

Pensions for councillors and other elected local office holders

Response from the Local Government Association

The LGA response

1. At their meeting on 15 May 2013, the LGA Executive considered the LGA's response to the Department for Communities and Local Government's consultation on councillors' pensions and agreed
 - 1.1 In line with the recommendation of the LGA Leadership Board, to support **option 3 – no change**. *Access to the Local Government Pension Scheme remains for all councillors and elected local office holders on the same basis as present.*

Note: Members requested the removal of the phrase "taxpayer-funded" which implies that councillors do not contribute towards their pension.
 - 1.2 To support the proposal to bring contributions in line with the rest of the scheme in the event that councillors continue to be part of the Local Government Pension Scheme from 1 April 2014.
2. The LGA's four Group Offices were also consulted separately and will be submitting their individual responses to the consultation.

Background

3. In 2003, the LGPS Regulations 1997 were amended to allow councillors under the age of 75 to join the scheme. Councils can only offer membership on the recommendation of their independent remuneration panel. In England, independent remuneration panels also determine whether the basic allowance, the special responsibility allowance or both can be pensionable. In Wales, both allowances are pensionable.
4. LGA research carried out in February through the pension funds found that 59% of councils offered councillors access to their pension scheme, compared with 52% in 2008. Overall, 17% of councillors are in the scheme. (see **table 1** on page 2).
5. In its response to the Government's response to the CLG Select Committee report, *Councillors on the frontline*, the LGA said *"It is generally agreed that we would like to see more people from all walks of life interested in and standing for political office. We are clear that we do not want to see a professional class of councillor. However if we want to see increasing representation of local councillors, particularly those of working age, we need to look at the role in its entirety. Remuneration alone will not overcome this issue; however, remuneration needs to reflect the loss of earnings councillors may face. We also think that councillors should continue to have access to the LGPS"*

because access to a pension is a factor in attracting a broad cross-section of people to become councillors”.

	England	Wales	All
No of councils offering councillors access to LGPS	179 (57%)	19 (95%)	198 (59%)
No of councillors taking up LGPS in councils offering access	2897 (30%)	414 (38%)	3311 (30%)
No of councillors with SRAs taking up LGPS in councils offering access	2016 (21%)	274 (25%)	2290 (21%)
No of councillors taking up LGPS across all councils	2897 (16%)	414 (36%)	3311 (17%)
No of councillors with SRAs taking up LGPS across all councils	2016 (11%)	274 (24%)	2290 (12%)

Table 1 – ¹Councillors in the Local Government Pension Scheme

The LGA’s position

6. The LGA Leadership Board considered the issue in February following the Local Government Minister’s written ministerial statement on 19 December. The Board concluded unanimously that all councillors should continue to have access to the LGPS. The LGA Executive considered the formal consultation on 15 May 2013 and again unanimously supported continued access to the LGPS for all councillors – **option 3** of the Consultation.
7. The Executive noted that the consultation had moved on from the original ministerial statement, and now included the Mayor of London, elected mayors and the London Assembly but still excluded MPs. Members noted that under the Parliamentary Pensions (Amendment) Regulations 2009 (SI 2009/1920), MPs have access to a final salary contributory pension with contribution rates set at 11.9%, 7.9% and 5.9%. The average pension in payment from the scheme is £18,000 per annum, including transfers in from other schemes and payments for added years. Therefore, the average pension financed by contribution from the Exchequer is estimated to be around £15,000 pa.
8. The Independent Parliamentary Standards Authority (IPSA) is currently reviewing MPs pay and pensions. In its summary report following consultation, it summarises the principles guiding pensions:-
 - the MPs’ pension scheme must provide MPs with an appropriate pension in retirement, based on their service as an MP;
 - it should, as far as possible, seek to be more equitable between MPs of different ages, background and income levels;
 - it must have an appropriate and fair balance of costs and risks between the member and the taxpayer;

¹ Based on a response by 77 of the 89 pension funds

- it must be sustainable and affordable in the short and long term and not require significant amendment for at least 25 years;
- any reforms should protect accrued rights.

Legal advice

9. The LGA has sought legal advice on the proposals contained in the consultation document. The initial view of our external legal advisers is that “*there are real problems for the Minister should he decide to withdraw membership*”. Lawyers have highlighted three particular courses on which the LGA might wish to mount a challenge, depending on the outcome of the consultation.
- 10.1 **Judicial review**, “*The prospects of success in a judicial review depend on the consultation response, the way in which the Minister effects the changes and the detailed provisions of the regulations brought forward*. If the Minister fails to give due regard to the outcome of the consultation, then there may be recourse to judicial review.
- 10.2 **Designation of councillors under the Pensions Act 2008**. The pensions act requires employers to provide access to a pension scheme for its workers. Until now, councillors have not been designated workers. However, initial advice is that “*In summary we consider that Members that receive a regular allowance are “workers” for the purposes of the pensions Act 2008*”. However it is understood that the government’s own legal advice on this matter concluded that elected members are not workers for the purposes of this legislation.
- 10.3 **Challenges under the Equalities Act 2012**. Legal advice supports the view that operating a two-tier approach, as set out in option 2, could lead to claims under the Equalities Act 2010 for indirect discrimination/ equal pay. It could also amount to a breach of the public sector equality duty.
10. The Consultation makes no real reference to previous government policy, which took positive action to encourage more high quality councillors from a greater diversity of backgrounds. Many serving councillors made important choices based on the expectation this created, and access to the LGPS will have been a factor. Given that the principle of “legitimate expectations” is embedded in European legal decisions, the LGA intends to pursue this avenue further if necessary.

Conclusion

11. Resolving the issue of members’ pensions is a high priority for the LGA and its membership. The LGA will rigorously defend the continuation of current pension arrangements, which enable individual councils to decide whether to offer pensions to their elected members, based on their own local needs and circumstances.