Annex 2

Surrey Local Pension Board
12 November 2020

Exit cap emergency decision

Recommendations:

The Board is asked to **note** the content of this report and **make recommendations** to the Pension Fund Committee if appropriate.

Background

1. On 4th November 2020, the government activated the legislation to introduce an exit cap for public sector termination payments. This has been enacted before the supporting legislation is in place and the Local Government Scheme (LGPS) regulations have been amended.

2. Although the exit cap is in force, the other provisions are still being consulted on and are unlikely to be implemented until the new year. This has the effect of existing scheme regulations conflicting with the exit cap in key areas.

3. The administering authority needs to decide whether to pay an unreduced pension in line with regulation 30(7) or provide the option of either a deferred pension under regulation 6(1) or an immediate reduced pension under regulation 30(5) in line with the Government's recommendations.

4. This only applies to terminations where the effective date is after 3rd November 2020 and the employer is subject of the exit cap.

Detail

5. These conflicts require the Administering Authority to balance the different requirements of competing legislation and the proposed policy and, where relevant, have been approved by the Executive Director of Resources and Director of Law and Governance, in consultation with the Chairman of the Pension Fund Committee. Through a delegated officer decision, in accordance with Scheme of Delegation Part 3 – Specific Delegation to Officers (FIN 16)

Decision

6. The decision is that the Surrey Pension Fund provide the option of either a deferred pension under regulation 6(1) or an immediate reduced pension under regulation 30(5) in line with the Government's recommendations.

7. The decision follows the principle of a prudent approach, on the basis of potentially paying an additional balance rather than seeking to recover an overpayment.

8. Regulation 30(7) of the LGPS requires the pension fund to pay unreduced pensions to members aged 55 and over who leave on the grounds of redundancy, business efficiency or mutual consent on grounds of business efficiency (compromise agreements). The immediate payment of pensions generates strain costs that can be considerable and may exceed the £95K cap. This creates a dilemma because the pension fund is forced to navigate a pragmatic course between two conflicting pieces of legislation.

9. If the alternative option, to pay an unreduced pension, in line with regulation 30(7)is decided upon, there is a risk that:
    - the pension fund could end up in the position of having to try and recover monies from the employer and/or the member;
    - the pension fund will not be able to obtain the whole strain cost from the employer;
    - the employer will be restricted to a maximum of £95k for all exit payments.

10. In reaching this decision regard has been taken of the legal advice obtained by the Scheme Advisory Board (SAB). Regard is also taken of the letter from MHCLG to LGPS administering authorities dated 28 October 2020.

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Sources/background papers:

1. Surrey County Council Decision notice
https://mycouncil.surreycc.gov.uk/ieDecisionDetails.aspx?ID=4358
2. The Restriction of Public Sector Exit Payments Regulations 2020
https://www.legislation.gov.uk/uksi/2020/1122/contents/made
3. The letter from MHCLG to LGPS administering authorities dated 28 October 2020
https://www.lgpsboard.org/images/PDF/letters/MHCLGtoLAs.pdf
4. Exit cap information for LGPS administering authorities from the LGA
http://lgpslibrary.org/assets/gas/ew/Exit%20Cap%20AA%20v1.0.pdf