

# Cambridgeshire Pension Fund

Pension Fund Board

23 April 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) 2) Scheme Advisory Board - Good Governance Review (section 3) 3) The Pensions Regulator – new code of practice (section 4) 4) Relevant Government Consultations (section 5) 5) New legislation (section 6) 4) Skills and knowledge opportunities (section 7) and appendix 1.
Recommendations	That the Pension Fund Board notes the content of the report.
Enquiries to:	Jo Walton – Governance and Regulations Manager, E-mail: <a href="mailto:joanne.walton@westnorthants.gov.uk">joanne.walton@westnorthants.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. 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](#); and the further response containing comments on the draft regulations can also be found [here](#).
- 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](#).
- 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 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. Scheme Advisory Board – Good Governance Review

3.1 On 15 February 2021, the Scheme Advisory Board published the phase 3 report of the Good Governance Review that was produced by the Hymans Robertson project team. The phase 3 report provides further details on some of the recommendations that were included in the phase 2 report which should be read in conjunction with each other.

3.2 The phase 3 report provide further detail on the following recommendations, among others:

3.2.1 The LGPS senior officer – a single named officer who is responsible for the delivery of LGPS activity for a Fund. The report covers the core functions of the role, the personal competencies needed to fulfil the role and how the role could be incorporated into different organisational structures.

3.2.2 Conflicts of interest – all administering authorities should publish a conflicts of interest policy that is specific to the LGPS. That policy should cover how it identifies, monitors and manages any conflicts. The report includes more detail on what LGPS-specific areas should be covered by the policy.

3.2.3 Representation – each administering authority must publish a policy on how scheme members and non-administering authority employers are represented on its committees and the reasoning behind those decisions.

3.2.4 Skills and training – introduce a requirement for key individuals, such as pension committee members and section 151 officers, to have the appropriate level of knowledge and understanding to carry out their duties efficiently. The administering authority must publish an administration strategy that sets out its policy on delivery, assessment and recording of training plans.

3.2.5 Service delivery – regulation change to make it compulsory for an administering authority to publish an administration strategy.

3.2.6 Key performance indicators – that focus on ensuring that each administering authority has defined service standards and has the governance in place to monitor those standards.

3.2.7 Business planning process – the senior officer and the committee must be satisfied with the resource and budget allocated to administer the LGPS each year. Require expenditure should be based on the business plan for the coming year with an inflationary increase.

3.3 At the Scheme Advisory Board meeting on 8 February 2021 the Board agreed that the Chair should submit the Board's good governance action plan to the Local Government minister for consideration. The action plan sets out:

- Changes that MHCLG could take forward by amending regulations or producing statutory guidance
- Work associated with the changes made by MHCLG that could be done by SAB or other bodies
- Actions that SAB can take to improve governance and administration immediately, regardless of which changes are progressed by MHCLG.

3.4 Full information on the good governance project can be found [here](#).

4. The Pensions Regulator – new code of practice
  - 3.1 On 17 March 2021 the Pensions Regulator (TPR) launched a consultation on its new Code of Practice which closes on 26 May 2021.
    - 3.1.1 The draft new code consolidates (with updates and amendments) most of the existing 15 codes of practice including the public service code of practice 14 into a new online code providing a single up-to-date and consistent source of information. The other codes will be consolidated into the single code at a later date, subject to further consultation.
    - 3.1.2 It is the intention of the Pensions Service to respond to the consultation only where it is relevant to the LGPS. Details of the new code of practice can be found [here](#).
    - 3.1.3 A copy of the Fund’s consultation response will be shared with the Pension Fund Board in due course.
5. Consultation – Implementing the increase to the minimum pension age
  - 5.1 On 11 February 2021, HMT published a consultation on the implementation of increasing the normal minimum pension age. In 2014, the Coalition Government consulted on increasing the normal minimum pension age from 55 to 57 from 6 April 2028 as part of the freedom and choice on pensions consultation. The current consultation re-confirms the Government’s commitment to this.
  - 5.2 The consultation seeks views on the implementation of the rise in the normal minimum pension age and protections for pension scheme members who have a right under the scheme rules to take benefits before age 57 at the date of this consultation.
  - 5.3 A copy of the Local Government Pension Committee’s response will be shared with the Pension Fund Board when it becomes available.
6. Legislation – The Pension Schemes Act 2021
  - 6.1 On 11 February 2021 the Pension Schemes Act 2021 received Royal Assent. The provisions within the Act will come into force when the Secretary of State makes regulations for them to do so.
    - 6.1.2 The provisions of the Act that will affect the LGPS include climate risk reporting, pensions dashboards and transfers out.
    - 6.1.3 Climate risk reporting - on 27 January 2021, the Government launched a consultation on draft regulations entitled ‘Taking action on climate risk: improving governance and reporting by occupational pension schemes’. The regulations would require trustees of pension schemes in scope to meet the climate change governance requirements that underpin the 11 recommendations of the Taskforce on Climate-related Financial Disclosures and to report on how they have done so. The regulations will not apply to the LGPS, however, it is expected that MHCLG will bring forward regulations which substantially mirror the requirements set out in the consultation document.
    - 6.1.4 Pensions Dashboards – administering authorities are encouraged to use the Pensions Dashboard Programme’s Data Standards Guide to identify any data gaps to ensure that they are ready to supply the right information to the dashboards once they are live.

- 6.1.5 Transfers Out – secondary legislation is awaited to provide the extra conditions members must satisfy before they are able to transfer out their LGPS benefits.
7. Skills and knowledge opportunities – training events
- 7.1 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.
- 7.2 In order to facilitate the acquisition of skills and knowledge for members of the Pension Fund Board appendix 1 lists the main events that are deemed useful and appropriate.
- 7.3 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.
- 7.4 It should be noted that the schedule of events in appendix 1 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.
- 7.5 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. There will be an introductory training session in on 4 June 2021 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
- 7.6 The first module will be held on 10 June 2021 and will cover the module of governance.
8. 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>

## 9. Risk Management

9.1 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.

9.2 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.

<b>Risk No</b>	<b>Risk</b>	<b>Residual risk rating</b>
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 Board to enable informed decision making.	Green

9.3 The Fund's risk register can be found on the Fund's website, [here](#).

10. Finance & Resources Implications

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

11. 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.

12. Legal Implications

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 2.10.

13. Consultation with Key Advisers

13.1 Legal advice was sought from the administering authority's legal advisor on the application of the Exit Payment Cap as detailed in paragraph 2.10.

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 – Schedule of virtual training events.

<b>Checklist of Key Approvals</b>	
Has this report been cleared by Head of Pensions?	Mark Whitby – 12 <sup>th</sup> April 2021