

## Current Issues

### 1. **SAB statement on local pension board meeting cancellations**

It has come to the attention of the SAB that some administering authorities have cancelled meetings of their local pension boards during the COVID-19 emergency.

Having taken legal advice, the SAB is satisfied that:

- arranging a virtual meeting of a local pension board would facilitate the discharge of a local pension board's duty to conduct business during the emergency, and
- a local pension board therefore has the power to hold virtual meetings by virtue of regulation 106(8) of the LGPS Regulations 2013.

A local pension board's terms of reference may already allow virtual meetings. If they do not, the SAB recommends amending them to allow virtual meetings in emergency situations.

### 2. **MHCLG consultation on amendments to the statutory underpin**

MHCLG has published a consultation on amendments to the statutory underpin. The consultation seeks views on proposed changes to the LGPS in England and Wales to remove the unlawful age discrimination identified in the McCloud judgment.

In summary, the consultation proposes that:

- members who were active in the 2008 Scheme on 31 March 2012 who joined the 2014 Scheme and do not have a disqualifying break will be covered by underpin protection
- members do not need to have an immediate entitlement to benefits when they leave the Scheme to qualify for underpin protection
- underpin protection will take account of early and late payment actuarial adjustments
- information about the impact of the underpin must be included in annual benefit statements.

Other proposals clarify how the underpin affects the calculation of survivor benefits, transfer values and trivial commutation payments.

The 12-week consultation will close on 8 October 2020.

### 3. **Actuarial valuation of the LGPS 2016 published**

The Government Actuary's Department (GAD) is undertaking an actuarial valuation of the LGPS as at 31 March 2016 as part of the cost control process. This work was on hold because of the changes to the scheme in response to the McCloud

judgment. On 15 July 2020, the Government published a GAD report on the membership data that will be used to calculate the valuation results.

#### **4. GAD 2020 data collection update**

To carry out the 2020 scheme level valuation, the Government Actuary's Department (GAD) will request data as at 31 March 2020 from administering authorities in September this year. In preparation, GAD reviewed the 2019 valuation data and recently gave individual feedback to administering authorities. The purpose was to start a dialogue on data quality and to find ways of improving it ahead of the 2020 valuation.

To discuss data issues and issues arising from the feedback to authorities, GAD, the Scheme Advisory Board, the Ministry for Housing, Communities and Local Government (MHCLG) and fund actuaries recently held a meeting. On 10 June 2020, LGA emailed administering authorities letting them know the outcome from the meeting, and forwarded a valuation data update from GAD.

The letter confirms that it was not GAD's intention to question the 2019 fund valuations or the data used to complete them. GAD also set out in the letter a revised timetable for the 2020 data collection exercise and that, due to the expected tight timeframe, they do not plan to give administering authorities individual feedback on their data as at 31 March 2020. Rather, GAD will provide a central report on LGPS data quality as part of the valuation advice to MHCLG. Despite the revised timetable, GAD still plan to request the data as at 31 March 2020 in September this year.

#### **5. HMRC**

##### **Pension schemes newsletter 121**

HMRC has published pension schemes newsletter 121.

In previous newsletters, to help administrators during the COVID-19 pandemic, HMRC had announced some temporary easements. In newsletter 121, HMRC announced an extension to these. In particular:

- If a scheme failed to meet the accounting for tax (AFT) deadline for the quarter 1 January 2020 to 31 March 2020 because their resources were affected by the COVID-19 pandemic, HMRC agreed to cancel any penalties. HMRC has extended this easement to cover the quarters 1 April 2020 to 30 June 2020 and 1 July 2020 to 30 September 2020.
- In newsletter 118, HMRC announced that they would cancel any penalties for submitting form APSS262 late. Schemes use this form to tell HMRC about a transfer to a qualifying recognised overseas scheme. HMRC has extended the easement to 31 October 2020.

HMRC has also announced some delays to the Managing pension scheme service. It was previously announced in the Managing pension schemes service newsletter – April 2020 that from 1 July 2020, schemes would be able to –

- submit their AFT return for the quarter 1 April 2020 to 30 June 2020 using the Managing pension scheme service
- use the new service to start compiling their AFT return for the next quarter (1 July 2020 to 30 September 2020).  
Schemes will now only be able to do so from 21 July 2020.

Lastly, newsletter 121 gives an update on HMRC's amendments to the process for reporting corrections to previous year payroll data, which is set to start from April 2021.

## **6. TPR updates COVID-19 guides**

The Pensions Regulator (TPR) has given guidance to help pension schemes and their employers cope with the impact of COVID-19. The guidance contains various easements, most of which were set to remain until 30 June 2020, such as TPR taking a more flexible approach to what they expect schemes to report. On 16 June 2020, TPR published updated versions, alongside a press release summarising the changes.

In particular, the COVID-19: an update on reporting duties and enforcement activity guidance sets out that, from 1 July 2020, the previously paused reporting requirements resume. TPR says that this will allow them to "horizon-scan effectively, identify risks and act as necessary to protect savers." TPR will continue to assess breaches on a case-by-case basis and respond pragmatically to COVID-19 related breaches.

The Scheme administration: guidance for trustees and public service is also updated to set out the need to ensure that members, particularly the most vulnerable, remain able to contact administrators. TPR acknowledges that some administrators are encouraging members to use electronic communication, such as online portals and emails. However, TPR recommends that administrators also seek to maintain services for those who are not online and potentially vulnerable through the safe and secure processing of post and providing a telephone service for critical queries.

The COVID-19 DB scheme funding and investment guidance for trustees included a reference to suspending transfer payments for up to three months where trustees feel it is in the best interests of scheme members. This guidance does not directly apply to the LGPS. Although, administering authorities may have used it when deciding whether to suspend transfer payments. The updated version has removed references to suspending transfer payments. It now simply refers schemes who need more time to pay a transfer to the normal rules on applying to TPR for an extension.

## **7. Adapted version of transfer warning letter for LGPS now available**

TPR's guidance on communicating to members during the COVID-19 pandemic includes a request for pension managers to issue a transfer warning letter to members applying for a cash equivalent transfer value (CETV) quote from a defined benefits (DB) to a defined contributions (DC) scheme. The original letter, jointly

prepared by TPR, the Financial Conduct Authority (FCA) and the Money and Pension Advice Service (MaPS), contains references to the Pension Protection Fund and is not suitable for use by the LGPS. TPR has now supplied a version of the transfer warning letter suitable for public sector schemes. TPR has asked that the letter is issued to all members requesting a CETV quote to a DC scheme for the foreseeable future. On 16 June 2020, LGA emailed all administering authorities letting them know.

TPR has also asked that pension managers actively monitor the number of requests for CETV quotes and which advisers are supporting the members' requests. If any unusual or concerning patterns emerge, such as spikes in CETV requests or the same adviser across a multitude of requests, LGPS administering authorities should contact the FCA at [DBTransferSchemeInformation@fca.org.uk](mailto:DBTransferSchemeInformation@fca.org.uk).

## **8. Other news and updates**

### **Clarification on whether Club transfer arrangements apply to CARE added pension**

The Cabinet Office (who is responsible for the Club transfer rules) has confirmed that added pension attached to CARE benefits ("CARE added pension") cannot be transferred under Club arrangements, in the same way that added pension attached to final salary benefits also cannot. CARE added pension means added pension awarded by the employer or bought by paying additional pension contributions (APCs).

The Club Memorandum sets out that added pension attached to final salary benefits should not be transferred under Club arrangements (under the "outer Club" rules). When a member with added pension takes an outer Club transfer, the transfer value must be calculated in two parts: the final salary element, calculated on outer Club terms; and the Added pension element calculated on non-Club terms. We queried with the Cabinet Office whether this also applies when a member with CARE added pension takes an inner Club transfer, as we don't believe that it is covered in the Memorandum.

After consulting with the Government Actuary's Department, the Cabinet Office has informed us that the Club arrangements should also not apply to CARE added pension. This is because "the value of accrued Added Pension is not affected by an active service link, so it has no need of the Club."

The Cabinet Office will update the Memorandum accordingly at its next review. In the meantime, they will send an update to all relevant public service pension schemes.

## **9. FCA sets out plans to improve pension transfer advice**

Members of most defined benefit schemes (including the LGPS) must get financial advice if they wish to transfer their benefits to a defined contribution scheme where the transfer value is £30,000 or more.

The Financial Conduct Authority (FCA) has expressed concern about the high levels of unsuitable advice that advisers have given to members.

On 5 June 2020, the FCA set out a package of measures to improve the quality of pension transfer advice. This includes banning contingent charging, with limited exceptions. This type of charging is where the adviser is only paid if they recommend a transfer. The FCA believes that such arrangements create a conflict of interest. The result of this ban, though, may see members paying more for advice. The FCA will also allow advisers to provide a shorter, cheaper form of abridged advice. Abridged advice can only result in a recommendation not to transfer or a statement that it is unclear whether the consumer would benefit from a pension transfer without giving full advice. Members wishing to transfer out who are required to get financial advice will still need to get the full advice.

In addition, the FCA has also published information to help customers check the suitability of advice previously given and information to help customers who are considering transferring out.

## **10. Pensions Dashboards update**

The Money and Pensions Service (MaPS) are leading on the initial phase of the project to implement pensions dashboards. This includes bringing together a delivery group made up of stakeholders from across the industry, consumer groups, regulators and government. The industry delivery group has now been renamed the Pensions Dashboards Programme (PDP). In April 2020 MaPS published the following documents:

- PDP progress update report. This sets out the progress made so far and the work that needs to be undertaken before the service is launched to the public.
- Pensions dashboards data scope: working paper. The paper sets out options for achieving comprehensive coverage across all pension sectors to deliver an acceptable early breadth of coverage for individuals.
- Pensions dashboards data definitions: working paper. This lists the set of data items that could be included in the dashboards data standards.

Initially, MaPS requested informal feedback only on the data scope and data definitions working papers; however, they will be requesting formal industry-wide input throughout July and August. The call for input will start on 6 July. In conjunction with this, the PDP will convene a data working group representing all sectors of the pensions industry.

On 22 June 2020, the PDP started a six-week period of informal market engagement with potential suppliers of the digital architecture which will connect individuals with their pensions information when they request it. The market engagement exercise will enable PDP to examine the readiness, capacity and capability of commercial firms which might be interested in the work. Formal procurement will start in Autumn 2020. Potential suppliers are being invited to register their interest by 31 July 2020.

#### **11. COVID-19 governance survey**

From 1 to 15 May 2020, the LGPS England & Wales Scheme Advisory Board (SAB) undertook a survey to understand how the governance of the LGPS has been affected by COVID-19. 83 administering authorities responded including authorities in Scotland and Northern Ireland. The SAB has published the results of the COVID-19 governance survey on the Board's website.

#### **12. LGPS employer FAQs**

LGA have created a COVID-19 FAQ web page for LGPS employers. They have been created based on questions and feedback from our COVID-19 employer webinars. The FAQs are designed to help employers understand pension issues that may arise during the pandemic.

#### **13. English life assurance scheme**

The Government has introduced the NHS and Social Care Coronavirus Life Assurance Scheme (England) for eligible frontline health and social care workers during the pandemic. A payment of £60,000 will be made to the estate of eligible individuals who die from coronavirus contracted during their frontline essential work. The scheme specifies that payments are separate to, and regardless of other registered pension scheme benefits. A summary note on the scheme is available on the COVID-19 page of the SAB website. Further information is also available from the life assurance scheme page on the NHSBSA website.

#### **14. Extension to furlough and next steps**

The Chancellor has made a further Treasury Direction in relation to the Coronavirus Job Retention Scheme. The Direction reflects the extension to the Scheme announced by the Chancellor on 17 April and clarifies some provisions within the original Direction.

On 29 May 2020, the Government published the next steps to furlough:

- from 1 July 2020, employers can bring back employees part-time.
- the Scheme will be closed to new entrants from 30 June 2020.
- from August 2020, employers will no longer be able reclaim employer NI and pension contributions.
- from September 2020, employers must fund 10 per cent up to £312.50 (Government will fund 70 per cent up to £2,187.50).
- from October 2020, employers must fund 20 per cent up to £625 (Government will fund 60 per cent up to £1,875).
- the furlough scheme finishes at the end of October 2020.

#### **15. Supreme Court Judgement on LGPS boycotts**

In June 2017 the High Court published its judgment in a judicial review case concerning the statutory guidance issued to accompany the L G P S (Management and Investment of Funds) Regulations 2016. The case was brought by Palestine Solidarity Campaign Ltd and an L G P S member. It ruled that the section within the guidance stating that administering authorities should not pursue policies that are contrary to UK foreign policy or UK defence policy was unlawful.

The statutory guidance was reissued in 2017 with the relevant statements removed; however, M H C L G appealed the High Court decision. In June 2018, the Court of Appeal disagreed with the original ruling by the High Court. This allowed the case to move to the Supreme Court. Meanwhile, the statutory guidance remained published with the relevant statements removed.

In April 2020 the Supreme Court ruled that the legislation does not permit the Secretary of State to impose the government's view on foreign and defence policy, on L G P S administering authorities.

SAB have issued a statement on its website and will publish a summary of the full judgment in due course.

#### **16. 2019 LGPS annual scheme report**

On 22 May 2020, Councillor Phillips (Chair of SAB) launched the 2019 L G P S England and Wales annual scheme report. Highlights from the report include:

- total membership increased from 5.8 million in 2018 to 5.9 million in 2019, a rise of 0.6 percent.
- total assets increased to £291 billion, a change of 5.9 percent.
- local authority returns on investment over 2018/2019 was 6.6 percent. This was reflective of the market conditions during the year and set against the UK Return of 6.4 percent.
- the Scheme maintained a positive cash-flow position overall, including investment income.
- over 1.7 million pensioners were paid over the year.

#### **17. New guidance on avoiding pension scams**

TPR has updated its guidance for avoiding pension scams. The guidance confirms that they cannot prevent a member pursuing their statutory right to transfer and cannot permit administering authorities to prevent a transfer to which a statutory right applies. However, where administering authorities show evidence that the transfer *doesn't meet legal requirements*, TPR will consider this when deciding whether to act due to the non-payment of a transfer. The wording reflects the legal position on statutory transfers.

TPR has also expanded its commentary on applications for an extension of time to complete a transfer, and notes that suspicion of scam activity is not necessarily enough for an extension to be granted. The request must identify one of the specific circumstances under which TPR is permitted to grant an extension. Circumstances where an extension may be granted include when the:

- member has not taken all steps they need for the transfer to take place.
- administering authority has not been provided with the information they reasonably require to carry out the member's request.

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