

**SURREY COUNTY COUNCIL****PENSION FUND COMMITTEE****DATE:** 11 DECEMBER 2020**LEAD OFFICER:** ANNA D'ALESSANDRO, DIRECTOR OF CORPORATE FINANCE**SUBJECT:** EXIT CAP DECISIONS**SUMMARY OF ISSUE:**

| <b>Strategic objectives</b> |                 |
|-----------------------------|-----------------|
| <b>Governance</b>           | <b>Delivery</b> |

This report provides the Pension Fund Committee with details of urgent decisions made regarding the processing of exit payments for eligible local government employees, including that which required an officer delegated decision from the Executive Director of Resources (Section 151 officer) and Director of Law and Governance (Monitoring Officer) in consultation with the Chairman of the Pension Fund Committee.

**RECOMMENDATIONS:**

That the Pension Fund Committee:

1. Notes the details of this report.
2. Note the Local Board's concern at the position that the Fund has been placed in due to conflicts between the Restriction of Public Sector Exit Payments Regulations 2020 and the Local Government Pension Scheme Regulations 2013.

**REASONS FOR RECOMMENDATIONS:**

To provide the Pension Fund Committee with full transparency over the Surrey Pension Fund's compliance with the Restriction of Public Sector Exit Payments Regulations 2020 and the Local Government Regulations.

This meets the Fund's strategic governance and delivery objectives.

**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 Pension 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 main area of conflict concerns members who are aged 55 and over and this obliges the fund to find pragmatic solutions until the situation is resolved.
4. This only applies to terminations where the effective date is after 3rd November 2020 and the employer is subject of the exit cap.
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.
6. In reaching these decisions 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.
7. The Administering Authority decisions follow 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 regulations requires the 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 £95,000 cap. This creates a dilemma because the Fund is forced to navigate a pragmatic course between two conflicting pieces of legislation.

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#### **DETAILS:**

**Decision 1: Legislation in force should be observed and the following decisions only affect terminations that breach the £95,000 cap.**

9. It should be noted that pending legislation includes provisions that may affect members whose packages are lower than the £95,000 cap and they may be introduced retrospectively.

**Decision 2: Recommend for employers in the Fund to NOT pay discretionary compensation if they have a liability to a strain cost.**

10. There may be situations where the employer cannot pay a strain cost if they pay discretionary compensation (they are required to pay a redundancy payment under ERA 1996) without breaching of the cap. The fund recommends to employers that they follow the SAB suggestion of refraining from paying discretionary compensation in these circumstances.

**Decision 3: To use the generic public sector (GAD) factors as they address equality issues and any marginal shortfalls in funding can be made good at the triennial valuations.**

11. If an employer releases an employee under regulation 30(7) it is required to make a payment to the pension fund to compensate it for paying the pension earlier and for longer. This is known as a strain cost. A decision is required on how this is calculated:
  - Using our existing factors which are fund and gender specific;

- Adopt the draft unisex generic (GAD) public sector factors.
12. The draft public sector Government Actuarial Department (GAD) factors will provide consistent results and there will be no differences in notional costs between men and women and different employers within the public sector. The generic factors will lead to lower headline strain costs for a variety of reasons and, therefore they will be less likely to breach the cap; however, they will be unlikely to cover the true costs of early within local government.

**Decision 4: To offer a deferred benefit or a reduced the pension under 30(5) as it can be re-calculated retrospectively.**

13. There will be occasions where the strain costs alone will exceed the exit cap and the Fund is forced to choose between breaching the scheme regulations by offering a deferred pension under 6(1), paying a reduced pension under 30(5) or paying an unreduced pension. If it opts the latter, it may not be able to recover the whole strain cost at exit and the employer may resist making good the shortfall at the triennial valuation by arguing that the additional payments would exceed the exit cap.
14. It should be noted that the member could appeal this decision on the grounds that it is technically ultra vires as it conflicts with the scheme regulations. It is understood that the Pensions Ombudsman is willing to fast track exit cap cases and we can review our recommendations in the light of the case law.

**Decision 5: To apply the LGPS specific actuarial reductions.**

15. If actuarial reductions are applied to members leaving under regulation 30(7) there is a decision to be made regarding whether to apply the standard scheme reductions or an alternative.
16. This is in keeping with a prudent approach, as they are likely to be higher than any generic public sector reductions that the government actuary may produce.

**CONSULTATION:**

17. The Chairmen of the Pension Fund Committee has been consulted on this report.

**RISK MANAGEMENT AND IMPLICATIONS:**

18. Risk related issues have been discussed and are contained within the report.

**FINANCIAL AND VALUE FOR MONEY IMPLICATIONS**

19. The performance of the Pensions Administration function does present potential financial and value for money implications to the Pension Fund. The monitoring of these implications is discussed within the report.

**DIRECTOR OF CORPORATE FINANCE COMMENTARY**

20. The Director of Corporate Finance is satisfied that all material, financial and business issues and possibility of risks have been considered and addressed.

## **LEGAL IMPLICATIONS – MONITORING OFFICER**

21. The Director of Law and Governance is satisfied that all legal issues have been considered and addressed.

## **EQUALITIES AND DIVERSITY**

22. The approval of the various options will not require an equality analysis, as there is no major policy, project or function being created or changed.

## **OTHER IMPLICATIONS**

23. There are no potential implications for council priorities and policy areas.

## **WHAT HAPPENS NEXT**

24. Process will be implemented in accordance with the decisions as shown.

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### **Contact Officer:**

Neil Mason, Strategic Finance Manager

### **Annexes:**

1. Delegated Officer Decision

### **Sources/background papers:**

1. The Restriction of Public Sector Exit Payments Regulations 2020  
<https://www.legislation.gov.uk/uksi/2020/1122/contents/made>
  2. Exit cap information for LGPS administering authorities (LGA)  
<http://lgpslibrary.org/assets/gas/ew/Exit%20Cap%20AA%20v1.0.pdf>
  3. Letter from MHCLG to LGPS administering authorities  
<https://www.lgpsboard.org/images/PDF/letters/MHCLGtoLAs.pdf>
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