

# **LOCAL GOVERNMENT PENSIONS COMMITTEE (LGPC)**

## **MINUTES OF THE NATIONAL LGPS TECHNICAL GROUP MEETING**

**held at the offices of:  
Hymans Robertson 1 London Wall EC2Y 5EA  
commencing at 11:00 am on  
Friday 8 June 2018**

<b>Voting members of the group</b>	
apologies (Chairman)	Welsh Pension Officer Group (WPOG)
Chris Hurst	Welsh Pension Officer Group (WPOG)
Ian Howe (Deputy Chairman)	East Midlands Pension Officer Group (EMPOG)
Gary McLellan	East Midlands Pension Officer Group (EMPOG)
Karen Gibson	South West Pension Officer Group (SWPOG)
Alan South	South West Pension Officer Group (SWPOG)
Clair Lewis-Smith	Southern Area Pension Officer Group (SAPOG)
Rachel Abbey	Southern Area Pension Officer Group (SAPOG)
Louise Savage	South Eastern Counties Superannuation Officer Group (SECSOG)
new member at next meeting	South Eastern Counties Superannuation Officer Group (SECSOG)
Richard Smythe	London Pension Officer Group (LPOG)
apologies	London Pension Officer Group (LPOG)
Steven Moseley	North West Pension Officer Group (NWPOG)
apologies	North West Pension Officer Group (NWPOG)
Jason Bailey	North East Pension Officer Forum (NEPOF)
apologies	North East Pension Officer Forum (NEPOF)
Erin Savage	Scottish Pensions Local Government (SPLG)
apologies	Northern Ireland Local Government Officers' Superannuation Committee (NILGOSC)

<b>Non-voting members of the group</b>	
Paul Kateley	Software supplier - Aquila Heywood
Catherine Carruthers	Software supplier - Capita
Julie Potter	Software supplier - Civica
Jon Slater	Software supplier - Equiniti
Anne Marie Allen	Actuarial - Barnett Waddingham
Pete Riedel	Actuarial - Hymans Robertson
Justine Davies	Actuarial - PWC
Dan Kanaris	Actuarial - Aon
Nikki Gemmell	Actuarial - Mercer
Jeremy Hughes	Ministry of Housing, Communities & Local Government (MHCLG)
apologies	Scottish Public Pension Agency (SPPA)
Jayne Wiberg	Local Government Association (LGA)
Kelly Scotford	Secretary

Agenda item	Description	Outcome	
1	Apologies for absence	Kevin Gerard (Chairman)	WPOG
		Zena Kee	NILGOSC
		Neil Mason	LPOG
		Debbie Sharpe	NWPOG
		Heather Currie	NEPOF
		Kimberly Linge	SPPA
		Ian Colvin	Actuarial - Hymans Robertson
2	<a href="#">Minutes</a> of the last meeting held on 9 March 2018	<p><b>For agreement:</b> The group agreed the minutes with the following two amendments:</p> <ol style="list-style-type: none"> <li>1) Adjust attendees as these are duplicated within the list of those who provided apologies for absence.</li> <li>2) Item 11 - Academy Outsourcing of catering To reflect the fact that although an Academy comes under New Fair Deal, the Academy must still oblige by the prescriptions within the LGPS Regulations. Add to the end of this sentence “however, the LGPS regulations continue to apply and as such a deferred benefits would be awarded”.</li> </ol> <p>The minutes have been updated to reflect these changes.</p>	
3	LGPC Update ( <a href="#">Appendix A</a> )	<ol style="list-style-type: none"> <li>a) <b>To note only:</b> <b>Elmes v Essex:</b> A member of the group queried as to whether or not there is any guidance concerning how to address those cases where the member died prior to 1 April 2014 (i.e. historical cases)? No, MHCLG are currently waiting for the full judgement to be released before they consider what further action may be taken.</li> <li>b) <b>Action – LGA - complete:</b> <b>Data quality / Section 13 workshops:</b> Amend the date from ‘18 June 2018’ to ‘18 May 2018’.</li> <li>c) <b>Action – All group members:</b> <b>CEP reclaim upon transfer from the LGPS to another registered pension scheme:</b> The group tentatively discussed the practical process as to how to obtain the receiving scheme’s authorisation in order to reclaim the CEP? It was felt that this needed further thought and the matter would be discussed in depth at the next Technical group in September but initial thoughts were to include this within the transfer forms.</li> </ol>	

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		<p>d) <b>To note only:</b>  <b>Financial Guidance and Claims Act 2018:</b>  It was noted that regulations will be forth coming to extend the situations whereby financial advice is required to be obtained upon the payment of a transfer and that this would affect payments from the LGPS in-house AVC Funds. No definite idea as yet as to what date we can expect these regulations.</p> <p>e) <b>Action - LGA:</b>  <b>TPR PSPS Governance &amp; Administration survey published May 2018:</b>  Published within the outcome of the above survey were figures confirming that only 45% of the LGPS administering authorities who responded to this question, had managed to deliver 100% of their active ABS within the statutory deadline. The group felt that this figure mis-represented the real picture. For example an administering authority may have delivered 99% of their active ABS within the statutory deadline, but this would be recorded as 0% because they did not deliver 100% (i.e. the question was all or nothing and not truly representative).</p> <p>The group therefore requested that the LGA approach TPR and ask that for future surveys the question be changed to:</p> <p>-“What % of active members ABS did the administering authority deliver within the statutory deadline?”</p>
4	<a href="#">Bulletin 171</a>	<p>a) <b>Group discussion:</b>  <b>Early payment of deferred benefits from age 55 in respect of those members who left active membership of the scheme before 1 April 1998</b></p> <p><b>LGA view:</b>  There was not an opt out clause inserted into the regulations because as noted in the Secretariat’s email of 22 May 2018, this was an unintended consequence (i.e. MHCLG did not spot this issue when finalising the regulations). The LGPS (Amendment) Regulations 2018, were made under the PSPA 2013 and if an opt out clause were to have been inserted this would have been implemented by way of section 23 of the PSPA 2013. Section 23 of the PSPA 2013 addresses the procedure for retrospective provision where</p>

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		<p>“Where the <u>responsible authority</u> proposes to make <u>scheme regulations</u> containing retrospective provision which appears to the authority to have significant adverse effects in relation to the pension payable to or in respect of members of the <u>scheme</u>, the authority must first obtain the consent of the persons referred to in subsection (3)”. This did not happen because, as mentioned previously, the changes brought about an unintended consequence.</p> <p>If in the meantime, until the regulations can be changed, a member raises a complaint, as far as we understand it, the Pensions Ombudsman cannot comment on primary legislation (i.e. the opt out clause under section 23 of the PSPA 2013) and as such this could only be resolved by way of a Judicial Review. Hopefully, such a case will not happen before MHCLG have chance to resolve the ‘transitional issue’.</p> <p><b>MHCLG explanation/confirmation/clarification:</b>  <b>MHCLG explained</b> that they are competing with other departments and pressures for the attention of the Minister.  <b>MHCLG confirmed</b> that the consultation to alleviate the transitional issue concerning members who left active membership of the scheme prior to 1 April 1998 will ‘piggy back’ on another forthcoming LGPS amendment, possibly with retrospective effect.  <b>MHCLG have agreed to clarify</b> in an email to administering authorities by w/e 22 June 2018, as to what the policy intention was in respect of those members who left active membership of the scheme prior to 1 April 1998? This may assist administering authorities to make an informed decision on how to proceed with such cases.</p> <p><b>b) <i>Group discussion:</i></b>  <b>Early payment of deferred benefits from age 55</b>  The group discussed their approach towards communication of the earliest date at which deferred benefits may be paid. Approaches varied from a ‘soft touch’ without too much publicity, newsletter directing individuals to use an on-line service to obtain an estimate their deferred benefits where paid early, writing personally to those individuals affected and including the information on the ABS.</p> <p><b>c) <i>Pensions Administration System update:</i></b>  <b>Early payment of deferred benefits from age 55</b></p>

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		<p>Aquila Heywood confirmed that they had already built these changes into their system so that they would be available to 'switch on' in the event of a regulatory change. The changes have now been 'switched on' and a couple of errors have been reported in respect of Group 2 &amp; 3 members. These will be corrected asap. Heywood will keep all clients informed asap.</p> <p>Civica confirmed that they are currently processing test cases from one of administering authorities and are aiming for the calculations to be available to all of their clients by 30 June 2018.</p> <p><b>d) <i>MHCLG view:</i></b>  <b>Displaying benefits available to be paid on and after age 55 on ABS</b>  MHCLG opined that whether or not to show the actuarially reduced benefits a member may be paid on and after age 55 on ABS, should be a matter for discussion and agreement by Local Pension Boards.</p> <p><b>e) <i>Group recommendation:</i></b>  <b>Disclosure – communication of a material change</b>  The group agreed that each individual affected by a material change brought about by the LGPS (Amendment) Regulations 2018 [SI 2018/493] should be personally informed of those material changes and how they affect them. The method (be this in written or electronic format to be determined by each administering authority)</p> <p><b>f) <i>Group discussion:</i></b>  <b>Backdated admission agreements</b>  The group discussed the practicalities surrounding the change to the paragraph 14 of Schedule 2 of the LGPS Regulations 2013. The discussion surrounded as to whether or not an administering authority would:</p> <ul style="list-style-type: none"> <li>• accept contributions before the admission agreement had been completed,</li> <li>• pay death benefits in the event that a person dies before the admission agreement is completed, but the admission agreement is backdated upon completion, to a date before the person died.</li> </ul> <p>With regards to the 1<sup>st</sup> bullet point above, some members of the group would accept contributions before the admission agreement had been completed on the understanding that should the</p>

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		<p>admission agreement not come to fruition the contributions would be refunded, other members of the group would not accept the contributions.</p> <p>With regards to the 2<sup>nd</sup> bullet point above the group generally thought they would pay the death benefits on two provisos. Payment would not be made until the admission agreement was completed and the person must be listed in the schedule at the back of the admission agreement.</p> <p>It was noted that ultimately it is was noted that the provision to back date an admission agreement is an administering authority discretion. Accordingly, the administering authority may determine that their discretionary policy is not to backdate admission agreements.</p> <p><b>g) Action – MHCLG / LGA / Hymans Robertson: Taxation position of Exit credit</b>  The group queried as to the tax position of exit credits. This matter has been raised by the LGA with MHCLG. MHCLG confirmed that they have been trying for several months with HMRC to determine the position concerning such payments. Another member of the group (Actuarial - Hymans Robertson) noted that the tax charge appears to be determined by the ‘type’ of employer to which the exit credit is paid, under relevant legislation. The LGA offered to assist MHCLG obtain an outcome from HMRC and requested that the relevant legislation be sent to the LGA so that it can be reviewed.</p> <p><b>h) Action – LGA</b>  <b>Early payment of pension credit benefits where the debited member left active membership of the scheme prior to 1 April 2014</b>  The group agreed that a tweak was needed within the text to clarify that this includes pension credits “where the debited member left active membership of the scheme prior to 1 April 2014 and the pension credit was awarded after 31 March 2014 in respect of pre 1 April 2014 membership).</p>
5	Potential expansion of the uses of the National Insurance Data Base (NIDB) – ( <a href="#">Appendix B</a> )	<p><b>Group recommendation:</b></p> <p>1) Technical group are asked to consider whether the usages of the LGPS Database should be extended?</p> <p><b>Outcome: Agreed with an additional recommendation that Funds share data where requested.</b></p>

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		<p>2) If agreed, do the group agree for the LGA to survey LGPS administering authorities with a view to obtaining their agreement to expand the usages detailed in the ISA at the same time as it is amended for the GDPR?</p> <p><b>Outcome: Agreed</b></p>
6	<p>Automatic aggregation where member's date of birth is not verified – (<a href="#">Appendix C</a>)</p>	<p><b>Group recommendation:</b> There are an increasing number of interfund adjustment where administering authorities are refusing to make payment because the member's date of birth has not been verified and/or the administering authority has not had sight of an original birth certificate/certified copy of a birth certificate.</p> <p>The LGPS regulations prescribe that an interfund adjustment <u>must</u> be paid where the circumstances set out in the 'background information' below occur.</p> <p><b>The group recommended</b> that if both the paying administering authority and the receiving administering authority hold the same date of birth, then the IFA should be paid.</p> <p>Additionally, the law on preventing illegal working (set out in sections 15 to 25 of the Immigration, Asylum and Nationality Act 2006 (the 2006 Act) and sections 24 and 24B of the Immigration Act 1971) states that where a person is employed the employer, must verify that person' has a legal right to work by carrying out a 'right to work check'. Checking a person's documents to determine if they have the right to carry out the type of work comprises three key steps:</p> <ol style="list-style-type: none"> <li>1. Obtain the person's original documents as specified in this guidance;</li> <li>2. Check the validity of the documents in the presence of the holder; and</li> <li>3. <u>Make and retain a clear copy</u>, and make a record of the date of the check.</li> </ol> <p>The majority of documents accepted include reference to the person's date of birth. Given that the document must be checked for validity, it is difficult to understand how a member's date of birth cannot be verified by the documents held by the former employer. Administering authorities may wish to review their processes when paying an IFA to include valid documents of this nature.</p> <p><b>Background</b> The LGPS regulations prescribe that an interfund <u>must</u> be paid where the circumstances set out below occur.</p>

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		<p>The date any Inter-Fund Adjustment is actually paid or any Intra-Fund Adjustment is processed is of no relevance.</p> <p>For the purpose of scenarios:</p> <ul style="list-style-type: none"> <li>• A1 (deferred refund – post 14),</li> <li>• B1 (deferred refund – pre &amp; post 14 – rejoined scheme &lt;=5 years and member is a 5(1) member), and</li> <li>• D1 (deferred refund – pre 14)</li> </ul> <p>the relevant date for the purpose of automatic aggregation is the day the member re-joined the scheme or the day after the end of a concurrent employment because the member has no choice but to aggregate.</p> <p>For the purpose of scenarios:</p> <ul style="list-style-type: none"> <li>• A2 (deferred benefit – post 14),</li> <li>• B2 (deferred benefit – pre &amp; post 14 – rejoined scheme &lt;=5 years and member is a 5(1) member), and</li> <li>• C2 (deferred benefit, pre &amp; post 14 – rejoined scheme &gt;5 years and member is not a 5(1) member)</li> </ul> <p>the member can elect not to aggregate their benefits within 12 months from rejoining the scheme (or 12 months of cessation of a concurrent employment) or such a longer time as the employer may allow. Therefore, the relevant date for the purpose of automatic aggregation in these instances, is the date the member confirms they do not wish to retain separate benefits or, in the absence of such an election, the end of the time period within which an election to retain separate benefits had to be made.</p> <p>In Scenario D2 (deferred benefit – Pre 14 – member rejoined scheme &lt;=5 years) the member:</p> <ul style="list-style-type: none"> <li>• elects to be a 5(1) member, the relevant date is the date the member made that election.</li> <li>• does not elect to be treated as a 5(1) member, the relevant date is the date the member elects to aggregate their benefits.</li> </ul> <p>In Scenario D3 (deferred benefit – Pre 14 – member rejoined scheme &gt;5 years), the relevant date is the date the member elects to aggregate their benefits.</p>
7	The Crown's Bona Vacanti a list covering unclaimed estates and when it is	<p><b>Group recommendation:</b></p> <p><a href="#">The Administration of Estates Act 1925</a> defines 'Personal representative' in section 55 as <i>“Personal representative” means the executor, original or by</i></p>

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	<p>appropriate for use – (<a href="#">Appendix D</a>)</p>	<p><i>representation, or administrator for the time being of a deceased person, and as regards any liability for the payment of death duties includes any person who takes possession of or intermeddles with the property of a deceased person without the authority of the personal representatives or the court, and “executor” includes a person deemed to be appointed executor as respects settled land.”</i></p> <p>Section 46(2)(vi) covers where there are no personnel representatives or known relatives to which a death grant may be paid and states “<i>In default of any person taking an absolute interest under the foregoing provisions, the residuary estate of the intestate shall belong to the Crown or to the Duchy of Lancaster or to the Duke of Cornwall for the time being, as the case may be, as bona vacantia, and in lieu of any right to escheat</i>”.</p> <p>Section 30 makes clear that it is the Treasury Solicitor who, in such cases, the administrator of the estate “<i>Where the administration of the real and personal estate of any deceased person is granted to a nominee of the Crown (whether the Treasury Solicitor, or a person nominated by the Treasury Solicitor, or any other person), any legal proceeding by or against that nominee for the recovery of the real or personal estate, or any part of share thereof, shall be of the same character, and be instituted and carried on in the same manner, and be subject to the same rules of law and equity (including, except as otherwise provided by this Act, the rules of limitation under the statutes of limitation or otherwise), in all respects as if the administration had been granted to such nominee as one of the persons interested under this Act in the estate of the deceased</i>”.</p> <p><b>Therefore, where an administering authority is required to pay an amount within 2 years to the personal representative, the personal representative in bona vacantia cases is the Treasury Solicitor.</b> Further information concerning how to refer such a case can be found on the Government <a href="#">web-site</a>.</p>
8	<p>Elmes v Essex – (<a href="#">Appendix E</a>)</p>	<p><b><i>MHCLG confirmation:</i></b>  MHCLG confirmed that they are waiting for the full judgement (this has been delayed due to a further consideration regarding children’s pension which was not taken into account at the point of determination – though this should not affect the payment of pensions</p>

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		<p>to co-habiting partners) to be issued by the respective judge before they consider as to what / if any changes need to be made to the LGPS regulations. MHCLG also confirmed that the Elmes v Essex case applies to anywhere within the LGPS regulations that refers to nominated co-habiting partners.</p> <p><b>LGA view:</b> Following the LGA's article in <a href="#">bulletin 167</a>, the LGA decided to send out their email of 8 May 2018 to clarify the content of the article within bulletin 167. Bulletin 167 did <u>not</u> say administering authorities should wait for MHCLG, it confirmed that MHCLG were waiting for the detailed judgement before deciding what if any changes may be needed to regulations.</p> <p>The LGA email of 8 May 2018, simply clarified that it was the view of the LGA that administering authorities did not have to wait for MHCLG to make any changes to the regulations, before they could start making payments co-habiting partners. Clearly, this is an administering authority decision call but if an administering authority waits for MHCLG before doing anything, they may find themselves subject to legal challenge.</p>
9	Matters arising	
10	Any other business	
10.1	AOB - <a href="#">Election for early payment of deferred benefits at age 55 for leavers before 1 April 1998</a>	<p><b>GMP impact – group agreement</b> GMP pensionable age is age 60 (women) and 65 (men). Where benefits are paid prior to this age and upon reaching pensionable age the benefits are less than then value of the GMP – the benefits should be increased to the value of the GMP (section 13 of the PSPA 2013). This will already be happening for members who take payment of their benefits prior to pensionable age under the 2013 Regulations and under predecessor regulations (albeit with employer consent where there could have been a reduction unless the employer waived that reduction on the grounds of compassion).</p> <p><b>LGA note following the meeting:</b> The question as to whether or not benefits can be reduced to below the level of the GMP as a result of 12:1 commutation or similar earlier provisions to convert pension to lump sum, arose within the meeting. It was acknowledged within the meeting that there was nothing explicit within the LGPS regulations covering this question. However,</p>

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		<p>on further reflection the group may wish to rely on the provisions of regulations:</p> <ul style="list-style-type: none"> <li>• D17 of the LGPS Regulations 1995</li> <li>• 36 of the LGPS Regulations 1997</li> <li>• 50A of the LGPS (Administration) Regulations 2008</li> <li>• 51 of the LGPS Regulations 2013</li> </ul> <p>All of which state that the scheme must be the GMP from pensionable age in accordance with section 14 of the PSA 1993. Therefore, a pension may not be voluntarily reduced to below the level of the GMP at a date earlier than the pensionable age of the GMP.</p> <p><b>Requisite benefits impact – group agreement</b>  Requisite benefits: these apply to members who left active membership of the scheme prior to 1 April 2008. Regulation 36 of the LGPS Regulations 1997 and regulation D17 of the LGPS Regulations 1995 confirms that a person's deferred benefit when brought into payment is not to be reduced to less than the aggregate of:</p> <ul style="list-style-type: none"> <li>• any minimum rate of equivalent pension benefits applicable under the Insurance Acts, and</li> <li>• one eightieth of his final pay (expressed as an annual rate), multiplied by the length in years of the whole period of his membership in contracted-out employment during the period beginning with the relevant date and ending with 30th April 1995.</li> </ul> <p>"the relevant date" means-</p> <p>(a) in the case of a man, 17th May 1990; and  (b) in the case of a woman, 6th April 1978.</p>
10.2	Email contacts for technical group distribution list	<p><b>Action – all group members</b>  Over the years the size of the technical group has grown and its demographics have changed. The current distribution list has grown out of recognition and more than half of the list is made up of individuals who do not represent a POG. Having examined this in more detail, we have noticed that the technical group email distribution list contains:</p> <ul style="list-style-type: none"> <li>• Names of individuals in excess of the numbers previously agreed per POG/External Organisation (2 per POG, 1 per external organisation plus the Secretary),</li> <li>• Historical names of individuals who either do not attend the group or have since retired/left the LGPS, and</li> </ul>

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		<ul style="list-style-type: none"> <li>Individuals who may have attended the group on a one off occasion for the purpose of making a presentation.</li> </ul> <p>Confirm to Jayne Wiberg by close of play Friday 15 June 2018, the names and email addresses of the:</p> <ul style="list-style-type: none"> <li>2 individuals who represent each POG, and</li> <li>1 individual who represents all other non-voting attendees (software supplier, actuarial, MHCLG, SPPA)</li> </ul> <p>Thereafter a new Technical Group distribution list will be established and used going forward for both communicating agenda's and confirming minutes of meetings.</p>
10.3	Pensions Managers Conference – November 2018 - Torquay	<p><b>Action – pensions managers and all group members</b></p> <p>On behalf of Pat Luscombe, Anne-marie Allen asked for volunteers from pensions managers to:</p> <ul style="list-style-type: none"> <li>facilitate a workshop</li> <li>Deliver a presentation</li> </ul> <p>In addition, ideas for the agenda was also requested.</p>
10.4	Exit payments, Exit Cap, Exit Recovery and Exit Reform	<p>A member of the group asked MHCLG if they could provide an update on these matters.</p> <p><b>MHCLG confirmed</b> that:</p> <ul style="list-style-type: none"> <li>they will be consulting on Fair Deal and Exit payments before the end of the year.</li> <li>cap, recovery and reform (confirmed following the meeting) is likely to be consulted upon before the end of the year.</li> </ul>
10.5	GAD assumptions on LGPS valuation	<p><b>MHCLG confirmed</b> that we have new scape rate, so GAD will review all of their LGPS GAD factors over the next 6 – 9 months.</p>
10.6	SAB conditional data	<p>A member of the group requested an update as to when we can expect to review the SAB conditional data. It was confirmed that administering authorities can expect the first draft of the SAB conditional data for review by the end of June 2018.</p>
11	Date and venue of next meeting	<p>28 September 2018</p> <p>AON</p> <p>Agenda items for meeting of 28 September to be supplied to the <a href="#">Secretary</a> by no later than close of play 14 September 2018 using the <a href="#">blank template</a> for agenda items.</p>

Agenda item	Description	Outcome
12	Date and venue of future meetings	<p>11 December 2018</p> <p>Barnet Waddingham</p> <p>Agenda items for meeting of 11 December to be supplied to the <a href="#">Secretary</a> by no later than close of play 23 November 2018 using the <a href="#">blank template</a> for agenda items.</p>