

LGPC Bulletin 161 – August 2017

Please contact [Con Hargrave](#) with any comments on the contents of this bulletin or with suggestions for other items that might be included in future bulletins. LGPC contacts can be found at the end of this bulletin.

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Letter from DCLG on Brewster cases

On 17th August, a letter from DCLG was circulated to LGPS funds in England and Wales regarding the implications of [the Brewster judgment](#) for the scheme in England and Wales. The letter is attached as [appendix 1](#).

In the Brewster judgment the Supreme Court found that the requirement of the LGPS in Northern Ireland for members to have completed a nomination form for a cohabiting partner to be entitled to payment of survivors pension constituted unlawful discrimination and was a breach of the European Convention on Human Rights (ECHR).

The LGPS in England and Wales previously included a similar requirement, meaning that:

- where a member had active membership in the 2008 Scheme,
- that member died on or after 1 April 2008 and prior to 1 April 2014,
- at the time of their death, the member was in a relationship where their partner would have met the definition of a 'nominated cohabiting partner' under regulation 25 of the LGPS (Benefits, Membership and Contributions) Regulations 2007), but
- no nomination had been made,

no survivor's pension would have been payable to that partner.

Whilst making clear that it is for LGPS funds in England and Wales to determine their approach in respect of claims arising from the Brewster case, the letter states that it would, in DCLG's view, be 'reasonable' for funds to rely on the judgment as well as section 3 of the Human Rights Act 1998 to *not* require that a survivor partner must have been nominated to have been eligible for an LGPS survivor's pensions in the circumstances set out above.

Section 3 of the Human Rights Act 1998 states that primary and subordinate legislation must be read and given effect in a way which is compatible with ECHR rights. DCLG's interpretation is that section 3 reasonably gives administering authorities the vires to read the aforementioned regulation 25 of the Benefits Regulations 2007 in a way compatible with ECHR rights and therefore disapply the nomination requirement. This is because the judgment of the Supreme Court earlier this year would appear to mean that the current wording of the Benefit Regulations 2007 is not compatible with ECHR rights.

The letter goes on to outline further points that LGPS funds should consider in dealing with claims arising from the Brewster judgment.

Separately DCLG have confirmed that they have received legal advice that there is no need for them to amend the Benefits Regulations 2007 to reflect the Brewster judgment and they therefore have no plans to do so.

Update on exit payments

Following the update on exit payment reform provided in the last bulletin, we have had confirmation that a fresh consultation on draft regulations governing the exit payment cap and exit payment recovery is due to take place in autumn. This would potentially mean

an implementation for both reforms in the first half of 2018, subject to sufficient parliamentary time being found.

There is no further update on the third part of the Government’s programme of public sector exit payment reforms, [further reform](#), on which a DCLG consultation is still awaited.

HMRC

Publication of countdown bulletin 26

HMRC have published contracting-out [countdown bulletin 26](#) (August 2017) containing a number of items of general interest relating to the ending of contracting out and the scheme reconciliation process.

DWP

Government publish response to scams consultation

The Government have [published their response](#) to the pension scams consultation that took place in late 2016 and early 2017

The response confirms that the Government plan to proceed with all three of the measures they consulted upon to tackle pensions scams and notes that respondents to the consultation were, in the vast majority of cases, also supportive of the proposed measures.

The table below lists each of the measures the Government hope to introduce and how the Government intends to implement these.

Measure	Implementation
Introduce a ban on cold calling in relation to pensions – <i>the Government have confirmed this ban will also now extend to cold calling via electronic communications such as email and text message, as well as traditional cold calling via phone</i>	The Government intend to work on the final and complex details of the ban on cold calling and then bring forward legislation when Parliamentary time allows.
Limiting the statutory right to transfer so that individuals only have a statutory right to transfer to the following schemes: <ul style="list-style-type: none"> To personal pension schemes operated by firms authorised by the FCA To authorised master trust schemes Where a genuine employment link to the receiving occupational scheme can be evidenced 	<p>The Government intends to work closely with industry, consumer groups and other stakeholders on how best to implement the employment link and add QROPS to the statutory transfer criteria (where this is a legitimate transfer).</p> <p>However, as the authorisation process the Government is introducing for master trusts is not being rolled out until late 2018/ early 2019, any changes to the statutory right to transfer will not come into force until after the authorisation process has been rolled out.</p>
Allowing only active companies to register a pension scheme, except in legitimate	The Government intend to introduce legislation in a Finance Bill later in 2017 to

circumstances where HMRC will have the discretion to register such schemes. HMRC will also have the power to de-register existing registered pension schemes where the sponsoring employer is a dormant company.	introduce this requirement.
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Other News and Updates

Options where LGPS benefits exceed ALTA

The DCLG and SPPA actuarial guidance documents entitled 'Limit on Total Amount of Benefits – Lifetime Allowance' (dated 14 April 2016 and 26 February 2015 respectively) provide guidance for LGPS funds on the permitted ways that an LGPS member may take benefits that exceed the lifetime allowance.

In particular, paragraphs 2.21 of the DCLG guidance and 2.22 of the SPPA guidance provide three options for how a member may take their post-commutation pension where, following the crystallisation of their lump sum, the member's pension still exceeds the available Lifetime Allowance (ALTA).

In [bulletin 132](#), we provided details of a query we had raised with GAD regarding the availability of option 1, the commutation of the remaining pension for a further lump sum which would be subject to tax (payable as a lifetime allowance excess lump sum). The query noted that whilst this option is permitted under the Finance Act 2004, restrictions contained in regulations 20 and 60 of the Occupational Pension Schemes (Contracting-out) Regulations 1996 [SI 1996/1172] appeared to mean that lifetime allowance excess lump sums could not be paid from pre 6 April 1997 GMPs or from post 5 April 1997 section 9(2B) rights.

The 1996 Regulations have, since 6 April 2016, been superseded by the Occupational Pension Schemes (Schemes that were Contracted-out) (No 2) Regulations 2015 [SI 2015/1677], but the same restrictions regarding the commutation of contracted-out rights apply by virtue of regulations 18 and 25 of the 2015 Regulations.

GAD have now confirmed that they agree with our interpretation meaning that LGPS members can only use option 1 to commute pension for a lifetime allowance excess lump sum where the part of the pension they are seeking to commute relates to:

- Pre 6 April 1997 pension rights in excess of the GMP, or
- Post 5 April 2016 pension accrual.

GAD will update their guidance to reflect this in due course and we have asked that when they do so they provide a methodology for funds to determine which portion of an individual's pension is available for commutation.

Query 30 on our [query log](#) has been updated to reflect the position outlined above.

TPR publishes information on roles and responsibilities within PSPSs

The Pensions Regulator has published information on the roles and responsibilities of certain people and bodies in respect of the governance and administration of public service pension schemes (PSPSs).

The information is available [on the Regulator's website](#) and follows confirmation in the Regulator's May 2017 report on governance and administration in PSPSs that TPR planned to publish materials in this area (see [bulletin 158](#) for more information).

In late August, the LGPC Secretariat met with the Pensions Regulator and received confirmation that they are working to provide additional materials to support public service pension schemes in the coming months, particularly in the fields of breach reporting and record keeping. As these materials are finalised and published, details will be circulated to the LGPC distribution list.

Pension Dashboard Project newsletter – August 2017

The Pensions Dashboard Project have published a newsletter on current developments in the establishment of the Pensions Dashboard, which is attached as [appendix 2](#).

Training

Following a successful recruitment exercise undertaken earlier in the summer, we hope that the team's new pensions adviser for training will be joining the organisation in early November. As details of our training plans for 2018 are finalised, details will be circulated via the LGPC distribution list.

[Circular 304](#) was issued in June containing details of the LGA's 2017 Fundamentals training programme.

The 2017 events incorporate all legislative changes since last year's programme (incorporating those related to "pooling") and all sessions will be refreshed to keep them up-to-date, relevant and interesting. Despite the year on year revision of course materials, the aim of the LGPC remains unaltered; that is to deliver a single training course covering all aspects of the Scheme, including "Benefits" and "Fund" administration as well as "Investments".

The fundamentals course is run on an annual basis and provides an insight into LGPS "trusteeship" for newly elected Committee/Board members, whilst also serving as an update/refresher course for longer-serving members. The course is of three days duration, spread over a number of months.

The course is not limited solely to pensions committee and local pension board members. Past delegates have included trades union representatives, member and employer representatives, a variety of officers who attend/support committees and some private sector organisations who provide services to administering authorities.

Places on the courses may be booked via the following links (please note spaces for London and Cardiff now have limited availability):

Leeds	Day 1	4 October
	Day 2	1 November
	Day 3	5 December
London	Day 1	10 October
	Day 2	15 November
	Day 3	13 December

Cardiff	Day 1	18 October
	Day 2	29 November
	Day 3	20 December

Legislation

Northern Ireland

SR	Reference Title
2017/158	The Pension Schemes Act 2015 (Judicial Pensions) (Consequential Provision No. 2) Regulations (Northern Ireland) 2017

Useful Links

[LGA Pensions page](#)

[LGPS member website](#) (England and Wales)

[LGPS 2015 member website](#) (Scotland)

[LGPS Advisory Board website](#) (England and Wales)

[LGPS Regulations and Guidance website](#) (England and Wales)

[LGPS Regulations and Guidance website](#) (Scotland)

[Recognised Overseas Pension Schemes](#) approved by HMRC and who agreed to have their details published.

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Distribution sheet

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Pension managers (outsourced) and administering authority client managers
Local Government Pensions Committee
Trade unions
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SPPA
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Private clients

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