Report Title:	**Public Sector Exit Pay Reform**
Contains Confidential or Exempt Information?	NO - Part I
Member reporting:	Councillor Julian Sharpe, Chairman Berkshire Pension Fund and Pension Fund Advisory Panels
Meeting and Date:	Berkshire Pension Fund and Pension Fund Advisory Panels – 19 October 2020
Responsible Officer(s):	Kevin Taylor, Pension Services Manager
Wards affected:	None

www.rbwm.gov.uk

Royal Borough of Windsor & Maidenhead

REPORT SUMMARY

1. This report provides Members with an overview of the current position regarding the Government's Public Sector Exit Pay Reform and the £95k Cap.

1 DETAILS OF RECOMMENDATION(S)

RECOMMENDATION: That Panel

i) Considers and notes the report and attached Appendix 1; and
ii) Receives further verbal updates from Officers.

2 REASON(S) FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

2.1 The Government first announced plans to cap exit payments in the public sector in 2015. Since then HM Treasury (HMT) launched a consultation in 2019 on draft regulations, guidance and Directions to implement the cap. HMT published its response to the consultation on 21st July 2020.

2.2 In September 2020 the Government moved swiftly to bring the proposed reforms before both Houses of Parliament.

2.3 In addition to the £95k exit payment cap, MHCLG has launched a consultation on changes to the Local Government Pension Scheme (LGPS) and Discretionary Compensation Regulations.

2.4 The Scheme Advisory Board's summary of events has been attached at Appendix 1 to this report in order to initiate debate and avoid the need for duplication within this report. As these issues are moving at pace and changing daily Officers will update Members verbally at Panel with the most updated information available at that time.

3 KEY IMPLICATIONS

3.1 The proposed exit payment reforms have significant implications for LGPS scheme members and employers. The proposed changes to scheme regulations will change/reduce scheme members rights upon redundancy/employer-driven early

retirement and affect employer decisions regarding transformation and restructuring.

4 FINANCIAL DETAILS / VALUE FOR MONEY

4.1 N/A

5 LEGAL IMPLICATIONS

5.1 N/A

6 RISK MANAGEMENT

Table 1: Risk Analysis

Risks	Uncontrolled Risk	Controls	Controlled Risk

7 POTENTIAL IMPACTS

7.1 TBC

8 CONSULTATION

8.1 Not Applicable.

9 TIMETABLE FOR IMPLEMENTATION

9.1 TBC

10 APPENDICES

10.1 The appendices to the report are as follows:

- Appendix 1 – Scheme Advisory Board Summary

11 BACKGROUND DOCUMENTS

N/A

12 CONSULTATION (MANDATORY)

Name of consultee	Post held	Date issued for comment	Date returned with comments
Cllr Julian Sharpe	Chairman – Berkshire Pension Fund Panel		
Adele Taylor	Director of Resources and Section 151 Officer		
Andrew Vallance	Head of Finance and Deputy Section 151 Officer		

Name of consultee	Post held	Date issued for comment	Date returned with comments
Ian Coleman	Interim Pension Fund Manager		

Appendix 1 – Download from Scheme Advisory Board website dated 01 October 2020

The Government first announced plans to cap exit payments in the public sector in 2015. On 10 April 2019 HM Treasury (HMT) launched a consultation on draft regulations, guidance and Directions to implement the cap. HMT published its response to the consultation on 21st July 2020. Regulations have now also been published and will be followed by updated guidance and HMT Directions which will 'take into account' detailed responses made as part of the consultation process.

In addition to the £95k exit payment cap MHCLG has launched a consultation on changes to the Local Government Pension Scheme (LGPS) and Discretionary Compensation Regulations. The consultation covers the required changes to compensation and pension regulations to implement both the £95K exit payment cap and the public sector exit payments further reform proposals issued by HMT in 2016.

The latter proposals were left to individual departments to implement rather than being via central HMT Directions. At this stage there have been no proposals to implement an exit payment recovery process that was also consulted on in 2015. The MHCLG consultation closes on the 9 November. Currently no other part of the public sector has any 'live' proposals to enact the further reform proposals.

This document summarises the proposals as they relate to the Local Government Pension Scheme (LGPS) in England and Wales and questions marked* have been updated in the light of the HMT response and regulations and MHCLG consultation. Further details about the guidance and directions to implement the cap will be made available as soon as they are made available.

Who is covered by the cap and proposed changes to compensation regulations?*

Employees of all local authorities are covered by both the cap and compensation regulations, so employees will see a range of limitations to scheme redundancy benefits. There will also be LGPS scheme employers who are not covered by either the cap or compensation regulations where employees will see different outcomes.

HMT regulations set out the bodies covered by the £95k cap – 'capped employers' - while revised compensation regulations (as yet unpublished) will set out the bodies covered by the further reform changes – 'reform employers'. Some scheme employers will be both capped and reform employers but others will fall into one or neither camp.

What is covered by the further reform proposals in the MHCLG consultation?*

These proposals will limit the payments made to, or in relation to, employees of 'reform employers' in addition to statutory entitlement as follows:

- The actual pay used in severance calculations will be limited to £80,000;
- The maximum severance (including statutory redundancy pay) will be limited to 3 weeks' pay per year of service or 15 months' pay, whichever is the lower
- No severance will be payable if the member receives an immediate pension with a payment by the employer to cover the cost of early release of pension - the strain cost - except in the case of the severance amount exceeding the strain cost in which case the excess would be payable
- The amount available for any strain cost will be reduced by the statutory redundancy payment

What is covered in the cap?

The exit payment cap is set at a total of £95,000 with no provision for this amount to be index-linked. Exit payments include redundancy payments (including statutory redundancy payments), severance payments, pension strain costs – which arise when an LGPS pension is paid unreduced before a

member's normal pension age – and other payments made as a consequence of termination of employment.

The cap applies to all exit payments that arise within a 28 day period and the regulations cover the process to follow if an individual has multiple exits from public sector employment within 28 days.

What isn't covered?

Payments related to death in service or ill health retirement, pay in lieu of holiday, payments made in compliance with an order made by a court or tribunal and payments in lieu of notice that do not exceed a quarter of a person's salary are not exit payments for the purposes of these regulations.

Although statutory redundancy is included as an exit payment it cannot be reduced. If the cap is exceeded, other elements that make up the exit payment must be reduced to achieve an exit payment of £95,000 or less.

Will the cap be indexed?*

Proposals for the cap were first published in 2015. If the cap had been indexed by CPI since then it would now be in excess of £110K. There is however no intention to index the cap although the response states that it will be kept under review.

When will the cap and further reform proposals come into force?*

Cap regulations are subject to the affirmative procedure so will need to be approved by both Houses of Parliament before they can be made. It is expected that the legislation will be debated in Parliament towards the end of November and once passed, will become law 21 days later. It is understood that MHCLG intend for changes to LGPS and Compensation regulations to come into force concurrent with the cap regulations.

Applying the cap and further reform to the LGPS*

The major impact of the regulations will be on LGPS members aged 55 or over who currently qualify for an unreduced pension because of redundancy or efficiency retirement as well as a severance payment under The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006.

For members whose employers are both capped and subject to further reform the effect of the proposals will be significant as they would receive statutory redundancy pay and one of the following options:

- An immediate actuarially reduced pension calculated using a strain cost reduced by the amount of the statutory redundancy payment and capped at £95k. In this case no severance is payable; or,
- An immediate fully reduced pension (no strain cost to the employer), plus statutory redundancy pay plus severance in excess of statutory redundancy limited to £95k, or,
- A deferred pension (no strain cost to the employer), plus statutory redundancy pay plus severance in excess of statutory redundancy limited to £95k.

Will the strain cost be calculated in the same way as now?*

No. Currently the strain cost for an early payment of pension is calculated by each LGPS fund. This is of no concern to employees at present as a full pension is paid regardless of any differential in cost. Under the new proposals, strain costs that are capped result in reduced pension and therefore any differential in strain costs across funds would lead to different outcomes for scheme members.

The consultation proposes that a standard methodology is to be used to calculate strain cost across all funds in respect of capped employers, but that some flexibility will be available when calculating strain costs for non-capped employers. Use of the standard strain cost may have implications for employer contributions at the following valuation depending on its relationship to the actual liability impact on the particular employer as calculated by the fund actuary.

How might the cap and further reform affect members of different scheme employers?*

We are still seeking clarity on this point which will not become completely clear until new compensation and LGPS regulations are published however our understanding is as follows:

- Employees of 'reform employers' who are aged under 55 or not in the LGPS will be subject to the severance restrictions in the same way as those of local authority employees. However, such payments may or may not be subject to the cap, depending on the status of the employer under HMT regulations relating to the £95k cap.
- Members of the LGPS aged 55 or over who are not employees of 'reform employers' but who are employees of 'capped employers' will not have their strain cost reduced by the statutory redundancy payment but it will be capped at £95K. They will have the three options set out above (ignoring the reduction to the strain cost in the first option)
- Members of the LGPS aged 55 or over who are employees of 'reform employers' but who are not employees of 'capped employers' will have their strain cost reduced by the statutory redundancy payment but it will not be capped and they will not have the three options set out above.
- Members of the LGPS aged 55 or over who are not employees of 'reform employers' or employees of 'capped employers' will not have their strain cost reduced by the statutory redundancy payment or capped and they will not have the three options set out above.

Relaxing the cap

There are circumstances, as set out in draft HMT Directions, when the cap must be or may be relaxed by a minister or the authority. However, most are subject to consent by HM Treasury even if passed by full council. Employers are required to record and publish information about any decisions made to relax the cap.

Employee and employer responsibilities

A person who receives an exit payment must inform any other public body covered by the regulations that employs them about that payment. An employer must ensure that any exit payment does not exceed the cap (unless permitted by the relaxation directions) and, where a non-compliant payment is made, recover any overpayment subject to a value for money assessment.