Local Government Pensions Committee
Technical Group

Minutes of the meeting held on 9 December 2016 at the offices of Price Water House Cooper 7 More London Riverside SE1 2RT

LGPC Technical Group

Present		**In Attendance**	
Mike Hopwood (Chair)	North East	Paul Kateley	Heywood
Kev Gerard	South Wales	Laura Whitworth	Civica
Lynne Miller	South Wales	Catherine Pearce	AON
Ian Howe	East Midlands	Martin Slaughter	Capita
Zena Kee	Northern Ireland	Annemarie Allen	Barnett Waddingham
Richard Smyth	London	Jon Slater	Equiniti
Rachel Abbey	South West	Justine Davies	PriceWaterhouseCoopers
Neil Mason	London	Ian Colvin	Hymans
Gary Chapman	North East		
Erin Savage	Scotland		
Alan South	South West		
Anne Weldon	South West	**LGA**	
Kelly Scotford	Secretary	Jayne Wiberg	
Dee Goodwin	Guest	Terry Edwards	
		DCLG	
		Not present	

1. Apologies

Amanda Hyde	Shrewsbury
John Smith	South East
Kimberley Linge	SPPA
Catherine Carruthers	Capita
Janet Caiazzo	Shrewsbury
Louise Savage	South East
Gary McLellan	East Midlands
Nigel Thomas	Mercer

2. LGPC Update

See attached update – Appendix A

Further to that update:
2.1 New DCLG contacts:

- Jeremy Hughes (Mergers / Late retirement factors),
- Darren Hill (GAD / Fair Deal),
- Teresa Clay (Investments),
- Chris Megainey (half-time Exit Payments),
- Sandra Layne (support only).
- A new person is due to start in January.

2.2 Due to the changes in staff at DCLG, we will need to establish who will be attending the group going forward. Jayne Wiberg to liaise with DCLG.

2.3 A new transfer club memorandum is due to be released to coincide with the release of the revised Club Transfer Factors, proposed to be effective from 1 March 2017. The LGA expect to receive a draft club memoradum before Christmas.

2.4 Exit Payment Reform – see LGPC update

2.5 End of Contracting Out

- Bulletin 21 has been issued, please can all authorities complete the closure scan request form in order to receive their active GMP reconciliation data from HMRC. HMRC are working on first come first served basis. The 'booking in date' is the trigger for HMRC to respond to any queries. HMRC will respond to any within 3 months of the 'booking in date' although it has been reported that they responding within that period. Lynne Ibbitson at HMRC is very helpful if you have any problems / queries.

- CEP – DWP lawyers are reviewing the LGPC query concerning the reclaim of CEPs upon aggregation (with effect from 6 April 2016, CEPs can no longer be reclaimed where a member with a deferred refund aggregated membership, transfers to another registered pension scheme are unaffected by this change). DWP have advised that if the law (they have not confirmed either way) is to change, any changes will become legislation next year and it is not clear if the legislation will be back dated. If DWP don't change the over-riding legislation, there may need to be a change to the LGPS regulations to account for an administering authority being unable to reclaim a CEP upon aggregation. In such an instance, it is not clear how cases already processed since 6 April 2016 will be affected.

- GMP reconciliation – It was reported at the meeting that during the course of reconciliation, administering authorities have noticed that there have been instances where the value of GMPs previously supplied by HMRC, have changed within the latest data extract supplied during the reconciliation exercise. If this issue becomes problematic and the reason for the change cannot be identified within the fund, then the administering authority should collate a report clearly setting out such instances (i.e. provide date of when the initial values were supplied together with the value, compared against the latest information supplied within the reconciliation data extract) and forward this report to Jayne Wiberg, who in turn will liaise directly with HMRC.

- On 10 February 2016, the LGPC secretariat circulated a letter on behalf of HM Treasury to all LGPS pension funds outlining their recommended approach to the contracted-out reconciliation exercise, including in respect of overpayments and tolerances. If your fund has decided not to follow any of the recommendations and you have not done so already, please email Jayne Wiberg at jayne.wiberg@local.gov.uk providing the following information, which will be duly forwarded to HM Treasury as per their request:

- the recommendation(s) which will not be followed
- what alternative approach is being taken, and
- the reasons for taking the alternative approach.

2.6 The Pensions Regulator has extended the deadline for the Public Service Pension Scheme survey to 21 December 2016

2.7 LGA will look at the www.lgpsregs.org with regards to reinstating any old bulletins and circulars, upon its relaunch due early 2017. Meanwhile, if an administering authority requires a copy of an old bulletin or circular then please email Cornelius.Hargrave@local.gov.uk

3. **Freedom and choice AVC working party**

Due to the size and complexity of freedom and choice with regards to AVCs, the Chair asked whether the group felt that a small working party should take this forward on behalf of all administering authorities. Lynne Miller, Jon Slater, Ian Howe, Heather Chambers and Ian Colvin have volunteered to be members of the working party along with representation from both LGPS Scotland and the LGA. Jon Slater was elected the Chairman of the new working party. Software parties will be invited when necessary. Can all authorities send the contact details of their AVC providers to Jon Slater at jonslater@:equiniti.com. Hymans have agreed to host the working party.

4. **Appointment of new Chair**

Mike has advised he is standing down and is planning to retire in the future. Volunteers were requested, Kevin Gerard was nominated and will be the new Chair from the next meeting..

Appointment of deputy Chair

Ian Howe has volunteered to be the new deputy Chair in the absence of the Chair.

5. **Annual Allowance – Voluntary Scheme Pays (VSP) – See appendix B**

The group discussed whether to try and apply a national agreement to VSP. This is a sub scheme administrator discretion, and accordingly each administering authority can choose whether or not to apply VSP. This becomes more relevant because of the tapered Annual Allowance, and there may be pressure on the administering authority to offer VSP. The annual allowance guide will be updated in due course.

Urgent postscript issued by the LGPC on 15/12/16:

A paper was circulated to members of the Technical Group setting out the reasons why we felt that administering authorities could agree to voluntary scheme pays (where the member did not have the right to mandatory scheme pays). We have just turned up a piece of legislation that brings that view into question. We are seeking urgent legal advice on whether administering authorities have the power to agree to voluntary scheme pays without an amendment to the LGPS Regulations 2013 and will issue further advice as soon as we have received the legal opinion.

6. **Policy Intention following Ombudsman decision on DB into payment on the grounds of ill health**

Discussed with the minutes of the last meeting, see point 10 below.

7. **Academy Retenders – where does the liability go?**

Where a maintained school converts to an academy, however, an element of the workforce remains employed by the local authority (e.g. catering service or cleaning service) then does the past liability transfer to the Academy or remain with the LA? The Group felt the best course of action was to take legal advice.

8. Address tracing framework

There was no demand from any of POG for a national framework of this type.

9. Minutes from last meeting

Unanimous agreement that minutes are correct except item 7 which is in matters arising

10. Matters arising

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

The Group agreed that the minutes from the previous meeting should be amended and the update is below:

The Group once again discussed the case brought before the pensions ombudsman regarding the elements of discretion allowed to a scheme employer when they were asked to bring a deferred pension into payment on grounds of ill-health.

The Group noted that the complaint against the scheme employer had been upheld and the Pension Ombudsman's determination reflected the wording of the appropriate regulations.

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

LGPC Secretariat understands that no other public service pension scheme has introduced a discretion for early payment of deferred benefits that meet the permanent ill-health criteria (i.e. payment remains automatic). The LGPC believe the change in wording introduced into regulation 31 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 (and followed through into regulation 38 of the LGPS Regulations 2013) was an unintended drafting error rather than a deliberate policy shift and will ask DCLG to consider making an appropriate amendment to the Regulations

b) It was noted that a Mayoral Combined Authority is a scheduled body

11. AOB

a) SAB invited firms to review Academies participation in the LGPS

PWC were appointed to review Academies with regards to the LGPS, they are currently at a fact finding stage and PWC are holding about 20 meetings with DFE, Academies, MATs, DCLG, Pensions Managers, Unions, Payroll providers (although there is a reluctance by payroll providers). Looking across the range, funding, administration, common contribution rate. Contact Justine Davies on Justine.l.davies@pwc.com if you have any personal views you want included. Further feedback will be given at the next meeting.

b) Thank you – Dee Goodwin

Dee was present and attended this meeting so that she could see colleagues she previously worked with and wanted to say thank you to colleagues for money which she has used to buy Pandora charms

c) Mike

Due to Mike leaving and ultimately retiring after 36 years of service Kev presented him with card and gift from Technical Group and our thanks for all the hard work undertaken as Chair to the Panel

12. Date and Venue of next meeting

3rd March 2017 – Barnett Waddingham

Appendix A –LGPC Update

General

Autumn Statement 2016
On 23 November, the Chancellor of the Exchequer, Philip Hammond MP, gave the 2016 Autumn Statement which included the announcements below.

Autumn statement abolished
The government intends to move towards having a single major fiscal event each year. Following the spring 2017 Budget and Finance Bill, Budgets will be delivered in the autumn, with the first one taking place in autumn 2017. The OBR will produce a spring forecast from spring 2018 and the government will make a Spring Statement responding to that forecast. The Statement will review wider economic and fiscal challenges and launch consultations. The government will retain the option to make changes to fiscal policy at the Spring Statement. "No other major economy makes hundreds of tax changes twice a year, and neither should we," Mr Hammond said.

Salary sacrifice
Following the Government consultation undertaken earlier this year (see bulletin 148) on limiting the salary sacrifice benefits that achieve tax and National Insurance advantages, the Chancellor confirmed in the statement that the Government plan to proceed with the changes. Under the reforms, childcare vouchers/workplace nursery provision, the Cycle to Work scheme, pensions (including advice) and ultra-low emission cars will retain their tax and NI advantages but most other benefits will lose these.

Most of the reforms will come into effect in April 2017, although arrangements already in place before April 2017 will maintain the advantages until April 2018, and arrangements for (non ultra-low emission) cars, accommodation and school fees will keep the advantages until April 2021.

Money Purchase Annual Allowance
The Government have announced that they plan to reduce the money purchase annual allowance – the maximum annual amount individuals can contribute to a defined contribution pensions after having previously accessed a pension flexibly – from £10,000 to £4,000 from April 2017. A technical consultation was launched to cover the detail, with responses to be submitted by 15 February 2017.

Pension scams
The Government also announced that they plan to undertake a consultation before the end of the year on steps to tackle pension scams, including ending ‘cold calling’. In addition, the consultation will contain options for giving schemes greater power to block suspicious transfers.

Personal allowance and higher rate threshold
The government will meet its commitment to raise the income tax personal allowance to £12,500 and the higher rate threshold to £50,000 by the end of this Parliament. For 2017/18, the personal allowance will rise to £11,500 and the higher rate threshold to £45,000. Once the personal allowance reaches £12,500, it will then rise in line with CPI.

National Insurance thresholds

The National Insurance secondary (employer) threshold and the National Insurance primary (employee) threshold will be aligned from April 2017, meaning that both employees and employers will start paying National Insurance on weekly earnings above £157. This will simplify the payment of National Insurance for employers.

Termination payments

As announced at Budget 2016, from April 2018 termination payments over £30,000, which are subject to income tax, will also be subject to employer NICs. Following a technical consultation, tax will only be applied to the equivalent of an employee's basic pay if their notice is not worked, making it simpler to apply the new rules. The government will monitor this change and address any further manipulation. The first £30,000 of a termination payment will remain exempt from income tax and National Insurance.

Legal opinion on LGPS and application of FSMA 2000

The LGA has obtained a legal opinion from Nigel Giffin QC on the extent to which a local authority or other body which is the administering authority of an LGPS fund might in that connection be subject to regulation by the Financial Conduct Authority ("FCA") pursuant to the Financial Services and Markets Act 2000 ("FSMA").

In the opinion, which is available on the LGPS Advisory Board website, Mr Giffin concluded that, in managing an LGPS fund, the administering authority is not carrying out a regulated activity, and does not require FSMA authorisation. In addition, the substantive provisions of the Client Assets Sourcebook section (CASS) of the FCA handbook do not apply to the activities of an administering authority acting as such, even though that authority may have FSMA authorisation for some other reason.

Publication of September 2016 CPI rate

On 18 October 2016, the Office for National Statistics (ONS) announced that the Consumer Prices Index (CPI) rate of inflation for September 2016 was 1.0%.

Government policy in recent years has been to base both pensions increase under the Pensions (Increase) Act 1971 and revaluation of pension accounts under section 9 of the Public Service Pensions Act 2013 on the rate of CPI for September of the previous year.

We await confirmation from the Government in due course that revaluation and pensions increase for April 2017 will apply in the LGPS at a rate of 1.0%.

In early November, the ONS also announced that it was changing its preferred measure of inflation to the CPIH. This is the normal CPI figure but with an element of housing cost included. For September 2016, the rate of CPIH was 1.2%.

There is no indication at the moment that the Government plans to use CPIH as its measure for uprating public service pensions.

Fund transactions briefing note

On 30 September 2016, the LGPC Secretariat circulated the final briefing note containing the transactions data, that funds in England and Wale are required to report upon, from 1st April 2017 onwards. This data will be used by GAD to undertake the cost control calculations they are required to perform under the Public Service Pensions Act 2013.

Actuarial Guidance

Following a change to the discount rate on 16 March 2016, on 29 April 2016, DCLG issued to funds various sets of new actuarial guidance. On 4 October 2016, DCLG issued further communications covering the transitional arrangements (i.e. in what circumstances the 'old' or 'new' guidance should be used).

In addition, on 4 October 2016, DCLG issued to funds, new guidance covering Late Retirement and we understand that further guidance covering Transfers In will be issued shortly (for those members with an NPA of 65 who wish to transfer in beyond that age).

Automatic enrolment and LTA protections

It has come to the LGPC Secretariat's attention that an employer's power to not automatically enrol an individual where they have reasonable grounds to believe they hold an active lifetime allowance protection has not been extended to include fixed protection 2016 or individual protection 2016. This goes against DWP's policy intent.

In their consultation response to the Occupational and Personal Pension Schemes (Automatic Enrolment) (Miscellaneous Amendments) Regulations 2016, the Government confirmed the following:

"DWP is aware of the need to make a consequential amendment to our regulations that came into effect in April 2015, which provided for an exception to the employer duty where an employer has reasonable grounds to believe that a worker has transitional protection rights for their pension savings under HMRC legislation, to mirror this new tax protected status to be effective from the same date.

This will allow for the policy intent to continue so employers can take advantage of this exception for individuals that are not the core target audience for automatic enrolment. This will also help prevent the risk of individuals being subjected to substantial tax charges should they fail to opt out.

*Our intention was to amend legislation to provide the discretion for employers under automatic enrolment legislation to be exempt from the duties in relation to anyone with the new tax protected status from 6 April 2016. It has, however, not proved possible to add the necessary provision to the Finance Act 2016, **which would have allowed the revised provisions to be backdated to 6 April 2016**. We therefore intend to introduce regulations at the earliest opportunity but cannot do so before the Finance Act 2016 becomes law.*

In the interim period, we have obtained agreement from HMRC to provide guidance in the Budget briefing on the steps individuals must take to protect their financial position in respect of their transitional protection rights for their pension savings under HMRC legislation. The Pensions Regulator will mirror this guidance their website. HMRC will also ensure their guidance is appropriately amended so that individuals are aware of the further exception under the new protection."

Until an amendment is made to the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 [2010/772], an employer must automatically enrol or re-enrol an eligible jobholder into the LGPS where that individual holds fixed protection 2016 or individual protection 2016. Until those regulations are in place an individual with fixed protection 2016 must make sure they opt-out of automatic enrolment/re-enrolment to maintain their tax protection. An individual who holds individual protection 2016 will not lose their tax protection if they make further pension savings but any pension savings in excess of their protected lifetime allowance will be subject to a lifetime allowance charge..

The LGPC's automatic enrolment guide will shortly be updated to reflect this position.

Disclosure requirements for deferred members

The LGPC Secretariat have received a number of queries recently regarding the statutory requirements for disclosing information to a member who leaves the LGPS prior to attaining their normal pension age with an entitlement to a deferred benefit.

Preservation of Benefits Regulations 1991

Regulation 27A of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 sets out the information that must be provided by a pension scheme to a scheme member whose pensionable service terminates before he or she attains normal pension age. Specifically paragraphs (1) and (2) of regulation 27A state that a scheme must, in writing, provide such a member with information as to their 'rights and options' in the following circumstances:

> *"(a) as of course to any person as soon as practicable and, in any event, within 2 months after he or his employer has notified the trustees that his pensionable service has terminated; and*
> *(b) to any member or prospective member on request (not being a request made less than 12 months after the last occasion on which such information was furnished to him) as soon as practicable and, in any event, within 2 months after he requests it."*

In the view of the LGPC Secretariat, the requirement to send an individual their 'rights and options' within two months of being informed of the termination of the member's pensionable service does not mean that details of the member's individual benefit entitlement (for example, their annual pension and survivor benefits) also have to be sent to the individual to satisfy regulation 27A. Instead, we take the view that 'rights and options' mean that the individual must be provided with broad information on:

- their 'rights' – i.e. the type of pensions right an early leaver from the scheme may have obtained (e.g. deferred benefit), and
- their 'options' – i.e. the options available for members in taking a right from the scheme (e.g. transferring their benefits),

This information must be supplied automatically within two months of the scheme being informed of the termination of the member's pensionable service, or within two months of a request from the member (where the member has not been provided such information in the previous 12 months).

Please note, there is still a requirement to provide the member with a notification of their deferred benefit (including monetary amounts) upon leaving the scheme, as soon as is practically possible, under regulation 73 (notification of first instance decisions) of the LGPS 2013 Regulations and regulation 71 of the LGPS (Scotland) 2014 Regulations. The notification should include a statement detailing the amount of benefit, how it has been calculated and the right of appeal.

Disclosure Regulations 2013

However, in addition to the above, the requirements of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 must also be followed. Regulation 16 of the

Disclosure Regulations 2013 say that certain information must be provided to deferred (and active and pension credit) members of a non-money purchase scheme on request from the member but only if such information has not been provided to the individual in the previous 12 months. Subject to that proviso, where such a request is made, this must be provided to the individual within two months.

For deferred members, parts 2 and 3 of schedule 5 of the Disclosure Regulations 2013 detail the information that must be provided following a request under regulation 16.

"Part 2 Information for active and deferred members
4 The date on which the member's pensionable service started.
5 A summary of the method for calculating the member's benefits and any survivors' benefits.
6 Details of how any deduction from benefits is calculated.

Part 3 Information for deferred members
7 The date the member's pensionable service ended.
8 The amount of the member's benefits and survivors' benefits payable from the date benefits are payable.
9 The amount of the member's pensionable remuneration on the date pensionable service ended."

Summary

In short, in the view of the LGPC Secretariat, the above requirements mean that if a member leaves the scheme with an entitlement to a deferred benefit there is no requirement to automatically provide the individual with details of their individual benefit entitlement (i.e. including monetary values) within two months of the fund being informed that the member has left, although they do have to provide such members with details of their 'rights and options' (i.e. that they are entitled to a deferred benefit and what their options in respect of that deferred benefit are, including any right to a transfer value). However, there is a requirement to provide the individual with details of their deferred benefit entitlement (including monetary values) under the LGPS regulations and this must be done as soon as is practically possible. In addition, if a deferred member requests a statement of their benefit entitlement (including monetary values), this must be provided to the individual within two months of that request being made (so long as the individual has not already received that information in the previous 12 months).

Members leaving the LGPS prior to NPA *without* an entitlement to a deferred benefit

For completeness, the requirements in respect of early leavers who leave *without* an entitlement to a deferred benefit (i.e. those who leave with an entitlement to a refund, having had more than three months' but less than two years' membership) are detailed on page 49 and 50 of the Freedom and Choice guide

Contacts for NHS Pensions

In February 2016, NHS Pensions appointed a Stakeholder Engagement Team to improve their relationships with both internal and external stakeholders. The team comprises a number of stakeholder engagement managers, with Jonathan Leach (jonathan.leach1@nhs.net), responsible for engaging with local government. Bulletin 151 provides further details.

NHS Pensions would welcome all feedback from local government to allow them to improve the service they provide.

Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016 [SI 2016/946] and DCLG guidance on preparing and maintaining an investment strategy statement

On 23 September the above regulations were laid before parliament effective from 1 November 2016. The regulations revoke and replace the LGPS (Management and Investment of Funds) Regulations 2009 (with some transitional provisions). The regulations facilitate the pooling of investment funds and introduce:

- A requirement to publish an investment strategy no later than 1 April 2017 in accordance with guidance issued by the Secretary of State.
- A power for the Secretary of State to intervene where an authority fails to comply with its statutory obligations as regards its pension fund or were it fails to act in accordance with guidance.

On 15 September DCLG published it's guidance to assist administering authorities in the formulation, publication and maintenance of their Investment Strategy Statement (ISS). The new ISS is required by regulation 7 of the LGPS (Management and Investment of Funds) Regulations 2016. An administering authority's duty to prepare, maintain and review their funding strategy statement under Regulation 58 of the LGPS (2013) Regulations is unaffected.

Earlier this year, an e-petition was set up on the Government website in response to the consultation on the new investment regulations for the LGPS in England and Wales, which was underway at the time. The e-petition set out concerns about:

- the proposed Government intervention power in scheme investments,
- the requirement for an improved capacity for investment in infrastructure, and
- ensuring that investments be made in the interests of scheme members.

As the e-petition succeeded in getting over 100,000 signatures, the Government granted a debate on the subject and this debate was held on 24 October 2016.

On 25 October, MPs from the Labour Party submitted an Early Day Motion (EDM) praying that the LGPS (Management and Investment of Funds) Regulations 2016 [SI 2016/946] be annulled. It is understood that the Early Day Motion has been submitted because of similar concerns to those that gave rise to the e-petition (as detailed above). Historically, it is very rare that an EDM to annul a statutory instrument is successful. Albeit the EDM has so far, attracted 85 signatures.

Education

Government publish response to college insolvency consultation

Following the Government consultation undertaken earlier this year to introduce insolvency provisions for further education and sixth form colleges in England (see articles in bulletins 148 and 149), the Department for Education has published its formal response.

The response notes that the LGPS was a common issue raised in responses and the Government respond to a number of the concerns raised about the potential impacts on the LGPS on pages 27 and 28 of the document. In particular, the Government's views are as follows:

- Following the area review process, the risk of college insolvency will be very low and the special administration regime (SAR) will be a tool of last resort

- However, in the event of a college insolvency event, most cases would not result in the crystallisation of a pensions deficit as there would be a merger with, or transfer to, another provider.
- Pension funds should nevertheless assess the strength of each employer's covenant.
- Providing guarantees from Government for college liabilities would not be appropriate as colleges do not form part of the public sector. The comparison with academies, for whom the Government does provide a limited guarantee, is therefore not fitting because academies are public bodies.
- During an insolvency event, the Government would consider whether ongoing pension contributions should form part of the costs of administration to be funded by Government.

The Government will now take forward their plans via primary legislation when parliamentary time permits.

FE and SF college area reviews

In bulletin 149 we mentioned the need for engagement between LGPS funds and colleges during the area review process and signposted information available on the GOV.UK and Association of Colleges websites.

We would also like to draw funds attention to an information note produced by DCLG to support the area review process; this document sets out information that colleges need to think about, in relation to pension issues, during the review process. It also provides information on the ways to manage the asset and liability position of colleges looking to change their current position e.g. merge with another college or close.

Government drops plan to convert all schools to academy status

It was reported on 27 October 2016 that the Government had dropped its bill to require all schools in England to convert to academy status by 2022.

The Government are still of the view that schools would benefit from the freedom and autonomy that academy status brings, but they will now focus their efforts on encouraging schools to convert voluntarily. No new primary legislation is needed for this purpose.

Scheme Advisory Board (SAB) (England & Wales) – implications for the LGPS of a significant increase in academy employers

The Scheme Advisory Board has commissioned PWC to investigate the implications for the LGPS of a significant increase in academy employers and to develop options to manage to those implications. They will present their findings to the SAB in March 2017 in the form a comprehensive report covering the administrative, actuarial, legal and investment issues relating to the implications identified and options proposed.

Between now and the end of the year PWC will be looking to engage with stakeholders, including administering authorities, to gain their input. As part of their engagement PWC held a voluntary session at the Pensions Managers Conference in Torquay, providing an ideal opportunity for administering authorities to contribute.

Exit payments

Exit payment recovery – delay in implementation

The Small Business, Enterprise and Employment Act 2015 makes provision for the introduction of the recovery of public sector exit payments in certain situations.

Under the 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.

Earlier this year, the LGPC Secretariat responded to a Government consultation on draft regulations covering the recovery of exit payments. At the time we submitted our response, it was expected that the reforms would take effect from April 2016. However, the regulations have since been delayed a number of times. We understand the Government hope that the regulations will pass through both Houses of Parliament before the end of the year, coming into force early in 2017. The regulations are subject to the affirmative process and must be passed by resolutions of both Houses before they can become law.

Exit payment cap

The introduction of the exit payment cap has been subject to delays following the Enterprise Act 2016 gaining Royal Assent in May. When introduced, the cap will restrict the total exit payments made in respect of an individual's exit from a public sector employment to a total of £95k. LGPS strain payments resulting from redundancy pensions being put into payment will be included in the cap. Before the cap becomes law, there will be a further consultation on the regulations that will govern the cap. We understand the government hope to commence this consultation in early 2017, with a view to the exit payment cap becoming effective soon after.

We also await Treasury directions which will provide 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 an authority may be able to consider a waiver rather than a discretion).

The exit payment cap regulations are subject to the affirmative process and must be passed by resolutions of both Houses of Parliament before they can become law.

Exit payment further reform consultation

In September, the government responded to the further consultation on exit payments confirming that it intends to proceed with plans for further reform.

Summary of proposals

- a maximum tariff for calculating exit payments of three weeks' pay per year of service. Employers could apply tariff rates below these limits
- a ceiling of 15 months on the maximum number of months' salary that can be paid
- a maximum salary on which an exit payment can be based. As a starting point the government will expect this to align with the existing NHS scheme salary limit of £80,000
- a taper on the amount of lump sum compensation an individual is entitled to receive as they get closer to their normal pension age

- action to limit or end employer-funded early access to pension within exit packages. As part of an overall package the government will consider proposals appropriate to each workforce, including action to:

    - cap the amount of employer funded pension 'tops ups' to no more than the amount of the redundancy lump sum to which that individual would otherwise be entitled
    - remove the ability of employers to make such top ups altogether, or offer greater flexibility to employers as to the circumstances in which they are available
    - increase the minimum age at which an employee is able to receive an employer funded pension top up, so that this minimum age is closer to or otherwise linked more closely with the individual's normal pension age in the scheme in which they are currently accruing pension benefits or to which they would be entitled to belong if they were accruing benefits

Who is in scope?

- current and future public sector employees
- the major workforces covered by existing statutory compensation schemes and other contractual exit arrangements are expected to begin reforms immediately. These are the: Civil Service, NHS, Local Government, Teachers, Police, Firefighters and (taking account of the unique nature of the occupation) Armed Forces
- those covered by any new compensation schemes set up for public sector employees
- in other areas, and for smaller public sector workforces, the government would encourage reforms consistent with the principles set out in this response

Timing

The response confirms that the government expects departments to produce packages consistent with the framework above and consult on these where appropriate. The government will expect departments to produce these proposals within three months of the publication of the response (i.e. by 26 December 2016) and to have completed negotiations and made the necessary amendments to exit arrangements within nine months of the publication of the government response (i.e. by 26 June 2017).

A working group of the LGPS advisory board is considering whether it wishes to make a recommendation to DCLG on the reforms it wishes to see made.

End of contracting out

Countdown bulletin 20 (October 2016)

HMRC contracting-out countdown bulletin 20 was published in October 2016.
In the bulletin, HMRC confirm that they intend to automatically close all open periods of contracted out employment held on their records (i.e. for active members) in December 2016. HMRC will then be contacting pension schemes with their active member output between January 2017 and March 2017 to allow schemes to reconcile their active member records. Administering Authorities are therefore urged to send any reconciliation queries they may have regarding their pensioner or deferred data, to HMRC as soon as possible.
Other topics covered in the bulletin include:

- GMP checker error messages
- SRS query template formatting
- CRM team update
- Planned HMRC consultation on technical amendments

- Pensions forum survey results

Reminder

On 10 February 2016, the LGPC secretariat circulated a letter on behalf of HM Treasury to all LGPS pension funds outlining their recommended approach to the contracted-out reconciliation exercise, including in respect of overpayments and tolerances. If your fund has decided not to follow any of the recommendations and you have not done so already, please email Jayne Wiberg at jayne.wiberg@local.gov.uk providing the following information, which will be duly forwarded to HM Treasury as per their request:

- the recommendation(s) which will not be followed
- what alternative approach is being taken, and
- the reasons for taking the alternative approach.

Increases to Public Service Pensions for those reaching SPa beyond 5 April 2016

On 5 April 2016 HMT issued a:

- revised Ministerial Direction under Section 59A of the Social Security Pensions Act 1975, effective on and after 6 April 2016, and
- note covering 'Guidance on the Operation of Pensions Increase Legislation for Public Service Pension Schemes' (replacing that previously issued in 2001)

The revised Direction and Note affects the payment of pensions to relevant members on and after 6 April 2016. Essentially it provides that where the individual reaches SPa after 5 April 2016 and prior to 6 December 2018, pensions increase will be applied to the Guaranteed Minimum Pension (GMP).

Prior to the issue of the revised Direction on 5 April 2016, the Secretariat identified a number of areas where the Direction appeared lacking, and since that date has worked with HM Treasury to identify and agree the shortcomings. Following on from this work, HM Treasury have confirmed that a new Direction will be issued prior to January 2017, with an effective date of 6 April 2016. This latest Direction will affect increases to public service pensions for a variety of individuals (including in a couple of instances, those who reach SPa beyond 5 December 2018).

Government consultation covering the increases to Public Service Pensions for those reaching SPa beyond 5 December 2018

On 28 November, HM Treasury commenced a consultation that proposes options for the indexation of GMP elements for members of public service pension schemes who will reach SPA on and after 6 December 2018.

On 6 April 2016 the government introduced the new State Pension, designed to radically simplify pension provision, whilst ensuring that pensioners have security in retirement. This simplification removed layers of complexity from the system, harmonised the rate of National Insurance contributions paid by employees and employers and was intended to promote private saving by giving people a better understanding of the amount of support they can expect to receive from the State when they reach State Pension age.

Among the layers of complexity that are being removed is the Additional State Pension (AP), an earnings related element of the old state system.

The removal of AP has led to the need to consider how, public service pension payments for a specific group of members should be increased in the future. Those who were in 'contracted-out' employment during the period 6 April 1978 to 5 April 1997 (inclusive), who accrued a guaranteed minimum pension (GMP) from their public service pension scheme and who will reach SPa after 5 December 2018, will be affected.

The consultation aims to consider two issues by putting forward a number of solutions. The two issues that are considered are:

1. How best to avoid the unequal payments to men and women in public service schemes that result from the abolition of AP? and

2. Whether, following the introduction of the new State Pension, public service pension schemes should, for someone who reaches SPa after 5 December 2018, provide full indexation on any GMP the public service pension scheme pays?

The consultation document is on the Drafts and Consultations page of www.lgpsregs.org and the consultation period closes on 20 February 2017.

HMRC

HMRC pension schemes newsletter 82 (November 2016)

HMRC published issue 82 of their pension schemes newsletter, covering:

- Bridging pensions
- Registration statistics
- Sale of lifetime annuities
- Pension flexibility statistics
- Relief at source
- Overseas pension schemes - GOV.UK content
- Lifetime allowance
- Annual allowance

In particular, as part of their ongoing work they have created a new overseas pension schemes page on their GOV.UK website. This new page has lots of useful information and links to help overseas scheme managers and members of overseas pension schemes keep up to date with the UK pension tax rules.

In addition, it provides some clarification on the date a member is protected for lifetime allowance purposes.

The Finance Act 2016

The Finance Act 2016 received royal assent on 15 September 2016. The majority of the changes do not impact on the administration of the LGPS with the exception of Fixed Protection 2016, Individual Protection 2016 and Trivial Commutation Lump Sums. The Secretariat is currently in the processing of updating it’s guidance (where relevant) to include these changes.

Consultation on draft provision of information (amendment) regulations 2016

On 7 November, HMRC commenced a technical consultation on draft regulations, which would amend the Registered Pension Schemes (Provision of Information) Regulations 2006.

The draft Registered Pension Schemes (Provision of Information) (Amendment No. 2) Regulations 2016 propose changes to the information that must be provided where a scheme administrator makes payment of a lump sum death benefit to a trust (who is not a bare trustee[1]).

Specifically, the regulations propose that when a lump sum death benefit is paid to a trust:

- the scheme administrator must provide prescribed information to the trustee on the amount of lump sum death benefit and tax paid by the scheme administrator, and
- trustees must pass on the same information if they then use the lump sum death benefit to make a payment to an individual beneficiary of the trust.

The new requirements are to ensure the trust beneficiary has the information they need in order to claim a refund of the excess tax paid by the scheme administrator over and above the tax at their marginal rate.

Comments should be sent to HMRC by 5 December 2016.

The Pensions Regulator

TPR quick guide on record keeping

TPR have published a short guide on record keeping for trustees and managers of occupational pension schemes. The guide comes off the back of a survey that TPR undertook on record keeping within occupational schemes which showed that there was little recent improvement in record keeping standards.

In future, TPR will be asking trustees and scheme managers to report on their record keeping work in TPR's annual scheme return.

Further educational materials will be published in 2017.

TPR self-assessment tool for public service pension schemes

The Pensions Regulator (TPR) has published a self-assessment tool for those involved in running public service pension schemes to assess how they are getting on with both meeting their legal requirements and complying with the guidance set out in the Regulator's code of practice number 14.

The tool sets out some processes, tools and actions TPR expect to see in a well-run scheme and, upon completion, the tool provides users with indicative risk ratings in certain key areas.

If you would like to give feedback on the tool, please email TPR at PSPSR@tpr.gov.uk.

Ssurvey of public service pension schemes

[1] 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.

Following last year's survey of the governance and administration of public service pension schemes, TPR commenced its 2016 survey during November. We understand that the survey built on the content of last year's survey, but with a greater emphasis on record-keeping, internal controls and communications.

The survey was directed to the main contact details TPR hold for each scheme manager (rather than the scheme return contacts), and TPR also wrote to pension board chairs to advise them of the survey.

Publication of first DB pensions landscape report

The Pensions Regulator (TPR) have published the first of what is planned to be an annual report on the defined benefits pensions landscape, covering all private DB pension schemes registered with TPR.

Whilst the report does not currently cover public service defined benefit schemes like the LGPS, it is understood that the data contained in the report may be updated as comparable data from public service schemes becomes available.

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

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.

At 28 October 2016, the funds listed below have yet to complete the registration process for the Database, or they are now registered but have not yet uploaded their membership data to the system.

England and Wales

LB Brent Pension Fund
Buckinghamshire Pension Fund

City of Westminster Pension Fund
LB Croydon Pension Fund
LB Enfield Pension Fund
LB Hackney Pension Fund
LB Hammersmith and Fulham Pension Fund
LB Hillingdon Pension Fund
Isle of Wight Pension Fund
LB Islington Pension Fund
RB Kensington and Chelsea Pension Fund
RB Kingston upon Thames Pension Fund
LB Lewisham Pension Fund
Nottinghamshire Pension Fund
LB Redbridge Pension Fund
LB Southwark Pension Fund
Surrey Pension Fund
LB Sutton Pension Fund
LB Tower Hamlets Pension Fund
LB Waltham Forest Pension Fund
Worcestershire Pension Fund
Scotland
Falkirk Pension Fund
Lothian Pension Fund
Orkney Pension Fund
Scottish Borders Pension Fund
Shetland Islands Pension Fund
Strathclyde Pension Fund
Tayside Pension Fund

If you are an active user of the LGPS Database, you may find it necessary to contact the above funds directly when dealing with death cases in order to satisfy yourself that you are not paying a duplicate death grant in error.

The principle of data sharing across the LGPS only works effectively if all LGPS pension funds participate and we urge all the remaining funds to submit their data to the system as soon as possible.

LGPC Communications

Updates to technical guides and associated forms

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

- 24/10/2016 - Version 1.4 of the revaluation guide has been updated to include an example covering an uplift from Tier 3 to Tier 2 following an 18 months review.

- 10/10/2016 - Version 3.0 Transfer Declaration Forms and advice confirmation form. The advice confirmation form has been updated to reflect the changes brought about by the Bank of England and Financial Service Act 2016, by including an 'appointed representative' within the definition of authorized independent advisor.

Updates to the full employee guides

- 19/10/2016 - Freedom & Choice for Scheme members has been updated to reflect the changes brought about by the Bank of England and Financial Service Act 2016, by including an 'appointed representative' within the definition of authorized independent advisor.

Communications Working Group

The communications working group met on 2 November 2016. Minutes from the meeting are available on the Communications resources page of www.lgpsregs.org, along with the communication work plan for 2016/17. Items of discussion included the national member website, annual benefit statements and AVCs in relation to Freedom and Choice.

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 – Voluntary Scheme Pays

Hi Kelly

Please can you put the following email on the agenda for discussion at technical group:

We request that members of the National Technical Group have the following discussion concerning an Administering Authority's discretion to voluntarily agree to pay a scheme pays deduction in respect of those individuals who do not meet the criteria for mandatory scheme pays. As far as we (LGPC) are aware, LGPS administering authorities do not currently agree to a voluntary scheme pays deduction. However, with the changes brought about by the Finance (No.2) Act 2015, which inserted the tapered annual allowance, this approach may need to be reconsidered and this email sets out the background, legislative impact and suggest possible way forwards.

Other Public Service Schemes

Having informally consulted administrators from the other public service schemes it would appear that there is no single consistent approach, ranging from a scheme that agrees to voluntary scheme pays with no restriction, schemes that agree to voluntary scheme pays in restricted circumstances and schemes that do not agree to voluntary scheme pays.

Background (Finance (No.2) Act 2015 section 228ZB)

From 6 April 2016, individuals with income for a tax year above £150,000 have their annual allowance for that tax year reduced on a tapered basis (a 'reduced annual allowance'). The annual allowance is reduced by £1 for every £2 of income above £150,000, subject to a minimum reduced annual allowance of £10,000. Where the reduction would otherwise take an individual's tapered annual allowance below £10,000 for the tax year, their reduced annual allowance for that year is set at £10,000.

Mandatory Scheme Pays (Sections 237A-237E Finance Act 2004 and The Registered Pension Schemes (Notice of Joint Liability for the Annual Allowance Charge) Regulations 2011 [SI 2011/1793])

Where a member has an annual allowance charge and certain conditions are met, they can give the administering authority notice that they want the LGPS to pay some or all of their annual allowance charge liability on their behalf to HMRC in return for an appropriate reduction in their pension benefits. If the conditions are met then the scheme administrator becomes jointly and severally liable (with the member) for the annual allowance charge and must pay this to HMRC within a given timescale. They must also make a consequential adjustment to the member's pension savings or their benefits under the pension scheme.

An individual can elect to notify their scheme administrator that they require the scheme to pay some or all of their annual allowance charge liability in return for an appropriate reduction in their pension benefits in the scheme if the following conditions are met:

- their annual allowance charge liability for the tax year has exceeded £2,000 (in the LGPS) and
- their pension input amount for the pension scheme for the same tax year has exceeded the annual allowance amount in section 228 Finance Act 2004 (for example, for tax year 2016-17, this means exceeded £40,000 (in the LGPS) - i.e. the tapered annual allowance and/or money purchase annual allowance is ignored).

Voluntary Scheme Pays (regulation 2 of the Registered Pension Schemes (Modification of Scheme Rules) Regulations 2011 [SI 2011/1791])

Where a member does not meet the conditions for mandatory scheme pays to apply or they do not make their nomination in time then a scheme may agree to pay the member's annual allowance charge on a voluntary basis. Unlike with mandatory scheme pays the scheme would not then have joint and several liability for the tax charge so the liability would remain with the member. The payment made by the scheme on a voluntary basis is paid to the member's normal self-assessment deadline. Where the scheme does not reduce the member's benefits in the scheme to take account of the tax the scheme has paid, then the member may also become liable to an unauthorised payments charge on the amount of their liability that the scheme has paid on their behalf.

LGPS – Mandatory Scheme Pays

Regulation 86(1) of the Local Government Pension Scheme Regulations 2013 and regulation 84(1) of the Local Government Pension Scheme (Scotland) Regulations 2014, prescribes that the Administering Authority must apply mandatory scheme pays "*where a member gives notice to the appropriate administering authority of joint and several liability under section 237B (liability of scheme administrator) of the Finance Act 2004 in respect of the member's annual allowance charge*".

Regulation 86(2) of the Local Government Pension Scheme Regulations 2013 prescribes that *"Where the joint liability amount specified in the notice is met by the pension fund, the appropriate administering authority must reduce the value of the member's rights accrued under the Scheme in accordance with actuarial guidance issued by the Secretary of State".*

LGPS – Voluntary Scheme Pays

The LGPS Regulations England & Wales or Scotland, do not give any specific power to apply voluntary scheme pays. However, whilst administering authorities can only take action with regards to that which they have specific power, there is a specific power in regulation 2 of the Registered Pension Schemes (Modification of Scheme Rules) Regulations 2011 [SI 2011/1791], which administering authorities can rely upon, to agree to voluntary scheme pays and, where they do so, to make a corresponding deduction to benefits to account for the tax they have paid on the member's behalf, which states:

2 Modification of scheme rules
(1)This regulation applies where a scheme administrator of a registered pension scheme ("the scheme") satisfies all or part of a member's liability to the annual allowance charge, either on a voluntary basis or pursuant to a liability under section 237B of the Finance Act 2004.
(2)The rules of the scheme shall be modified so as to allow for a consequential adjustment to be made to the entitlement of the member to benefits under the scheme on a basis that is just and reasonable having regard to normal actuarial practice. This paragraph is subject to paragraph (3).
(3)Any modification to the scheme's rules made by virtue of paragraph (2) is subject to section 159 of the Pension Schemes Act 1993 or section 155 of the Pension Schemes (Northern Ireland) Act 1993 (inalienability of guaranteed minimum pension etc).

In addition, regulation 4A of the Pension Schemes (Reduction in Pension Rates) Regulations 2006 [SI 2006/138] is also relevant and this states:

4A Reduction of pension - voluntary satisfaction of liability
The circumstances are that the pension is reduced by reason of the satisfaction by the scheme administrator on a voluntary basis of all or part of a liability of a member arising under section 227(1) of the Finance Act 2004 (annual allowance charge).

So, the net result is that we believe that we do not need a regulatory change for an administering authority to agree to voluntary scheme pays as, administering authorities already have the statutory power to agree to voluntary scheme pays and to make a corresponding deduction to benefits to account for the tax we have voluntarily paid on the member's behalf.

However, both regulation 2 of the Registered Pension Schemes (Modification of Scheme Rules) Regulations 2011 [SI 2011/1791] and regulation 4A of the Pension Schemes (Reduction in Pension Rates) Regulations 2006 [SI 2006/138] refer to "the pensions administrator". We believe, due to the provisions in the Registered Pension Schemes (Splitting of Schemes) Regulations 2006 [SI 2006/569], that the references to "the pensions administrator" should be read as references to "the sub-scheme pensions administrator" i.e. the administering authority. This leaves both Schemes in a somewhat difficult position that, potentially, each administering authority could independently take different approaches but, as soon as one agrees a voluntary scheme pays, the Scheme rules (for all administering authorities) are deemed to have been amended (meaning that it could be argued that all other administering authorities would then find it difficult to refuse any voluntary scheme pays request). Clearly this will lead to inconsistency, confusion and cause difficulties in administration across administering authorities.

Possible action

We would be grateful if the National Technical Group could consider the content of this email and provide their views on how LGPS Schemes and their respective administering authorities should move forward. It would be preferable if we could agree a national approach that we could then seek to insert within our regulations. Below are 3 suggested solutions, though members of the group may have alternative suggestions to be considered:

The Scheme and their respective administering authorities may wish to nationally agree to:

a) stick to the current position of only applying mandatory scheme pays (we believe this to be the simplest approach), or
b) agree to voluntary scheme pays without any de minimis value (i.e. unrestricted), or
c) agree to voluntary scheme pays but set a de minimis amount i.e. only agree to voluntary scheme pays where the tax bill due in respect of the Pension Input Amount in the Fund is for example £1,000 or more (or any other value deemed appropriate).

I look forward to our discussion on 9 September 2016.