

## **Paper A: Minutes of meeting held on 8 February 2021**

### **Present**

Cllr John Fuller	Chair, LGA
Cllr Alan Waters	LGA
Cllr Richard Wenham	LGA
Cllr Phil Murphy	LGA
Cllr Adam Paynter	LGA
Cllr Goronwy Edwards	LGA
Cllr Oliver Ryan	LGA
Cllr Joanne Laban	LGA
Mr Jeremy Hughes	MHCLG
Mr David Murphy	NILGOSC
Ms Kimberly Linge	SPPA
Ms Linda Welsh	SPPA
Mr Kevin Gerard	Technical Group representative

### **Secretariat**

Ms Lorraine Bennett	LGPC
Ms Rachel Abbey	LGPC
Ms Elaine English	LGPC
Mr Jeff Houston	LGPC

### **Non-attendees**

Ms Rachel Brothwood	SAB representative
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## **1. INTRODUCTION FROM THE CHAIR**

The Chair, Cllr John Fuller [JF], welcomed members to the third virtual meeting and outlined the importance of the meeting to represent the interests of LGPS Scheme employers. Issues raised at LGPC are fed through to the Scheme Advisory Board that meets directly after this meeting.

## **2. APOLOGIES**

No apologies were received.

No declarations of interest were declared.

## **3. MINUTES**

The minutes of the previous meeting held on 2 November 2020 were agreed.

## **4. MATTERS ARISING**

Any matters arising concern topics that will be covered in later in the meeting.

## **5. REGULATIONS UPDATE ENGLAND AND WALES**

Lorraine Bennett [LB] presented the key points from Paper B.

### **Exit payment reforms**

LB gave a background update to the complex issue of exit payment reforms in England and Wales. The exit cap does not apply in Scotland or Northern Ireland.

The Restriction of Public Sector Exit Payments 2020 [the 2020 Regulations] came into force on 4 November 2020. MHCLG was consulting on regulation changes to accommodate the exit cap and introduce further reforms to local government exit payments when the 2020 Regulations took effect.

According to the LGPS regulations, a member who leaves due to redundancy or efficiency at age 55 or over is entitled to immediate payment of their benefits without reduction. The employer generally meets the cost of paying the pension early – known as the strain cost. The 2020 Regulations limit the amount that an employer may pay when an employee leaves their employment. This means that in some cases, the employer will not be able to pay the full strain cost. The conflict between the two sets of regulations has led to legal uncertainty for employers, administering authorities and scheme members.

The Government believes that the 2020 Regulations take precedence over the LGPS Regulations. This is based on the principle of implied repeal. MHCLG confirmed this position in a letter to administering authorities and council chief executives. In that letter, MHCLG advises administering authorities to offer fully reduced benefits or deferred benefits and advises employers to pay a cash

alternative payment when an employer cannot pay the full strain cost because of the cap.

The Scheme Advisory Board [SAB] sought Counsel's opinion on the impact of the 2020 Regulations on the LGPS. That legal advice did not agree with the Government's view that implied repeal applies. The SAB published a commentary on the legal advice in which they recommended that employers delay paying a cash alternative payment until the legal uncertainty is resolved if the cap prevents them from paying a full strain cost.

Three Judicial Review (JR) applications made by ALACE/LLG, UNISON and GMB/Unite will be heard on 24 and 25 March 2021. While these JR reviews are underway, the Pensions Ombudsman is not able to make a determination on the operation of the exit cap. The LGA has been named as an interested party in the proceedings and will be providing a submission to the hearing.

Jeff Houston [JH] noted that there were many possible outcomes of the JR. An appeal to the decision is likely. It is important that we make employers and administering authorities aware that the legal proceedings, and therefore the legal uncertainty, may continue until the autumn.

Cllr Richard Wenham [RW] noted that the best end result for employers was that they did not have to clawback any payments from former employees. The Chair noted that employers that have followed the approach recommended by the SAB will not have to clawback any cash alternative payments.

The Chair thanked the Secretariat on behalf of the Committee for all their hard work related to this complex matter.

LB confirmed that the Secretariat's work to provide information to employers, administering authorities and scheme members was ongoing. The Secretariat will continue to update websites and information notes as the situation develops.

**Post-meeting script:** On Friday 12 February 2021, the government issued the [Exit Payment Cap Directions 2021](#) which disapply parts of the Restriction of Public Sector Exit Payments Regulations 2020 with immediate effect.

As the Directions disapply regulation 3, the exit cap no longer applies with effect from 12 February 2021. The Welsh Government has confirmed that, in their view, the exit cap no longer applies to exit payments made by a devolved Welsh authority.

For exits from 12 February 2021, LGPS administering authorities must pay qualifying scheme members an unreduced pension under Regulation 30(7) of the LGPS 2013 regulations. Scheme employers will be required to pay full strain costs in relation to those unreduced benefits, as notified by their administering authority. Employers should not make cash alternative payments to either the scheme member or the administering authority.

HM Treasury issued [guidance on the Directions](#). The guidance sets out HM Treasury's expectation that employers should pay the additional sums that would have been paid, had the cap not applied for employees who left between 4 November 2020 and 11 February 2021.

On 25 February 2021, [The Restriction of Public Sector Exit Payments \(Revocation\) Regulations 2021](#) were made. These regulations confirm the effect of the Directions and come into force on 19 March 2021. The regulations are not retrospective, but they do contain an obligation for employers to make payments to or on behalf of a former employee that they were previously unable to pay because of the exit cap.

The SAB is seeking a legal view on what interest is payable on additional payments made by employers to former employees and administering authorities. We will update the employer and administering authority information notes once we have received that legal opinion.

### **LGA/LGPC response to GMP indexation consultation**

On 21 December 2020, LGA/LGPC responded to the HM Treasury consultation on indexation of guaranteed minimum pensions (GMPs). The consultation contains proposals to ensure that the government meets its commitment to fully price protect the GMP element of public service pensions following the introduction of the new State Pension in 2016.

### **Dashboard data standards.**

LB informed the Committee that the Pension Dashboards Programme (PDP) published key data standards on 15 December 2020. Administering authorities will need to identify and address any data gaps. The PDP is proceeding with the proposal to include a retirement estimate in the information that members can access through the dashboard. Our response to the consultation did not support the inclusion of a retirement estimate because:

- administering authorities are not required by current legislation to include one in an annual benefit statement, and
- a projection based on retirement on a specific date that might be 40 years in the future is of limited use.

We were in favour of making information about accrued benefits available on the dashboard, and signposting members to online calculators to model what benefits they might receive based on their chosen retirement date.

## 6. SAB UPDATE [E&W]

JH presented the key points from paper C.

### McCloud

JH informed the Committee that the other major issue for LGPS employers and administering authorities apart from the exit cap is the McCloud remedy.

The Government responded to the consultation on changes to the unfunded public service pension schemes on 4 February 2021. The Government intends to proceed with deferred choice underpin - members in scope will be allowed to opt for membership of the relevant final salary or career average scheme for the period 1 April 2015 to 31 March 2022, and they will make that choice on retirement. The SAB is currently analysing the Government's response to the consultation with the added help of Joanne Donnelly, who recently joined the team as the SAB Senior Pensions Secretary, having previously worked for HM Treasury.

We expect a ministerial statement on changes to the LGPS to implement the McCloud remedy in the coming weeks.

JH emphasised the amount of work that will be involved to update member records so that the McCloud remedy can be correctly applied. The additional work is likely to impact on the morale of pension administration teams who are pressed due to the pandemic, but it will result in very few actual changes to benefits in payment or deferred benefits.

The Chair noted the cost of the McCloud remedy across the public sector was expected to amount to several billion pounds.

JH reminded the Committee that the preliminary findings of the 2016 valuations found that cost of providing public sector pension schemes was cheaper than expected and would breach the cost 'floor'. Taking the McCloud remedy into account

will increase the scheme costs and may mean a different result when the 2016 valuations are finalised.

### **Good Governance project**

The aim of the Good Governance project is to improve governance across the LGPS. The SAB will discuss the Phase 3 report when it meets later today. The SAB will decide on what proposals to recommend. It will be up to MHCLG to make the final decision on what will be taken forward and find the necessary parliamentary time to make changes to the LGPS regulations.

### **Responsible investment**

The SAB is aiming to launch an online A to Z responsible investment guide by the end of March 2021.

The Pension Schemes Bill contains new rules on climate change risk reporting. Those rules will not apply to the LGPS, but MHCLG intends to introduce changes to the LGPS regulations that mirror the proposals in the Pension Schemes Bill.

### **Employer flexibilities**

We expect MHCLG to issue statutory guidance later in February. This will be accompanied by supporting guidance published by the SAB.

RW expressed concern that the employer flexibilities could lead to the weakening of an employer's covenant. If a further educational establishment or wholly private company fails, could their liabilities fall on the remaining Scheme employers and ultimately council taxpayers?

JH confirmed that the default position remained that an exiting employer must pay the full exit payment. The new flexibilities should be used by the administering authority to get the most money out of an exiting employer if it is not able to pay the full exit payment. The flexibilities provide an alternative route for employers that can neither afford to remain in the Scheme, nor afford to leave.

Kevin Gerard [KG] confirmed that he is aware of employers that are keeping a single employee in the Scheme to avoid the requirement to pay an exit payment.

## **7. REGULATION UPDATE SCOTLAND**

The Committee noted the key points from paper D, which was presented by Kimberly Linge [KL].

LGPC Meeting – 10 May 2021

Agenda Item 2

Page - 6

## **Consultation – (Amendment) (No 2) Regulations 2020.**

SPPA is looking at the flexibilities for exiting employers that have been introduced to the LGPS in England and Wales and considering whether to make similar amendments to LGPS Scotland. SPPA wrote to Scottish administering authorities to ask for their views by the end of February 2021.

## **Cost Cap valuation**

GAD will recommence work on the 2016 cost cap valuation when HMT publishes Directions, which are expected February 2021.

## **Scottish Structural Review**

Scottish Ministers asked the SAB to look into the structure of the LGPS funds, with a view to seeking improvements in administration and the ability to invest in infrastructure. Following on from the interim report of April 2019, the SAB has asked Scotland Excel to provide support to procure an expert to carry out a cost benefit review of the structure of the Scottish funds.

## **8. REGULATIONS UPDATE NORTHERN IRELAND**

The Committee noted the key points from paper E, which was presented by David Murphy [DM].

### **LGPS Regulations**

The Department for Communities consultation on the McCloud remedy closed on 31 January 2021. In their response to the consultation, NILGOSC recommended that the underpin should crystallise on 31 March 2022, instead of crystallising when the member takes their benefits.

The SAB met virtually in December 2020. The Department indicated that it is unlikely to support crystallisation of the underpin in 2022. They are unlikely to deviate from the approach proposed for England and Wales, and Scotland.

The first Industrial Tribunal claim relating to the discrimination identified in the McCloud case has been launched in Northern Ireland.

The Department is considering how to remedy the discrimination identified in the Goodwin case.

DM asked to continue to attend the LGPS practitioner group. JH confirmed that representatives from Scotland and Northern Ireland had not been invited to the most recent meeting. That meeting concerned the exit payment cap that applied only in England and Wales. JH agreed that representatives from Scotland and Northern Ireland would be invited to future meetings that cover topics which are relevant to them.

## **9. UPDATE FROM TECHNICAL GROUP**

The Committee noted the key points from paper F, which was presented by KG.

KG stated that most of the issues discussed by the Technical Group had already been covered in other Papers.

The Technical Group recognises the enormous amount of work that the McCloud remedy will generate for both employers and administering authorities. Many of the benefit calculations performed since 2014 will need to be reviewed. The Technical Group values support from the Committee and from the SAB and their efforts to publicise the scale of the task and the resources that will be needed to complete it successfully.

Software suppliers are developing data upload interfaces to assist with the data collection process. Users are currently testing these interfaces and it is clear that a significant amount of manual intervention will be required to record the accurate service information needed to perform an underpin calculation.

### **Exit payment cap**

Technical Group thanked the LGA for the guidance and other resources covering the exit payment cap that they have produced for employers and administering authorities.

### **GMP indexation and equalisation**

Technical Group would welcome a longer extension to the interim solution due to the resource demands resulting from the McCloud remedy. The Group is also awaiting guidance on the approach to take for past transfers of benefits built up before 1997.



## **10. TRAINING AND CONFERENCE UPDATE**

Elaine English [EE] reported that a virtual LGPS update took place on 26 January 2021. Over 100 delegates attended and have provided very positive feedback. EE sent a copy of the recording and slides to the Committee.

We hope that both our Fundamentals training programme and the annual Governance conference can go ahead. The Fundamentals programme usually takes place in October, November and December each year. Our annual conference then follows in January. The next annual conference is booked for 20/21 January 2022 in Bournemouth.

We recently conducted a survey to find out what administering authorities' training priorities are. The survey results show almost equal support for virtual and face to face training. We will use the survey results to develop our training plan. Events will be virtual in the immediate future. In the longer term we plan to offer both virtual and face to face training.

The LGPC will run webinars covering new scheme developments when the demand arises.

## **11. ANY OTHER BUSINESS**

The Chair noted that some of the meeting papers show 2020 instead of 2021 and asked for these to be corrected. LB agreed to make those amendments.

## **12. DATES OF NEXT MEETINGS**

10 May 2021, 2 August 2021 and 1 November 2021.

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