

Pension Fund Board

6th November 2020

Report by: Head of Pensions

Subject:	Governance and Compliance Report
Purpose of the Report	To provide the Pension Fund Board with information on: 1) The activities of the Scheme Advisory Board (section 2) 2) Legislative updates (section 3) 3) Government consultations affecting the LGPS (section 4) 4) Skills and knowledge opportunities (section 5 and appendix 3).
Recommendations	That the Pension Fund Board notes the content of the report.
Enquiries to:	Jo Walton – Governance and Regulations Manager, LGSS Pensions E-mail: jwalton@northamptonshire.gov.uk

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. The Scheme Advisory Board

2.1 Good Governance Review

2.1.1 Following the delivery of the phase 2 report in 2019 of which the detail was presented at the Information Day held at Wyboston Lakes on 6th March 2020, the Scheme Advisory Board have requested that Hymans Robertson work on more detailed implementation proposals with the working group focussing on the areas of the LGPS Senior Officer role, service delivery key performance indicators and the independent governance review process.

2.1.2 It was anticipated that by the end of September 2020 three key deliverables would be agreed with the working group as follows:

- A report setting out implementation advice for the proposals in phase 2.
- A sample version of what a Fund's new governance compliance statement might look like.
- A sample independent governance review report that would aid in the development of procurement proposals in respect of the independence governance review process.

2.1.3 The timetable thereafter will depend on the capacity within the Ministry of Housing Communities and Local Government (MHCLG) and other LGPS stakeholders to progress to implementation of the proposals and to consult on the formal guidance.

3. Legislation update

3.1 Goodwin vs the Department of Education

3.1.1 Following the Walker vs Innospec Supreme Court ruling the government recently decided that surviving male same-sex and female same-sex spouses and civil partners of public service pension scheme members will receive benefits equivalent to those received by widows of opposite sex marriages.

3.1.2 A newer case earlier this year (Goodwin vs DoE) highlighted that these changes may lead to direct sexual orientation discrimination within the Teachers' Pension Scheme, where male survivors of female scheme members will now be entitled to a lower survivor benefit than a comparable same sex survivor.

3.1.3 The government has concluded that changes are required to the Teachers' Pension Scheme and other public service pension schemes to address this discrimination. A consultation on the required changes to the regulations is expected very shortly. All members affected back to 5th December 2005 will need to be contacted and notified of the changes once the regulations are amended.

3.2 LGPS Amendment Regulations

3.2.1 On 26th August 2020 MHCLG published its latest partial response to the May 2019 consultation 'Changes to the local valuation cycle and management of employer risk'. The accompanying amendment regulations have also been made and came into force on 23rd September 2020. The new regulations provide more flexibility for Funds to manage risk in 3 key areas:

- Inter-valuation reviews of employer contributions
- Spreading of exit debts
- Deferred Debt Agreements

3.2.2 The regulations require Fund to have policies in place around these new powers and MHCLG intends to develop guidance in collaboration with the Scheme Advisory Board and CIPFA. Amendments to the Cambridgeshire Pension Fund policies will be presented to the Pension Fund Board at a future meeting.

4. Consultations

4.1 Public Sector Exit Payment Cap

4.1.1 The government first announced plans to cap exit payments in the public sector in 2015. On 10 April 2019 HM Treasury launched a consultation on the draft regulations, guidance and Directions to implement the cap. HM Treasury published its response to the consultation on 21 July 2020. The regulations have now been published and will be followed by updated guidance and the HM Treasury Directions. The cap will apply to all the public service employers as detailed on the schedule alongside the regulations.

- 4.1.2 The exit payment cap is set at a total of £95,000 with no provision for this amount to be index linked. Exit payments must include redundancy payments (including statutory redundancy, severance payments, pension strain costs which arise when a LGPS pension is paid unreduced before a member's normal pension age and other such payments made as a consequence of termination of employment).
- 4.1.3 The amount of an individual's statutory redundancy payment cannot be reduced. If the cap is exceeded by other elements of the total exit payment package, those other elements must be reduced to achieve an exit payment of £95,000 or less.
- 4.1.4 The exit payment cap will be in force with effect from 4 November 2020.
- 4.1.5 There are circumstances when the cap must or may be relaxed by a minister or the authority. However, this is likely to be only subject to consent by HM Treasury even if it is passed by full Council. Employers are required to record and publish information about any decisions made to relax the cap.
- 4.1.6 An individual that receives an exit payment must inform any other public body that employs them about that payment. An employer must ensure that any exit payment does not exceed the cap (unless permitted by the relaxation Directions) and, where a non-compliant payment is made, recover any overpayment subject to a value for money assessment.
- 4.1.7 The government's response to the consultation can be found in appendix 1.

4.2 Reforming Local Government Exit Pay

- 4.2.1 On 7 September 2020, the Ministry of Housing, Communities and Local Government (MHCLG) released a consultation on the proposals on reforming local government exit pay. The consultation specifically affects individuals who are eligible to be members of the LGPS (in England). The consultation closes on 9 November 2020.
- 4.2.2 The consultation has 3 main proposals on which views are being sought:
 1. A maximum tariff for the calculation of exit payments of 3 weeks' pay per year of service.
 2. A ceiling of 15 months/66 weeks that can be paid as redundancy compensation payment.
 3. A maximum salary of £80,000 on which a redundancy compensation payment can be based, to be reviewed annually using an appropriate mechanism (such as the consumer price index).
- 4.2.3 The consultation proposes introducing an element of choice into the current arrangements. At present employees may have no option but to take immediate payment of their pension on redundancy. MHCLG have recognised that in current times individuals have good reasons for wanting to work longer but also recognise that for those who have carried out demanding work throughout their adult lives should have the security of a reliable income with a suitable enhancement.
- 4.2.4 MHCLG are proposing that for members of the LGPS who are at least 55 when made redundant the benefits and associated strain cost due from the employer should be limited as follows:

- The strain cost cannot exceed the overall cap contained in the exit payment regulations (£95k)
- Strain cost will be further reduced by the value of any statutory redundancy payment required (which the employee will still receive as a cash payment)
- A further reduction would be made to reflect any voluntary payments made to cover a grant of additional pension (regulation 31 of the LGPS Regulations 2013)
- Any reduction in the strain cost due to the above limitations may be made up by the employee from their own resources
- The member will receive an actuarially adjusted pension benefit in line with revised strain cost under these provisions.

4.2.5 Upon request for clarification of the proposals detailed in 4.2.4 MHCLG confirmed that their intention was that any member retiring on redundancy grounds from an English council/academy with unreduced LGPS benefits will receive no discretionary redundancy payment and will have to pay the fund a sum equal to their statutory redundancy payment. To all intents and purposes the individual will receive no redundancy pay. This is the case regardless of pay and the value of the redundancy package.

4.2.6 The options available for members in such cases would be to choose which one of the elements they want to give up (that are currently all provided in full):

- Give up any entitlement to a discretionary redundancy payment and discretionary additional lump sum payment, and pay a sum equivalent to their statutory redundancy payment to the pension fund if they want full pension paid immediately,
- Give up any entitlement to a discretionary redundancy payment and discretionary additional lump sum payment plus some pension (ie it is partially reduced) if they want it paid immediately and to also retain the statutory redundancy payment,
- Give up immediate payment of pension (ie have full pension deferred to normal pension age) and also retain the statutory redundancy payment and any entitlement to a discretionary redundancy payment and discretionary additional lump sum payment available under their employer's policy in relation to the reformed compensation arrangements,
- Give up immediate payment of pension with no early payment reduction, but take immediate payment of pension with full early payment reductions (ie as if they had retired voluntarily thus not triggering any strain cost for the employer) and also retain the statutory redundancy payment and any entitlement to a discretionary redundancy payment and discretionary additional lump sum payment available under their employer's policy in relation to the reformed compensation arrangements.

4.2.7 The above proposals have surprised the LGPS community and as such the LGPS Scheme Advisory Board is currently working to achieve further clarity from MHCLG.

4.2.8 Officers will be monitoring developments closely with a view to responding to the consultation by the closing date of the 9 November. The consultation response on behalf of the administering authority, will be shared with the Pension Fund Board and Pension Fund Committee prior to submission.

4.2.9 The MHCLG consultation can be found in appendix 2.

4.3 McCloud

4.3.1 A 12-week consultation on the proposed changes to the LGPS regulations as a result of the age discrimination remedy resulting from McCloud commenced in July with a closing date of 8 October 2020.

4.3.2 Officers have submitted a response to this consultation as approved by the Chairman and Vice Chairman of the Pension Fund Board. The response on behalf of the administering authority was circulated to members of the Pension Fund Board alongside the government consultation document.

4.3.3 A more detailed report on the detail of the proposals within the consultation and an analysis of the resources required to deliver the appropriate outcomes to scheme members is to be presented at this meeting.

5. LGPS National Knowledge Assessment

5.1 In February 2020 Hymans Robertson launched their LGPS National Knowledge Assessment (NKA) following their LGPS National Confidence Assessment published in 2018. The NKA looks at the knowledge levels of both Pension Fund Committee and Local Pension Board members, individually and collectively.

5.2 Approximately 225 Pension Committee and Local Pension Board members across 20 administering authorities participated in the assessment which was based on the 8 areas of knowledge identified in the CIPFA Skills and Knowledge Framework. The findings, published in August 2020, are as follows:

Knowledge area	Knowledge % (as determined through a series of questions with multiple choice answers)%
Financial markets and product knowledge	83%
Committee role and pensions legislation	71%
Pensions governance	69%
Investment performance and risk management	68%
Pensions accounting and audit standards	68%
Procurement and relationship management	67%
Pensions administration	59%
Actuarial methods, standards and practices	53%

5.3 Further findings are detailed in the full report found at the following link and will be incorporated into the Fund's revised skills and knowledge strategy and plan to be presented to the Pension Fund Board at a future meeting.

https://www.hymans.co.uk/media/uploads/LGPS_National_Knowledge_Assessment_Report.pdf

5.4 The Scheme Advisory Board will also be using these findings in the development of proposals of the Good Governance Review.

6. Skills and knowledge opportunities – training events

6.1 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 Pension Fund Board 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 Board appendix 3 lists the main events that are deemed useful and appropriate.

6.3 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.

6.4 It should be noted that the schedule of events in appendix 3 details only the events that are known to be taking place during the pandemic and are virtual/online events only. As soon confirmation is received that face-to-face events are able to be held an amended schedule of events will be issued.

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. <i>Objective 1</i>
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. <i>Objective 2</i>
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. <i>Objective 3</i>
To continually monitor and manage risk, ensuring the relevant stakeholders are able to mitigate risk where appropriate. <i>Objective 5</i>

8. Risk Management

8.1 The Pension Fund Board are required to have the appropriate skills and knowledge to effectively carry out their duties. This report ensures that the Pension Fund Board 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 Pension Fund Board 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/Pension Board to enable informed decision making.	Green

8.3 The Fund's risk register can be found on the LGSS Pensions website at the following link: <https://pensions.cambridgeshire.gov.uk/app/uploads/2019/10/RiskRegisterCPF.pdf>

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 There are no legal implications connected to the contents of this report as this report is for information only.

12. Consultation with Key Advisers

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

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 - Government consultation response on the public sector exit cap (July 2020)

15.2 Appendix 2 – MHCLG consultation on public sector exit pay reforms (September 2020)

15.3 Appendix 3 – Schedule of virtual training events.

Checklist of Key Approvals

Has this report been cleared by Head of Pensions?

Mark Whitby – 21st October 2020