TRAFFORD COUNCIL

Report to:	**Employment Committee**
Date:	**7th December 2020**
Report for:	**Information**
Report of:	**Sara Saleh Corporate Director Strategy & Resources**

Report Title

Reform of Public Sector Exit payments

Recommendations

1. **That the content of this report is noted.**
2. **A further report will update the committee on the outcome of the proposals to change the Local Government Pension Scheme Regulations and associated revised Council policies.**
3. **The pay policy statement for 2021/22 will be updated to reflect the legislative changes outlined in the report.**

Relationship to Policy Framework/Corporate Priorities	This report aligns with the council's Corporate Priorities in respect to 'Successful & Thriving places'.
Financial	The changes will have a positive impact on the Council's finances as the cost of exiting staff through redundancy or business efficiency, which would be the alternative, will be lower in some cases.
Legal Implications:	Legal guidance has been sought in the application of the voluntary severance scheme and the implications of the exit cap. Appropriate policy and process changes will be put in place to ensure that the Council is legally compliant.
Equality/Diversity Implications	The exit cap and pension reform proposals may mean that the Council is in a position to release more staff over 55, during voluntary severance/redundancy exercises, as they are more expensive to release with the current LGPS Regulations.
Sustainability Implications	None.
Staffing/E-Government/Asset Management Implications	Reduced exit packages for staff leaving under redundancy and business efficiency and in rare cases higher earners leaving for other reasons.
Risk Management Implications	None.
Health & Wellbeing Implications	None.
Health and Safety Implications	None.

1. Introduction

1.1 When public sector employees leave for reasons such as redundancy, business efficiency, early retirement and settlement agreements, there has previously been no legal limit on the level of exit payment that could be paid by the employer. In 2015, the Government first announced plans to introduce a cap on exit payments in the public sector. The cap applies to the total amount payable and so includes any severance payments, pension strain costs and notice payments in excess of three months. Consultation took place in April 2019 and closed on 3 July 2019, with draft regulations, associated guidance and a response to the consultation published on 21 July 2020. The regulations which bring in an exit cap of £95k have now been passed in Parliament and became law on 4 November 2020.

1.2 Currently in accordance with our Constitution, any exit packages that are proposed that are over £100k have to be approved by Council.

1.3 In addition, the Ministry for Housing, Communities & Local Government (MHCLG) undertook a consultation exercise seeking views on changes to the Local Government Pension Scheme (LGPS) and Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (the Compensation Regulations). The consultation closed on 9 November 2020 and covered the required changes to the Compensation Regulations and pension regulations to implement both the £95k exit payment cap and the public sector exit payments further reform proposals (issued by HM Treasury in 2016).

1.4 In light of the delay in publishing the draft implementing Regulations to accompany their consultation, MHCLG have extended the deadline for responses on the draft regulation to 18 December 2020.This means that the LGPS regulations will not change until early 2021, and the current Pension scheme rules are presently at odds with the Exit cap until the Regulations come into force.

1.5 Both the public sector exit payment cap and the proposed changes to the LGPS and the Discretionary Compensation Regulations will affect the way in which the exit package is constructed for employees leaving the Council and in particular for those who are aged over 55 and in the LGPS. The exit package that the Council can offer staff leaving under the current Voluntary Severance Scheme is also subject to the constraints of the emerging proposals as outlined in para 1.3 above.

2. Public Sector Exit Payment Cap

2.1 Payments covered by the cap

The new legislation means that exit payments made by public sector employers are now subject to a cap of £95k.

The cap includes:

- Any payment on account of dismissal by reason of redundancy
- Any payment to reduce or eliminate an actuarial reduction to a pension on early retirement or in respect to the cost to a pension scheme of such a reduction not being made.
- Any payment pursuant to a settlement or conciliation agreement.
- Any severance payment or ex gratia payment.
- Any payment in the form of shares or share options.
- Any payment on voluntary exits.
- Any payment in lieu of notice due under a contract of employment (excluding the first three months).
- Any payment to extinguish any liability to pay money under a fixed term contract.
- Any other payment, whether under a contract of employment or otherwise, in consequence of termination of employment or loss of office.

The cap excludes:

- Any payment in respect of death in service.
- Any payment in respect of incapacity as a result of accident, injury or illness.
- Various payments under the rules of firefighters' pension schemes covering early retirement.
- Any service award paid to judges just prior to retirement.
- Any payment in respect of annual leave due under a contract of employment but not taken.
- Any payment in lieu of notice due under a contract of employment that does not exceed one quarter of the relevant person's salary.

3.2 Other rules regarding the cap

3.2.1 Where the employee leaves more than one public sector employment within a 28 day period, then the exit payments for both combined must be below the overall cap. The employee who receives an exit payment from one job must inform other existing public sector employers of the details.

3.2.2 The regulations allow for relaxation of the cap in appropriate circumstances. This safeguard is for use in exceptional circumstances where imposing the cap would cause genuine hardship. The Minister of the Crown's power to relax a restriction in respect of certain payments is delegated to the full Council of a local authority in England in respect of exit payments made by local government bodies for which it has responsibility.

3.2.3 There are circumstances where the power to relax restrictions must be exercised ("mandatory cases") and may be exercised ("discretionary cases").

In both cases as well as full Council consideration a business case would have to be submitted to their sponsoring department for approval by the Principal Accounting Officer and the relevant minister. Then, in the case of discretionary cases it would have to be approved by HM Treasury. It is anticipated that there would be very few occasions on which we would look to apply a waiver.

3.3 Current issues with implementing the exit cap

3.3.1 The exit cap became law on the 4th November 2020, meaning that local authorities cannot now make an exit payment of over £95k. However as the changes to the LGPS and the discretionary compensation regulations have not yet come into force, under these rules, authorities must pay redundancy/severance pay plus an unreduced pension to those over 55 who have been in the scheme for 2 years. This package in some cases will be over £95k. There is a conflict between the two sets of regulations and this will continue until the supporting regulations come into force. We do not know when this will happen, however January 2021 has been suggested as the earliest date.

3.3.2 Presuming that they do come into force then, or not long after, this shouldn't pose too many problems for the Council. In terms of the current Voluntary Severance Scheme, if there are any agreed releases affected by the gap we do have some options which are being explored.

- The first is delaying the issuing of a Settlement Agreement and final confirmation of the termination date until after the regulations come into force;
- The other option is going ahead and offering a Settlement Agreement with a lower discretionary severance payment. We would be able to reach agreement with an employee on the package, because this is a voluntary severance exercise as opposed to a compulsory redundancy exercise, i.e. completely discretionary.

3.3.3 There has been concern from various quarters about the process, drafting and legality of the regulations. This has led to a number of challenges to Government, and we are currently aware of four potential challenges to the Exit Cap Regulations by means of Judicial Review. Pre-action correspondence has been issued by the BMA, UNISON, GMB and Lawyers in Local Government /SOLACE/ALACE. We await further developments, but as things stand, the Regulations took effect on 4 November 2020.

3. Public Sector Exit Payments Reform

3.1 The proposals

3.1.1 The draft Regulations make several proposals, some of which apply to all employees leaving through redundancy or business efficiency grounds and some which only apply to those who are aged 55 or more who have been members of the LGPS for 2 years.

3.1.2 For all employees there will be new maximum tariffs for calculating exit payments as follows:

- Maximum of 3 weeks' pay per year of service.
- Maximum of 15 months on the amount of a redundancy payment.
- Maximum salary of £80k on which an exit payment can be based.
- Limiting publicly funded pension top-ups.
- £95k cap on the total of all forms of compensation, including redundancy payments, pension top-ups, compromise agreements and special severance payments.

In terms of the Council's current Discretionary Payments Policy, the only areas which will have to change are the maximum salary of £80k on which an exit payment can be based and the £95k cap.

3.1.3 For employees aged 55 or more who have been in the pension scheme for 2 years, the benefits and associated strain cost due from the employer should be limited as follows:

- The strain cost (capital cost) cannot exceed the overall cap contained in the Exit Payment Regulations (£95,000).
- The pension strain cost (capital cost) will be reduced by the value of any Statutory Redundancy Payment required to be paid.
- If there is a capital cost to be paid, the employer cannot offer a discretionary severance payment in addition (unless the discretionary amount is more than the capital cost then the difference can be paid which is rare).
- Any reduction in the strain cost due to the above limitations may be made up by the worker from their own resources.
- The member will receive an actuarially adjusted pension benefit in line with the revised strain cost under these provisions.

Employees affected by this will have several options as follows:

- Take an unreduced pension. This may mean receiving either a reduced or no voluntary severance payment depending on the amount of the pension strain cost.

- Take a partly reduced Pension. This may mean receiving either a reduced or no voluntary severance payment depending on the amount of the pension strain cost.

- Take a fully reduced Pension and retain the voluntary severance payment.

- Defer payment of Pension until a later date and retain the voluntary severance payment. If this is before Normal Retirement Date (currently state pension age) there will still be a reduction.

3.1.4 The draft regulations detail transitional arrangements which suggest that if the employer has entered into an agreement with the employee to terminate their employment, before the Regulations come into force, the current Regulations will apply. However this is provided that their termination date is within 6 months of the date the Regulations come into force.

3.2 Issues with the timing of the Exit Payment Reform proposals

3.2.1 The proposals have been consulted on during the application window for our Voluntary Severance scheme and they may impact on the exit package that we can offer some staff that can be released. We have communicated the proposed changes to the workforce, however it is a very complex area and difficult to convey in simple terms. There are also some unknowns, particularly in relation to timescales which is making planning for release challenging. Legal advice is being sought on this matter.

3.2.2 Regardless of the current exercise and the difficulties these changes pose, when brought into effect, it will mean a significant change in the exit package offered to the over 55s who are members of the pension scheme. It has been a long-standing benefit of local government service when staff in this demographic are made redundant, rewarding loyal service over the years. A draft assessment by the Government's Actuary's Department shows that 86% of staff who were made redundant between 2013 and 2016 would have received lower benefits as a result of the proposals, with an average negative impact of £13,000. Additionally the top 10% of people impacted by the proposals would suffer an average impact of 47.5%.

3.2.3 The consequence of reduced exit packages may be that there is less interest from staff who might otherwise have considered an offer of voluntary severance or redundancy. However it will lead to reduced spend for the Council for such exercises and reduced interest for voluntary schemes could also lead to compulsory redundancy.

3.2.4 Due to our concerns on the proposals, we provided a response to the consultation that closed on the 9th November 2020.

4. Communication and Policy Changes

4.1 As part of the messaging for the Voluntary Severance scheme, from the outset we advised staff that the £95k public sector exit cap was coming in. We later communicated with staff about the wider exit payments reform, particularly the impact that it will have on access to early pension for the over 55s and set out in clear and easy to understand language, what some of the options might be at an early stage. For this group we also sent them a letter to explain the position and the Pensions and HR Team have been available for one to one conversations.

4.2 We will create internet content relating to the changes when the proposed regulations come into force and we will provide updated communications to make staff aware, including our hard to reach staff, of the implications of the exit cap and LGPS reform.

4.3 When the regulations come into force we will also revisit our Discretionary Compensation policy to update it in light of the changes. We will also update any other related policies, such as the Redundancy and Early Retirement Policy. In accordance with the Constitution, Council must approve exit packages that exceed £100k and this will be revised to reflect the £95k cap.

5. Conclusion

5.1 The discussions about Public sector exit pay reform started 5 years ago and progress has been slow – however this year there has been a renewed impetus to pass the legislation and the exit cap of £95k came in on 4 November 2020. The supporting regulations, which also have a wider impact are likely to come into force in the final quarter of the year and maybe even as early as January 2021.

5.2 We are ensuring that we have a full awareness of the impact of these changes both for a current Voluntary Severance exercise and also that we have appropriate policy changes in place, so we comply with the new regulations in future.

5.3 The pay policy statement for 2021/22 will be updated to reflect the position on exit payments following implementation of all regulations outlined in this report.

6. Recommendation

6.1 That the content of this report is noted.

6.2 A further report will update the committee on the outcome of the proposals to change the Local Government Pension Scheme Regulations and associated revised Council policies.

6.3 The pay policy statement for 2021/22 will be updated to reflect the legislative changes outlined in the report.