

**CAMBRIDGESHIRE PENSION  
FUND**



**Pension Fund Board**

**Date:** 27 October 2017

**Report by:** Head of Pensions

<b>Subject:</b>	<b>Governance and Legislation Report</b>
<b>Purpose of the Report</b>	To provide the Pension Board with: 1) Information on potential, new or amending legislation affecting the LGPS; 2) Information on other pensions legislation; 3) Activities of the LGPS Scheme Advisory Board and Pensions Regulator; 4) Information on issues concerning the governance of the Local Government Pension Scheme (LGPS) on a national and local basis; and 5) Skills and knowledge opportunities.
<b>Recommendations</b>	<b>That the Pension Board notes the content of the report.</b>
<b>Enquiries to:</b>	Jo Walton – Governance and Regulations Manager, LGSS Pensions Service E-mail: <a href="mailto:jwalton@northamptonshire.gov.uk">jwalton@northamptonshire.gov.uk</a>

## 1. Background

- 1.1 This is a standing report that identifies issues concerning the governance of the Local Government Pension Scheme (LGPS) and also potential, new, amending and overriding legislation that will have an impact on how the Scheme is managed and on members' benefits.

## 2. Potential changes to LGPS Regulations

### 2.1 Cohabiting partner's pensions

- 2.1.1 The UK's Supreme Court previously ruled that a provision in Northern Ireland's Local Government Pension Scheme (LGPS) that prevented the cohabiting partner from receiving a survivor's pension, unless the member had nominated her, unlawfully infringed upon her human rights. The ruling could have direct implications for other public-service pension schemes, such as the LGPS for England and Wales, many of which have similar nomination requirements.
- 2.1.2 Following on from this, the Department of Communities and Local Government have recently issued guidance and in conjunction with legal advice obtained from the Cambridgeshire Pension Fund a full report is being provided to the Pension Fund Committee on the findings and action to be undertaken, which can be found in Appendix 2 of this report.

## 2.2 Exit payment reform update

2.2.1 Following June's general election, it is understood that there is no policy change in respect of the various exit payment reforms that the 2015-2017 Government were in the process of introducing prior to the snap election. However, given the focus on Brexit in the coming period and the new Government's minority status, it is unclear the extent to which pursuing each reform will be a priority for the Government. It is also unclear the implementation timescales the Government plan to adopt for each reform. The understanding of the current position on each reform is as follows:

2.2.2 **1. Exit payment recovery** – the draft regulations issued under the Small Business, Enterprise and Employment Act 2015 proposed that where an individual with a salary of £80,000 or more leaves a public sector employment and returns to work in the public sector within 12 months, they will be required to pay back some or all of the exit payments (including strain cost) received.

Prior to the announcement of the general election the final HM Treasury regulations that would have enacted the recovery provisions were expected "soon". If and when issued, the regulations will be overriding meaning that it will not be necessary to amend the LGPS regulations for exit payment recovery to have effect. The legislation is subject to the affirmative procedure meaning that it will require the formal approval of both Houses of Parliament before it becomes *law* – this is expected to take 3-4 weeks from the publication of the final regulations.

2.2.3 **2. Exit Cap** – where an individual leaves a public sector employment, the total exit payments that their employer can make in respect of that exit will be capped at £95k. This cap includes the strain cost payable in respect of an LGPS pension coming into payment early.

Subject to the Government proceeding with its plans in this area, it is anticipated that there will be further consultation (draft HM Treasury regulations) on how the cap will work in practice. The consultation is expected to last for 6-8 weeks. Discussion with regard to how the 'strain on fund' cost would be calculated for the purposes of the exit payment cap are ongoing.

Once final Treasury regulations are laid they will enact the relevant parts of the Enterprise Act 2016 which will amend the LGPS regulations. HM Treasury are also expected to publish guidance on the circumstances when the cap can be waived these circumstances will be prescriptive and set out the specific situations in which HMT think it would be acceptable to waive the cap.

2.2.4 **3. Exit payments further reform** – proposals looking at the overall severance packages payable from public sector bodies following a Government consultation on this topic, undertaken in February 2016. HM Treasury issued its formal response to the consultation in September 2016 setting out broad criteria within which they expected responsible departments to reform the exit packages of their workforces.

Subject to the Government proceeding with its plans in this area, it is expected that DCLG will publish a consultation on the proposed package for local government.

The full response to the initial consultation can be found - [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/555304/reforms\\_to\\_public\\_sector\\_exit\\_payments\\_consultation\\_response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/555304/reforms_to_public_sector_exit_payments_consultation_response.pdf)

### **3. Other impacting legislation**

#### **3.1 MIFID2 – publication of FCA policy statement**

- 3.1.1 In early July, the Financial Conduct Authority (FCA) published their final policy statement on the implementation of the EU's Markets in Financial Instruments Directive II (MIFID2) from January 2018.
- 3.1.2 Upon coming into force, MIFID2 will re-designate local authorities as 'retail' investors from their current status as 'professional' investors. The policy statement confirmed significant revisions to the criteria via which a local authority pension fund will be able to opt up to professional status and follows detailed discussions undertaken by the Scheme Advisory Board England and Wales (SABEW) with the FCA.
- 3.1.3 It will be possible for Funds to "opt up" to *elective professional* status, and thereby attain similar status under MiFID II that prevailed under MiFID I.
- 3.1.4 The original proposals gave cause for concern that "opting up" may be problematic. Whilst most LGPS Funds would have passed the *£15m financial instruments* threshold, few, including Cambridgeshire, would have completed *10 transactions per quarter* as the Fund does not manage money internally. Furthermore the initial draft policy on *client experience* was felt to give insufficient recognition to the decision making role of Members on s101 committees, such as the ISC, who have a regulatory obligation to take advice. Ambiguity on that test was considered to have a likely knock on impact in how the Investment Managers undertook their own qualitative assessment.
- 3.1.5 Many Funds responded to the FCA's consultation in late 2016. Furthermore FCA officials engaged with the LGA, the Investment Association (IA) and British Venture Capital Association (BVCA). In January two FCA officers attended the Cross Pool Collaboration Group (CPCG) officer meeting chaired by ACCESS, and further dialogue was held in February.
- 3.1.6 The outcome of this engagement is a revised set of criteria. Critically an additional test – proposed by CPCG – has been added, which reflects the regulatory obligation for an LGPS Fund to take advice when making investment decisions. Furthermore the expanded policy wording in relation to the qualitative assessment reinforces this point. In addition to lowering the financial instruments threshold from £15m to £10m, which may assist smaller Funds.
- 3.1.7 The LGA, in consultation with the IA and BVCA has developed a template designed to capture the information that an LGPS Fund will need to provide in order to demonstrate that it passes two of the four quantitative test and relevant background for Investment Managers to undertake the qualitative assessment. The relevant background emphasises the importance of each Fund's governance structure, committee membership and training. All of which must be evidenced at individual and Committee level, including supporting officers of the Fund.

- 3.1.8 Officers have commenced completion of the templates and will seek Mercer feedback before circulating the completed draft template to Investment Managers by mid to late September. This will allow Investment Managers to feed back to the Fund before a final submission is made in November 2017, facilitating Investment Managers to confirm opt ups ahead of the January 2018 deadline.

#### **4. Activities of the LGPS Scheme Advisory Board England and Wales (SABEW)**

##### **4.1 Launch of SABEW Investment Transparency Code**

- 4.1.1 The Pensions and Lifetime Savings Association local authority conference saw the launch of the SABEW Investment Transparency Code. The Code has been issued to assist LGPS funds in obtaining the data they require in order to report costs on a transparent basis.
- 4.1.2 The move toward investment fee transparency and consistency is seen by the SABEW as an important factor in the LGPS being perceived as a value led and innovative scheme. Transparency is also a target for the revised CIPFA accounting standard issued for inclusion in the statutory annual report and accounts and was included in the government's criteria for pooling investment.

More details on the code can be found -

<http://www.lgpsboard.org/index.php/structure-reform/cost-transparency>

##### **4.2 Local pension board survey**

- 4.2.1 On 26 May SABEW commenced a survey to test the effectiveness and operational efficiency of the new governance arrangements with particular emphasis on the role and function of local pension boards and interaction with their administering authority.
- 4.2.2 The survey deadline has since been extended from 28 July 2017 to 29 September 2017 due to lack of responses. Following its completion the SABEW will be writing to DCLG with their findings and, if applicable, their recommendations for any regulatory changes they consider necessary. The survey was sent to the Chairman of the Pension Fund Committee and Chairman of the Local Pension Board for completion in June this year.

##### **4.3 Publication of PwC academies report**

- 4.3.1 The SABEW have published the PwC report, "Options for Academies in the LGPS", on their website. The report was commissioned by the SABEW in 2016 to look into the issues associated with the participation of academies in the LGPS.
- 4.3.2 Publication of the report will enable the SABEW to engage with key stakeholders including pension funds, actuarial firms and academy trusts as appropriate on the issues raised by those interviewed by PwC. The Board will continue to gather relevant evidence and then develop specific proposals for change before submitting its recommendations to Ministers for their consideration.

The report can be found - <http://www.lgpsboard.org/index.php/structure-reform/review-of-academies>

##### **4.4 Consultation on academies objectives**

- 4.4.1 The SABEW have commenced a consultation on the development of options for academies. The consultation is open to all interested parties and was open until 29 September 2017.
- 4.4.2 The proposed draft objectives that the SABEW are seeking views upon are as follows:

- Protect the benefits of scheme members through continued access to the LGPS;
- Ring fence local taxpayers and other scheme employers from the liabilities of the academy trust sector;
- Improve the efficiency and effectiveness of administrative practices; and
- Increase the accuracy and reliability of data.

4.4.3 However, in achieving the objectives, the SABEW do not believe the changes should:

- Significantly alter cash flow at the fund level; or
- Significantly alter assets at the pool level

4.4.4 The consultation can be found - <http://www.lgpsboard.org/index.php/board-publications/board-consultations> and a response was submitted by the LGSS Pensions Service agreeing with the objectives in 4.4.2.

#### **4.5 Consultation on pooling forum**

4.5.1 The SABEW have also commenced a consultation on the development of a national Cross Pool Information Forum (CPF) for the LGPS in England and Wales.

4.5.2 The SABEW propose that the CPF is established to receive, share and disseminate information on the pooling of LGPS assets as well as provide a platform to exchange best practice and items of cross pool interest. However, it should not have decision making powers, nor should its discussions be technical in nature. It is proposed that the CPF would consist of up to three members from each pool, nominated by the member administering authorities of each pool.

4.5.3 Views from LGPS Pension Committee Chairmen/women are sought on the proposals and the consultation closed on 29 September 2017.

4.5.4 The consultation can be found - <http://www.lgpsboard.org/index.php/board-publications/board-consultations> and a response was submitted on behalf of the ACCESS pool by the Joint Collaboration Group.

#### **4.6 Local Pension Board Liability Insurance**

4.6.1 According to the legal opinion obtained by the LGA from James Goudie QC, the Pension Board itself is not a council committee and therefore there is uncertainty as to whether members of the board are officials who fall within the scope of the councils own indemnity provisions.

4.6.2 Many policies contain exclusions relating specifically to claims arising out of a breach of fiduciary duty, responsibility or obligation in connection with any employee benefit or pension plan, and there is some reluctance to extend the scope of cover.

4.6.3 As such officers have sought advice from the Council's insurance department and obtained an external insurance quote for the Local Pension Board to be covered for incidents such as public relation expenses and prosecution costs. This quote is currently with the Council's insurance department for review and an update will be provided when available.

## **5. Activities of the Pensions Regulator**

### **5.1 The Pensions Regulator's Annual Scheme Return**

- 5.1.1 The Pensions Regulator (TPR) issued the Annual Scheme Return for the Cambridgeshire Pension Fund. This was completed and returned to the Pensions Regulator ahead of the 26 October 2017 deadline. Failure to have done so would have been a breach of the Pensions Act 2004.
- 5.1.3 It has recently been confirmed that an LGPS fund has been fined £1,000 by TPR for its failure to complete its annual scheme return.

## **6. Other activity**

### **6.1 Pension Ombudsman Service**

- 6.1.1 Following discussions with Government ministers, it has been agreed that the Pensions Ombudsman service will at some point in the future take over the informal dispute resolution service currently provided by the Pensions Advisory Service (tPAS).
- 6.1.2 To assist with their plans for the merger of the formal and informal resolution processes, the Pensions Ombudsman service have recently commenced a project to look into the services provided by both organisations and are seeking views from pension scheme administrators to feed into this. Specifically, the Pensions Ombudsman service were asking for views on what works well about both services (in terms of both quality and delivery), what could be improved, and what administrators believe are the risks and opportunities of merging the services.
- 6.1.3 There was only a short window of opportunity to feed into this with a closing date of 2 August 2017.

### **6.2 State pension age review**

- 6.2.1 The rise in the pension age to 68 will now be phased in between 2037 and 2039, rather than from 2044 as was originally proposed and those affected are currently between the ages of 39 and 47.

## **7. Skills and knowledge opportunities.**

### **7.1. Training Events**

- 7.1.2 Section 248A of The Pensions Act 2004 as incorporated within The Pensions Regulator's Code of Practice (Governance and administration of public service pension schemes) requires all members of the Pensions Committee to maintain the necessary skills and knowledge to undertake their role effectively.
- 7.1.3 In order to facilitate the acquisition of skills and knowledge for members of the Pension Committee, appendix 1 lists all events that are deemed useful and appropriate.

- 7.1.4 Requests to attend events will be facilitated by the Governance Team. It may be necessary to restrict numbers of attendees on some courses through reasons of cost.

## 8. Relevant Pension Fund Objectives

Have robust governance arrangements in place, to facilitate informed decision making, supported by appropriate advice, policies and strategies, whilst ensuring compliance with appropriate legislation and statutory guidance. <i>Objective 1</i>
Manage the Fund in a fair and equitable manner, having regard to what is in the best interest of the Fund's stakeholders, particularly the scheme members and employers. <i>Objective 2</i>
Ensure the relevant stakeholders responsible for managing, governing and administering the Fund, understand their roles and responsibilities and have the appropriate skills and knowledge to ensure those attributes are maintained in a changing environment. <i>Objective 3</i>
Continually monitor and manage risk, ensuring the relevant stakeholders are able to mitigate risk where appropriate. <i>Objective 5</i>

## 9. Finance & Resources Implications

- 9.1 Not applicable

## 10. Risk Implications

- a) Risk(s) associated with the proposal

Risk	Mitigation	Residual Risk
There is no risk associated with this report		Green

- b) Risk(s) associated with not undertaking the proposal

Risk	Risk Rating
That the Committee are ill-informed about important consultations and changes affecting the Fund they are responsible for administering	Green

## 11. Communication Implications

<b>Training</b>	All staff involved in the administration of the LGPS are aware of the new legislation and the impact on the calculation and payment of benefits from the scheme.
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## 12. Legal Implications

- 12.1 There are no legal implications connected to the contents of this report.

## 13. Consultation with Key Advisers

13.1 There has been no requirement to consult with advisers over the content of this report.

#### **14. Alternative Options Considered**

14.1 There are no alternative options to be considered.

#### **15. Background Papers**

15.1 Not applicable

#### **16. Appendices**

16.1 Appendix 1 - List of training events/conferences.

16.2 Appendix 2 – Pensions for Cohabiting partners without nomination report – Pensions Committee meeting of 19 October 2017.

<b>Checklist of Key Approvals</b>	
Is this decision included in the Business Plan?	Not applicable
Will further decisions be required? If so, please outline the timetable here	Not applicable
Is this report proposing an amendment to the budget and/or policy framework?	No
Has this report been cleared by Head of Pensions?	Mark Whitby – 22 September 2017



### Appendix 1 - Internal/External training and events 2017-18

Date	Event	Training Credits	Target Audience	Website Link
28 June 2017	Local Pension Board – Two years on Conference	2	Board Members	<a href="http://www.cipfa.org/training/l/lgps-local-pension-boards-2-years-on-20170628-london">http://www.cipfa.org/training/l/lgps-local-pension-boards-2-years-on-20170628-london</a>
29-30 June 2017	14 <sup>th</sup> Annual LGPS Trustees Conference	4	Officers, Committee/ Board Members	<a href="https://lgaevents.local.gov.uk/lga/frontend/reg/thome.csp?pageID=119663&amp;eventID=365&amp;eventID=365&amp;CSPCHD=000001000000FwL8fgemsOYHjsa3Y3JGLpBRbsB9_DnGyxF3sT">https://lgaevents.local.gov.uk/lga/frontend/reg/thome.csp?pageID=119663&amp;eventID=365&amp;eventID=365&amp;CSPCHD=000001000000FwL8fgemsOYHjsa3Y3JGLpBRbsB9_DnGyxF3sT</a>
4-5 July 2017	CLASS Annual Conference	2	Officers	
4-6 July 2017	LGA Annual Conference & Exhibition	4	Officers, Committee/ Board Members	<a href="https://lgaevents.local.gov.uk/lga/frontend/reg/thome.csp?pageID=68680&amp;eventID=228&amp;eventID=228">https://lgaevents.local.gov.uk/lga/frontend/reg/thome.csp?pageID=68680&amp;eventID=228&amp;eventID=228</a>
5 July 2017	LGSS Pensions Information Day	2	Officers, Committee/ Board Members	Internal
12 July 2017	CIPFA Pensions Network – Governance in a changing environment	2	Officers	<a href="http://www.cipfa.org/training/g/governance-in-a-changing-environment-london">http://www.cipfa.org/training/g/governance-in-a-changing-environment-london</a>
12-13 July 2017	CIPFA Annual Conference	4	Officers, Committee/ Board Members	<a href="http://cipfaannualconference.org.uk/home-cipfa-annual-conference-2017/">http://cipfaannualconference.org.uk/home-cipfa-annual-conference-2017/</a>
3 September 2017	Schroders Trustee Training – Advanced	2	Officers, Committee/ Board Members	<a href="http://www.schroders.com/en/uk/pensions/events/">http://www.schroders.com/en/uk/pensions/events/</a>
7-8 September 2017	LGC Investment Summit	4	Officers, Committee/ Board Members	<a href="https://investmentsummit.lgcplus.com/">https://investmentsummit.lgcplus.com/</a>
4 October 2017	LGSS Pensions Information Day	2	Officers, Committee/ Board Members	Internal
18-20 October 2017	PLSA Annual Conference and Exhibition	4	Officers, Committee/ Board Members	<a href="http://www.plsa.co.uk/Conferences_and_Seminars/Annual_Conference_And_Exhibition.aspx">http://www.plsa.co.uk/Conferences_and_Seminars/Annual_Conference_And_Exhibition.aspx</a>

### Appendix 1 - Internal/External training and events 2017-18

Date	Event	Training Credits	Target Audience	Website Link
7 November 2017	UBS First steps seminar	2	Officers, Committee/ Board Members	<a href="https://www.ubs.com/uk/en/asset_management/institutional/client_events/steps_seminars.html">https://www.ubs.com/uk/en/asset_management/institutional/client_events/steps_seminars.html</a>
8 November 2017	Local Pension Board Seminar	2	Board Members	<a href="http://www.plsa.co.uk/Training/Pension-Practitioners/LGPS_Pension-Boards.aspx">http://www.plsa.co.uk/Training/Pension-Practitioners/LGPS_Pension-Boards.aspx</a>
21-22 November 2017	Pension Managers Annual Conference	4	Officers, Committee/ Board Members	<a href="http://southwest-ra.gov.uk/nqcontent.cfm?a_id=339&amp;tt=swra&amp;displayMode=PDF&amp;eventStatus=list&amp;eventAction=view&amp;eventId=1271">http://southwest-ra.gov.uk/nqcontent.cfm?a_id=339&amp;tt=swra&amp;displayMode=PDF&amp;eventStatus=list&amp;eventAction=view&amp;eventId=1271</a>
22 November 2017	LGSS Pensions Information Day	2	Officers, Committee/ Board Members	Internal
22 November 2017	UBS Second steps seminar	2	Officers, Committee/ Board Members	<a href="https://www.ubs.com/uk/en/asset_management/institutional/client_events/steps_seminars.html">https://www.ubs.com/uk/en/asset_management/institutional/client_events/steps_seminars.html</a>
6-8 December 2017	LAPFF Annual Conference	4	Officers, Committee/ Board Members	<a href="http://www.lapfforum.org/events/lapff-conference/">http://www.lapfforum.org/events/lapff-conference/</a>
7 February 2018	LGSS Pensions Information Day	2	Officers, Committee/ Board Members	Internal

The list of training events will be updated as we become aware of definitive dates and new events. We will also continue to email details of the training events as soon as we are notified where we feel members of the Pension Committee, Investment Sub-Committee and Local Pension Board will benefit from attending.