

LGPC Bulletin 199 – June 2020

Local Government Pensions Committee (LGPC)
Secretary, Lorraine Bennett

Foreword

This bulletin contains important updates for administering authorities, scheme employers and software suppliers. It also provides a general update for all LGPS stakeholders.

This bulletin contains important articles on:

- [Delays to marriages/civil partnerships](#)
- [LGA guides updated](#)
- [McCloud member FAQs published](#)
- [McCloud annual benefit statement wording agreed](#)
- [TPO opinion PO-22432](#)
- [Adapted version of transfer warning letter for LGPS now available](#)
- [Clarification on whether Club arrangements apply to CARE added pension](#)
- [Incorrect links to the Government's free tracing service](#)

which need action by certain stakeholders.

If you have any comments or articles for future bulletins, please contact query.lgps@local.gov.uk.

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LGPS England & Wales Scheme Advisory Board (SAB)

Summary of Supreme Court Judgment on LGPS boycotts

On 29 April 2020, the Supreme Court handed down [its judgment](#) about whether the Government exceeded its powers when giving guidance directing funds not to pursue policies that are contrary to UK foreign or defence policy.

On 8 June 2020, the SAB published [a summary of the case](#), which the Board's legal adviser assisted with drafting. The summary aims to clarify the impact of the judgment on administering authorities.

Cost Transparency Initiative launches additional tools

A year ago, the Cost Transparency Initiative (CTI) published a framework of tools and guidance to help institutional investors better understand their investment costs. The CTI framework is a partnership initiative between the Pensions and Lifetime Savings Association, the Investment Association and the SAB. On 19 June 2020, the [CTI launched additional resources and encouraged remaining schemes and asset managers to adopt the standards](#).

COVID-19

Easement to protected pension age rules

As we reported in [Bulletin 197](#), the Government announced that they were temporarily easing the protected pension age (PPA) rules because of the COVID-19 pandemic. On 2 June 2020, HMRC, by amending [Newsletter 119 \(April\)](#), announced an extension to the easement up to 1 November 2020. On 25 June 2020, the Government amended the [Finance Bill 2019-21](#) (which is currently going through Parliament) to give effect to the temporary easement. On the same day, they also published [a tax information and impact note](#). The draft legislation suggests that the easement applies to any person with a protected pension age who returns to employment (which would otherwise have caused them to lose the protection) between 1 March 2020 and 1 November 2020 (inclusive) where the only or main reason was to help the employer respond to the COVID-19 pandemic. The information note suggests that this is most likely to apply to police officers, firefighters and other uniformed officers.

Top tips for remote working

Due to the COVID-19 pandemic, most teams are now working from home. This brings opportunities; but it also raises challenges, particularly for managers.

Our colleagues in the Workforce and HR Support Team have recently published [some tips for managers](#), to help them support and promote good wellbeing during these exceptional times.

Welsh life assurance scheme

On 27 April 2020, Welsh Ministers confirmed in [a written statement](#) that they will establish a [life assurance scheme in Wales](#) which is similar to the English NHS and Social Care Coronavirus Life Assurance Scheme. On 17 June 2020, the scheme was established. It is called the NHS and Social Care Coronavirus Life Assurance Wales Scheme 2020. The rules and details on how to make a claim will be available on [NHS Business Service Authority's website](#) within the next few days.

Employer guidance on steps to take following the death of an adult social care worker from COVID-19

On 19 June 2020, the Department of Health and Social Care published [guidance for employers in England](#). The guidance sets out the steps that employers may need to take following the death of an adult social care worker from COVID-19.

Delays to marriages and civil partnerships

For English or Welsh administering authorities, if you have any cases where the survivor benefits are less because a marriage/civil partnership could not take place due to the COVID-19 pandemic, please provide MHCLG (LGpensions@communities.gov.uk) with the details (with personal details removed). This would apply where:

- a marriage or civil partnership was delayed because of the COVID-19 pandemic and the member subsequently died before the event could be rearranged
- a member was terminally ill and was not able to arrange an urgent marriage or civil partnership due to the COVID-19 pandemic.

The Scottish Public Pensions Agency (SPPA) has also asked for Scottish administering authorities to provide this information to us (query.lgps@local.gov.uk), and we will collate and forward on to SPPA.

Action for administering authorities

Please provide details of such cases to either MHCLG or the LGA, as appropriate.

LGPS England and Wales

LGA guides updated

We have recently published new versions of the following guides:

- Retirement planning guide (v1.1)
- Employee brief guide (v2.1)
- Councillors' full guide (v2.0)
- Update for Councillors in England (v2.0)
- Introductory leaflet for Councillors in Wales (v1.7)
- HR guide (v4.1)

You can find all our guides on [the Guides and sample documents page](#) of www.lgpsregs.org.

The HR guide is a PDF, the rest have been published in Word so that administering authorities can add contact information and any other details specific to their fund.

We included an article in [Bulletin 190](#) about the [Public Sector Bodies \(Websites and Mobile Applications\) \(No. 2\) Accessibility Regulations 2018](#). Existing websites must comply with these regulations by 23 September 2020. This includes any electronic documents available on public sector websites. If you plan to publish PDF versions of any of our scheme guides and factsheets, you may need to take additional steps to ensure that they are compliant. You can find more information online about:

- How to [Create accessible PDFs](#)
- [Creating accessible PDFs in Adobe Acrobat](#).

You may need to take extra steps to [tag tables correctly](#).

Action for administering authorities

Please update your versions of the guides in line with the revisions made.

Discretions guide updated

On 8 June 2020, we published version 1.11 of the discretionary policies guide and version 1.9 of the full list of discretionary policies. We have made minor tweaks to the wording of the discretions covering assumed pensionable pay and abatement of compensatory added years. You can view the clean and tracked versions at [the Guides and Sample Documents page](#) of www.lgpsregs.org.

GAD 2020 data collection update

To carry out the 2020 scheme level valuation, the Government Actuary's Department (GAD) will request data as at 31 March 2020 from administering authorities in September this year. In preparation, GAD reviewed the 2019 valuation data and recently gave individual feedback to administering authorities. The

purpose was to start a dialogue on data quality and to find ways of improving it ahead of the 2020 valuation.

To discuss data issues and issues arising from the feedback to authorities, GAD, the Scheme Advisory Board, the Ministry for Housing, Communities and Local Government (MHCLG) and fund actuaries recently held a meeting. On 10 June 2020, we emailed administering authorities letting them know the outcome from the meeting, and forwarded a [valuation data update from GAD](#).

The letter confirms that it was not GAD's intention to question the 2019 fund valuations or the data used to complete them. GAD also set out in the letter a revised timetable for the 2020 data collection exercise and that, due to the expected tight timeframe, they do not plan to give administering authorities individual feedback on their data as at 31 March 2020. Rather, GAD will provide a central report on LGPS data quality as part of the valuation advice to MHCLG. Despite the revised timetable, GAD still plan to request the data as at 31 March 2020 in September this year.

McCloud member FAQs published

On 9 June 2020, we published [McCloud FAQs for scheme members](#) on [the national member website](#).

Action for administering authorities

Please bring the FAQs to the attention of your employers and members.

McCloud annual benefit statement wording agreed

The LGA, in conjunction with the national Communications Working Group, has produced standard wording for administering authorities to use in this year's annual benefit statements. The wording has been agreed by MHCLG and HM Treasury. Using the standard wording will help provide a consistent message to LGPS members.

Where authorities have not sent their statements, they should include the standard wording, where possible. If authorities have already sent theirs, MHCLG has confirmed that the wording is a nice to have, rather than a must include.

“When the LGPS changed from a final salary to a career average pension scheme in 2014, protections for older scheme members were introduced. Similar protections were provided in other public sector pension schemes. The Court of Appeal ruled that younger members of the Judges' and Firefighters' Pension schemes have been discriminated against because the

protections do not apply to them. The Government has confirmed that there will be changes to all main public sector schemes, including the LGPS, to remove this age discrimination. This ruling is often called the ‘McCloud judgment’.

The Government is still considering exactly what changes need to be made to remove the discrimination from the LGPS. This means it has not been possible to reflect the impact of the judgment in your annual benefit statement this year. If you qualify for protection it will apply automatically - you do not need to make a claim. For more information, see [the frequently asked questions on the national LGPS website](#).”

Action for administering authorities

If you have not sent your annual benefit statements for this year, please add the standard wording, where possible.

HMRC

Pension schemes newsletter 121

HMRC has published [pension schemes newsletter 121](#).

In previous newsletters, to help administrators during the COVID-19 pandemic, HMRC had announced some temporary easements. In newsletter 121, HMRC announced an extension to these. In particular:

- If a scheme failed to meet the accounting for tax (AFT) deadline for the quarter 1 January 2020 to 31 March 2020 because their resources were affected by the COVID-19 pandemic, HMRC agreed to cancel any penalties. HMRC has extended this easement to cover the quarters 1 April 2020 to 30 June 2020 and 1 July 2020 to 30 September 2020.
- In [newsletter 118](#), HMRC announced that they would cancel any penalties for submitting form [APSS262](#) late. Schemes use this form to tell HMRC about a transfer to a qualifying recognised overseas scheme. HMRC has extended the easement to 31 October 2020.

HMRC has also announced some delays to the Managing pension scheme service. It was previously announced in [the Managing pension schemes service newsletter – April 2020](#) that from 1 July 2020, schemes would be able to –

- submit their AFT return for the quarter 1 April 2020 to 30 June 2020 using the Managing pension scheme service

- use the new service to start compiling their AFT return for the next quarter (1 July 2020 to 30 September 2020).

Schemes will now only be able to do so from 21 July 2020.

Lastly, newsletter 121 gives an update on HMRC's amendments to the process for reporting corrections to previous year payroll data, which is set to start from April 2021.

TPO

TPO opinion PO-22432

We would like to bring to your attention the outcome of an opinion by a senior adjudicator in relation to an ill-health complaint. The case will be of interest to LGPS administering authorities and employers in England and Wales. In this case, the adjudicator surprisingly ruled that the LGPS administering authority was guilty of maladministration because it did not replace the employer's ill health decision with its own at stage two of the appeal process. The adjudicator relied on regulation 77(4) of the LGPS Regulations 2013:

“A decision under paragraph (1) takes effect as a decision of the Scheme employer or administering authority, as the case may be, except where the matter concerns the exercise of a discretion, in which case, if the adjudicator does not uphold the decision, the matter must be referred back to the body which made the decision under adjudication for reconsideration or, where that body would have been the Scheme employer but that body is no longer a Scheme employer, to the appropriate administering authority.”

The case relates to an appeal by Miss E against the decision to award her tier three ill health retirement benefits. The adjudicator upheld the complaint and instructed the employer to reconsider its decision to award tier three benefits. In addition, the employer and the LGPS administering authority were instructed to jointly pay Miss E £500 for distress and inconvenience.

Importantly, the adjudicator states that at stage two of the appeal, the administering authority is under a duty to consider the tier of benefits Miss E was eligible to receive and this goes beyond just considering whether the employer has followed due process. If the administering authority had, for example, decided that Miss E was eligible for tier two rather than tier three, because this is a decision rather than a discretion, the administering authority's decision would have taken effect as a decision of the employer and replaced the original decision. Because the

administering authority did not do this, the adjudicator appears to view this as maladministration and makes the administering authority jointly liable for the £500 distress and inconvenience award.

Although the adjudicator's opinion was accepted by the respondents in the case, we asked for clarification from the legal team at the Pensions Ombudsman (TPO) because of the potential implications for the Scheme as a whole.

Expecting administering authorities to decide the entitlement for each ill health appeal, rather than make a decision to remit it back to the Scheme employer where their view is that the Scheme employer did not follow the correct process, places a much higher burden on them. It also raises issues such as GDPR, access to medical records and the administering authority's ability to seek further advice and information.

In response, TPO's senior counsel stated that because the opinion has been accepted by the respondents it cannot be revisited. However, because we raised the issue in the context of future investigations, he confirmed that TPO is unlikely to expect administering authorities to substantially revise their general approach at stage two of an ill health appeal (of remitting back to employers when upholding appeals that the employer has not correctly assessed an application). He asked that if the same issue arises in the future, the respondents ask the TPO adjudicator to approach the legal team for assistance, noting that the LGA have previously raised the point in issue in PO-22432 (after closure). They will then be able to provide a full analysis on a live case and their views on how the legislation should be interpreted and followed.

Note, the opinion is not available on the TPO's website because they only publish Ombudsman's determinations. However, the relevant administering authority has given permission for us to attach [TPO opinion PO-22432 to this bulletin](#). We would like to thank Gary Delderfield from Eversheds Sutherland for his assistance.

Action for administering authorities (England and Wales)

If, in a future case, the adjudicator suggests that the administering authority should have considered at stage two of appeal whether to replace the employer's decision in an ill health case, please ask the adjudicator to approach TPO's legal team.

TPR

TPR updates COVID-19 guides

The Pensions Regulator (TPR) has given [guidance to help pension schemes and their employers cope with the impact of COVID-19](#). The guidance contains various easements, most of which were set to remain until 30 June 2020, such as TPR taking a more flexible approach to what they expect schemes to report. On 16 June 2020, TPR published updated versions, alongside [a press release summarising the changes](#).

In particular, the [COVID-19: an update on reporting duties and enforcement activity guidance](#) sets out that, from 1 July 2020, the previously paused reporting requirements resume. TPR says that this will allow them to “horizon-scan effectively, identify risks and act as necessary to protect savers.” TPR will continue to assess breaches on a case-by-case basis and respond pragmatically to COVID-19 related breaches.

[The Scheme administration: guidance for trustees and public service](#) is also updated to set out the need to ensure that members, particularly the most vulnerable, remain able to contact administrators. TPR acknowledges that some administrators are encouraging members to use electronic communication, such as online portals and emails. However, TPR recommends that administrators also seek to maintain services for those who are not online and potentially vulnerable through the safe and secure processing of post and providing a telephone service for critical queries.

The [COVID-19 DB scheme funding and investment guidance for trustees](#) included a reference to suspending transfer payments for up to three months where trustees feel it is in the best interests of scheme members. This guidance does not directly apply to the LGPS. Although, administering authorities may have used it when deciding whether to suspend transfer payments. The updated version has removed references to suspending transfer payments. It now simply refers schemes who need more time to pay a transfer to [the normal rules on applying to TPR for an extension](#).

TPR publishes Corporate Plan for 2020-21

TPR published [its Corporate Plan for 2020-21](#) on 29 June 2020. Due to the COVID-19 pandemic, TPR had previously paused publication. The Plan sets out TPR’s priorities for the year ahead and reflects the realities of how the pensions landscape has changed because of the pandemic.

Adapted version of transfer warning letter for LGPS now available

[TPR’s guidance on communicating to members during the COVID-19 pandemic](#) includes a request for pension managers to issue a transfer warning letter to members applying for a cash equivalent transfer value (CETV) quote from a defined

benefits (DB) to a defined contributions (DC) scheme. The original letter, jointly prepared by TPR, the Financial Conduct Authority (FCA) and the Money and Pension Advice Service (MaPS), contains references to the Pension Protection Fund and is not suitable for use by the LGPS. TPR has now supplied a version of the [transfer warning letter suitable for public sector schemes](#). TPR has asked that the letter is issued to all members requesting a CETV quote to a DC scheme for the foreseeable future. On 16 June 2020, we emailed all administering authorities letting them know.

We have uploaded the letter to the [TPR pages](#) on www.lgpsregs.org and www.scotlgpsregs.org. It can also be accessed via the COVID-19 news and information page on each site and the [administrator FAQs](#).

TPR has also asked that pension managers actively monitor the number of requests for CETV quotes and which advisers are supporting the members' requests. If any unusual or concerning patterns emerge, such as spikes in CETV requests or the same adviser across a multitude of requests, LGPS administering authorities should contact the [FCA at DBTransferSchemeInformation@fca.org.uk](mailto:FCAatDBTransferSchemeInformation@fca.org.uk).

Action for administering authorities

Issue the transfer warning letter to all members requesting a CETV quote to a DC scheme for the foreseeable future.

Actively monitor the number of requests for CETV quotes and which advisers are supporting requests.

Other news and updates

Clarification on whether Club transfer arrangements apply to CARE added pension

The Cabinet Office (who is responsible for the Club transfer rules) has confirmed that added pension attached to CARE benefits ("CARE added pension") cannot be transferred under Club arrangements, in the same way that added pension attached to final salary benefits also cannot. CARE added pension means added pension awarded by the employer or bought by paying additional pension contributions (APCs)

[The Club Memorandum](#) sets out that added pension attached to final salary benefits should not be transferred under Club arrangements (under the "outer Club" rules). When a member with added pension takes an outer Club transfer, the transfer value must be calculated in two parts: the final salary element, calculated on outer Club

terms; and the Added pension element calculated on non-Club terms. We queried with the Cabinet Office whether this also applies when a member with CARE added pension takes an inner Club transfer, as we don't believe that it is covered in the Memorandum.

After consulting with the Government Actuary's Department, the Cabinet Office has informed us that the Club arrangements should also not apply to CARE added pension. This is because "the value of accrued Added Pension is not affected by an active service link, so it has no need of the Club."

The Cabinet Office will update the Memorandum accordingly at its next review. In the meantime, they will send an update to all relevant public service pension schemes.

Action for administering authorities

Please review your Club transfer in/out processes to ensure that CARE added pension is calculated using the non-Club methodology and factors.

For Club transfers out, this will involve calculating the CARE added pension (and the revaluation on it) separately as a non-club CETV. You will also need to make sure that sending schemes do likewise.

Communications Working Group (CWG)

The CWG met through MS Teams on 28 May 2020. Topics covered included:

- COVID-19 communications
- member website
- digital engagement
- McCloud remedy
- 2020/21 workplan.

You can read the minutes on [the CWG page](#) of www.lgpsregs.org and www.scotlgpsregs.org

National LGPS technical group minutes published

[Technical group meeting minutes](#) from the meeting held on 12 June 2020 are now available. The meeting included a presentation on the pensions dashboards by the Money and Pensions Service and an update from MHCLG. The group has also agreed to help the England and Wales Scheme Advisory Board (SAB) by asking the chairs of each pension officer group to collect data on deaths in their region. This will help the SAB understand the impact of the COVID-19 pandemic on the LGPS.

FCA sets out plans to improve pension transfer advice

Members of most defined benefit schemes (including the LGPS) must get financial advice if they wish to transfer their benefits to a defined contribution scheme where the transfer value is £30,000 or more.

The Financial Conduct Authority (FCA) has expressed concern about the high levels of unsuitable advice that advisers have given to members.

On 5 June 2020, the FCA set out [a package of measures to improve the quality of pension transfer advice](#). This includes banning contingent charging, with limited exceptions. This type of charging is where the adviser is only paid if they recommend a transfer. The FCA believes that such arrangements create a conflict of interest. The result of this ban, though, may see members paying more for advice. The FCA will also allow advisers to provide a shorter, cheaper form of abridged advice. Abridged advice can only result in a recommendation not to transfer or a statement that it is unclear whether the consumer would benefit from a pension transfer without giving full advice. Members wishing to transfer out who are required to get financial advice will still need to get the full advice.

In addition, the FCA has also published [information to help customers check the suitability of advice previously given](#) and [information to help customers who are considering transferring out](#).

Corporate Insolvency and Governance Act 2020

[The Corporate Insolvency and Governance Act 2020](#) received royal assent on 25 June 2020. The main objective of the Act is to help businesses during the COVID-19 pandemic by easing the burden on them and helping them avoid insolvency. During its passage through Parliament, the Pensions and Lifetime Savings Association expressed concerns to Government about the Act's impact on pension schemes; in particular, that schemes may find it harder to recover cash from a company insolvency. You can read the [PLSA response to the Bill](#) on their website. To attempt to allay some of the concerns, the Government amended the Act. However, there is still a lack of clarity on the status of employer contributions during the "moratorium period".

Pensions Dashboards update

The Money and Pensions Service (MaPS) are leading on the initial phase of the project to implement pensions dashboards. This includes bringing together a delivery group made up of stakeholders from across the industry, consumer groups, regulators and government. The industry delivery group has now been renamed the Pensions Dashboards Programme (PDP).

In April 2020 MaPS published the following documents:

- [PDP progress update report](#). This sets out the progress made so far and the work that needs to be undertaken before the service is launched to the public.
- [Pensions dashboards data scope: working paper](#). The paper sets out options for achieving comprehensive coverage across all pension sectors to deliver an acceptable early breadth of coverage for individuals.
- [Pensions dashboards data definitions: working paper](#). This lists the set of data items that could be included in the dashboards data standards.

Initially, MaPS requested informal feedback only on the data scope and data definitions working papers; however, they will be requesting formal industry-wide input throughout July and August. The call for input will start on 6 July. In conjunction with this, the PDP will convene a data working group representing all sectors of the pensions industry.

On 22 June 2020, the PDP started a six-week period of informal market engagement with potential suppliers of the digital architecture which will connect individuals with their pensions information when they request it. The market engagement exercise will enable PDP to examine the readiness, capacity and capability of commercial firms which might be interested in the work. Formal procurement will start in Autumn 2020. Potential suppliers are being invited to register their interest by 31 July 2020.

Divorce, Dissolution and Separation Act 2020

[The Divorce, Dissolution and Separation Act 2020](#) received royal assent on 25 June 2020 and will, in the main, come into force on a date to be appointed by Government. The Act will revise the legal process in England and Wales for married couples to obtain divorces and for civil partners to dissolve their civil partnership. It will also update terminology: terms such as “decree nisi”, “decree absolute” and “petitioner” will be replaced with “conditional order”, “final order” and “applicant”.

Incorrect links to the Government’s free tracing service

Some news companies have found over 40 organisations who mistakenly use an incorrect link to the Government’s free online Pension Tracing Service. In some cases, the link takes people to a commercial website linked to a fee-charging adviser.

The correct link is www.gov.uk/find-pension-contact-details

Action for administering authorities

If you signpost members to the Government's free online Pension Tracing Service, please make sure that you are using the correct link.

Training

We are currently delivering the employer role and survivor benefits courses virtually using Microsoft Teams. They were initially offered to attendees that had already booked on the courses earlier in the year; however, we will shortly be advertising some new dates for booking for employer role, survivor benefits and transfers.

We also hope to publish the first bite-size employer training modules on APP in the next few weeks.

Please email karl.white@local.gov.uk if you have any requests for additional courses.

Wider landscape

MaPS publishes Corporate Plan for 2020/21

On 16 June 2020, the Money and Pensions Service (MaPS) published [its Corporate Plan for 2020/21](#), setting out its strategic priorities and its immediate response to the COVID-19 pandemic.

The Pensions Regulator publishes interim guidance on superfunds

On 18 June 2020, the Pensions Regulator published [interim guidance on defined benefit superfunds](#). A superfund is a pension scheme set up to accept bulk transfers from defined benefit schemes.

Voluntary scheme pays deadline extended for NHS pension scheme members

Due to the COVID-19 pandemic, the NHS Business Service Authority [has decided to extend](#) the voluntary scheme pays deadline for NHS scheme members for the 2018/19 tax year from 31 July 2020 to 31 October 2020. For more information, please see [the NHS guidance notes on scheme pays](#).

Legislation

Acts

[Corporate Insolvency and Governance Act 2020](#)

[Divorce, Dissolution and Separation Act 2020](#)

Statutory Instruments

[The Coronavirus Life Assurance Scheme \(England and Welsh Schemes\) \(Excluded Benefits for Tax Purposes\) Regulations 2020 \[SI 2020/615\]](#)

Useful links

[LGA Pensions page](#)

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

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

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

[LGPS Advisory Board website \(Scotland\)](#)

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

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

[Public Sector Transfer Club](#)

[Recognised Overseas Pension Schemes](#) that have told HMRC that they meet the conditions to be a ROPS and have asked to be included on the list.

LGPS pensions section contact details

If you have a technical query, please email query.lgps@local.gov.uk and one of the team's LGPS pension advisers will get back to you.

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Further information

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