

## LGPC Bulletin 166 – January 2018

Please contact [Jayne Wiberg](#) with any comments on the contents of this bulletin or with suggestions for other items that might be included in future bulletins. LGPC contacts can be found at the end of this bulletin.

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## LGPS England & Wales

### Department for Communities and Local Government renamed

In January 2018, The Department for Communities and Local Government (DCLG) became the Ministry of Housing, Communities and Local Government (MHCLG). It should be recognised that housing was always included in the brief, but just not recognised in its name.

### New Parliamentary Under Secretary of State (Minister for Local Government)

Following the cabinet reshuffle in January 2018, Rishi Sunak MP (MP for Richmond (Yorkshire)), became the new Parliamentary Under Secretary of State (Minister for Local Government), taking over from Marcus Jones who was appointed in May 2015.

### SAB tier 3 employer project – extension of surveys deadline

In [bulletin 164](#), we reported that the Scheme Advisory Board (SAB) for the LGPS in England and Wales (SAB) had appointed Aon Hewitt to help them in their review of Tier 3 employers in the LGPS.

A key element of this project is information gathering and, on 27 November 2017, the SAB launched three surveys for completion by:

- a) LGPS administering authorities - <http://lgpsregs.org/survey/administering-authorities.php>,
- b) Tier 3 employers - <http://lgpsregs.org/survey/employer.php>, and
- c) LGPS members employed by tier 3 employers - <https://lgpsmember.org/survey/member.php>

The surveys were due to close on 31 December 2017, however, in early January 2018 administering authorities were informed that this date was being extended to 31 January 2018. Administering authorities were asked to forward the message onto their tier 3 employers.

### Insolvency regime for further education and sixth form colleges: technical consultation

In [bulletin 147](#) we reported that on 6 July 2016 the Department for Business, Innovation and Skills (BIS) published a consultation to develop an Insolvency Regime for the Further Education and Sixth Form College Sector. Following changes in departmental responsibilities, this consultation was later taken over by the Department of Education. The [LGA responded](#) to the consultation on 5 August 2016, raising our concerns to ensure that all steps are taken to prevent any risk arising that the pension liability of a college falls on to other employers in an LGPS fund, and ultimately the taxpayer.

Since our response in August 2016, the [Technical and Further Education Act 2017](#) was enacted in April 2017 setting out the framework for an insolvency regime, which applies aspects of existing insolvency law to further education and sixth form colleges in England and Wales. This [latest consultation](#) (which opened on 18 December 2017 and closes on 12 February 2018) published by the Department of Education, seeks views on the technical detail of the insolvency regime and sets out proposals as to how colleges at risk of (or in) insolvency will be dealt with in practice. It also outlines plans to further improve monitoring and support available to colleges in financial difficulty.

The Association of Colleges (AoC) have already published their [draft response](#) and the LGA will be doing likewise, reiterating the concerns raised previously.

### **High Court judgement in the case of Elmes v Essex**

This case concerns Nichola Elmes versus Essex County Council with an interested party of MHCLG. This is a similar case to that decided upon in the Supreme Court on 8 February 2017 concerning Denise Brewster versus NILGOSC (Northern Ireland LGPS).

The case of Nichola Elmes versus Essex County Council was heard before the High Court on Tuesday 18 January 2018 and declared that:

*“The requirement to nominate a person under regulations 24 and 25 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 is incompatible with Article 1 of the first Protocol to, and Art 14 of, the European Convention on Human Rights and must therefore be disapplied”.*

It is our understanding that the outcome of this case effectively removes the requirement for a nomination form from regulations and enables an LGPS administering authority to pay a partner’s pension, to the partner (who meets the definition of co-habiting partner set out in schedule 1 of the LGPS Regulations 2013) of a deceased member who died without completing a nomination form, and who left active membership on or after 1 April 2008 and prior to 1 April 2014.

### **GMP reconciliation – pensioner overpayments**

In [bulletin 159](#) we reported that the LGPC secretariat had circulated an [information note](#) to funds in England and Wales to assist administering authorities in determining what action to take following the discovery of an overpayment of pension during the course of the contracted-out reconciliation exercise. The document represented the views of the Secretariat and should not be treated as legal advice nor in any way a complete and authoritative statement of the law.

It is for each LGPS fund and each unfunded public service scheme, to decide upon the discovery of an overpayment that arose during the course of the contracted-out reconciliation exercise, whether or not to reclaim / write off such amounts. It may be of interest to funds to know that, although not widely publicised, the Civil Service Pension Scheme Accounting Officer has taken the decision to write-off such over-payments and the decision is in the public domain, as part of [the scheme accounts](#) at the bottom of page 28.

## **LGPS Scotland**

### **Draft LGPS (Scotland) Regulations 2018 – LGPC response**

In [bulletin 164](#), we reported that SPPA [commenced a consultation](#) on a new set of main scheme regulations for the LGPS in Scotland, the draft LGPS (Scotland) Regulations 2018. The closing date for the consultation was initially 1 January 2018 though this was later extended to Monday 15 January 2018. The [LGPC responded](#) to this consultation on 11 January 2018.

## McDonald (Respondent) v Newton or McDonald (Appellant) (Scotland) - Supreme Court Ruling – Pensioner on Divorce

Paragraph 2.3.1 in the guidance issued by Scottish Ministers titled '[Pension Sharing Following Divorce Calculation of Cash Equivalents](#)' dated 23 May 2011, confirms that "*Regulation 10 of the Family Law (Scotland) Act 1985 states that for divorce cases in Scotland, only the pension rights built up since the beginning of the marriage will be taken into account up to the earlier of the date of separation and the date of divorce when the court has granted the decree absolute*".

We understand this has been interpreted as meaning, as per regulation 4 of The Divorce etc. (Pensions) (Scotland) Regulations 2000 [SSI 2000/112], that the CETV for Divorce (factor 'A') is adjusted to reflect the period of time for which the member was married during active membership (factor 'B'), by the total period of time for which the member was an active member (factor 'C').

For example, a member who:

- joined the scheme on 1 April 1990, left active membership of the scheme on 31 March 2000, and took payment of their benefits from 1 April 2000, and
- was married on 1 April 1998 and divorced on 31 March 2017.

The CETV (factor 'A') would be adjusted by 2/10 (factors 'B'/'C')

It has recently come to light that a [judgement](#) made on 26 July 2017 by the Supreme court in the case of McDonald (Respondent) v Newton or McDonald (Appellant) (Scotland), brought to light a dispute between the parties that relates to the definition of factor 'C' which consequently affects factor 'B'.

Mr McDonald argued that the court should apportion the value of his pension rights by reference only to the period in which he was an "active member" of the scheme, which is the period during which he was making contributions to the scheme. This would reflect the current process adopted by LGPS funds set out in the above example.

Conversely, Mrs McDonald argued that the cash equivalent transfer value should be apportioned by reference to the period of Mr Macdonald's membership of the scheme, both when in pensionable employment and also when drawing a pension. If we use the example above this would mean that the CETV (factor 'A') would be adjusted by 19/27 (factors 'B'/'C'), which is a considerably higher proportion than 2/10. Mrs McDonald's appeal was initially dismissed by an extra division of the Inner House.

However, the Supreme Court unanimously allowed Mrs McDonald's appeal and subsequently agreed that the period of membership covered by factor 'C' should be interpreted as "*the period of the person's membership of the pension arrangement, whether or not contributions are being made in that period*" citing various reasons for doing so.

Clearly, this ruling sets a precedent and indicates a move away from current practice with regards to deferred and pensioner members. In light of this ruling, we have raised this matter with SPPA to seek their views.

## HMT

### Consultation outcome on indexation and equalisation of GMP in public service pension schemes

In [bulletin 151](#) we reported that on 28 November 2016, HM Treasury commenced a [consultation](#) that proposed options for the indexation of GMP elements for members of public service pension schemes who will reach SPA on and after 6 December 2018. The LGPC [responded](#) to this consultation 20 February 2017. On 22 January 2018, HMT published its [response](#) to the consultation.

A summary of this response is set out below:

*“This consultation was about how government should continue to meet its obligations to index (price protect) and equalise (make equal payments to men and women) the pension entitlements of a certain group of public servants with an occupational pension known as a GMP.*

*This consultation received 62 responses, broadly in favour of the government’s objectives in continuing to ensure the GMP continues to be indexed and equalised. The government has been implementing an “interim solution” between 6 April 2016 and 5 December 2018. The outcome of this consultation is that this solution will be extended for a further two years and four months. This will cover those members of public service schemes with a GMP who reach state Pension Age on or after 6 December 2018 and before 6 April 2021.*

*During this period, the government will investigate the possibility of an alternative long-term methodology, known as “conversion”.*

In [bulletin 163](#) we reported that we are currently in the process of producing a scheme administrator guide to assist funds in how to apply increases to pensions in payment where the member holds a GMP.

The outcome of the consultation, will be reflected in a revised Ministerial Direction under Section 59A (2) of the Social Security Pensions Act 1975. We are currently working with HMT to fully understand the implications and in order to do so, we need the revised Ministerial Direction to be published by HMT. Once this has occurred we will be in a position to, shortly thereafter, publish our scheme administrator guide (unless any unforeseen changes are included within the revised Ministerial Direction).

In addition, the outcome of the consultation will have an effect on the calculation of CETV In/Out and CETV on Divorce. Section 11 of the Secretary of State guidance title [‘Individual incoming and outgoing transfers’](#) dated 8 April 2016 and the [‘Non Club GMP adjustment addendum’](#) dated 19 April 2016 issued by Scottish Ministers, both contain adjustments to the CETV where the member has an entitlement to a GMP. These adjustments apply, in prescribed circumstances, where the members SPa falls between 6 April 2016 and 5 December 2018 inclusive (The existing ‘interim period’). We expect an addendum to this guidance, in light of the fact that the outcome of the consultation extends the ‘interim period’ to include those members whose SPa falls between 6 April 2016 and 5 April 2021 inclusive.

## HMRC

### Pension Schemes Newsletter 94

On 28 December 2017, HMRC published [pension schemes newsletter 94](#) including articles on:

- Relief at source for Scottish Income Tax (this guidance does not apply to the LGPS because the LGPS operates tax relief on a 'net pay' basis),
- Annual Allowance – a reminder for scheme administrators to prompt their members who have exceeded the annual allowance for 2016 to 2017, to declare this on their Self-Assessment tax return (the deadline for submitting this is 31 January 2018),
- Reporting multiple small pots payments through Real Time Information (RTI) – This relates to the payment of multiple Trivial Commutation sums. HMRC are aware that some pension scheme administrators continue to have problems when reporting multiple small pots payments, because RTI matches on the first part of the payroll ID reference can treat some reports of multiple small pots payments as duplicates. The guidance in [paragraph 2.2.5 of the CWG2](#) has been amended to say that when a scheme administrator reports these types of payments they should enter a different end date for each payment,
- Simplifying pension language – HMRC are looking at how they might make their language more user friendly and they would like to speak to scheme administrators and industry representative bodies,
- New pensions online service - updating scheme administrator details – this article concerns scheme administrators who have not logged onto the Pensions Schemes Online service since April 2015, to remind them to go online and update their details.

### Countdown bulletin 31

On 2 January 2018, HMRC published [countdown bulletin 31](#) including articles on:

- Scheme Cessation Guidelines
- Type 7 Query Process
- Limited Rate Premiums (LRPs) and Contribution Equivalent Premiums (CEPs) refunds
- Business as Usual CEP's
- Not In Scheme (NIS) - CEP Automation Solution
- Member Types

Of particular interest was the article covering Limited Rate Premiums (LRPs) and Contribution Equivalent Premiums (CEPs) refunds. This confirms that the "Department for Work and Pensions (DWP) Policy and HMRC are working together looking at current processes and legislation to get a workable solution for post 5 April 2016 transfers".

Regulation 14(1)(b) of The Occupational Pension Schemes (Schemes that were Contracted-out) (No 2) Regulations 2015 [SI 2015/1677] confirms that HMRC may refund a CEP where the earners accrued rights have been transferred to another registered pension scheme. However, due to a change in HMRC processes, the practical means of refunding a CEP is proving problematic. Unless notified otherwise, there is no change to either a CETV calculation or a Club transfer out calculation (i.e. there should be no



deduction of the CEP from the value of the transfer payment). LGPS scheme administrators should continue to calculate and pay such payments in accordance with the current Secretary of State guidance or Guidance issued by Scottish Ministers, and the Club memorandum.

### Lifetime allowance event reporting

On 11 January 2018, the Secretariat forwarded an email to LGPS scheme administrators from HMRC concerning how to submit details for the event report, in respect of members who have relied on IP2014 (applied for using the digital service), fixed protection 2016 or individual protection 2016.

The email confirmed that the event report has not been amended to include any lifetime allowance protections that scheme members may have applied for online (as per article 6.2 of the [Pension schemes newsletter 85 - March 2017 - GOV.UK](#)).

If a scheme administrator needs to submit such details to HMRC then they can submit these on a password protected spreadsheet and send the password in a separate email. Both emails should be sent to [pensions.businessdelivery@hmrc.gsi.gov.uk](mailto:pensions.businessdelivery@hmrc.gsi.gov.uk) putting 'Lifetime allowance – Event Reporting' in the subject line of the emails.

## Other News and Updates

### Carillion

Following the demise of Carillion in January 2018, we understand that:

- Only a very small number of LGPS funds (3) had direct exposure to Carillion on the asset side. We estimate their total losses to be in region of £3m to £4.5m or around 0.03% to 0.05% of the total assets of those funds. This compares with the 21% growth in asset values seen by LGPS funds in 2017.
- A small number of LGPS funds (13) had exposure on the liability side to Carillion as a scheme employer. However, early communications with administering authorities and fund actuaries indicate that in the majority of cases, Carillion was fully funded and therefore we do not expect to see local authorities having to pick up any significant deficits as a result of this event.

Carillion was an admitted body to the LGPS in relation to each contract under the terms of Schedule 2 Part 3 of the Local Government Pension Scheme Regulations 2013. Essentially this means that unless some form of bond or indemnity is in place, which can be called upon by the administering authority, the pension's liabilities of Carillion including the meeting of any strain costs for redundancy pensions, would be met by the Scheme Employer (the outsourcing employer) party to the admission agreement.

### GDPR

The Secretariat, on behalf of LGPS Administering Authorities, have commissioned Squire Patton Boggs to produce the following three documents set out below. We expect these documents to be published in March 2018.

1. 'Template privacy statements' specifically for LGPS administering authorities that administering authorities can use /adapt:
  - a. A detailed privacy notice – setting out the information to be provided under articles 13 and 14 of the GDPR. This notice will take into account that most likely, the data will be obtained directly from both the employer and the member.

- b. A summary privacy notice for use in newsletters / annual benefit statements etc. – this will link to the detailed privacy notice that would be held on the administering authority’s website or made available upon request.
2. A memorandum of understanding document for employers - the aim of this document is to set out that participating employers in the LGPS are able to share data with the LGPS administering authority without a data sharing agreement being in place (i.e. that there is no legal requirement for employers to have a data sharing agreement with LGPS administering authorities as they are both data controllers). The document will quote the relevant statutory references to inform an employer’s data protection officer and legal department of the legal position, to head off any issues with employers uncertain about what data they can / cannot share with LGPS administering authorities.

### **LGPS Frameworks**

In [Bulletin 163](#) we reported that at Technical Group in September 2017, it was agreed that the LGPC Secretariat would begin to host a list of current frameworks available for use by LGPS administering authorities on [www.lgpsregs.org](http://www.lgpsregs.org) and [www.scotlgpsregs.org](http://www.scotlgpsregs.org). Accordingly, we requested that each provider contact the LGPC with details of their framework. Only three parties contacted the Secretariat: two who confirmed that their framework had closed or was due to close, and one that their framework is open. We have therefore added a link to ‘the National LGPS Procurement Frameworks’ on our Useful Links pages on <http://lgpsregs.org/links.php> and <http://www.scotlgpsregs.org/links.php>

### **PLSA Staff resourcing and talent management research**

The Pensions and Lifetime Savings Association (PLSA) are currently undertaking research to explore issues with staff resourcing and talent management within the LGPS. They are interested in finding out the challenges faced in this area, what actions are being taken to overcome them at the moment or what further support or resources would help in the future.

Any feedback will enable the PLSA to support Local Authority Funds by sharing and promoting examples of best practice, identifying different approaches and addressing any emerging challenges.

The survey was sent to Chief Financial Officers (or relevant equivalent) to complete and the deadline for completing the survey is Friday 9 February 2018.

If your LGPS fund has not received a link to the survey and you would like to take part please contact Kate Boulden as [kate.boulden@plsa.co.uk](mailto:kate.boulden@plsa.co.uk).

### **Tell Us Once – Password resets**

DWP have recently noticed an increase in the number of requests for password resets from users of the Canopy Digital Connect (CDC) service, which is the platform that they use to send you Tell Us Once notifications.

They have asked us to remind administering authorities that you should have at least two admin users who are able to reset passwords within the administering authority to avoid having to contact Tell Us One. Utilising your admin users to reset passwords will save



time, as when a user notifies Tell Us Once that they need a password reset, they then have to contact ATOS who maintain the CDC platform. This process can often take a few days, hence why using your own admin users is a more efficient process.

If you have any queries on the above please contact either Beth Cassidy [ELIZABETH.CASSIDY1@DWP.GSI.GOV.UK](mailto:ELIZABETH.CASSIDY1@DWP.GSI.GOV.UK) or Matt Styan [MATT.STYAN@DWP.GSI.GOV.UK](mailto:MATT.STYAN@DWP.GSI.GOV.UK)

### **The Pensions Ombudsman Service (TPOS) newsletter**

TPOS have published the third of their stakeholder newsletters, which is attached to this bulletin as [appendix 1](#). As ever, if LGPS funds have ideas for what TPOS could include in future newsletters, please let us know so that we can pass these on to the Ombudsman Service.

### **The Registered Pension Schemes and Overseas Pension Schemes (Miscellaneous Amendments) Regulations 2018 [SI 2018/5]**

The above regulations were laid on 9 January 2018 and are effective from 30 January 2018. They make amendments to the Pension Schemes (Information Requirements for Qualifying Overseas Pension Schemes, Qualifying Recognised Overseas Pensions Schemes and Corresponding Relief) Regulations 2006 [SI 2006/208], and Registered Pension Schemes (Provision of Information) Regulations 2006 [SI 2006/567].

The amendments reflect, where appropriate, that:

- the Money Purchase Annual Allowance (MPAA) has been reduced from £10,000 to £4,000 with effect from 6 April 2017, and
- where a scheme becomes, or ceases to be, a master trust, then the reason for the change together with the date is now a reportable event. Any such change must be provided to HMRC within 30 days of the event.

### **Training**

The training programme is currently being worked on for potential roll out from May 2018. This will include practitioner and employer training as well as 'Fundamentals' which is aimed at pension board and committee members and runs from October to December 2018.

An app and webpage are in development to help our offering move towards a digital, and away from a paper based, approach.

A short survey for Administering Authorities and one for Employers will be sent out next month (February 2018) to help us in the development of our program and approach going forward and we would be grateful if you could let us know your views.

Meanwhile if you have any training requests for the year going forward please do contact [training.lgps@local.gov.uk](mailto:training.lgps@local.gov.uk)

### **The wider landscape**

- In December 2017 the Government consulted on the [draft Contracting-out \(Transfer and Transfer Payment\) \(Amendment\) Regulations 2018 \(December 2017\)](#). The consultation provides that a transfer may be made from a formerly

contracted-out salary related occupation pension scheme to a scheme, which has never been contracted-out, without member consent (subject to certain prescriptive conditions being met). The transfers will only be permissible in limited circumstances where schemes are in financial difficulty.

- Home Office: Occupations (Firefighters' Pensions) Re-engagement of Senior Fire Officers Post-retirement. The Government [published its response](#) to the consultation that closed on 4 April 2017.

## Legislation

### United Kingdom

SI	Reference Title
2018/63	The Pensions Act 2008 (commencement No 16) Order 2018
2018/62	The Pension Schemes Act 2017 (Commencement No 1) Regulations 2018
2018/39	The Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling and Compensation Cap) Order 2018
2018/5	The Registered Pension Schemes and Overseas Pension Scheme (Miscellaneous Amendments) Regulations 2018

### Scotland

SSI	Reference Title
2017/454	The Teachers' Pension Scheme (Scotland) (No 2) Amendment regulations 2017

## Useful Links

[LGA Pensions page](#)

[LGPS member website](#) (England and Wales)

[LGPS 2015 member website](#) (Scotland)

[LGPS Advisory Board website](#) (England and Wales)

[LGPS Regulations and Guidance website](#) (England and Wales)

[LGPS Regulations and Guidance website](#) (Scotland)

[Public Sector Transfer Club](#)

[Recognised Overseas Pension Schemes](#) approved by HMRC and who agreed to have their details published.

## Pensions Section Contact Details

*If you have a technical query, please email [query.lgps@local.gov.uk](mailto:query.lgps@local.gov.uk) and one of the team's LGPS pensions advisers will get back to you.*

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secondment to MHCLG ([see bulletin 165](#))**

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**Distribution sheet**

Pension managers (internal) of administering authorities

Pension managers (outsourced) and administering authority client managers

Local Government Pensions Committee

Trade unions

CLG

COSLA

SPPA

Regional Directors

Private clients

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