

## **LGPS Update**

Report of the County Treasurer

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

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

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### **1. Summary**

1.1 This report is brought to the Committee to provide an update on the latest developments affecting the Local Government Pension Scheme (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 may be 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 (FSS). The current FSS was updated and approved by the Investment and Pension Fund Committee at the previous 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'.

2.4 The claimants also raised concerns 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.

2.5 Officers have reviewed the newly implemented Fund policy on exit credits and are satisfied that no changes are required following this judgement.

### **3. Minimum Retirement Age**

- 3.1 On 20<sup>th</sup> July 2021 HM Treasury issued their response to the consultation on increasing the minimum retirement age from 55 to 57 in April 2028. Draft legislation was also released which will form part of the next Finance Bill and will amend the Finance Act 2004.
- 3.2 The changes will not affect members who
- Retire due to ill health
  - Have a protected retirement age
  - Members of the Firefighters, police or armed forces schemes
- 3.3 We await to see if MHCLG will continue to allow members of the LGPS aged 55-57 access to their benefits post 2028.

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

- 4.1 Under the current public service pension scheme framework, the costs of the pension schemes must be periodically assessed to ensure that the reforms made in 2013/14 continue to be affordable and sustainable. In the LGPS in England and 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. Currently these mechanisms allow for an increase or decrease of up to 2% from the target cost before a review of scheme benefits and/or employee contributions is triggered.

- 4.2 There are two mechanisms because the Treasury's ECC process has been partly established in order to demonstrate consistency between the public service pension schemes. Unlike the other public sector schemes the LGPS is a funded scheme, and therefore has some different characteristics that need to be taken into account. Because of this, the LGPS Scheme Advisory Board has set up a second (FSC) process to reflect the specifics of the LGPS experience in assessing the costs of the pension scheme reforms.
- 4.3 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 the Government Actuary's Department (GAD).
- 4.4 The consultation sets out Treasury's response to GAD's findings and proposes making the following three changes to the ECC process, all of which were recommended in GAD's review:

- only considering past and future service in the reformed CARE (Career Average Revalued Earnings) 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.
- 4.5 The LGPS Scheme Advisory Board will consider any necessary changes to this second FSC mechanism in the light of the overall changes made across schemes by HM Treasury.
- 4.6 Officers welcome the proposed changes to the cost cap although a formal response was not made to the consultation which closed on 19<sup>th</sup> August 2021. The outcome of the consultation will not impact on the 2016 cost control valuations which have been paused, delayed and re started again following the McCloud judgement. Changes to the cost cap are expected to apply from the 2019 exercise.

## **5. The Pension Regulator (TPR) new Code of Practice**

- 5.1 Back in March, TPR launched a new Code of Practice consultation. The draft new code consolidates (with updates and amendments) most of the existing codes of practice (including the public service code of practice 14) into a new online code providing a single up-to-date and consistent source of information.
- 5.2 It was initially envisaged that the new code would be implemented sometime during 2021 though due to the large volume of consultation responses received, TPR have recently announced in its interim response to the consultation that the code will be delayed. No firm publication date has been given but it is unlikely to become effective until summer 2022.

## **6. Conclusion**

- 6.1 The Committee 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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