

TONBRIDGE & MALLING BOROUGH COUNCIL

GENERAL PURPOSES COMMITTEE

05 October 2015

Joint report of the Leader and Chief Executive

Part 1- Public

Matters for Information

1 RESPONSE TO HMT CONSULTATION ON A PUBLIC SECTOR EXIT PAYMENT CAP

Executive Summary

In accordance with a Manifesto commitment, on 31 July the Government announced a consultation over its proposals to cap the total amount of redundancy and other exit payments that can be made to individuals leaving the public sector to £95,000. The closing date for responses to the consultation was 27 August. A full version of the consultation is available on <https://www.gov.uk/government/consultations/consultation-on-a-public-sector-exit-payment-cap/consultation-on-a-public-sector-exit-payment-cap>

As the proposed cap has potentially significant implications for the council as an employer, it was felt important to respond to the consultation. However, due to the timing of the consultation (in August), there was no opportunity for this matter to be brought to this committee. Therefore the proposals were considered by a representative group of key members consisting of The Leader, The Deputy Executive Leader/Cabinet Member for Finance, Innovation and Property/Chair of the Joint Employee Consultative Committee, The Chair of the Overview and Scrutiny Committee, The Chair of the General Purposes Committee and The Leader of the Opposition. Their agreed response is set out in Annex A. This report summarises the proposals set out in the consultation and the council's response to them.

1.1 Scope of the consultation

1.1.1 With a small number of exemptions, all government departments and local government organisations (such as this council), as well as non-financial public corporations would be within the scope of the consultation.

1.1.2 The proposal is that the £95,000 cap would include the aggregate of; redundancy payment, pay in lieu of notice and payment of outstanding annual leave entitlement (all of which are contractual), as well as severance payments (very

rarely agreed within this authority). Officers were asked to assess the potential impact of this cap. They confirmed that it will be possible for this council to remain within the £95,000 cap without running the risk of breach of contract, in all but very unusual circumstances (such as significant levels of outstanding annual leave entitlement for employees on long term sick leave). This is because this council has already taken prudent measures to reduce the level of redundancy payment (i.e. the removal of the ability for the council to buy additional years' pension contributions, and the cessation of a "multiplier" for redundancy entitlement). Therefore, as Members will discern from the responses in Annex A, the council broadly supports the £95,000 cap (on the basis that this will be reviewed periodically). We understand that this is not the case in many authorities, including some in Kent.

- 1.1.3 The consultation also sought responses as to whether to include within the cap the employer cost of funding early access to unreduced pensions for employees within the Local Government Pension Scheme (referred to in the consultation as "the strain cost"). Unlike most other public service pension schemes, the Local Government Pension Scheme sets out a **statutory** entitlement to an unreduced pension for employees aged over 55 who leave employment on grounds of redundancy. This is because the LGPS is a funded pension scheme to which the employee and the employer have already contributed in roughly a one-third/two-thirds proportion.
- 1.1.4 The consultation is unclear about what would happen in circumstances where the cap was exceeded as a result of the strain payment, but does allude to a further consultation concerning reforms to the LGPS. No timescale is given for this.
- 1.1.5 As will be discerned from Annex A, the council as an employer does not support the proposal to include the strain cost within the £95,000 cap, for the reasons set out in the responses. In summary, such a move is currently unlawful, highly likely to be discriminatory (on the grounds of age), and would impact adversely on the council's ability to retain and recruit suitably experienced and qualified staff. Furthermore, according to figures from the independent pension administrators Aon Hewitt, the inclusion of the strain cost in the £95,000 cap would, for example, be breached in the event of a LGPS member facing early retirement on the grounds of a redundancy dismissal with 30 years' service and final pay of £39,000. This illustrates that the potential inclusion of the strain cost in the cap would impact on a wide range of middle ranking employees and would thus disproportionately disadvantage local government employees when compared to those in other public sector organisations.
- 1.1.6 The consultation recognises that there may be legitimate exceptions to the £95,000 cap and authorities will be required to publish a policy on the circumstances where this could be considered. All exemptions would then be published in the authority's annual Statement of Accounts. These two proposals are supported in the response set out in Annex A.

1.2 Legal Implications

- 1.2.1 We are aware from an article in the Municipal Journal that the response to the consultation has been highly critical of the proposals, and that one representative body, (the Association of Local Authority Chief Executives - ALACE), has stated "ALACE has grave misgivings about the legal soundness of these proposals and will be seriously exploring – potentially in conjunction with other trade unions - the scope for legal action, including judicial review."

1.3 Financial and Value for Money Considerations

- 1.3.1 It is clear that there is still much detail to be fleshed out as to how an exit payment cap would actually work in practice. This will be closely monitored to ensure that any recommendations to this committee for changes to the council's establishment will not only take cognisance of the cap, but will also be structured so as to avoid potential claims for breach of contract, and/or discrimination, and potentially high levels of compensation payments awarded through the Tribunal process.

1.4 Risk Assessment

- 1.4.1 Assuming that, eventually, a cap is set for exit payments the council will structure the "Waiver Policy" to mitigate against the risk of unlawful dismissals.

Background papers:

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Nil

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