APPENDIX B

Current Technical Issues

MHCLG letter about new requirement for exit payment data

MHCLG wrote to chief financial officers of councils and combined authorities in England on 9 April 2021, letting them know about a new requirement to provide data on exit payments.

Councils were asked to provide data on all redundancy payments, pension strain payments and other special payments made in consequence of an exit for 2014/15 to 2020/21 by the end of May 2021. We expect that a similar request will be made for subsequent years.

The data will be used to inform delivery of the Government’s policy to end excessively high exit payments in the public sector.

The letter included a draft specification and invited comments by 26 April 2021 on the clarity of the data requirements and the practicality of providing this.

High Court judgment on exit credits

On 27 May 2021, the High Court handed down its judgment in the case of EMS & Amey v Secretary of State for MHCLG. The case relates to the non-payment of a £6.5 million exit credit.

The Court found in favour of MHCLG and upheld the retrospective effect of the LGPS (Amendment) Regulations 2020. The judge noted that 'there were compelling public interest reasons for making the regulations retroactive', and that 'the aim of avoiding windfall payments and protecting the pension funds was legitimate'.

Background

From 14 May 2018, the LGPS (Amendment) Regulations 2018 introduced a requirement on administering authorities to pay any surplus (exit credit) to exiting employers.

EMS exited the Scheme in June 2018. The surplus at leaving was £6.5 million. However, the administering authority had concerns about paying this amount to EMS because a ‘pass-through arrangement’ had been in place.

MHCLG made the LGPS (Amendment) Regulations 2020, which came into force on 20 March 2020. The regulations amended the exit credit rules, requiring administering authorities to decide the amount of an exit credit after taking into account relevant factors. The regulations do not apply to credits paid before

20 March 2020. Therefore, as the administering authority in this case had yet to pay EMS the exit credit, the new rules applied to it.

The claimants brought a judicial review against the 2020 Regulations applying retrospectively.

Clarification on the exit credit discretion

The claimants also raised concern about how administering authorities are applying the new rules; in particular, suggesting that some administering authorities are excluding the possibility of paying an exit credit because a pass-through arrangement is in place. All parties accepted that this is incorrect, and the regulations do not give primacy to any single factor. In paragraph 161, the Court clarified the parameters of the discretion to award exit credits:

"i) The essential obligation of the decision maker is to make a rational and fair application of regulation 64(2ZAB) and (2ZC), giving the words their clear meaning.

Paragraph 7.2 of the explanatory memorandum could give the impression that no exit credit can or should be paid in the circumstances described in that paragraph. That impression would be misleading, because the regulation requires a multi-factorial discretion to be applied, having regard to all relevant facts of which the decision maker is made aware. The regulation does not make any single factor conclusive.

Regard may always be had to the fact that, by the legislation as amended by both the 2018 Regulations and the 2020 Regulations, the Defendant provided for the possibility of exit credits.

Regard also may always be had to the fact that, by the legislation as amended by the 2020 Regulations, a multi-factorial discretion was provided to replace, and no doubt was thought to be fairer than, an absolute entitlement.

Regard must be had to the relevant factors stipulated at paragraphs (a) to (c) of regulation 64(2ZC).

The regulation does not give primacy to any single factor. The weight given to any relevant factors therefore will always depend on the facts of the individual case."

TPO publishes three member factsheets

In March 2021, the Pensions Ombudsman (TPO) published three factsheets aimed at members, covering the Early Resolution Service, how TPO investigates complaints and complaining to the party at fault.

The factsheet on the Early Resolution service explains what the service is, how it operates and what the member's options are.

The factsheet on how TPO investigates complaints explains the investigation process, what is meant by a determination, how TPO will communicate during the investigation, how TPO will share information and how the member can help the process.

The factsheet on complaining to the party at fault explains the need for members to have first tried to resolve the matter with the party at fault before TPO can investigate. This includes explaining how the member can complain to the party at fault, time limits, and what happens after then.

Pension scams webinar

On 31 March 2021, TPR hosted a webinar on the pledge to combat pension scams.

The webinar included speakers from TPR, the Pensions Scams Industry Group, the Money and Pension Service and the City of London Police. It also included recordings of calls from victims of scams.

TPR has published a recording of the webinar on their website.

TPR addresses concerns about new criminal offences powers

On 19 April 2021, David Fairs from TPR published a blog addressing concerns raised about TPR's new criminal offences powers.

The Pension Schemes Act 2021 includes two new criminal offences, which are expected to come into force in autumn 2021. The offences cover avoiding employer pension debts and risking savers' pensions. TPR has recently consulted on their policy setting out their approach to the investigation and prosecution of these new powers.

Many industry commentators have raised concerns about the reach of the new powers. Some have speculated that the new powers could lead to competent trustees resigning in fear of inadvertently committing an offence.

David Fairs confirms in the blog that TPR will not overstretch the intent and purpose behind the new powers.

Direction on GMP indexation updated

The Government had decided to discount conversion as a long-term policy solution and make the interim solution the permanent solution for indexing guaranteed minimum pensions (GMPs) in public service pension schemes.

HMT has updated their direction under section 59A of the Social Security Pensions Act 1975, implementing the decision. The updated direction commenced on 6 April 2021 and applies in England, Scotland and Wales.

LGPC responds to NMPA consultation

On 19 April 2021, the Local Government Pension Committee (LGPC) responded to the consultation on increasing the normal minimum pension age (NMPA).

HM Treasury consulted on increasing the NMPA. The consultation reconfirmed an earlier decision to increase the NMPA from 55 to 57 from 6 April 2028. The consultation also sought views on proposals to implement the increase.

Supreme Court refuses to hear claim against SPA changes

The Supreme Court has recently confirmed that it will not hear the claim against the State Pension age (SPA) changes. The claim was supported by the campaign group, Backto60.

In the claim, Backto60 argued that the increase in the SPA affecting women born in the 1950s was discriminatory and that government did not give the women enough notice. Both the High Court and Court of Appeal had previously dismissed the claim.

PSIG publishes new version of Code of Good Practice

The Pensions Scams Industry Group (PSIG) has published version 2.2 of its 'Code of Good Practice on Combating Pension Scams'.

The new version is effective from 1 April 2021 and is updated to improve usability and to reflect recent regulatory changes as well as the evolving nature of pension scams. The code includes a section outlining the key changes.

Action Fraud launches awareness campaign about pension scams

On 20 April 2021, Action Fraud launched a national awareness campaign to remind the public about the importance of doing their research before making changes to their pension, including a warning to remain vigilant against pension scams.

The press release announcing the launch contains some simple steps for members to protect themselves against scams and advice on what to do if they suspect a scam.

PDP progress update

The PDP April 2021 progress update report includes information updates on the programme achievements over the last six months. You can read more about the PDP timetable for delivering pensions dashboards in the Programme timeline.

On 13 April 2021, the Pensions Dashboards Programme (PDP) issued an invitation to tender (ITT) for a supplier to provide the digital architecture for pension dashboards.

The chosen supplier will provide the main parts of the digital architecture. This will include the pension finder service, the consent and authorisation service and the governance register.

Prudential announce update to their brand

Prudential has announced that they will be updating their brand with a fresh new look and feel (including a new logo). This will include updating their websites, social media, brochures, letters and emails.

Prudential will roll out the updates to their communications gradually from mid-May 2021. So, you may receive information from them in the old and new brand over the next 12 months.

Prudential has said that the brand update will have no impact on either their contact details or login details to their online services.

Prudential has set up a webpage about their brand update giving more information.

Written Ministerial Statement on McCloud

On 13 May 2021, Luke Hall, Minister for Regional Growth and Local Government, made a Written Ministerial Statement on McCloud and the LGPS. The statement confirms the key changes that the Government will make to the LGPS regulations to remove the unlawful age discrimination. The statement confirms that:

- the age requirement for underpin protection will be removed
- a member will not need to leave with an immediate entitlement to
- benefits to qualify for underpin protection
- the remedy period will end on 31 March 2022
- the underpin calculation will be based on final pay at the underpin date,
- even when this is after 31 March 2022
- there will be two stages to the underpin calculation:
- the first on the underpin date – the date of leaving or on the normal
- pension age in the 2008 Scheme, if earlier
- the second when the benefits are paid
- the regulations will be retrospective to 1 April 2014.

We expect MHCLG to issue a full response to the consultation and to publish draft regulations later this year.

Call for input on improving the pensions journey

TPR and the Financial Conduct Authority have launched a call for input on improving the consumer pensions journey. They are seeking views from interested parties such as pension providers and employers on how consumers make decisions about their pension at key points throughout their working lives. The responses to the call for input will be used to find better ways to support individuals and help them to achieve better pensions outcomes.

The Pensions consumer journey: Call for input closed on 29 June 2021.

Call for input on improving the pensions journey: Blog and extension

On 1 June 2021, the Pensions Regulator (TPR) published a blog setting out the reasons for the call for input on improving the pensions.

The blog highlights how the world of pensions has changed. Life expectancy has risen significantly over the last 60 years, the demographic of membership has altered and savers in defined contribution schemes outnumber their defined benefit counterparts by 15 to one.

The Queen's Speech

The Government's legislative programme was laid out in the Queen's Speech delivered on 11 May 2021. The Government announced:

- a Public Service Pensions and Judicial Offices Bill that will introduce amendments to incorporate the McCloud judgment into public service pension schemes including the LGPS, and
- a Boycotts, Divestment and Sanctions Bill which aims to stop public bodies imposing their own views about international relations by preventing boycott, divestments or sanctions against foreign countries.

The Scheme Advisory Board plans to update its summary of the Supreme Court Boycotts case next month to reflect the contents of the Bill. You can find a link to the current version of the summary on the Legal opinions and summaries page of the Board website www.lgpsboard.org.

PLSA launches LGPS research project

On 18 May 2021, the Pensions and Lifetime Savings Association (PLSA) announced an LGPS research project at its Local Authority Conference. The research will look at areas of best practice, the future challenges faced by the LGPS and identify areas where additional clarity is needed.

SAB Annual Report 2019/20 launched

Councillor Jim Goodfellow, the Chair of the Scheme Advisory Board (SAB), recently launched the fifth Annual Report. The Report aims to provide a primary source of information about the Board's work over the last financial year (2019/20) for members, employers and other stakeholders.

Finance Act 2021 receives Royal Assent

On 10 June 2021, the Finance Act 2021 received Royal Assent.

The Act gives legal effect to the Government's decision to freeze the lifetime allowance at £1,073,100 for tax years 2021/22 to 2025/26, as announced at the last budget. The Government used budget resolutions to freeze the allowance from 6 April 2021 to the date the Act received Royal Assent.

Treasury launches consultation on cost control mechanism

On 24 June 2021, HM Treasury launched a consultation on proposed changes to the cost control mechanism alongside a written ministerial statement.

The consultation follows a review of the mechanism by GAD, which was published on 15 June 2021. HM Treasury requested the review amidst concern that the mechanism was not operating in line with its original objectives, in particular that it would only be triggered by extraordinary, unpredictable events.

The consultation sets out Treasury's response to GAD's findings and proposes making the following three changes, all of which were recommended in GAD's review:

- only considering past and future service in the reformed CARE schemes in the mechanism (so, removing any allowance for final salary schemes)
- widening the 2 per cent corridor to 3 per cent
- introducing an economic check so that a breach of the mechanism would only be implemented if it would still have occurred had long-term economic assumptions been considered.

The outcome of the consultation will not impact on the 2016 cost control valuations.

The consultation recognises that there are differences between the LGPS and other public service schemes, especially in the way in which employer contributions are set. The Government welcomes views on how the economic check would apply to the LGPS.

The consultation does not cover schemes in Northern Ireland, though Treasury welcomes feedback from all stakeholders across all UK public service schemes.

The consultation closes at 11:45pm on 19 August 2021. We intend to respond and will share our response before the closing date.

The consultation is available to view on the:

- Non-scheme consultations page of www.lgpsregs.org and

Treasury launches consultation on the SCAPE discount rate methodology

On 24 June 2021, H M Treasury launched a consultation on the methodology the Government uses to set the SCAPE discount rate alongside a written ministerial statement.

The SCAPE (Superannuation Contributions Adjusted for Past Experience) discount rate is used in the valuation of unfunded public service pension schemes (such as the NHS scheme) to set employer contribution rates. The discount rate is also used to set actuarial factors in the LGPS and other schemes.

Subject to the consultation on the cost control mechanism (see previous article), the rate may also become relevant to the outcome of the mechanism in the future. This is because the Government proposes to base the 'economic check' on the SCAPE discount rate, or an alternative measure, such as expected long-term GDP.

The consultation seeks views on the objectives for the SCAPE discount rate and the most appropriate methodology for setting it.

The current level of the rate will not be changed by this consultation; the Government will carry out a separate exercise to set a new rate in line with the chosen methodology following this consultation.

The consultation closes at 11:45pm on 19 August 2021.

The consultation is available to view on the:

- Non-scheme consultation page of www.lgpsregs.org

Commons committee publishes report on public sector pensions

In June 2021, the House of Commons Committee of Public Accounts published

a report on public sector pensions, after taking evidence earlier this year from HM Treasury and the Government Actuary's Department.

The report includes the Committee's conclusions:

- HM Treasury focuses on affordability to the taxpayer, but this is often at the expense of its other objectives, such as ensuring a decent income in retirement and supporting employers in recruiting and retaining staff.
- Public service pensions are affecting the delivery of frontline services insome areas, due to increased employer contributions.
- HM Treasury has not done enough to ensure people understand the value of their pensions.
- HM Treasury has done little to identify and manage the stark differences in average pensions between genders and other groups.
- HM Treasury has had to revisit key elements of the 2014/15 reforms due to the McCloud judgment and the cost control process not working as intended. These issues may take decades to resolve fully.
- HM Treasury has not yet performed an evaluation of the 2014/15 reforms and the Committee is not convinced that it is on track to meet its objectives.

LGPS mortality data

On 15 June 2021, the Scheme Advisory Board (SAB) in England and Wales updated its LGPS mortality data to the end of March 2021. The data covers all LGPS administering authorities in England, Wales, Scotland and Northern Ireland.

On the same day, the SAB published updated reports from Aon and Barnett Waddingham. Each report sets out analysis of the mortality data of a single LGPS fund during the pandemic.

Making ABSs for active members available on a website

In accordance with the Public Service Pensions (Information about Benefits) Directions 2014, administering authorities may provide annual benefit statements (ABS) to active members by making them available on a website. The Directions set out requirements that must be complied with when doing so. As a result of a question we have received, we would like to reiterate what those requirements are:

- if the member requests a copy of the ABS, the administering authority must provide a paper copy (or a copy in a similar form capable of being read) free of charge
- the administering authority must be satisfied that members will be able to get access to, and store or print, the ABSs
- the administering authority has taken into account the requirements of disabled persons
- each time the authority uses a website to provide an ABS to an active member, the authority must first have told the member that fact, explaining how the member will be able to access and read the statement
- where the authority is using a website for the first time to provide an ABS to the member, the authority must give the information mentioned in the last bullet by giving it to the member by hand or by sending it to the member's last known postal or email address. Each subsequent time, the authority must give that information in such manner as the administering authority considers will bring that information to the member's attention (including by sending it to the member's last known email address).

In our view, one of the ways it would be acceptable for the administering authority to bring the information to the member's attention is via the Scheme employer. The administering authority should satisfy themselves that the employer is able and willing to contact all relevant employees.

MaPS MoneyHelper goes live

On 18 March 2021, the Money and Pensions Service (MaPS) revealed plans to launch a single offering for consumers called MoneyHelper. This will replace the Money Advice Service, the Pensions Advisory Service and Pension Wise. Though, Pension Wise will continue as a named service under the MoneyHelper umbrella.

Roll out began on 7 June 2021 with the launch of the Beta MoneyHelper website, ahead of a working date of 30 June for the full launch of MoneyHelper. The Beta launch allowed MaPS to continue testing and to gather vital feedback ahead of the full launch.

Next steps

As part of the consolidation of three brands into one, MaPS has decided to discontinue some of their content. This will enable them to provide a better and enhanced consumer experience, a single source of information and guidance where information can easily be found in one place.

As of 30 June 2021, links to the legacy websites (Money Advice Service, The Pensions Advisory Service and Pension Wise) will automatically redirect to the relevant new location on MoneyHelper. If the article(s) or tool(s) no longer exist, itwill redirect to a relevant landing page on the broader topic.