

CITY OF WOLVERHAMPTON COUNCIL	Pensions Board 27 April 2021
--	--

Report title	Regulatory Update	
Originating service	Pension Services	
Accountable employee	Rachel Howe	Head of Governance
	Tel	01902 55 2091
	Email	Rachel.Howe@wolverhampton.gov.uk
Report to be/has been considered by	Rachel Brothwood	Director of Pensions
	Tel	01902 55 1715
	Email	Rachel.Brothwood@wolverhampton.gov.uk

Recommendation for noting:

The Pensions Board is asked to note:

1. The updates to the current regulatory environment within the LGPS and how the Fund are responding to change and emerging developments within the Scheme and wider pensions industry.

1.0 Purpose

- 1.1 To provide the Pensions Board with an update on key developments currently impacting the regulatory environment in which the Fund operates.

2.0 Regulatory Updates

2.1 Public Sector Exit Payments (£95k) Cap (reverted processes)

- 2.1.1 The Restriction of Public Sector Exit Payments Regulations came into force on 4 November 2020 with the short timescale for implementation causing concern amongst the public sector with little or no notice for individuals, employers and pension funds to prepare for the changes (which included a need to amend administration software systems to enable the amended calculation of benefits where necessary as a result of the limit). Further, concerns about the exit payments capturing long serving, average salaried workers had not appeared to have been included in the considerations on drafting the regulations and due to the nature of Local Government Pension Schemes and rules governing the protections of pensions through TUPE, there was also the added complexity of the exit payment regulations not applying (in full or in part) to all Fund employers (as not all are public sector organisations).
- 2.1.2 On 12 February 2021, Central Government sought to revoke the exit pay regulations and disapply the cap to those leaving public sector service employment with immediate effect with the regulations being formally revoked on 25 February 2021. MHCLG issued a follow up letter to Funds on 4 March withdrawing its letter of 28 October (in which it outlined its interpretation of the exit cap regulations and their application to LGPS Funds). This latest letter also confirms that the consultation on Reforming Exit Pay is now closed with any future changes requiring a new and separate consultation.
- 2.1.3 The revocation regulations contain an obligation for employers to make payments to employees who left during the period between the original regulations coming into force (4th November 2020) and the date of these regulations coming into force. Such payments being the difference between what was paid and the exit payments that the employee would have been entitled to had the exit pay Regulations not been in force. The West Midlands Pension Fund had been amending its processes and issued communications to employers which would have alerted the fund to any member impacted by the exit cap. At the time of writing, the Fund is not aware of any members who have exited with restricted payments. The Fund, following the announcement of the revoked regulations, has since amended its processes back and has been working with employers to prepare communications on the disapplied regulations. Communications to members have been maintained through our website.
- 2.1.4 While the Exit Pay Regulations have been revoked, it is anticipated that an amended approach may be forthcoming in managing exit payments of public sector employees with the potential for consultation to be recommenced on new proposals in the coming months.

2.2 Scheme Advisory Board – Good Governance Review

2.2.1 On 15 February the Scheme Advisory Board (SAB) published phase three of their Good Governance Review, conducted in conjunction with Hymans Robertson. As previously reported, the aim of the review was to improve governance standards across all LGPS funds. Recommendations from Phase two of the report were approved by the Scheme Advisory Board on 3 February 2020, with phase three delayed due to Covid-19.

2.2.2 The report includes a series of recommendations which have been categorised into the following areas;

- General, including the changes to statutory guidance in order to implement good governance recommendations, the introduction of a single named officer for responsibility of LGPS activity and additional requirements with regards to LGPS governance and compliance statements.
- Conflicts of Interest, the production of a conflicts of interest policy that includes details of how actual, potential and perceived conflicts are addressed within the Fund's governance arrangements.
- Representation, the introduction of a policy outlining the parties invited to join, participate and vote on governing bodies.
- The introduction of knowledge and understanding requirements for key individuals in the LGPS, including officers and Pension Committee members.
- Service Delivery for the LGPS Function, the documentation and publication of key roles and responsibilities in relation to the Local Government Pension Scheme, and the requirement to report performance against an agreed set of key performance indicators.
- Independent governance assessment, the requirement to undergo a biennial independent Governance review.

2.2.3 SAB have now formally written to MHCLG highlighting the actions they are recommended to implement by either amending scheme regulations or producing statutory guidance in order to take the review forward. Details of MHCLG's response will be reported to a future meeting of the Pensions Board along with progress on the Fund's review of the Fund's progress with regards to the implementation of recommendations in the Good Governance report.

2.2.4 In reviewing the outcomes of the report, the Fund has undertaken an appraisal of its governance to identify areas for enhancements. It can be noted that the Fund already has a training and development policy for its officers and governing bodies as well as a clear management and leadership structure, having regularly undertaken external review of its Governance arrangements over the last 5 years. Work will continue on developing its reporting in these areas with an updated Governance statement being prepared for presentation to Pensions Committee in June and Pensions Board in July and as part of the annual policy review framework.

2.3 The Pensions Regulators (TPR) Single Code of Practice

- 2.3.1 On 17 March 2021 the Pensions Regulator launched their consultation on their singular code of practice. As previously reported, the Regulator has reviewed their current 15 codes of practice and created one single code. The ten-week consultation runs until 26 May 2021.
- 2.3.2 It is the Regulator's intention that the formation of one shorter, web-based, single code of practice will make codes of practice quicker to find and update, enabling scheme managers to be more responsive to changes in regulation.
- 2.3.3 In reviewing the draft code and in order to respond to the consultation the Fund are in the process of undertaking an analysis of the Regulator's existing code of practice (code of practice 14) and the draft single code with the view to identifying new requirements and areas where enhancements to current practices may be required in future.
- 2.3.4 The draft code is made up of 51 modules which cover the five following themes:
- The Governing Body, including structure, activities and the knowledge and understanding that Governing Bodies are expected to have and maintain, (It should be noted that these requirements will now apply to the Pensions Committee as well as the Pensions Board), risk management and scheme governance
 - Funding and Investment, including investment reporting, monitoring, climate change and stewardship
 - Administration, covering information handling, contributions and maintenance of IT systems which includes the maintenance of effective cyber security measures
 - Communications and Disclosure, covering information provided to members and information that governing bodies are required to publish
 - Reporting to TPR including regular reports, whistleblowing, breaches of law and the results of biennial governance assessments.
- 2.3.5 Details of the Fund's response to the consultation and ongoing work in relation to the single code will be reported to the Pensions Board in July.

2.4 MHCLG, consultation and legislation.

- 2.4.1 The Pension Schemes Act 2021 came into force on 11 February 2021 and with it brings new powers for the Pensions Regulator, including inspection and interview powers to support their existing information gathering role when conducting reviews of schemes.
- 2.4.2 The Act also includes requirements to ensure effective pension scheme governance is in place in relation to managing the risks of climate change, with the Department for Work and Pensions (DWP) undertaking a consultation on the governance and reporting of climate risk in occupational pension schemes. The Fund has responded to the DWP consultation and is engaging in the development of legislation and guidance for the LGPS with the expectation that MHCLG statutory guidance will be forthcoming for consultation later this year.

- 2.4.3 The Act introduces statutory requirements facilitating the operation of pensions dashboards (on which the Fund participated in data design discussions), through which individuals will be able to access information about all their pensions in one place.
- 2.4.4 One key development is in relation to pension transfers and heightened tests for transferring schemes to aid in the protection of members from pension scams. Board will be aware that this is an area of watch for the Fund, noting the number of third party requests for information received from claims management companies in the last 6 months. The Fund, in conjunction with other LGPS Funds, has raised concerns with the FCA over the conduct of these companies, in particular their apparent lack of understanding of the LGPS benefit structure and the tie in for members to pay a success fee.
- 2.4.5 MHCLG are further running a consultation on the proposed minimum pension age. This normal minimum pension age is the minimum age at which most pension savers can access their pensions. It is currently age 55 and is reflected within the LGPS regulations. Contained within the consultation documents, the government has reconfirmed its intention to legislate to increase the normal minimum pension age to age 57 on 6 April 2028. It states that increasing the normal minimum pension age reflects increases in longevity and changing expectations of how long persons will remain in work and in retirement. It is reflective of the increase in state pension age (with the minimum age historically being 10 years prior to normal pension age). While changes to the LGPS regulations will require further consultation, the approach from MHCLG outlines a direction of travel which the Fund will continue to monitor.

3.0 Financial implications

- 3.1 Further consideration may need to be given to the Fund Budget depending on the nature of change requirements for implementing regulatory change. There is the potential for cost pressures on the Fund.
- 3.2 The changes to be brought in by Regulatory change have the potential to impact Fund resource considerably and its ability to delivery services to target. Consideration is underway as to the potential resource implications and need.

4.0 Legal implications

- 4.1 Changes to legislation and statutory guidance are detailed in the report. Failure by the Fund to comply with legislation and/or statutory guidance can result in enforcement action and fine from both the Pension Regulator and the Courts via judicial review.

5.0 Equalities implications

- 5.1 There are no direct equalities implications.

6.0 Environmental implications

- 6.1 There are no direct environmental implications.

7.0 Human resources implications

7.1 There are no direct human resources implications.

8.0 Corporate landlord implications

8.1 There are no direct corporate landlord implications.

9.0 Schedule of background papers

9.1 [LGPS Scheme Advisory Board - Board Updates \(lgpsboard.org\)](https://www.lgpsboard.org/)

9.2 [Hymans Good Governance - Final Report](#)

9.3 [The Pensions Regulators Draft Single Code of Practice](#)

9.4 [Fund response to DWP Climate Risk Consultation – March 2021](#)

10.0 Schedule of appendices

10.1 None.