

**Local Government Pensions Committee
Technical Group**

**Minutes of the meeting held on 16 September 2016 at
the offices of AON Hewitt, 10 Devonshire Square
London EC2M 4YP**

LGPC Technical Group

16 September 2016

Present

Mike Hopwood (Chair)	North East
Kev Gerard	South Wales
Lynne Miller	South Wales
Louise Savage	South East
John Smith	South East
Gary McLellan	East Midlands
Ian Howe	East Midlands
Zena Kee	Northern Ireland
Amanda Hyde	Shrewsbury
Richard Smyth	London
Rachel Abbey	South West
Alan South	South West
Gary Chapman	North East
Kelly Scotford	Secretary

In Attendance

Paul Kateley	Heywood
David Friend	Civica
Daniel Kanaris	AON
Catherine Carruthers	Capita
Annemarie Allen	Barnett Waddingham
Jonathan Perera	Mercer
Kimberley Linge	SPPA
Jon Slater	Equiniti
Justine Davies	PriceWaterhouseCoopers
Ian Colvin	Hymans

LGA

Jayne Wiberg

DCLG

Bob Holloway

1. Apologies

Craig Martin	Environment Agency
Janet Caiazzo	Shrewsbury
Catherine Carruthers	Capita
Neil Mason	London

2. LGPC Update

It was agreed that in the future Jayne will pass the LGPC update to the Technical Group secretary to distribute to the group with the Agenda. Any questions and any tweaks to the update will be undertaken as part of the Technical Group meeting.

See attached update – Appendix A

3. Auto Enrolment and Returning/Acting Returning Officer 'Staff'

At SPLG in September 2016, a question arose regarding Auto Enrolment and NEST. At the Technical Group in December 2013 it was minuted that an authority had obtained legal advice confirming that Returning/Acting Returning Officer 'Staff' should be auto enrolled into a qualifying pension scheme and that a qualifying pension scheme could be nest (Note: such staff are not able to be enrolled into the LGPS as they are employed by the Returning/Acting Returning Officer). Merseyside believe that it may have been one of their employers who obtained the legal advice and, if this was the case, they agreed to share the advice.

4. TV in Post 28th April 2016 / SCAPE changes

DCLG (29 April 2016) issued various new sets of Secretary of State actuarial guidance. Attached to that email was a letter which in particular confirmed the following in paragraph 4:

4. The guidance is to apply immediately. A further letter providing details on transitional arrangements for quotations provided before this date will be sent early next week together with a list of extant guidance.

Setting aside transitional arrangements, the letter states that the guidance is to apply immediately.

Unlike previous changes to factors, the reason new factors have been issued on this occasion is solely because of the change to the SCAPE (Superannuation Contributions Adjusted for Past Experience) on 16 March 2016 (note the SCAPE changes every 5 years).

Recent changes to Secretary of State actuarial guidance issued over the past 5/6 years have been as a result of a change in scheme design. For example when new Secretary of State actuarial guidance was issued in: -

- 2014 - this was because of a change in scheme design (introduction of the 2014 Scheme)
- 2010 – this was because of a change in scheme design (if you recall transfers were put on hold for nearly 18 months following the introduction of the 2008 Scheme)

Where a change in factors is attributable to:

- Scheme design implementation of the new factors has in the past been triggered with reference to the relevant date of the event, and
- Solely a change to the SCAPE implementation of the new factors applies immediately for any new cases and there may be transitional arrangements for cases that are caught up in the 'change over' period.

To summarise, all **new** cases (i.e. ones to which there has been no previous quotes) calculated after the new Secretary of State actuarial guidance has been received by Administering Authorities solely attributable to a change in the SCAPE, should use the new factors. Accordingly, this instruction was set out in paragraph 4 of DCLG's letter of 29 April 2016, though it appears that there has been a misunderstanding with regards to the implementation within LGPS administration software.

It has been brought to the attention of the LGPC that the new Secretary of State actuarial guidance issued on 29 April 2016 in relation to 'Transfers In', has not been programmed into LGPS administration software as set out above for '**new**' cases calculated on and after 29 April 2016. Rather the software only uses the new factors where the relevant date is on or after 29 April 2016.

The change to the SCAPE increased the value of the individual transfer factors, therefore, if the Pre 29 April 2016 transfer in factors are used for 'new' calculations on or after 29 April 2016, the benefits purchased by the member in the LGPS will be more than those purchased had the new factors been used. This clearly demonstrates that to proceed as programmed is not an option, as applying this methodology will enable the old factors to be used up to and including 27 April 2017 (i.e. if a member joined the scheme on 28 April 2016 and requested a transfer in thereafter and the election to proceed was received within 12 months of joining the scheme (R100(6)), the old factors would continue to be used as the relevant date would be the 28 April 2016).

The LGPC has discussed the issue of 'Transfers In' with the software providers and accordingly brought this matter to the attention of the members of the National Technical Group, in order that both the software providers and their clients can agree a way forward that complies with the instruction issued by DCLG on 29 April 2016.

Following a discussion by the group, the software suppliers confirmed that they are looking to develop a solution.

5. 95k Cap

This was covered in the LGPC update (see appendix A)

6. Recording and Reporting Breaches of the Law

AON Hewitt provided a back ground paper, see appendix B

The group felt that it was difficult to meet the statutory deadlines with regards to issuing information concerning deferred benefits. Though there is a question mark over what information is required by way of the statutory deadline. Is it simply a generic information leaflet confirming as to when deferred benefits are paid? Can the member transfer out such benefits? Or should the information include the actual 'value' of the deferred benefits?

All funds should be able to identify a breach and the group felt that workflow helps achieve identification, by enabling a fund to report against the statutory requirements. The group also felt that the majority of breaches are caused by information provided by the employer (be this incorrect information or simply information not supplied within a timely manner). JW suggested that authorities should keep a record of such instances to support the reason as to why a breach may have occurred.

As an aside, whilst all breaches should be recorded, not all breaches should reported to the TPR, it would be for appropriate party to determine as to whether or not a breach is of material significance. The group felt that it was occasionally difficult to determine as to whether or not a breach is of material significance.

7. Deferred into payment on the grounds of Ill Health, where date of leaving active membership is on or after 1 April 2008

Where an IRMP certifies that a deferred member meets the ill health criteria for early payment of deferred benefits, then where the member left active membership on or after 1 April 2008, the former employer has the discretion to choose as to whether not to bring those benefits into payment early. At least one case has reached the TPO and the TPO has determined that it is an 'employer discretion' as to whether or not to bring those benefits into payment. Some months back,

the Technical Group agreed that they should seek a regulatory change to revert back to the Pre 1 April 2008 position, whereby a deferred member who is certified by an IRMP to meet the ill health criteria, could not be denied payment by way of employer discretion. Following that decision, an administering authority challenged as to whether or not the regulations should be changed which prompted a further discussion at this Technical group meeting.

The group discussed the matter in some depth and wondered what happened to the ill health review hat was started some years back, by the shadow board?

Bob Holloway requested that the views initially supplied by DCLG (March 2016) be sent to him to review, to ensure that DCLG still maintained that position.

8. Address Tracing

SPLG asked the LGA if there is a national framework for address tracing. The LGA undertook a survey earlier this year and discovered that whilst there was no evidence of a national framework there appeared to be plenty of appetite for one. The group discussed the matter and agreed that whether or not to establish a national address tracing framework, should be raised at Local Pension Officer Groups to determine if any one authority would be willing to act as the 'lead procurement authority'. Providing an authority steps forward, Mark Alexander from Norfolk will be invited to attend the following Technical Group to offer is advice.

9. Minutes from last meeting

Unanimous agreement that minutes are correct

10. Matters arising

None

11. AOB

a) Impending changes to AVCS AND Freedom & Choice

The Prudential have requested to attend a technical group meeting to discuss the practical implementation of F&C. However, it is not as yet known when the draft LGPS (Amendment) Regulations 2016 will be issued. This matter is on hold until further clarity surrounding both the content (note: significant changes were suggested by the LGA in their response date 15 August 2016) of the amendment regulations and the timing is known.

b) Deferred Member pre 2014 with AVC and a small residual amount

The only authorised route an administering authority may take is to ensure that an annuity is provided representing the residuary amount. If the administering authority were to simply 'refund' the residuary amount this would be an unauthorised payment, though if the value were less than 250, HMRC may not be interested in such payments.

c) Mayoral Combined Authority

Legislation is due between October and December for implementation in April 2017. These are multi authorities joining together for services and a question was raised on the proposed pension

arrangements, DCLG confirmed that each case should be reviewed on a case by case basis. Requests should be initiated by the Chairs of the authorities to the Secretary of State.

d) Date and Venue of next meeting

9th December at the offices of PWC, offices to be confirmed in due course.

Appendix A –LGPC Update

General

Consultation on draft 2016 LGPS (England & Wales) Amendment Regulations

In May 2016, DCLG commenced a consultation on amendment regulations for the LGPS in England and Wales. The LGPC Secretariat [submitted its response](#) to DCLG prior to the closure of the consultation period on Friday 19th August.

The response is split into two parts:

- 1) A covering letter, outlining LGA's views from a policy perspective on some of the matters included in the consultation, and
- 2) An annex, providing our views on the draft regulations from a technical perspective, suggesting other changes to the regulations that we believe are necessary where appropriate.

The covering letter made the following main points:

- **Fair Deal**
 - The LGA is supportive of the proposals but believe there are some fundamental issues with the regulations as drafted, as detailed further in the technical annex.
 - Why are 'community' admission bodies covered when, for example, police and crime commissioners are not?
 - If the 2007 Directions Order is revoked, what happens to those individuals who have already transferred out under it? LGA's view is that they should come under the Fair Deal regulations.
 - What are the plans for the 2012 Welsh Direction which currently provides pensions protection for employees of local authorities in Wales? Is it to be revoked like the 2007 Directions Order?
- **Freedom and Choice**
 - The LGA is supportive of the proposals but believe there are some fundamental issues with the regulations as drafted, as detailed further in the technical annex.
- **Early payment of pensions**
 - The LGA is supportive of the proposals to allow deferred members who left the LGPS under the 2007 Benefits Regulations (i.e. between 1st April 2008 and 31st March 2014) to be able to choose to take an actuarially reduced pension from the age of 55 without requiring employer consent.
 - We would support this option being extended to members who left the LGPS under the 1995 and 1997 Regulations too.
- **Extension of the underpin**
 - The LGA has serious concerns about the proposal to extend the underpin to members who have transferred in from other public service pension schemes.
 - Our concerns are that:
 - It is being retrospectively imposed upon the LGPS,
 - It is not necessary to comply with the Public Service Pensions Act 2013,
 - There will be cost implications for the scheme of providing the protection,
 - It will take significant resource in order to determine the individuals to whom the protection needs to be extended, and

- It will only benefit very few individuals as in the majority of cases, the career average pension is better than the final salary pension that would have been payable.
- **Amendments to actuarial guidance**
 - Due to the problems experienced in the implementation of the actuarial guidance that was issued in April 2016, it would be helpful if:
 - The updated pieces of guidance are issued at the same time as the amending regulations are made and laid, and
 - Suitable guidance is provided for the implementation of the revised guidance (including details of transitional arrangements if necessary).
- **General**
 - The LGA have been maintaining a corrections list since the introduction of LGPS 2014 and many of the suggestions on that list were not taken forward in this consultation.
 - It would be helpful if we could meet with DCLG in order to discuss the list and how best to take this forward in future.

Consultation on the draft LGPS (Wandsworth and Richmond upon Thames Fund Merger) Regulations 2016

In August 2016, DCLG commenced a consultation on amendment regulations in respect of the fund merger between Wandsworth and Richmond upon Thames. The LGPC Secretariat [submitted its response](#) to DCLG prior to the closure of the consultation period on Thursday 8 September 2016. The response provided our views on the draft regulations from a technical perspective.

LGPS: Guidance on preparing and maintaining an investment strategy

On the 15 September DCLG issued the above new guidance. New investment regulations to be introduced later this year will include a requirement for administering authorities to publish new Investment Strategy Statements by 1st April 2017 in accordance with this new guidance. Administering authorities will be required to act in accordance with the provisions in this guidance when Regulation 7 of the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016 comes into force. An administering authority's duty to prepare, maintain and review their Funding Strategy Statement under Regulation 58 of the Local Government Pension Scheme Regulations 2013 ("the 2013 Regulations") is unaffected.

Further education and sixth form college insolvency consultation

The Department for Business, Innovation and Skills (BIS) [commenced a consultation](#) in early July on the development of an insolvency regime for further education colleges and sixth form colleges.

The introduction of insolvency procedures follows changes introduced via the Education Act 2011, which removed further education and sixth form colleges from the public sector. Currently, there is no mechanism for a college's assets and liabilities to be dealt with upon insolvency – the consultation seeks to bring into effect an insolvency regime for colleges called a 'special administration regime'.

The LGA [submitted its response](#) to the consultation in early August. The main points made in that response were as follows:

- If a college becomes insolvent, all steps should be taken to avoid the pension liability falling back on other employers in the fund (and eventually the taxpayer).

- To achieve this, the appointed education administrator of an insolvent college should have a responsibility to act in a way that achieves the best outcomes for the taxpayer.
- Pension considerations should be a crucial part of colleges' area review process merger discussions. Feedback received suggests that this is not always the case.
- There should be a wider discussion on whether it is appropriate for colleges to continue to participate in a taxpayer backed pension scheme.

Whilst the proposals in the consultation only extend to England, the consultation document makes clear that any proposed changes could also be applied to Wales in the future, as this is not an area devolved to the Welsh Government.

Following the meeting, the LGA began a survey of pension funds in England and Wales to gain a firmer idea of the scale of liabilities that further education and sixth form colleges represent in the LGPS. The results of that survey will be sent to DfE in early September.

Earlier this year, the Skills Funding Agency (which funds further education in England) began to [publish a list](#) of colleges for which it had issued a notice of concern. The list is updated on the first working day of every month and, when a college no longer has a notice of concern against it, the college is removed from the next published list.

Distress and Inconvenience (D&I) payments

The Pensions Ombudsman has been in touch with the LGPC Secretariat regarding the payment of distress and inconvenience sums by LGPS pension funds.

The Ombudsman and TPAS occasionally come across a view from local authorities that they can only make D&I payments if the Ombudsman issues a determination instructing them to do so. With the general increase in pension complaints over the past couple of years, the Ombudsman is trying to resolve more cases at an early stage, either when the enquiries get to them or beforehand if possible. The Ombudsman have asked if funds can give greater consideration to making early D&I payments in the future in order to prevent complaints requiring a formal determination from the Ombudsman.

In the view of the LGPC Secretariat: -

- Local authorities in England have the power to make compensation payments under the Localism Act 2011,
- Local authorities in Wales have the power to make a compensation payment under the Local Government Act 2000.
- We understand that funds in Scotland have the power to make compensation payments under the Local Government (Scotland) Act 2003, though we are seeking assurance from SPPA that this is in fact the case.

Whether a compensation payment made by an administering authority can be charged to the pension fund is, in our view, debatable. However, if a compensation payment is charged to the pension fund, HMRC's Pensions Tax Manual at [PTM143300](#) gives advice on whether it would be an authorised payment.

The Pensions Ombudsman Service has guidance regarding [Putting things right](#) on their website, which include a link to a [factsheet](#) that they have published on non-financial injustice and potential means of redress.

Fund transactions briefing note

Our thanks go to the funds who commented on the draft fund transactions briefing note that was sent to LGPC fund contacts on 21st June. The briefing note set out the detail of new transactions data that it is proposed funds will need to be able to supply to GAD in the future.

On 27th July, the LGPC had a productive meeting with DCLG and GAD to discuss the comments received and, in particular, the specific items of data where respondents had expressed concerns about providing the information in the requested format.

Following that meeting, on 25th August the LGPC met with GAD and representatives of the administration software suppliers to discuss the requirements, in particular the implementation timescales.

Following the two meetings, a number of significant simplifications to the requirements have been agreed in principle, and work is now underway to finalise and circulate an amended version of the briefing note. Administering authorities will need to ensure that their accounting, payroll and other payments software systems are updated to deliver the new requirements, potentially by 1st April 2017.

Address Tracing (Technical group agenda item 9)

At SPLG in June 2016 the matter of address tracing frameworks arose, as a result on 6 June 2016, the LGPC sent the following email to Funds In England & Wales:

“Dear colleague,

The framework for address tracing used by Scottish LGPS funds is soon to come to an end. We have been asked to check with funds in England and Wales if there are any other address tracing frameworks in use that they may be able to join.

If you could respond to this email in the first instance, that would be much appreciated.

Regards

Con”

Whilst we did not receive confirmation from any fund to confirm that they were aware of any address frameworks in England & Wales, some got in touch to say that they would be interested in signing up to one. One Fund suggested that the LGPC may wish to centrally procure such a service on behalf of all funds. Accordingly, the LGPC will raise this matter at the next Technical Group to determine if there is any interest.

Aggregation of Pre 1 April 2014 benefits (deferred / deferred refund) to benefits of a member who joined the LGPS on or after 1 April 2014

We have raised the following questions in footnotes 1 and 2 of the aggregation document.

Scenario D1

It is not clear why, where a member left prior to 1 April 2014 with a deferred refund and rejoins the Scheme on or after 1 April 2014 and has not had a continuous break in active membership of a public service pension scheme of more than 5 years, regulation 10(5) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 requires that the transfer value in respect of the pre 1 April 2014 membership should purchase an amount of earned pension in the member’s active pension account (rather than final salary membership in accordance with section 20 of, and

paragraph 1 of Schedule 7 to, the Public Service Pensions Act 2013). Clarification has been sought from DCLG.

Scenario D2

It is not clear why, if the member **does not** elect to be treated as if he / she had been an active member on 31 March 2014 and 1 April 2014 and elects to aggregate, regulation 10(6) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 requires that the transfer value in respect of the pre 1 April 2014 membership should purchase an amount of earned pension in the member's active pension account (rather than final salary membership in accordance with section 20 of, and paragraph 1 of Schedule 7 to, the Public Service Pensions Act 2013). Clarification has been sought from DCLG.

The Secretariat has further investigated this subject and we have set out below the basis for what we believe to be the overall outcome, based on the current wording of the LGPS Regulations.

Summary of the Secretariat's understanding of the Public Service Pensions Act 2013 (PSPA2013)

In the first instance if we start with the principles of the PSPA2013.

Schedule 7 paragraph 1 covers persons who remain in the 'old scheme' for past service and defines those individuals in paragraph 1(1) as being a person who:

- was a member of an existing scheme (defined in s18(2) and Schedule 5, in the case of the LGPS as a scheme set up under s.7 of the Superannuation Act 1972) – **Old Scheme**, and
- is a member of a scheme under section 1 (defined in the case of the LGPS as a scheme set up under s.1 of the Public Service Pensions Act 2013) – **New Scheme**

Member is not defined and accordingly this could be construed as an active, deferred or pensioner member (though paragraph 5 of Schedule 7 makes clear that final salary protection does not apply to a pension in payment).

Paragraph 1(2) moves on to qualify that if the 'old scheme' service and the 'new scheme' service are continuous (paragraph 1(2)(a)) then the 'old scheme' service is regarded as having ended when the 'new scheme' service ended and the earnings in the 'new scheme' are derived as earnings from the 'old scheme'. Paragraph 1(3) qualifies that those earnings must not be less than what would have been achieved under the 'old scheme'.

Summary: So at this stage in the proceedings, the pre 1 April 2014 Final Salary Benefits of a member who was continuously in the LGPS both on 31 March 2014 and 1 April 2014 retained final salary protection when ending their 2014 Scheme membership.

If we then move onto paragraph 3, this deals with continuity of employment and defines continuous for the purpose of paragraphs 1(2)(a) and 2(2)(a). Where there is a gap in LGPS service for the purpose of determining continuity, ignore:

- a) Any gap in LGPS service, where the person was in one of the new public service schemes (set up under s.1 of the PSPA2013)
- b) A single gap of LGPS service of 5 years or less, where the person was not in one of the new public service schemes (set up under s.1 of the PSPA2013)
- c) Two or more gaps in LGPS service of 5 years or less (where any one gap does not exceed 5 years), where the person was not in one of the new public service schemes (set up under s.1 of the PSPA2013)

Summary: It seems that where a member aggregates Pre 1 April 2014 benefits with Post 31 March 2014 benefits and meets one of the continuity conditions set out in paragraph 3 of Schedule 7, the Act prescribes that the aggregated benefits **must** be provided with final salary protection.

However, regulation 10(6) of the Transitional Provisions 2014 seems to provide an initial choice for the member (i.e. CARE or final salary) and for the member to receive final salary protection, the member has to elect under regulation 5(5). Accordingly we believe the statement within the aggregation guide is correct as the default position should be that in the first instance, the member is awarded final salary protection, and only thereafter, if DCLG wish to extend this option to instead provide earned pension, the member should have to elect for the alternative to that prescribed within the PSPA2013. However, even if they were to initially elect for the aggregated earlier service to purchase CARE pension the member would, under the PSPA 2013, still be entitled to a final salary benefit if this was higher i.e. the underpin would have to be applied in all such cases (even where the member was not over 55 / within 10 years of NRD in 2012) – why would DCLG want to do that?

Similarly regulation 10(5) of the Transitional Provisions 2014, simply appears incorrect as the member is awarded ‘earned pension’ upon aggregation of a deferred refund, which does not seem to comply with the PSPA2013 at all? Accordingly we believe the statement within the aggregation guide is correct as the default position should be that in the first instance the member is awarded final salary protection, and only thereafter, if DCLG wish to extend this option (why would they want to?) to instead provide earned pension, the member should have to elect for the alternative to that prescribed within the PSPA2013.

The Secretariats understanding of the impact to Administering Authorities

At the moment we believe we have two problems:

1. If Funds are following the Transitional Provisions Regulations 2014 and our aggregation guide they will be giving
 - i) deferred refund cases, and
 - ii) deferred benefit cases who did not elect to be treated as if they were an active member on 31/3/14 and 1/4/14a CARE benefit in respect of the aggregated service.

If that eventually turns out to be greater than the final salary guarantee under the PSPA2013 then the member won't complain and the Fund can justify paying a benefit higher than that provided for under the PSPA2013 on the grounds that our TP Regulations require us to pay that benefit. However, if the CARE pension from the aggregated service turns out to be less than the final salary benefit provided for under the PSPA2013 the member could complain that the Fund had not complied with the PSPA2013 and demand the higher, final salary benefit (to which they are entitled under the PSPA2013).

2. If Funds are following the PSPA2013 and ignoring our aggregation guide and the Transitional Provisions Regulations 2014, they will be giving
 - iii) deferred refund cases, and
 - iv) deferred benefit cases who did not elect to be treated as if they were an active member on 31/3/14 and 1/4/14a final salary benefit in respect of the aggregated service.

If that eventually turns out to be greater than the CARE benefit under the Transitional Provisions Regulations 2014 then the member won't complain and the Fund can justify

paying a benefit higher than that provided for under the Transitional Provisions Regulations 2014 on the grounds that the PSPA2013 requires the Scheme to pay that benefit. However, if the final salary pension from the aggregated service turns out to be less than the CARE benefit provided for under the Transitional Provisions Regulations 2014 the member could complain that the Fund had not complied with the Transitional Provisions Regulations 2014 and demand the higher, CARE benefit (to which they are entitled under the Transitional Provisions Regulations 2014).

Thus, whichever stance an administering authority is currently taking, there will be cases where the member is due a higher payment. This will remain the case unless / until DCLG amend the Transitional Provisions Regulations 2014.

Exit payments

Exit payment recovery – delay in implementation

Earlier this year, the LGPC Secretariat responded to a Government consultation on draft regulations covering the recovery of exit payments.

Under the proposed reforms, when a person leaves a relevant public sector employment with a salary of £80,000 or higher and subsequently re-joins another part of the public sector within 12 months, they may have to pay a proportion of the exit payments they received back to their prior employer.

At the time we submitted our response, it was expected that the reforms would take effect from April 2016. However, the regulations have been delayed and it is now expected that they will be published and in force later this year, subject to their passing by both houses under the affirmative process.

Exit payment cap (Technical group agenda item 5)

The Enterprise Bill received Royal Assent in May and is now the Enterprise Act 2016. The Act provides the legislative framework for the introduction of the £95k cap on public service exit payments.

We still await HM Treasury regulations which are due to provide further detail on how the cap will work in practice. There will be a further consultation this autumn on the cap, so they will not be in force in October 2016 as originally anticipated; it is hoped that regulations will be published and in force early next year along with HM Treasury directions providing detail on the circumstances in which the cap may be relaxed by permitted bodies (guidance on the relaxation will be prescriptive rather than permissive in so much that it will set out a list of situations to consider a waiver rather than a discretion).

Exit payment reform consultation

The Government's February consultation on further reforms of public sector exit payment reforms closed in early May. The LGA's response to the consultation is available under [Drafts and Consultations](#) on www.lgpsregs.org. The major impact of the proposals would be to remove the ability for employers to meet the cost of pension strain for early retirees.

The response focussed on technical aspects of the proposals and highlighted a number of issues that the Government would need to consider if it took the proposals further. The government's response to the consultation should be published shortly.

End of contracting out

Countdown bulletin 19 (August 2016)

The bulletin:

- provides the outcome of the GMP checker survey whereby the majority surveyed confirmed that they were happy with the service and only a small minority confirmed that they were having difficulties. If any fund is still experiencing problems and have not been contacted/have been contacted and are still experiencing problems they should contact HMRC at: Mailbox.newstatepensionenquiries@hmrc.gsi.gov.uk
- Confirms that HMRC will not accept any more requests to register for SRS.

The new customer relationship manager (CRM) is Paul Bennett.

CEP

Where a member: -

- Holds a frozen refund within the scheme and the CEP has been paid, and
- Sometime later the member, re-joins the scheme at which point the service is automatically aggregated.

It would appear by the removal of R54(1)(b) of the OPS(Contracting-out) Regulations 1996 [SI 1996/1172] within the regulation 14 of OPS (Schemes that were contracted-out)(no.2) Regulations 2015 (SI 2015/1677), that CEPs can no longer be reclaimed.

The Secretariat initially raised this matter with HMRC in December 2015 and in August 2016 received the following response: *“DWP have confirmed that the policy intent is that periods of contracted out service pre-abolition should not be linked with post abolition non-contracted service”*.

This has raised a number of concerns and the Secretariat has challenged the policy intent as follows:

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- 1) If we accept the policy intent then we believe regulation 14 of the Occupational Pension Schemes (Schemes that were Contracted-out) (No 2) Regulations 2015 [SI 2015/1677] should be amended. This is because regulation 14(1)(b) states that the Commissioners are able to refund a contributions equivalent premium if *“they are satisfied that a transfer of the earner's accrued rights will be made in accordance with regulations made under section 20 (transfer of accrued rights) or section 37A of the 1993 Act”*. This seems to make no sense with reference to the policy intent, as regulation 14(1)(b) provides that a CEP may be reclaimed where contracted out benefits are transferred to a contracted-in scheme post 5 April 2016 yet where benefits are aggregated within the same scheme under the same circumstances a CEP cannot be reclaimed? Surely if the policy intent is not to link pre contracted out abolition service with post abolition contracted in service then regulation 14(1)(b) should be deleted? If not, why not?
- 2) If the policy intent is that periods of contracted out service pre-abolition should be linked with post abolition non-contracted service then we believe regulation 54(1)(c) of the Occupational Pension Schemes (Contracting-out) Regulations 1996 [SI 1996/1172] which prescribed *“he is satisfied that the earner in respect of whom it was paid has entered into employment which is contracted-out employment by reference to the same contracted-out scheme as that by which the employment to which it relates was contracted-out employment, and that for the purpose of calculating the earner's accrued rights under the scheme the two employments will be linked”* should be reinstated alongside the already extant regulation 14(1)(b) described above.

Whilst for tax reasons, a deferred refund **must** continue to be aggregated where a member re-joins the same scheme (there is no other option as a refund cannot be paid as the member is in active service), where a CEP has been paid, if we apply the policy response, the benefits aggregated will need to be reduced to account for the fact that the Scheme Administrator can no longer reclaim the CEP. The extent of the reduction will be a matter for GAD to determine by way of Secretary of State guidance. The LGPS may currently be in a position of overstating aggregated benefits and if the policy is to remain as noted, the Secretariat will need to (1) advise DCLG as a matter of urgency as Scheme regulations will need to be change and actuarial guidance sought, (2) scheme members who are in the process of aggregating benefits will need to be informed, and (3) consider how we should deal with cases already processed that are affected by this policy.

HMRC

HMRC pension schemes newsletter 80 (July 2016)

HMRC published issue 80 of their pension schemes newsletter, covering Pension Flexibility Statistics, Lifetime Allowance and Relief at Source annual returns.

In particular HMRC have launched their new online lifetime allowance service for pension scheme members to apply to protect their pension savings from the lifetime allowance tax charge. This service replaces the interim paper process for applying for fixed protection 2016 (FP2016) and individual protection 2016 (IP2016) and replaces the online form for applying for individual protection 2014 (IP2014). With the launch of the online service, HMRC will no longer process applications for lifetime allowance protection made using the interim process. Any applications made after the 31 July 2016 using the interim paper process will be returned and HMRC will direct the member to the online service to make their application.

Taxation of Defined Benefit Lump Sum Death Benefits (DBLSDBs) and Uncrystallised Funds Lump Sum Death Benefit (UFLSDB)

In [bulletins 139, 141 and 146](#) we included articles covering the taxation of Defined Benefit Lump Sum Death Benefits (DBLSDBs) with reference to the changes brought about by the [Finance \(No. 2\) Act 2015](#) which amended the Finance Act 2004. Since publishing these articles the LGPC Secretariat has received a number of queries relating to this matter.

The LGPS regulations, both in England & Wales and Scotland, all contain a similar provision concerning the timescale within which a death grant must be paid. If the administering authority has not paid the member's death grant before the expiry of two years beginning with the date of the member's death or, where the administering authority did not know about the member's death within that period, beginning with the date on which the administering authority could reasonably be expected to have become aware of the member's death, they must pay the death grant to member's personal representatives. Therefore, without a change to the relevant LGPS regulations administering authorities are unable to make a payment in accordance with the new provisions brought about by the Finance (No.2) Act 2015.

The new provisions provide that where a DBLSDB and/or UFLSDB (AVCs) is paid to either a 'qualifying person' or a 'non-qualifying' person after a period of two years of the Scheme Administrator first becoming aware of the individual's death, that such payments shall be authorised. Where the payment is made after this period the new rules (section 206 and paragraphs 13 and 15 of Schedule 29, of the Finance Act 2004) become valid and where payment is made to a:

- 'qualifying person' (e.g. a nominee), tax is deducted by the Scheme Administrator via PAYE, and

- ‘non-qualifying person’ (someone who is receiving the payment in their capacity as a trustee, other than a bare trustee*, or in their capacity as a personal representative, director of a company, partner in a firm or member of a limited liability partnership), tax is deducted by the Scheme Administrator at 45%

DBLSDB and UFLSDB continue to be paid tax free when paid within a period of two years of the Scheme Administrator first becoming aware of the individual’s death (although the recipient might be liable to a lifetime allowance charge).

Given that the changes introduced by the Finance (No. 2) Act 2015 mean that it is no longer necessary for payments to be made within 2 years to be authorised payments, in the interests of making the tax system fairer, the LGPC support a change to the LGPS regulations to facilitate these new provisions and have requested the appropriate amendments.

Until such changes are made, administering authorities should comply with the LGPS regulations and continue to ensure death grants are paid before the expiry of two years beginning with the date of the member’s death or, where the administering authority did not know about the member’s death within that period, beginning with the date on which the administering authority could reasonably be expected to have become aware of the member’s death.

If a fund does not pay either a DBLSDB or UFLSDB within the prescribed period of two years, then the current over-riding tax rules as set out in the Finance (No.2) Act 2015 apply which would be an authorised payment. However, funds should be extremely careful when making such payments outside of 2 years for the following reasons: -

- a) If the payment is not made within 2 years it become taxable (it is not taxable within two years).
- b) A fund is obliged by statute to make the payment within 2 years.
- c) If a fund decides to pay, after 2 years, to a nominee and is subsequently challenged by the personnel representatives of the estate this could become very tricky. The LGPS rules state that *“If the administering authority has not made payments under paragraph (1) equalling in aggregate the member’s death grant before the expiry of two years beginning with the date of the member’s death or, where the administering authority did not know about the member’s death within that period, beginning with the date on which the administering authority could reasonably be expected to have become aware of the member’s death, they must pay an amount equal to the shortfall to the member’s personal representatives”*. In such a situation, if the personnel representatives challenged this payment TPO may very well agree with the complainant and the fund will have to pay the monies ‘again’ to the personnel representatives, leaving the fund left to reclaim from the nominee, who may well have spent the monies in good faith.

Note: "bare trustee" means a person acting as trustee for-

- (a) an individual absolutely entitled as against the trustee,
- (b) two or more individuals who are so entitled,
- (c) an individual who would be so entitled but for being a minor or otherwise lacking legal capacity, or
- (d) two or more individuals who would be so entitled but for all or any of them being a minor or otherwise lacking legal capacity.

Consultation – salary sacrifice for the provision of benefits-in-kind

Following the announcement in the 2016 Budget that the Government planned to undertake a consultation on limiting the range of benefits that attract income tax and NIC advantages when provided via salary sacrifice schemes (as reported in [bulletin 143](#)), on 10th August, HMRC [commenced a consultation](#) to take these proposals forward. Benefits such as: employer pension contributions, employer pension advice, employer childcare, work place nurseries and cycle to work schemes remain unaffected by the consultation.

The consultation period is due to close on 19th October 2016. The LGPC will be submitting its response in due course.

Annual Allowance Statements 2015/16

In September 2016 the Secretariat received an email from HMRC regarding scheme data returns for 2015/16 pension saving statements, which we issued to funds on 21 September 2016.

The email announced that in the same way as last year HMRC is prepared to accept scheme data regarding the 2015/16 pension saving statements on an excel spreadsheet rather than through the scheme's Event Report (all other scheme events for 2015/16 must be submitted via Pensions Online).

Funds wishing to use the spreadsheet method should confirm this to HMRC and also confirm that they understand that late filing penalties may be due if the information is not provided by 31 January 2017.

The Finance Act 2016

The Finance Act 2016 received Royal Assent on 15 September 2016, its highlights are: -

- Part 1 - Inserts the new Standard LTA from 16/17 and 17/18 as 1 million
- Schedule 4 – Introduces Lifetime Allowance Transitional Provision covering IP16 and FP16
- Schedule 5 – inserts amendments in connection with Pensions Flexibility

Further information will be available in due course once the full contents of the act have been reviewed and their impact understood.

Tell Us Once

As reported in bulletins, the Tell Us Once service is now live for public service pension schemes, and – since the end of April 2016 – has moved to the business as usual part of DWP.

LGPS funds not yet fully set up for Tell Us Once (55 funds are currently live on the system) can still sign up to the service and are encouraged to do so. For assistance with the onboarding process, please refer to the [LGPS on-boarding guide for Tell Us Once](#) in the first instance.

If at any point when setting up or using Tell Us Once, a fund is experiencing problems or has concerns with the level of service being received from DWP or their suppliers, please contact [Con Hargrave](#) so that the concerns can be addressed.

LGPS Database

As at 31 August 2016, 67 funds had uploaded their membership files into the NI Database, with 33 still to do so.

Funds are reminded that, as well as being set up to facilitate the extension of Tell Us Once to the LGPS, the [LGPS Database](#) was also set up so that funds can:

- a) search for matching pension records in other funds in cases where there may be a potential duplicate death grant, and
- b) contact funds where a match is found to check on the death grant entitlement.

To ensure this system works in practice, funds are reminded that their procedures in dealing with death cases should be updated so that the LGPS Database is routinely checked for matching records at the time of processing a member's death.

Later this year, a project will be undertaken to identify further possible usages for the LGPS Database and establish what may be needed to mean the Database can be used for these other purposes, in particular taking into account data protection considerations.

The PCSPS undertook this exercise prior to the launch of the new scheme in April 2015 and adopted a self-certification approach.

LGPC Communications

Sample pensions saving statement

In bulletin 144 we mentioned that the LGPC Secretariat has commissioned a third party to develop a sample pensions saving statement (PSS). On 11 July 2016, we sent, to all funds, the sample statement plus a factsheet which have both been produced by KPMG. These have since been loaded to our website www.lgpsregs.org. The documents have been reviewed by West Yorkshire, Great Manchester and West Midland pension funds. The sample statement is a template which funds can tailor to their own requirements. We understand both West Yorkshire and Greater Manchester pension funds are in the process of tailoring the statement and factsheet for their own use and that they are happy to share their versions once complete.

Updates to technical guides and associated forms

Since June 2016 the following technical guides, available in tracked and non-tracked versions) have been published on www.lgpsregs.org:

- **Version 3.0 of the Annual Allowance guide (23/08/16)** which has been revised since the last version was issued in July 2012 to take account of:
 - the Finance Act 2013,
 - the Finance Act 2014,
 - the Taxation and Pensions Act 2014 and the Finance (No. 2) Act 2015)
 - Related Statutory InstrumentsOn 26th August, the guide was reissued to include annex 5, GAD's guidance on the transfer Club and the calculation of the pension input amount. The wording of example 46 was also amended slightly.

Updates to the annual allowance and lifetime allowance factsheets (21/06/16 and 5/9/2016)

- 21/06/2016 - The annual allowance and lifetime allowance factsheets have been updated to reflect the fact the 6th April has now passed. Clean and tracked versions of the documents are available on www.lgpsregs.org.
- 6/09/2016 – The annual allowance factsheet has been amended to clarify that a fund is not obliged to inform a member if they exceed the Tapered annual allowance
- 06/09/16 – The Lifetime allowance factsheet has been amended to reflect that the online application process for Individual and Fixed Protection 2016 is now live. Individuals applying for the new protections will no longer receive a lifetime allowance protection certificate,

instead once they have successfully applied for protection the online service will provide them with a reference number which they will need to keep.

Updates to the full employee guides

- Employees full guide – 11th July 2016 updated with the new early retirement factors
- Councillor full guide – 5th September 2016 updated with the new early retirement factors and the new online application process for fixed and individual protections 2016
- Councillor update – 5th September 2016 updated links in document only.

Investment Pooling Q&As

In July, the LGPC published Q&A documents on investment reform for employees and employers respectively.

The Q&A for members can be found on the [Employees' Guides](#) page of www.lgpsregs.org. The Q&A for employers can be found on the [Communications Resources](#) page.

Re-launch of lgpsregs.org

lgpsregs.org is being re-designed with a view to the website being re-launched before the end of 2016.

Earlier in the year, we received feedback from a number of pension funds on the changes they would like to see made to the website and their views have been taken on board in the development of the new site's layout and design. It is hoped that once the new version has been launched it will be easier for funds to find documents on the website in the future.

Appendix B – AON Hewitt paper

Recording and reporting of breaches of the law

The Pension Regulator's Code of Practice No 14 (Governance and administration of public service pension schemes) highlights:

- the legal requirement for us (scheme managers, boards, advisers etc.) to report where a legal duty in relation to the administration of the scheme is not being complied with and this is likely to be materially significant to the regulator in the exercise of its functions (para 241),
- that appropriate and effective procedures should be in place to meet legal obligations (para 245), and
- procedures should include a system to record breaches even if they are not reported to the regulator (para 246).

Clearly there are a wide range of potential breaches but a number of these stem from Disclosure or other legislation in relation to timescales. Just a few examples are shown below:

Process	Legal Requirement (100% target)
1 - New entrants	Provide information about the scheme within: <ul style="list-style-type: none">• 2 months from date of joining where scheme member information has been received or• 1 month of receiving jobholder information where the individual is being automatically enrolled / re-enrolled.
2 - To inform members who leave the scheme of their deferred benefit entitlement	As soon as is practicable, and no more than 2 months from date of initial notification (from employer or scheme member)
3 - To notify the amount of retirement benefits	1 month from date of retirement if on or after Normal Pension Age 2 months from date of retirement if before Normal Pension Age
4 - To notify dependant(s) of the amount of death benefits	As soon as possible but in any event no more than 2 months from date of becoming aware of the death, or from date of request

We are aware of a number of funds who are either:

- struggling to identify / provide stats on these deadlines (due to complexities with report writing) and/or
- struggling to meet some of these deadlines (with retirements being a key challenge due to the need to collect information from both employers and scheme members).

Are meeting these timescales causing issues for most Funds? In which specific areas? It would be useful to discuss this and particularly hear Technical Group members' thoughts on solutions to both identifying these cases and also meeting the requirements (in relation to the above or any other legal timescales). Can anything be done nationally to assist (e.g. standard reports, liaison with TPR)?

Catherine Pearce, Aon Hewitt

