

Cambridgeshire Pension Fund

PENSION FUND COMMITTEE

8TH DECEMBER 2020

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 activities of the Scheme Advisory Board in connection with the Public Sector Exit Cap and associated legislative changes and consultations (section 2 and appendix 1)
- 2) The activities of the Pensions Regulator (section 3)
- 3) Skills and knowledge opportunities (section 4) and appendix 2.

Recommendations 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

- 2.1 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 Restriction of Public Sector Exit Payment Regulations 2020 were signed on 20 October 2020 and effective from 4 November 2020 and apply to all the public service employers as detailed on the schedule in the Regulations.
- 2.2 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).
- 2.3 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.

- 2.4 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.
- 2.5 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.
- 2.6 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 closed on 9 November 2020. The administering authority's consultation response can be found in appendix 1.
- 2.7 The consultation's main proposals were as follows:
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. 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.
- 2.8 The options available for members being made redundant over the age of 55 would be to choose which one of the elements they want to give up:
- Give up any entitlement to a discretionary redundancy 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 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

- 2.9 On the 14th October, MHCLG began a consultation on the draft Local Government Pension Scheme (Restriction of Exit Payments) (Early Termination of Employment) (Discretionary Compensation and Exit Payments) (England and Wales) Regulations 2020 which would enable LGPS Funds to process redundancy retirement benefits in accordance with the intention of the Restriction of Public Sector Exit Payment Regulations 2020.
- 2.10 Without these amended LGPS Regulations it is currently not possible to award a scheme member a deferred benefit or a reduced immediate pension on the grounds of redundancy at the age of 55+. The consultation on the draft Regulations closes on 18 December 2020 and it is unlikely that these Regulations will be in force until mid-late January 2021 at the earliest.
- 2.11 On 30 October, following a view from QC James Goudie, the Scheme Advisory Board published their view on how administering authorities should proceed between the period of the 4 November until the LGPS Regulations are in place. The advice was that the administering authority should offer members a deferred benefit or fully actuarially reduced pension and for the scheme employer to delay the payment of a cash alternative (up to £95K). This would provide maximum flexibility for both administering authority and the scheme employer to minimise the financial risk resulting from inevitable challenge from the scheme member denied what appears to be their right to an unreduced pension under existing LGPS Regulations.
- 2.12 On 28 October, MHCLG issued a letter detailing their view on how Funds should proceed in this interim period which differed to that issued by the Scheme Advisory Board on the matter of the alternative cash payment made by the scheme employer. MHCLG believe the scheme employer should pay the cash alternative of capped strain cost minus statutory and discretionary redundancy pay as they believe the Exit Cap regulations effectively already prevent an immediate pension being payable without reduction when the £95K cap is breached.
- 2.13 Officers are in the process of seeking independent legal advice from Squire Patton Boggs. A verbal update on the advice received will be provided at this meeting. This advice is being obtained alongside other ACCESS funds to ensure consistency of approach.
- 2.14 The administering authority's response to the consultation on the LGPS Regulations will be shared with the Chairman and Vice-Chairman of the Pension Committee prior to submission to MHCLG.

3. Activities of the Pensions Regulator

- 3.1 On 3 November, the Pensions Regulator issued the annual mandatory scheme return. The deadline for completion of the return is 15 December 2020. Failing to submit the return on time would be a breach of section 64 of the Pensions Act 2004 and a penalty of up to £50,000 could be levied.
- 3.2 The scheme return also asks for the Fund's common and scheme specific data scores. At the time of writing these scores are in the process of being produced and will be verbally notified to the Pension Committee at this meeting.

4. Skills and knowledge opportunities – training events

- 4.1 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.

- 4.2 In order to facilitate the acquisition of skills and knowledge for members of the Pension Fund Board appendix 2 lists the main events that are deemed useful and appropriate.
- 4.3 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.
- 4.4 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 confirmation is received that face-to-face events are able to be held an amended schedule of events will be issued.

5. 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*

6. Risk Management

- 6.1 The Pension Fund Committee are 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.
- 6.2 The risks associated with the Pension Fund 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/Pension Board to enable informed decision making. | Green |

- 6.3 The Fund's risk register can be found on the LGSS Pensions website at the following link: [Risk Register Hyperlink](#)

7. Finance & Resources Implications

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

8. 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.

9. Legal Implications

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

10. Consultation with Key Advisers

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

11. Alternative Options Considered

- 11.1 There are no alternative options to be considered.

12. Background Papers

- 12.1 Not applicable.

13. Appendices

- 13.1 Appendix 1 – Cambridgeshire County Council's response to the MHCLG consultation on reforming local government exit payments
- 13.2 Appendix 2 – Schedule of virtual training events.

Checklist of Key Approvals

Is this decision included in the Business Plan? No

Will further decisions be required? If so, please outline the timetable here No

Is this report proposing an amendment to the budget and/or policy framework? No

Has this report been cleared by Section 151 Officer? Sarah Heywood – 23rd November 2020

Has this report been cleared by Head of Pensions? Mark Whitby – 09/11/2020

Has the Chairman of the Pension Committee been consulted? Councillor Rogers – 23rd November 2020

Has this report been cleared by Legal Services? Fiona McMillan – 13th November 2020