

## **LGPS Update**

Report of the County Treasurer

Please note that the following recommendations are subject to consideration and determination by the Board before taking effect.

Recommendation: that the Board be asked to note the developments in the LGPS

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### **1. Summary**

- 1.1 This report is brought to the Pension Board to provide an update on the latest developments affecting the LGPS.

### **2. High Court judgement on Exit Credits**

- 2.1 On 27 May 2021, the High Court handed down its judgment in the case of EMS & Amey v Secretary of State for MHCLG. The case relates to the non-payment of a £6.5 million exit credit.
- 2.2 An exit credit maybe payable to an exiting employer, typically an admitted body, if a surplus is revealed in the closure valuation. The fund is required to have a policy in place regarding exit credits which is included within the Funding Strategy Statement which the Devon Pension Board last reviewed in its April 2021 meeting.
- 2.3 The claimants brought a judicial review against the 2020 Regulations applying retrospectively. The Court found in favour of MHCLG and upheld the retrospective effect of the LGPS (Amendment) Regulations 2020. The judge noted that 'there were compelling public interest reasons for making the regulations retroactive', and that 'the aim of avoiding windfall payments and protecting the pension funds was legitimate'
- 2.3 The claimants also raised concern about how administering authorities are applying the new rules; in particular, suggesting that some administering authorities are excluding the possibility of paying an exit credit because a pass-through arrangement is in place. All parties accepted that this is incorrect, and the regulations do not give primacy to any single factor.
- 2.4 Officers have reviewed the newly implemented Fund' policy on exit credits and are satisfied that no changes are required following this judgement.

### **3. Finance Act 2021**

- 3.1 Finance Act 2021 received Royal Assent. The Act gives legal effect to the Government's decision to freeze the lifetime allowance at £1,073,100 for tax years 2021/22 to 2025/26, as announced at the last budget. The Government used budget resolutions to freeze the allowance from 6 April 2021 to the date the Act received Royal Assent

### **4. Cost Cap Consultation**

- 4.1 Under the new public service pension scheme framework, the costs of the pension schemes must be periodically assessed to ensure that the reforms are affordable and sustainable. In the LGPS in England & Wales, there will be two mechanisms used to do this:

- a) the employer cost cap (ECC) process as operated by HM Treasury,  
and
- b) the future service cost (FSC) process as operated by the LGPS Scheme Advisory Board.

Both processes could lead to changes to the scheme design or to the level of members' contributions if the costs of the LGPS are shown to have moved sufficiently from the target.

- 4.1 There are two mechanisms because the ECC process has been partly established in order to demonstrate consistency between the public service pension schemes. Because of this, the LGPS Scheme Advisory Board FSC process has been set up to reflect the specifics of the LGPS experience in assessing the costs of the pension scheme reforms.
- 4.1 On 24 June 2021, HM Treasury launched a consultation on proposed changes to the cost control mechanism alongside a written ministerial statement. The consultation follows a review of the mechanism by GAD,
- 4.2 The consultation sets out Treasury's response to GAD's findings and proposes making the following three changes, all of which were recommended in GAD's review:
- only considering past and future service in the reformed CARE schemes in the mechanism (so, removing any allowance for final salary schemes)
  - widening the 2 per cent corridor to 3 per cent
  - introducing an economic check so that a breach of the mechanism would only be implemented if it would still have occurred had long-term economic assumptions been considered.

- 4.3 The outcome of the consultation will not impact on the 2016 cost control valuations.
- 4.4 Officers welcome the proposed changes to the cost cap though do not propose to respond to the consultation.

## **5. Conclusion**

- 5.1 The Pension Board is asked to note the issues and developments of the LGPS outlined in the report.

Mary Davis  
County Treasurer

Electoral Divisions: All

Local Government Act 1972:  
List of Background Papers: Nil  
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