

Cambridgeshire Pension Fund

Pension Fund Committee

25th March 2021

Report by: Head of Pensions

Subject: Governance and Compliance Report

Purpose of the Report: To provide the Pension Fund Committee with information on:

- 1) The Public Sector Exit Cap (section 2) and appendix 1
- 2) The activities of the Pensions Regulator (section 3)
- 3) Consultations (section 4)
- 4) Future Developments (section 5)
- 5) Skills and knowledge opportunities (section 6) and appendix 2.

Recommendation: That the Pension Fund Committee notes the content of the report.

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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. Public Sector Exit Cap Update

2.1 The Ministry of Housing, Communities and Local Government (MHCLG) launched a consultation on the reform of exit payments in local government on 7 September 2020, with a closing date for responses of 9 November 2020. The consultation document set out policy intention and proposals which specifically affect individuals who are eligible to be members of the LGPS (in England) but no associated draft regulations were included.

2.2 On 14 October 2020, during the consultation period, associated draft regulations were issued for comment - the Local Government Pension Scheme (Restriction of Exit Payments) (Early Termination of Employment) (Discretionary Compensation and Exit Payments) (England and Wales) Regulations 2020. These cover revisions to discretionary payments and amendments to the LGPS regarding payment of benefits on redundancy or leaving on grounds of business efficiency at or after age 55.

- 2.3 The consultation closed on 9 November 2020, with comments on the associated draft regulations being accepted until 18 December 2020. The administering authority's consultation response can be found here; [Hyperlink to the administering authority's consultation response](#), and the further response containing comments on the draft regulations can also be found here; [hyperlink to further response on draft regulations](#).
- 2.4 During the above consultation period The Restriction of Public Sector Exit Payment Regulations 2020 were signed on 20 October 2020 and came into force from 4 November 2020. These apply to all the public service employers as detailed in the schedule to the Regulations and set a cap on aggregate exit payments of £95,000.
- 2.5 With The Restriction of Public Sector Exit Payment Regulations 2020 coming into force before the amendments proposed in the MHCLG consultation could be made, there was a conflict in the legislation that could impact those LGPS members who leave on redundancy or business efficiency grounds if they have attained age 55; the LGPS currently requires immediate payment of unreduced benefits in those circumstances, and for the scheme employer to meet the pension strain cost, but the cap may have meant they could not pay this strain cost in addition to other exit payments as they total more than £95,000.
- 2.6 Differing views had been expressed by MHCLG, in a letter from Luke Hall MP dated 28 October 2020, and the Scheme Advisory Board (SAB), in a commentary issued on 30 October 2020 following a view from QC James Goudie, as to the legal position and how administering authorities and scheme employers should have proceeded from 4 November 2020 until the proposed amendments to the LGPS Regulations were in place.
- 2.7 Officers sought legal advice on behalf of the administering authority as to how to proceed in light of the differing views of the Scheme Advisory Board and MHCLG and in the absence of the amended LGPS Regulations. The advice received from the administering authority's legal advisor, Squire Patton Boggs, was in line with that of the Scheme Advisory Board; to offer members who would exceed the £95K cap a deferred benefit or a fully actuarially reduced pension (also the MHCLG view) with a strong recommendation for the scheme employer to delay payment of the 'cash alternative' being proposed by MHCLG (this 'cash alternative' being the capped pension strain cost minus statutory and discretionary redundancy pay).
- 2.8 This approach provided maximum flexibility for both the administering authority and the scheme employer to minimise the financial risk resulting from inevitable challenge from the scheme member denied what appeared to be their right to an unreduced pension under existing LGPS Regulations.
- 2.9 All scheme employers received detailed communications as to the administering authority's approach to the payment of benefits where a member leaves employment on the grounds of redundancy or business efficiency at or after age 55 with an exit payment totalling greater than £95K, until such time as the LGPS Regulations are amended. This information can be found on the Fund's website here: [Public Sector exit payments hyperlink](#).

- 2.10 The legal advice received and the resultant decision to not pay members an unreduced immediate pension as they are entitled to under the current (un-amended) LGPS Regulations did not remove the risk of member's being dissatisfied with their awards. As such it was to be expected that members could use the scheme's Internal Dispute Resolution Procedure to challenge decisions taken.
- 2.11 However, three requests for Judicial Review of the Restriction of Public Sector Exit Payment Regulations 2020 were given permission to proceed to contest the Regulations on a number of grounds including their effect on the LGPS Regulations. It was understood that whilst members can still take their claims against the employer or administering authority through the two stage IDR process that the Pensions Ombudsman will not provide a ruling on such claims until the Judicial Reviews were complete, and those cases were not due to be heard before 24 March 2021.
- 2.12 MHCLG indicated that the amendments to the LGPS Regulations would not be made until after the outcome of the Judicial Reviews.
- 2.13 On 12 February 2021, HM Treasury released a Direction dis-applying parts of the Restriction of Public Sector Exit Payments Regulations 2020 in England, specifically regulation 3 resulting in the exit cap no longer applying with effect from 12 February 2021. The reason for this decision has been cited as that the application of the cap had resulted in "unintended consequences".
- 2.14 For exits from 12 February 2021, LGPS administering authorities must pay qualifying scheme members an unreduced pension. Scheme employers will be required to pay full strain costs in relation to those unreduced benefits.
- 2.15 HM Treasury has issued guidance on the Directions (appendix 1) setting out HM Treasury's expectation that employers should pay the additional sums that would be paid had the cap not applied for employees who left between 4 November 2020 and 12 February 2021.
- 2.16 The guidance also confirms that the government will revoke the exit cap regulations in due course, but they will legislate again to tackle unjustified exit payments. It is understood that the revocation of the exit cap regulations will not be retrospective.
- 2.17 On 4 March 2021 MHCLG wrote to all chief executives of LGPS administering authorities to confirm that:
- On the 25 February 2021 the Restriction of Public Sector Exit Payments Regulations 2020 were formally revoked;
 - The letter from Luke Hall MP of 28 October 2020 (referred to in 2.6) has been withdrawn; and
 - The MHCLG policy consultation launched in September (referred to in 2.1) is now considered closed.
- 2.18 No retirements were processed under the now revoked Exit Payment Regulations and so there has been no need to pay amended benefits to any scheme members. Officers have communicated to all scheme employers that the legislation and has been revoked, reverted redundancy retirement processes back to how they were prior to the 4 November 2020 and amended information on the website accordingly.

3. Activities of the Pensions Regulator

3.1 Pledge to combat pension scams

3.1.1 On 10 November 2020, the Pensions Regulator (TPR) launched the pledge to combat pension scams campaign as supported by the Pension Scams Industry Group (PSIG).

3.1.2 TPR is urging administering authorities to help protect scheme members thinking of transferring their pensions. According to complaints filed with Action Fraud, more than £30m (across all types of pension schemes) has been reportedly lost to scammers since 2017. By making a pledge and following the principles of PSIG the administering authority is demonstrating its intention to protect scheme members and that there is a commitment to preventing pension scams.

3.1.3 The process to sign up to the pledge involves a number of activities concerning ensuring robust processes, regular communications to scheme members and signposting to the Financial Conduct Authority's ScamSmart website and reference materials. Officers, Committee and Board members are also encouraged to undertake the scams module within TPR's trustee toolkit. Members of the Pension Fund Committee have been contacted about this requirement and have been asked to complete the module by 17 March 2021 to enable Officers to sign up to the Pledge as soon as is practicably possible.

3.2 Governance and Administration Survey 2019

3.2.1 On 20 November 2020, TPR published the outcome of the public service pensions governance and administration survey for 2019. This is an anonymous survey to which the administering authority submitted a response.

3.2.2 The survey focusses on six key processes that TPR expect public service pension schemes to have in place. The table below details these processes and the percentage of survey participants that have these processes.

Process	2019
Documented policy to manage board member's conflicts of interest	92% (90% in 2018)
Have access to the knowledge, understanding and skills needed to properly run the scheme	97% (96% in 2018)
Have their own (not the administering authority's) documented procedures for assessing and managing risks)	82% (92% in 2018 but the question did not specify the need to have a scheme level risk processes)
Have processes to monitor records for accuracy/completeness	92% (91% in 2018)
Have a process for resolving contribution payment issues	92% (94% in 2018)
Have procedures to identify, asses and report breaches of the law	93% (93% in 2018)

3.2.3 The Cambridgeshire Pension Fund has all the six key processes in place. Approximately two-thirds of participating public service pension schemes also had all six processes in place representing 71% of all memberships. Two-thirds of Local Government Pension Schemes had all six processes in place.

3.2.4 The full report can be found here: [Public service governance and administration survey 2019 hyperlink](#).

4. Consultations

4.1 Department for Work and Pensions: Climate change

4.1.1 On 27 January 2021 the Department for Work and Pensions released its policy consultation response and consultation on regulations; Taking action on climate risk: improving governance and reporting by occupational pension schemes. The consultation closes on 10 March 2021.

4.1.2 The scope of the regulations do not include the LGPS however regulations are expected from MHCLG to substantially mirror the requirements set out in this document.

4.1.3 The investment information day held on 10 February 2021 contained information regarding this matter.

4.1.4 The consultation document can be found here [Taking action on climate risk pensions consultation hyperlink](#).

5. Future developments

5.1 At previous meetings of the Pension Fund Committee reference has been made to the TPR's new singular code of practice, a revised CIPFA Skills and Knowledge Framework and the Scheme Advisory Board's Good Governance Review. All of which would lead to a review of the Fund's current governance processes and arrangements.

5.2 A consultation on TPR's singular code of practice is expected to be launched in March 2021. On 11 February 2021 a roundtable event was held with TPR with representation from Aon, (the Fund's governance advisors), trustees from several private sector pension schemes and officers from a number of LGPS Funds including Cambridgeshire and Northamptonshire to review the code of practice before it is released for consultation.

5.3 It is understood that the refreshed CIPFA Skills and Knowledge Framework is due to be released in April. Officers will need to digest the content of the new framework and embed it within Fund's Training Strategy.

5.4 On 15 February 2021, the Scheme Advisory Board published the final report of the Good Governance Review alongside an action plan for consideration by MHCLG. The report builds on the recommendations agreed in 2019 with further input from a range of scheme stakeholders. The action plan contains a number of immediate actions that can be conducted by Scheme Advisory Board without approval by MHCLG. A more detailed update on this matter will be addressed at the next meeting of the Board. In the meantime further information can be found on the Scheme Advisory Board website: [Scheme Advisory Board website hyperlink](#).

6. Skills and knowledge opportunities – training events

- 6.1 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 Pension Fund Committee to maintain the necessary skills and knowledge to undertake their role effectively.
- 6.2 In order to facilitate the acquisition of skills and knowledge for members of the Pension Fund Committee appendix 2 lists the main events that are deemed useful and appropriate.
- 6.3 Requests to attend external events will be facilitated by the Governance Team. It may be necessary to restrict numbers of attendees on some courses through reasons of cost.
- 6.4 It should be noted that the schedule of events in appendix 2 details only the events that are known to be taking place during the pandemic and are virtual/online events only. As soon as confirmation is received that face-to-face events are able to be held an amended schedule of events will be issued.
- 6.5 It has been recognised that the forthcoming local elections may result in a significant change to the membership of both the Pension Fund Committee and the Pension Fund Board. As a result, officers are in the progress of scheduling training sessions for new members and these will also be open to existing members to refresh their knowledge. It is anticipated that there will be an introductory training session in early June covering at a high level the knowledge requirements of being a Pension Fund Committee and Pension Fund Board member followed by a series of more in-depth training sessions to cover the eight CIPFA Skills and Knowledge core modules as follows:
- Pensions legislations and guidance
 - Pensions governance
 - Funding strategy and actuarial methods
 - Pensions administration and communications
 - Pensions financial strategy, management, accounting, reporting and audit standards
 - Investment strategy, asset allocation, pooling, and performance and risk management
 - Financial markets and product knowledge
 - Pensions services procurement, contract management and relationship management

7. Relevant Pension Fund Objectives

To 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. *Objective 1*

To 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. *Objective 2*

To ensure that 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. *Objective 3*

To continually monitor and manage risk, ensuring the relevant stakeholders are able to mitigate risk where appropriate. *Objective 5*

8. Risk Management

8.1 The Pension Fund Committee is required to have the appropriate skills and knowledge to effectively carry out their duties. This report ensures that the Pension Fund Committee is up to date with:

- New or amending legislation affecting the LGPS;
- Relevant activities of the LGPS Scheme Advisory Board and the Pensions Regulator that concern the governance of the (LGPS) on a national and local basis; and
- Skills and knowledge opportunities.

8.2 The risks associated with the Committee not having the required level of knowledge and understanding have been captured in the Fund's risk register as detailed below.

Risk No	Risk	Residual risk rating
7	Those charged with governance of the Fund and Scheme are unable to fulfil their responsibilities effectively.	Green
13	Failure to administer the scheme in line with regulations and guidance.	Green
16	Failure to provide relevant information to the Pension Fund Committee to enable informed decision making.	Green

8.3 The Fund's risk register can be found on the Fund's website at the following link: [Pension Fund Risk Register hyperlink](#)

9. Finance & Resources Implications

9.1 There are no financial or resource implications connected to the contents of this report is for information only.

10. Communication Implications

Training - 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.

Employers - All relevant items are communicated to scheme employers via website updates.

11. Legal Implications

11.1 Legal advice was sought from the administering authority's legal advisor on the application of the Exit Payment Cap as detailed in paragraph 2.7.

12. Consultation with Key Advisers

12.1 Legal advice was sought from the administering authority's legal advisor on the application of the Exit Payment Cap as detailed in paragraph 2.7.

13. Alternative Options Considered

13.1 There are no alternative options to be considered.

14. Background Papers

14.1 Not applicable.

15. Appendices

15.1 Appendix 1 – Guidance on the Exit Payment Cap Directions 2021

15.2 Appendix 2 – Schedule of virtual training events.

Checklist of Key Approvals

Has this report been cleared by Section 151 Officer? Sarah Heywood – 15/3/21

Has this report been cleared by Head of Pensions? Mark Whitby – 24/2/2021

Has the Chairman of the Pension Committee been consulted? Councillor Rogers –
12/3/2021

Has this report been cleared by Legal Services? Fiona McMillan – 1/3/21