Paper A: Minutes of Meeting held on 2 November 2020

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 rep

Secretariat

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

Non-attendees

Ms Rachel Brothwood	SAB representative
Cllr Iain Malcolm	LGA

1. INTRODUCTION FROM THE CHAIR

The Chair, Cllr John Fuller [JF] welcomed members to the second virtual meeting and outlined the protocol for the meeting.

2. APOLOGIES

No apologies were received.

No declarations of interest were declared.

3. MINUTES

The minutes of the previous meeting held on 7 September 2020 were agreed.

4. MATTERS ARISING

Cllr Oliver Ryan [OR] thanked the Chair for his welcome and stated that he missed the last meeting due to a funeral.

Lorraine Bennett [LB] informed the Committee that the Secretariat has written to Cllr Byron Rhodes on behalf of the Committee extending their thanks to him. LB also confirmed that, following the Committee’s agreement to the budget at the last meeting, the subscription letters to local authorities have been sent.

5. EXIT PAYMENT REFORMS

LB presented the key points from Paper B.

Paper B only covers England and Wales. The exit payment reforms do not apply in Scotland or Northern Ireland. The Government first consulted on exit payment reforms in 2015 but implementation of the reforms was delayed. Two streams of exit payment reforms are now being taken forward at pace:

- the exit payment cap which impacts the whole public sector and is effective from 4 November 2020, and
- further exit payment reforms which impact some LGPS employers only and amend the LGPS regulations to accommodate the cap.

HMT exit payment cap regulations came into force earlier than expected, and before any changes had been made to the LGPS regulations. This has caused an apparent conflict between the two sets of regulations when the exit of an LGPS member aged 55 or over would cost the employer more than £95,000.

The MHCLG consultation on further exit payment reforms has closed, but they have also asked for responses to draft regulations by 18 December 2020. Implementation of these amendments is expected to be early in 2021.

Exit cap

LB stated that the draft Restriction of Public Exit Payment Regulations 2020 are effective from 4 November 2020. The Schedule to the regulations provides a list of public sector employers and offices that the cap applies to.

The LGPS regulations require immediate payment of unreduced benefits when a member retires due to redundancy or business efficiency. These regulations prevent an employer from meeting the pension strain cost of paying the pension early if the total cost of the exit exceeds £95,000. The LGA has made both MHCLG and HM Treasury (HMT) aware of the predicament this conflict places LGPS administering authorities and Scheme employers in.

HMT has published:

- Exit Payment Cap Directions 2020 setting out further information about waiving the cap
- Guidance for employers on how to implement the exit payment cap, including a pro forma to use to apply to HMT for a waiver.

We expect further guidance from MHCLG on the waiver process.

The Local Government minister wrote to all councils and administering authorities setting out MHCLG's recommended course of action when the cost of an exit would exceed the cap. The minister's view, when the cost of an exit would exceed £95,000 is that:

- the administering authority should offer the member deferred benefits or an immediate fully reduced pension
- the employer should pay a cash alternative instead of making a strain cost payment to the administering authority.

The recommendation does not constitute legal advice or statutory guidance.

Jeff Houston [JH] confirmed that the Scheme Advisory Board (SAB) has obtained legal advice on the risk of challenge when a member is denied an unreduced pension. The SAB has published a commentary on that legal advice on the Public Sector Exit Payments page of the SAB website. The SAB suggests that:

- the administering authority should offer the member deferred benefits or an immediate fully reduced pension
- the employer should delay paying a cash alternative.

The SAB expects that a member who is denied an unreduced pension will launch a legal challenge. If that challenge is successful, and the SAB approach has been followed, the administering authority could then pay an unreduced pension and ask the employer to pay the strain cost. The employer may only be able to meet part of the strain cost.

If an employer pays a cash alternative, and a member launches a successful legal challenge, then the administering authority will ask the employer for a strain cost to cover the early payment of the pension. There is a risk that the employer would pay twice in respect of the same exit.

The MHCLG view is based on the principle of implied repeal. If their view is upheld in a legal challenge, then any administering authority that has paid unreduced benefits when the exit payment cap is breached would have to recover overpaid pensions.

JH noted that these regulations only affect exits if the cost exceeds the cap. There is no change to the benefits payable when an individual leaves and the employer cost is £95,000 or less.

A number of unions have launched legal challenges in response to the introduction of the exit payment cap and opposing MHCLG proposals for further reform.

Kevin Gerard [KG] expressed his concern about redundancies in the immediate future. His preference would be for all administering authorities to take the same approach. JH confirmed that administering authorities were free to take their own legal advice and may choose a different approach to the SAB recommendation. The Chair stated that no instruction should be given but that clear communication was needed. He suggested that a group be formed of representatives of administering authorities and employers to look at the issue and consider what information would be useful for employers in scope of the cap. JH stated that he would be attending a meeting the next day with practitioner representatives and SAB on how to progress.

Action: The Committee agreed that the Secretariat should produce a checklist of responsibilities for employers and administering authorities when dealing with an exit covered by the cap.

Post-meeting script: LGA published on 4 November an information note for employers on the exit cap. The document is available on the employer guides and documents page of www.lgpsregs.org. It supplements the information provided on the Scheme Advisory Board's website.

LGA also published on 9 November an information note for administering authorities.

Reforming public sector exit pay

LB outlined the second ongoing stream of reforms to exit pay. MHCLG is consulting on changes to LGPS and compensation regulations:

- to accommodate the exit cap by introducing partial reductions and allowing members to pay extra to buy out the reduction
- to make further reforms in line with the 2016 consultation, including limiting the calculation of discretionary compensation payments

The change that will have the greatest impact on LGPS members is the requirement to reduce the strain cost by the statutory redundancy payment (SRP). The member's LGPS pension would be reduced to reflect the lower payment made to the pension fund by the employer.

Figures produced by GAD indicate that 86% of members will be affected by the proposed reforms, predominantly because of the requirement to reduce strain cost by SRP. The LGA will respond to the consultation before the deadline of 9 November. Their response will highlight the impact of the reforms on lower paid workers with a relatively small pension. The response will include figures to illustrate the impact of the reforms on different groups based on age and pay.

Cllr Alan Waters [AW] noted that the purpose of the reforms was to reduce payments made to the highest paid when they exit public sector employment. The figures reinforce the significant impact the proposals would have on lower paid individuals who are facing the difficulties associated with redundancy.

Jeremy Hughes [JHu] confirmed that the purpose of the reforms was to tackle the cost of the exits of higher earners. There were other aims, including making public sector exits more in line with practices in the private sector and to remove incentives for employees to retire early.

The Chair thanked the Secretariat for the useful set of tables. He asked whether the figures could be shared with local authorities, including a list of key points.

6. REGULATIONS UPDATE ENGLAND AND WALES

LB presented the key point from paper C.

Three consultations on proposals to remove the discrimination identified in the McCloud / Sargeant cases have recently closed:

- The SAB responded to the MHCLG consultation on amendments to the statutory underpin. The response included comments on both policy and technical considerations of the proposal. MHCLG received 94 responses which they are currently considering.

- The LGPC responded to the equivalent consultation for amending the statutory underpin in Scotland.

- The LGA responded to HM Treasury's consultation on changes to the transitional arrangements of the 2015 unfunded schemes on behalf of the Teachers', Firefighters' and Police Pension Schemes.

The LGA responded to HM Treasury's call for evidence on pension tax relief administration. The LGPS operates on a net pay basis, meaning that it is more expensive for non-tax payers than a relief at source arrangement. GAD provided demographic data about LGPS members that are disadvantaged by the current arrangement. Women over 40 are disproportionately represented in that group, meaning that a legal challenge on the grounds of discrimination is possible.

The rate of CPI rate of inflation in September 2020 was confirmed as 0.5%.

7. SAB UPDATE [E&W]

Jeff Houston [JH] presented the key points from paper D.

COVID-19

The fortnightly meetings of the Practitioners Group have proved very successful. The group has assisted the SAB in producing FAQs and publishing surveys on scheme resilience, cash flow, governance and mortality. The SAB agreed that the time was now right to move back to more strategic and specific issues. Fresh terms of reference and membership of a new practitioners' group will now be formed.

Investment, governance and engagement committees

The terms of reference and composition of the Responsible Investment Advisory Group has been agreed. The group will facilitate a web resource for LGPS stakeholders.

DWP's consultation 'Taking action on climate risk: improving governance and reporting by occupational pension schemes' closed on 7 October. The DWP proposed changes that will apply in the private sector. MHCLG plans to consult in 2021 on proposals to introduce similar changes to the LGPS.

8. REGULATION UPDATE SCOTLAND

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

Consultation – addressing discrimination in the LGPS & amendment to the statutory underpin

This SPPA consultation closed on 23 October. SPPA received more responses than normal, a number of which were very detailed. The Scottish Ministers are considering those responses before final regulations are laid in 2021.

Cost Cap valuation

GAD will recommence work on the 2016 cost cap valuation in 2021.

9. REGULATIONS UPDATE NORTHERN IRELAND

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

LGPS Regulations

The Department for Communities has not yet launched its consultation on changes to the statutory underpin. This is expected in early November 2020.

The Department of Finance is considering what action to take in response to the Goodwin case. The remedy introduced for Walker v Innospec was introduced from January 2020 without retrospection and a similar date is being considered for the Goodwin remedy.

10. UPDATE FROM TECHNICAL GROUP

The Committee noted the key points from paper G, which was presented by Kevin Gerard

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 require by both employers and administering authorities. They would welcome the publication of statutory guidance at the same time as the regulations are amended. This would allow all administering authorities to implement the remedy using the same process and timescales.

The National Insurance Database is a facility which administering authorities use to check if a member has membership with any other LGPS administering authority before taking certain actions. In order for the database to work effectively, each administering authority must sign up to the database and regularly upload data. KG thanked LB for liaising with Section 151 Officers of local authorities that have not signed up or uploaded data to the database.

11. TRAINING AND CONFERENCE UPDATE

Elaine English [EE] reported that the Fundamentals Programme that took place virtually during October had been very well received. The annual Governance conference originally scheduled to take place in January 2021 has been postponed until January 2022. The Secretariat is considering a virtual update in early 2021. The training programme for practitioners is currently being reviewed. We may introduce training on the exit payment cap and wider exit payment reforms.

12. ANY OTHER BUSINESS

13. DATE OF NEXT MEETING

8 February 2021, 10 May 2021 [August onwards to be agreed]

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