

**Local Government Pensions Committee
Technical Group**

**Minutes of the meeting held on 16 June 2017 at
the offices of AON Hewitt
Leadenhall Building, 122 Leadenhall Street, London,
EC3V 4AN**

LGPC Technical Group

Present

Kev Gerard (Chair)	South Wales
Debbie Sharp	Shrewsbury
Lynne Miller	South Wales
Ian Howe	East Midlands
Zena Kee	Northern Ireland
Richard Smyth	London
Rachel Abbey	South West
Neil Mason	London
Gary Chapman	North East
Erin Savage	Scotland
Gary McLellan	East Midlands
Kim Linge	Scotland
Karen Gibson	South West
John Smith	South East
Alan South	South West
Helen Currie	North East
Kelly Scotford	Secretary

In Attendance

Paul Kateley	Heywood
Nikki Cooper	Civica
Dan Kanaris	AON
Catherine Carruthers	Capita
Melanie Stephenson	Barnett Waddingham
Jon Slater	Equiniti
Justine Davies	Price Waterhouse Coopers
Ian Colvin	Hymans
Nigel Thomas	Mercer

LGA

Jayne Wiberg

DCLG

Not present

1. Apologies

Janet Caiazzo	Shrewsbury
Louise Savage	South East
Craig Martin	Environment Agency

2. LGPC Update

See attached update – Appendix A

Advert for the Pensions Adviser (Training) is being extended to 28th June with interviews on 12th July.

3. Taxation

Background:

LGPS Funds are being asked by members (usually high earners) to provide greater information on pensions taxation especially in regards to whether a member should or shouldn't transfer, when they should move into 50:50, when is the optimal time to retire so not to trigger LTA or AA.

Feedback discussion:

Most funds deal directly with their senior members.

Some funds direct members to their actuaries to provide FCA regulated independent financial advice to the individual members (cost should be met by the member) on the basis of a contract between the actuary and the member.

The group felt that Independent Financial Advisors don't understand the LGPS therefore the group felt that funds did not have choice but for funds to provide the information with disclaimers.

It was noted that funds need to take care not to provide advice.

LGPC feedback:

The Secretariat confirmed that it can only provide prescription on what a fund must do (which is already included within the AA guide) not what a fund may choose to do above and beyond the legislation.

However if Funds are experiencing pressure from High Earners (Treasurers etc) to provide information to which they are not authorised to do so by legislation, the Secretariat is happy to explore how they may assist, one such approach could be to contact SAB to ask them to write to ALACE (the Association of Local Authority Chief Executives and Senior Managers) to ask them not to approach LGPS Funds for such information.

No ability within the LGPS regulations to charge for this information.

Funds who do wish to provide information in excess of that under which they are prescribed within law, may wish to seriously think about the following. If funds provide information (seemingly to be helpful) that they are not legally authorised to do so, and that information proves to be incorrect, officers may be liable (see *Peter Burgess and Lynn Burgess v Basia Lejonvarn*).

Outcome

POGs to review whether the Secretariat's offer to approach ALACE should be pursued. The Chairman to inform the Secretariat accordingly.

4. MAT's and SAT's**Background:**

Where a single academy trust (AT) is part of a multi academy trust (MAT) can these be considered separately for pooling as ATs are not recognised as a legal entity?

How does this work where AT's are within a MAT which isn't within the same location?

LGPC feedback:

The Secretariat confirmed that:

- An academy trust (AT) is the scheme employer where that academy does not form part of a multi-academy trust (MAT), or
- Where there is a MAT the MAT is the scheme employer (see information page 3 of the DoE/LGA document dated April 2017)

The Secretariat agrees with the legal view provided to Neil Mason that where the AT forms part of a MAT, then the employer is the MAT and the AT is not a recognised legal entity.

When setting contribution rates it is acceptable practice to treat the academies within the MAT either separately or all together (see information page 3 of the DoE/LGA document dated April 2017). There are pros and cons to both practices (again, see information page 3 of the DoE/LGA document dated April 2017).

Sometimes the MAT can have an AT within different LGPS Funds and may look to pool all of its AT to a single contribution rate. This is possible (see information page 5 of the DoE/LGA document dated April 2017). However, where the ATs within the MAT fall across different LGPS Funds both sets of actuaries would need to agree. Alternatively, the AT could look to move administering authorities (see information page 4 of the DoE/LGA document dated April 2017).

5. Pension Credit Member Commutation

Background:

See Appendix B

LGPC feedback:

The Secretariat believes that there is an error within both regulation 33 and the relevant GAD guidance (please see below for explanation). DCLG have been advised by LGA . If funds believe there are any other errors within the regulations or GAD guidance we encourage funds to contact the Secretariat at query.lgps@local.gov.uk

LGPS 2013 – Regulation 33(4)(a) – Election for lump sum instead of pension: I believe this is not restrictive enough as it allows a Pension Credit member to commute if the Pension Debit member's pension is in payment but the debit member had not commuted any pension for lump sum. However, under the Finance Act 2004 a Pension Credit member cannot commute pension for lump sum if, at the time the pension credit was created, the member's ex-spouse or former civil partner's pension that was being shared was in payment - see <http://www.hmrc.gov.uk/manuals/ptmanual/ptm063230.htm> which says:

Payment of a pension commencement lump sum where there is a disqualifying pension credit

Paragraphs 2(1) to (5), 3(2), (5)(b) and (8)(b) Schedule 29 Finance Act 2004

If all or part of the benefit entitlement from a registered pension scheme comes from a 'disqualifying pension credit', those pension credit rights are not included when calculating the maximum applicable amount of pension commencement lump sum that can be paid.

As the permitted maximum is the lower of the applicable amount and the available portion of the member's lump sum allowance then, where all the member's rights under an arrangement relate to a disqualifying pension credit, the permitted maximum is nil (as the applicable amount is nil). So a lump sum cannot be treated for tax purposes as a pension commencement lump sum in such cases. This will not change no matter how high the available portion of the member's lump sum allowance is.

Where only part of the arising benefit entitlement represents a disqualifying pension credit the applicable amount is discounted proportionately.

Definition of a disqualifying pension credit

Paragraph 2(3) and (4) Schedule 29 Finance Act 2004

A pension credit is a disqualifying pension credit if at the time the pension credit was created, the member's ex-spouse or former civil partner's pension that was being shared with the member was actually in payment.

If the pension credit arose from the member's ex-spouse or former civil partner's benefit that had not yet come into payment at that time, it is not a disqualifying pension credit. The position is not affected where the member's ex-spouse's or former civil partner's benefits come into payment after the creation of that pension credit.

Reason for exclusion

The purpose behind this exclusion is to ensure that where a pension in payment is split through a pension sharing order, the person who is provided with the pension credit will not be able to take a tax-free lump sum from the benefit rights that are acquired. This is on the basis that when the member's ex-spouse or former civil partner's benefits first came into payment, that ex-spouse or former civil partner will have taken (or had the opportunity to take) a tax-free lump sum in respect of the benefits, so it would not be appropriate to allow a lump sum to be taken free of income tax from the pension credit rights. This applies regardless.

6. LGPS / SHPS

Background

A Housing Association offers new employees an option to join the LGPS or Social Housing Pension Scheme (SHPS) which is also an auto enrolment scheme. However once the decision is made by the employee, the employee is unable to switch from one scheme to another, is this correct?

Feedback:

Yes, as the housing association can specify this restriction within the Admission Agreement .

Paragraph 122 of the Auto Enrolment guide confirms this position.

7. DWP Update

Any feedback on tell us once to be sent to Con at LGPC.

8. PWC 'Options for Academies in the LGPS' commissioned by the Scheme Advisory Board – PWC feedback

PWC undertook a fact finding exercise on Academies that included 7 funds, actuaries, DFE and payroll providers. Each party provided feedback on their experiences. Various issues were identified including guidance and process improvements..

The SAB published the report on 31 May 2017 which will enable the Board to engage with key stakeholders including pension funds, actuarial firms and academy trusts as appropriate on the issues raised by those interviewed by PwC.

The Board will continue to gather relevant evidence and then develop specific proposals for change before submitting its recommendations to Ministers for their consideration..

9. Technical Group Meeting Start Time

Start time to remain at 11am

10. Minutes of previous meeting held on 9 December 2016

Agreed all accurate.

11. Matters arising

Freedom and choice AVC working party - this has been indefinitely put on hold

12. AOB

12.1 Refunds paid in respect of deceased members

Appendix C gives full details.

Outcome

The Group agreed that a:

- Refund of contributions, should in the event where the member dies prior to payment, be paid in the form of a DBLSDB, and
- Non-life-assurance AVC pot attached to a frozen refund, should in the event where the member dies prior to payment, be paid in the form of an UFLSDB

Given that both the 2008 and 2014 LGPS Regulations are silent on the above, the Secretariat will request a change to be made to the LGPS regulations. Clearly any changes to the LGPS regulations will take time, and LGPS Funds may wish to adopt the above approach (and thus rely on section 168 of the Finance Act 2004) when making such payments prior to any change in the regulations.

12.2 Contracted-out reconciliation – Pensioner overpayments guidance

Thank you to Jayne for the hard work on the GMP reconciliation documentation.

12.3 DCLG

The group noted that DCLG failed to attend the Technical group meeting.

The chairman to contact Jeremy Hughes to make sure someone from DCLG attends going forward.

12.4 Auto Enrolment – Transitional Delay

Scenario

- An employer upon reaching their staging day issues an Eligible job (EJ) holder with a transitional delay notification,
- Following the end of transitional delay, the employer assesses the individual and discovers they are a non-eligible job holder (NEJ), accordingly the individual is not auto enrolled into the scheme,
- Subsequently, the NEJ becomes an EJ, at which point, the EJ is auto enrolled into the scheme and according to sections 3 and 30 of the Pensions Act 2008 and TPR guidance, auto enrolment is back dated to 1 October 2017 (i.e. day after the end of transitional delay)

The above will clearly be an issue for both employers and employees. The secretariat will investigate this issue further and update colleagues in our monthly bulletin in due course.

12.5 TUPE and 12 months transfer in window

The 2008 Admin Regs included regulations 16(6) and (7) which said that a person who TUPE transfers from one LGPS employment into another LGPS employment is treated as having continuous active membership (thus meaning that benefits would be automatically aggregated without the option of the member retaining separate benefits). Under this

system, some took the view that as members were treated as being in continuous employment there would not be a new 12 month window in which members would have the option of aggregating their benefits.

However, under the 2013 Regulations there is no such equivalent and so where an LGPS member is TUPE transferred into another LGPS employment, it is to be treated as a new LGPS employment with the member being given a fresh 12 months to elect to transfer in any benefits.

13. Date and venue of next meeting

15th September 2017 at Hymans Robertson, 1 London Wall, London, EC2Y 5EA

