We will pay the member either a reduced pension benefit or award a deferred benefit.***
- You can if you wish make an additional cash payment up to the level of the cap. This is an employer decision. However, you should carefully consider the risks of doing so as set out in the LGA information note for employers.

*This approach has been decided based on the latest guidance from LGA in their information note for Administering Authorities, which you may want to read alongside the employer guidance, as well as relevant legal advice.

Once we re-start processing cases we'll approach them like this:

Scenario	**Changes to how we process cases**
Employees not covered by exit cap	No change needed, cases will be processed in the usual way.
Employees covered by exit cap but total exit payments including strain cost are under £95K cap	Detail on-going issue in correspondence to employer. Process estimates and retirement cases. Ask employer to confirm total exit payments on the retirement notification. The fund would only pay an unreduced pension if total exit payments to member were under £95K.
Employees covered by exit cap but total exit payments including strain cost are over £95K cap	Proceed on the basis that Regulation 30(7) of the LGPS Regulations is disapplied by Regulation 8 of the Exit Regulations and follow guidance from MHCLG and LGPS Advisory Board. Give member option to take a reduced pension or deferred benefits.

Employers will need to incorporate any relevant information regarding other exit payments and/or deductions from them.

Flexible retirements
Currently a flexible retirement is not an 'exit' within the scope of this legislation. But the LGA have flagged a risk to employers that they need to ensure that any cases are treated as a contract change or variation so that no 'exit event' occurs.

Applying the waiver

Current opinion about the waiver from LGA suggests it is likely only to be used in very rare circumstances. In regard to the waiver coming as a result of TUPE rights, there is some complexity within this. The basic fact of TUPE may not confer rights to activate the waiver. Employers will need to seek their own formal advice on this matter.

Paying cash alternatives

This remains an employer decision. The information notes set out the relative risks of doing so and any payments should be very carefully considered.

Keeping the fund/administrator informed

If you have any redundancy cases in the pipeline make sure you discuss them with us and confirm in writing any decisions you make about the cap, whether it applies, if a waiver is being applied and any

cash payments you intend to make. Without this information we will not be able to process cases or pay benefits.

This is a fast-moving subject and we will continue to update you as we find out more information or case law begins to emerge.

Once we're in a position to do so, we will look to hold some webcasts about the exit cap.

Finally, we do not expect draft regulations from MHCLG until shortly before Christmas, meaning actual legislation is unlikely before late January at the earliest. If you want to read more about MHCLG's further reform on exit costs you can read the consultation document.

Useful links:

https://www.local.gov.uk/reform-local-government-exit-payments
http://www.lgpsboard.org/index.php/structure-reform/public-sector-exit-payments
https://www.gov.uk/government/publications/restriction-of-public-sector-exit-payments