

LGPS Legislative Updates:

Public sector exit payments

On 4th November 2020 The Restriction of Public Sector Exit Payments Regulations 2020 came into force enforcing a cap of £95k to an exit payment for an employee leaving a public sector employer.

The amount in severance payments, pension strain cost and notice payments in excess of three months are included in the calculation.

There is now a conflict between the exit cap regulations and the LGPS regulations. The LGPS regulations require a member who is made redundant over the age of 66 to take immediate unreduced pension, but the exit cap regulations prevent the employer from paying strain cost if the exit package exceeds £95k.

MHCLG have issued a consultation on the draft amendments to the LGPS regulations, which closed on 18th December 2020. Once in place the Regulations will address the conflict but these are not expected before March 2021

It has therefore been necessary to implement an interim solution to the conflict. Based on advice from our One Source legal team and guidance from LGA and the LGPS SAB, LB Havering, as an administering authority have decided that any members made redundant after 3rd November 2020, where their exit package exceeds the £95k cap, will be offered the choice of taking immediate fully reduced pension or a deferred pension to take at a later date.

By doing this, we comply with The Restriction of Public Sector Exit Payments Regulations 2020 in that a strain cost will not be payable to the Pension Fund and the exit package will be below the cap. We do however, open ourselves to challenge as we are not adhering to the LGPS Regulations. It was felt that this options leaves us with the least risk as it is easier to pay a member more benefit if order to by the courts or Pensions Ombudsman, then to try an reclaim anything that it is decided has been overpaid.

In addition to the above and as part of amendment to the Local Government Pension Scheme Regulations, new universal GAD factors will be introduced for all LGPS funds to use in the calculation of strain costs. This is to ensure equal treatment of all scheme members regardless of the individual fund that they pay into.

The existing factors used to calculate pension strain costs are intended to fill any funding gap created by paying a member's pension early. They were not calculated with the intention of impacting a member's benefits and as a result, the factors are specific to each individual fund and are not unisex.

Following advice from our Actuary, Havering, as an administering authority, have made the decision to start using the draft GAD factors and calculation methodology ahead of the implementation of the amendment regulations.

LGPS Amendments to Statutory Underpin (McCloud)

When the Government reformed public service pension schemes in 2014 and 2015 they introduced protections for older scheme members. Following the findings in the McCloud legal judgement, certain elements of public sector pension schemes brought in at the time of the reforms have been deemed age discriminatory. The Government has confirmed that there will be changes to all public sector pension schemes to remove the age discrimination. In the case of the Local Government Pension Scheme, it is the “underpin” provision which gives special protection to the rights of older members that has been classed as age discriminatory.

We await further clarification on the implementation of the remedy but LPPA have already started looking at the additional administration requirements both in terms of identifying any missing data and the resources and cost of the project.

Management of employer risk regulations

On 26 August MHCLG published its latest partial response to the May 2019 consultation called “Changes to the local valuation cycle and management of employer risk”. The accompanying amendment regulations have also been made and came into force from 23 September 2020.

The new regulations focus on three key areas:

- Review of employer contributions (inter- valuation)
- Spreading exit debts
- Deferred Debt Agreements

The Funding Strategy Statement has been updated to reflect the new Regulations and the discretions we have in these areas.