

**Local Government Pensions Committee
Technical Group**

**Minutes of the meeting held on 15 September 2017 at
the offices of Hymans Robertson
One London Wall, London, EC2Y 5EA**

LGPC Technical Group

Present

Kev Gerard (Chair)	South Wales
Lynne Miller	South Wales
Ian Howe	East Midlands
Zena Kee	Northern Ireland
Richard Smyth	London
Rachel Abbey	Southern
Gary Chapman	North East
Erin Savage	Scotland
Gary McLellan	East Midlands
Kim Linge	Scotland
Karen Gibson	South West
Alan South	South West
Heather Currie	North East
Claire Lewis-Smith	Southern
Kelly Scotford	Secretary

In Attendance

Nikki Cooper	Civica
Catherine Pearce	AON
Catherine Carruthers	Capita
Anne Marie Allen	Barnett Waddingham
Jon Slater	Equiniti
Justine Davies	Price Waterhouse Coopers
Ian Colvin	Hymans

LGA

Jayne Wiberg

DCLG

Not present

1. Apologies

Janet Caiazzo	Shrewsbury
Louise Savage	South East
Craig Martin	Environment Agency
Paul Kateley	Heywood
Jonathan Perera	Mercer
Debbie Sharp	Shrewsbury
John Smith	South East
Neil Mason	London

2. LGPC Update

See attached update – Appendix A

Additional items raised by LGPC:

a) The Police, Fire and Crime Commissioner for Essex (Fire and Rescue Authority) Order 2017 [SI 2017/864]

The above regulations were laid before Parliament on 8 September 2017 and come into force on 1 October 2017. Regulation 16 amends regulation 64 (Special circumstances where revised actuarial valuations and certificates must be obtained)

of the Local Government Pension Scheme Regulations 2013. New regulations 64(8A) and 64(8B) have been inserted to confirm that no exit payment is due where the exiting employer is the Essex Fire Authority and the liabilities of the fund in respect of the benefits due to the Essex Fire Authority's current and former employees (or those of any predecessor authority) have been or are to be transferred to the Essex Police, Fire and Crime Commissioner Fire and Rescue Authority under a transfer scheme made under section 4C of the Fire and Rescue Service Act 2004.

b) MiFIDII - Opt up process – update

On 13 September 2017, the Secretariat issued an email to all LGPS Funds providing an update covering MiFIDII and the opt-up process. The email covered: the consequences of not opting up; using the CIPFA Public Sector link to assist with the opt-up process; noted that a number of funds have yet to respond to the email of 30 August 2017 and if no responses are received by 2 October 2017 the Board secretariat will seek assurance via other routes including political (e.g. chairs of pension committees) in order to ensure that all LGPS funds have had the opportunity to opt up before the 3rd January deadline; and the opt up process for advisors (Funds may need to opt up with their advisor(s) if they provide the fund with regulated advice on complex investments and/or do not have retail permissions).

~~Email from Liam – Opt ups. Professional to retail – ascertaining which funds have done this, otherwise SAB will contact regional POGs~~

c) Brewster

On 17 August 2017 DCLG issued a letter to all LGPS funds detailing their views regarding the impact of Brewster. The letter noted that:

“Most public sector pension schemes that have, or have had, such a nomination requirement for unmarried partners, are now taking the view that scheme managers can rely on this judgment and section 3 of the Human Rights Act 1998 as the legal basis for not requiring that a surviving adult partner be nominated in order to receive survivor benefits. This section of the Act provides that, as far as possible, regulations such as those covering the LGPS must be read and given effect in a way which is compatible with the European Convention on Human Rights. This approach is also being applied to applications which have previously been rejected. In these circumstances, schemes are also being encouraged not to require survivors to claim within any specific limitation period. We consider that this approach is reasonable in the circumstances and that LGPS funds should give careful consideration to adopting a similar approach to relevant cases. In adopting this approach a fund accepts that a power to pay these benefits already exists in the LGPS regulations when read and given effect in a way which is compatible with Convention rights and that the tax status of them is no different from any other payments made under the scheme..... Some cases will inevitably raise complex issues and it is not possible to provide guidance on the application of the judgment in all circumstances. Accordingly, scheme managers should seek their own independent legal advice if they are in any doubt as to how to proceed.”

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

It has been brought to the attention of the Secretariat that one fund sought legal counsel and that counsel, did not concur that scheme managers could rely on section 3 of the Human Rights Act 1998 as the legal basis for not requiring that a partner be nominated in order to receive survivor benefits. Clearly, it will be for each fund to determine as to whether or not to rely on the recommendations within DCLG's letter of 17 August 2017 or to in deed seek their own legal advice.

d) DCLG

We understand that a member of DCLG's pensions' team will soon be departing which may impact on the progression of the 100 or so regulatory queries that the Secretariat currently has outstanding with DCLG. To date, the list of outstanding regulatory queries has not been for public consumption due to the fact that the items are merely the view of the Secretariat and may not be that of DCLG or their lawyers. However, the Secretariat will consider discussing with DCLG as to whether or not it would be appropriate to publish the list of regulatory queries and inform the group accordingly.

e) LGPS Regulations

- The Draft LGPS (Amendment) Regulations 2016 are currently under review by DCLG and we expect a consultation to be issued later in 2017.
- DCLG are currently working upon the Exit Payment and Recovery regulations, though at this stage there is no indication as to when the consultation will be published.

f) LGA

During the course of September 2017 and early October 2017 the LGA will have limited resources to respond to technical queries due to paternity leave and extended jury service. Therefore, responses to technical queries will take longer than normal. If a query is urgent funds are asked to contact Jayne Wiberg directly on 07979 715825.

g) Consultation on indexation and equalisation of GMP in public service pension schemes

HMT hope to publish the outcome of the above consultation together with their preferred option by the end of 2017.

h) Increases to LGPS pensions

The Secretariat are in the process of creating a guide covering 'Increases to LGPS Pensions' which sets out the Secretariat's understanding of how increases are applied to LGPS pensions in payment that operate from 6 April 2016 in accordance with the over-riding legislation. The guide will be initially issued to the software providers and thereafter published on the LGPS regulations web-site. We expect the guide to be published around December 2017.

i) Automatic enrolment and Transitional Delay

Employers should be aware that [TPR's guidance](#) (see paragraphs 73 to 78) states that where an individual to whom transitional delay was applied is not an eligible jobholder on 1 October 2017 the employer must keep assessing the worker each pay reference as usual. If at any point after 1 October 2017 the eligible jobholder criteria are met, unless one of the exceptions apply, the individual must be automatically enrolled with effect from 1 October 2017 i.e. active membership must be backdated to start from 1 October 2017 irrespective of the date the employee first meets the eligible jobholder criteria after 1 October 2017. Obviously, this could have serious consequences if employers are required to backdate contributions for several years. We have been seeking clarification from DWP on this and will provide further information as soon as it becomes available

j) GDPR

On 25 May 2018 the EU's General Data Protection Regulation (GDPR) comes into force containing new standards for the protection of individual's personal data in the

European Economic Area. In July, the LGPC Secretariat circulated a handout commissioned from Squire Patton Boggs to provide a brief overview of the new requirements and the steps which local authority pension funds should be taking to prepare for GDPR coming into force.

We are aware that GDPR is an area that is getting increased attention across the LGPS and there are a number of crucial questions where there are different views, in particular:

- a) the implications of GDPR for LGPS funds, and
- b) the work that needs to be undertaken to ensure administering authorities are fully compliant by the time GDPR comes into force.

In general, we recommend that LGPS administering authorities which form part of a local authority discuss and become involved in the local authority's broader project for the implementation of GDPR. However, at a national level, plans are also in place to help funds with their GDPR responsibilities:

- a number of funds have joined together to form a GDPR group. The group, in consultation with the communications working group, plan to produce sample documentation for use by LGPS funds, and
- the LGPC Secretariat are also seeking a legal view on a number of specific questions that have been raised about GDPR in respect of the LGPS.

All information will be circulated to funds via the mailing list as and when this is available.

3. Frameworks

Background:

A member of the group wondered if there is or, if not, if there could be created, a central list of all of the LGPS frameworks that includes the:

- Content of each framework (e.g. administration, investments, software etc), and
- Date by which each framework ends.

Feedback discussion:

The group discussed this query and concluded that whilst there are a number of LGPS frameworks there is no central register containing a list of content and end dates.

Outcome

The group agreed that the LGA would investigate the feasibility of creating and maintaining such a list and report the outcome at the next technical group meeting on 12 December 2017.

4. State Pension Age

Background:

Paragraph 2.8 (Transfers out) of the Secretary of State guidance titled 'Individual Incoming and Outgoing Transfers dated 8 April 2016, states that "*DCLG has confirmed that State Pension Age for the purpose of calculating transfer value factors should be as set out in HM Treasury Directions ('HMT Directions') made in exercise of the powers conferred on them by sections 11(2) and 12(3) of the Public Service Pensions Act 2013, and not legislation in force at the guarantee date*" and paragraph 7.8 (Transfers In) of that same guidance states "*DCLG has confirmed that State Pension Age for the purpose of calculating transfer credits, should be as set out in HMT Directions*". A member of the group asked if when such a Direction is

made, should the transfer calculations reflect the changes to SPa or wait until the changes had been laid in legislation?

:

Outcome:

The group agreed that where a HMT Directions is made that changes SPa, then in accordance with paragraphs 2.8 and 7.8 of the Secretary of State guidance titled 'Individual Incoming and Outgoing Transfers dated 8 April 2016, the calculations should reflect the HMT Direction.

5. TUPE

Background:

A scheme member is employed by the LEA but providing services exclusively to an academy through a service level agreement or contract. At the point the LEA school became an academy, the staff member was not transferred to the academy but stayed as a council employee (at no point was the staff member directly employed by the Academy).

What pension protections, if any would funds apply?

How would this be achieved?

Outcome:

Although, this point was touched upon in the Technical Group meeting of December 2016, it was the consensus of the group that the precise flow of employment should be followed in order to determine as to what pension protections (if any) apply. In the circumstance outlined above, despite the apparent continued local authority employment by the individual, the actual post had been transferred twice:

- i) LEA to the Academy (the group believes the individual would transfer under TUPE)
- ii) Academy contracted the post back to the LEA (the group believes the individual would transfer by way of New fair Deal)

The group noted that in similar cases outlined above, the correct paperwork is not always followed and administering authorities are not notified of the employment changes, thus it appears that the individual has continuous local authority employment, which may not be the case. All in all, the group concluded that legal advice should be taken where such situations arise.

6. Minutes of previous meeting held on 16 June 2017

Agreed all accurate.

7. Matters arising

Taxation – the group wondered what sort of information/advice administering authorities are providing to their scheme members?

- Mercers confirm that they can provide FCA regulated advice to a scheme member,
- the other actuaries confirmed that they provide calculations but not FCA regulated advice

8. AOB

8.1 Are funds allowing voluntary scheme pays and if so how are they monitoring?

Outcome

It is the individuals responsibility to advise if Money Purchase Annual Allowance needs to be taken into account (tapered annual allowance)

Queries whether the system should hold the information

8.2 Bulk transfers, where a person has taken flexible retirement can transfer the active membership even if the member has less than 3 months

An Administering Authority has to comply with the prescriptions laid down in Part 4ZA and Part IVA of the PSA 1993. However, do these parts apply equally where the transfer is a bulk transfer under regulation 98 of the LGPS Regulations 2013?

Outcome

Subsequent to the meeting Jayne Wiberg confirmed on 18 September 2018 the following:

A discussion occurred in our meeting on Friday concerning bulk transfers and whether or not an ongoing active member's benefits, following a flexible retirement, could be included within a bulk transferred? At the time, I thought this may not be possible due to the fact that a BCE had taken place and thus one of the transfer conditions within the PSA 1993 would not be met (i.e. this would conform with regulation 96 of the LGPS Regulations 2013).

However, having thought about this over the weekend, I'm not sure that this concern was valid as 'technically' a bulk transfer is not a CETV and thus the conditions in the PSA 1993 would not need to be met. I've had a look at the regulations and regulation 98(2) seems to back up this approach by specifically highlighting those cases that are not entitled to a CETV under the PSA 1993 (albeit the references in the regulations are incorrect – known error):

*(2) The appropriate **administering authority** must not give its agreement under paragraph (1)(b) unless it is satisfied that the rights that each of the members will acquire under the new scheme are at least equivalent to those which would have obtained if a transfer value had been paid to the same scheme under Chapter 4 or 5 of Part 4 of the Pensions Schemes Act 1993, as they apply as modified by these Regulations (assuming in any case where a member would not be entitled to such a payment that the member was so entitled).*

Therefore, it would seem for the purpose of Catherine's question, that the ongoing active member benefits, following a flexible retirement, can be transferred by way of a bulk transfer by virtue of regulation 98(2) of the LGPS Regulations 2013.

8.3 AVC's and Drawdown

Once a member undertakes drawdown they will be restricted to paying £4,000 into a money purchase scheme (AVC plan) without a tax charge (addition from meeting of 12/12/2017)

8.4 Agenda

Further to point 2(d) above, the group agreed that going forward, if the agenda of the Technical group meeting is 'light' then the group would review an area of the regulations that

may be inconsistently applied throughout the UK, with an aim to arriving at a consistent view point which may then be shared with LGPS scheme managers.

Accordingly, the group agreed to the following process:

- a) Items for the agenda will be requested around 6 weeks prior to the Technical group meeting. If the agenda is 'light' then,
- b) The Technical Group Secretary will notify the LGA one month prior to the Technical Group meeting that a regulatory review can be addressed at the next meeting.
- c) The LGA will prepare a report covering a regulatory area for review and issue to the group 2 weeks prior to the Technical group meeting.
- d) The group will review the report prior to the meeting and at the meeting agree a consistent approach to be shared with LGPS scheme managers.

8.5 Lynne Miller – Retiring

This was Lynne's last meeting, thanks were given by the Chair for everything Lynne has done for the group and the group wished Lynne well in her retirement.

9 Date and venue of next meeting

Tuesday 12th December 2017 at Mercers