Local Government Newsletter

February 2021

We bring you a bumper edition of news and developments this month. HMT has kept things interesting, with a shock announcement to disapply the £95K exit cap (something to do with unintended consequences?); a response to the unfunded schemes McCloud consultation, and a consultation on increasing the minimum pension age to 57. We now also have a new Pension Scheme Act, and DWP responded to their climate change risk consultation. The SAB has also published its final report from the Good Governance review.

Lots to digest, but here is our take in bitesize chunks.

Industry developments

£95K cap 'disapplied'

In a surprise announcement on 12 February, HMT issued a Direction to disapply the Restriction of Public Sector Exit Payments Regulations 2020 (£95K cap) with immediate effect, and we expect them to be formally revoked once parliamentary time allows. It is unclear whether they will be revoked retrospectively, or whether they will remain in force from 4 November 2020 to 12 February 2021. In addition, the Welsh Government has confirmed that, in their view, the exit cap no longer applies to exit payments made by a devolved Welsh authority.

HMT also issued guidance which set out their expectation that employers who had capped exit payments since 4 November 2020 should revisit those cases and pay the additional sums that would have been payable had the cap not applied. The timing of the announcement, on the eve of the judicial review, suggests Government was not expecting to win. The only reason given for disapplying the cap was the identification of 'unintended consequences'.

Where funds have followed SAB's previous advice to pay a reduced pension and delay any payment of a cash alternative, they will need to revisit such cases to pay a full unreduced pension and request the strain payment from the employer.

However, many funds may have followed advice in MHCLG's letter of 28 October 2020 which recommended that affected members should be paid either a reduced early retirement pension, or a deferred pension, plus a compensation amount equal to the capped strain on fund amount. The expectation is that MHCLG will need to amend that advice to avoid inconsistencies with HMT's guidance to revisit cases after 4 November, and inconsistency with exits after 12 February 2021.

The Scheme Advisory Board has since commissioned and published legal advice which considered options where members have been paid a compensation payment. In considering that advice SAB's view is that administering authorities should follow HMT's advice of 12 February 2021 and pay the additional sums that would have been paid, had the exit cap not applied (i.e. pay benefits under Regulation 30(7)). Employers would be required to pay the full strain cost to the Fund and attempt to recover any compensation payment from the member (it will not be possible to set off the compensation payment from the strain cost and pay a partially-reduced pension). As there remains a risk with this approach, administering authorities may wish to obtain their own legal opinion before paying benefits. SAB have also updated their guidance for employers and funds.

A large number of funds have also moved to using the proposed new method and factors for calculating strain costs proposed by Government Actuary's Department (GAD), in anticipation of these being adopted once new LGPS compensation regulations were in force. Funds will need to talk to their actuaries about the calculation of strain costs in light of these developments.

Once the issues raised in the Judicial Review are resolved, we are expecting the exit payment regulations to be brought back later this year, hopefully this time aligned with changes to the LGPS regulations!

Governance Springing to Action

Spring 2021 is expected to be a busy time for governance related activity. With many readers just fresh from submitting Governance and Admin survey responses to the Pensions Regulator (TPR) on 12 February we expect a busy few months to look forward to for a number of reasons.

Firstly, earlier this month we saw the final report from the **Good Governance Review** being published by the Scheme Advisory Board (SAB), which builds on the phase I and phase II reports published in 2019. The SAB Chair has now written to MHCLG to ask them to implement the recommendations either via revised guidance or regulations. Alongside this SAB have put forward an action plan to support best practice governance building on the recommendations of the review. It will be interesting to see MHCLG's response and the timelines for progress particularly given the other governance related activity underway at present.

Secondly, we can expect more from TPR relating to the **Single Modular Code** with a consultation expected in the Spring on the merger of exiting Codes of Practice (including Code of Practice No.14). This change in Code could see changes to the requirements placed on Public Service Pension Schemes, including the LGPS. Interpretation of relevant aspects of the new Code will be particularly important given requirements for the LGPS will be placed alongside those of all other schemes. In due course (once the new Code comes into force) each Fund will need to assess their compliance with its requirements.

On the horizon for **knowledge and skills** we also can expect more from CIPFA in Spring 2021 with the CIPFA Pensions Panel (working with Aon) updating their Knowledge and Skills Code of Practice and Framework for Pension Committee members and Senior Officers. Revised documents are expected ahead of the forthcoming **local elections** in May 2021. For a number of Funds, it will be a busy few months after those elections to ensure induction training takes place for new members of Committees/Boards.

If you would like to discuss these areas in more detail, please get in touch with Mary Lambe or your usual Aon contact.

UK Pension Schemes Act

On 11 February the UK Pensions Scheme Act received Royal Assent. Although the main provisions will require regulations to bring them into effect, and to add in some of the details, the Act sets out changes in a wide range of areas. Not all parts of the Act will be relevant to the LGPS, as much of it focusses on the pension scheme funding regime applicable to private sector schemes and the creation of a framework for collective money purchase schemes, however the following sections are expected to be relevant to the LGPS (either directly or indirectly):

- **Pensions dashboards:** The Act provides a framework to support pensions dashboards, including new powers to compel schemes to provide information. Trustees will be required to feed in information on their own schemes and members, and regulations will specify the detail (what must be provided, when and how). The Money and Pensions Service (MaPS) is to deliver a non-commercial dashboard. To be a 'qualifying pensions dashboard service', commercial dashboards delivered by industry will need to meet requirements to be laid down in regulations.
- **Climate change governance:** Regulations can impose requirements on trustees to ensure there is effective governance of schemes with respect to the effects of climate change, and to publish information relating to the effects of climate change on the scheme. In both cases, trustees must comply with guidance issued by the Secretary of State. This provides the legal framework for requiring trustees to make disclosures in line with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). We are expecting MMHCLG to consult on TCFD for the LGPS in the summer.

- **Limiting transfer rights:** The Act will allow trustees to block transfer requests where conditions, including in relation to the member's new employment or to their place of residence, are not met. The detail, including the implementation date, will be set out in regulations. The regulations may also require the member to obtain information or guidance from a prescribed person and confirm to the trustees that they have done this. This provision is intended to help prevent pensions scams. Exercising due diligence when a transfer request is received can sometimes be difficult, with trustees currently having little scope to refuse a transfer that displays the characteristics of a scam.

Consultation on increasing the minimum pension age from 55 to 57 in April 2028

On 11 February HMT launched a consultation on the implementation of increasing the minimum pension age from 55 to 57 in April 2028. This is the age at which individuals can access their pension benefits without incurring an unauthorised tax charge. Government had previously signalled its commitment to increase the minimum pension age to 57 in 2028 in its response to the Freedom and Choice in Pensions consultation in July 2014. The Government's justification is to reflect increases to life expectancy since the minimum pension age was last increased from 50 to 55 in 2010, so that tax efficient pension savings are only used to provide income and security in later life (with a broad intention of allowing access around 10 years before State Pension Age). The consultation confirms that the proposals do not apply to those who are members of the firefighters, police and armed forces public service pension schemes. The consultation closes on 22 April 2021.

HMT consultation response to McCloud

On 4 February the Chief Secretary to the Treasury, Steve Barclay, issued the Government's response to the consultation on changes to the transitional arrangements to the 2015 public service pension schemes. This relates to the "unfunded schemes" including the civil service, NHS, teachers, police and fire schemes. The LGPS is subject to a separate MHCLG consultation process.

The key policy decisions set out in the Government's response are:

- The deferred choice underpin (DCU) method has been selected, whereby members will choose whether they wish to have membership of the legacy scheme or the reformed scheme in respect of their affected membership when they retire. This option attracted a significant majority of support from consultees over the "immediate choice" option which would have required members to make a choice in advance of their retirement, which would mean making assumptions over which scheme would give them better benefits when they eventually retired, in some cases decades later
- Prior to making their deferred choice, members will be deemed to have accrued benefits in their legacy schemes for the remedy period (i.e. 1 April 2015 to 31 March 2022)
- Legacy schemes will close on 31 March 2022, meaning all active members will move to their reformed schemes from 1 April 2022
- Members who have already had a pensions award will be asked to make their choice as soon as is practicable after the necessary legislative and process changes have been made
- The Government has confirmed that the changes will not apply to members who joined after 31 March 2012, on the basis they had no reasonable expectation they would have remained in the legacy schemes beyond 1 April 2015
- The Government will bring forward primary legislation to enact the changes 'when parliamentary time allows'
- Individual schemes will consult on the specific details of the implementation of the changes when they publish draft regulations
- The implementation of the changes will take place by 1 October 2023 at the latest.

A ministerial statement on changes to the LGPS is expected in March.

Climate Change Risk and TCFD

On Wednesday 27 January, the Government published a response to its August 2020 consultation, *Taking action on climate risk: improving governance and reporting by occupational pension schemes*, along with draft regulations and non-statutory guidance. The consultation contained proposals for trustees of occupational schemes to comply with the recommendations of the Task Force on Climate Related Financial Disclosures (TCFD) and have effective governance and risk management measures to address climate change risks and opportunities. Policy proposals include various requirements on the scope and timing with regards to TCFD governance and reporting. The DWP has now launched a consultation on draft regulations and guidance.

Regulations on how this will apply to the LGPS are expected to be issued by MHCLG following a consultation expected later in 2021.

Section 13 update

As mentioned in our January newsletter, GAD are currently engaging with the fund actuaries over the preliminary findings of their section 13 analysis. Following a call with GAD earlier this month we understand that:

- there are more amber flags this year partly due to the fact that GAD's best estimate basis has strengthened, and assets and liabilities have increased relative to core spending
- the asset shock metric (linked to core spending) is not causing the same issues for the Met funds as at 2016
- there is still a focus on consistency, but a more holistic and less "name and shame" approach is planned, however many aspects of the reporting are still being decided.
- it is expected that approaches taken to allow for the potential costs of McCloud will be compared under the consistency comparison.
- there will be some follow up to the recommendation in the 2016 report in relation to academies, although this may be less of an issue this time given DfE has other priorities and there is a general view that academisation has materially slowed down
- GAD will be including some thoughts on what they will expect at the 2022 valuation in respect of climate change.

We understand that the actuarial firms will be asked for their views on academies and we hope to provide some input in relation to climate change too.

Non-club transfer technical advice

On 15 February the LGA published a new and comprehensive technical guide on the transfer of LGPS benefits to non-club registered pension scheme. The guide sets out a process to follow for handling CETV and Cash Transfer Sums requests including statutory timescales and frequently asked questions.

Consultation on accounts deadlines

In response to recommendations from the Redmond review, MHCLG has written to Chief Executives in England to consult on a change to the timescales for preparing and auditing local authority accounts for 2020/21 and 2021/22. Government has proposed to change the deadline for publishing audited local accounts from 31 July to 30 September, and to push back the date for public inspection from 1 June to 1 August. The consultation closes on 1 March.

Our understanding is that the accounts deadline in Wales will be unchanged from last year, at 30 November, and in Scotland 31 October.

What we've been talking to our clients about

Cyber Scorecard

Thanks to those of you who have already completed the LGPS Cyber Scorecard questionnaire. For those who have not yet completed it, as a reminder, the Scorecard is a tool for LGPS administering authorities to assess their cyber resilience across a range of areas, and completing the questionnaire will provide you with a free benchmarking report showing where you are in your cyber journey relative to other LGPS funds.

If you haven't yet completed it the link to the questionnaire is here, and if you want to prepare your responses before going online to complete the questionnaire, please contact Laura Caudwell for the full list of questions.

The LGA and SAB have agreed that the information will be useful and so we will be providing them with a summary report of the LGPS responses including the range of scores in the 10 key areas in the scorecard, and some additional commentary on how LGPS funds compare to the private sector fund sample (we ran an equivalent survey for which we have had over 100 schemes complete so far). No individual funds will be named in this reporting.

We are waiting for a few more LGPS funds to respond before we start to provide the free reports, in order to have as large a comparison set as possible, so there's still time for you to take part.

In the meantime, if you are interested in getting an idea of the picture of responses in the equivalent private sector survey, you can watch our webinar here. This includes a number of useful and relevant hints and tips on how to make improvements to your cyber resilience.

Please contact Laura Caudwell if you would like further information on any of this.

Recent events

Aon's longevity webinar

Specialists from our Demographic Horizons team hosted a webinar on 18 February on how the pandemic is impacting best estimate longevity assumptions for actuarial valuations and risk settlement transactions. A replay of the webinar is available here.

CIPFA actuarial summit on 9 February

Sam Ogborne provided a presentation at this year's CIPFA Actuarial Summit taking a look at the impact of Brexit, Covid-19 and other seismic events on the 2019 valuations and funding position, and on forthcoming IAS 19 reports.

Chris Darby and Alison Murray also attended the event which included further presentations covering the effect of recent legal cases and consultations, including employer flexibilities; McCloud; GMP equalisation and RPI reform, as well as recent trends in pensioner longevity and the impact of new funding options for exiting employers.

CIPFA audit and accounting workshop

Arkady Gibas and I attended CIPFA's annual audit and accounting workshop on 15 February. Looking ahead to preparing the 2020/21 accounts, the presenters discussed some of the key changes and challenges facing account preparers this year including needing to understand the accounting impacts from a plethora of scheme changes (GMP/McCloud/Goodwin/Exit Caps/employer flexibilities), changes to the Code of Practice, auditors' increasing requirements around challenge and scepticism, accounting for pre-payment of 2020/21 contributions, actuarial issues relating to COVID and estimating future CPI inflation following RPI reform, and an update on CIPFA's new Knowledge and Skills framework.

Research and Publications

The latest research and publications by Aon Thought Leaders: -

- Market update – Covid 19

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