

Bath & North East Somerset Council

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| MEETING | AVON PENSION FUND COMMITTEE | |
| MEETING | 26 March 2021 | Agenda Item Number |
| | | 15 |
| TITLE: | Update on Legislation | |
| WARD: | All | |
| AN OPEN PUBLIC ITEM | | |
| List of attachments to this report: Appendix 1 – Current matters affecting LGPS administration 28 February 2021 | | |

1 THE ISSUES

- 1.1 The purpose of this report is to update the Pensions Committee on the latest position concerning the Local Government Pension Scheme [LGPS] and any proposed regulatory matters that could affect scheme administration. An updated list is included in Appendix 1.

2 RECOMMENDATION

The Committee is asked to;

- 2.1 Note the current position regarding the developments that could affect the administration of the fund.

3 THE REPORT

The below items have been selected from Appendix 1 as we believe them to be key items of interest for committee members:-

3.1 HMT Public Sector Exit Payments Cap / MHCLG Consultation on Further Reform to Exit Payments

- (1) The government first consulted on plans to cap exit payments in the public sector in 2015 and subsequently launched a further consultation in April 2019 the key points of which were:-
- a) A maximum exit payment of £95,000 which was to apply to a wide range of public sector employers, however, excluding some LGPS employers such as Universities and Colleges.

- b) The cap was to include the value of any early retirement strain costs payable as a result of the exit.
 - c) There would be a provision for the cap to be waived in some exceptional circumstances.
- (2) In July 2020, the Government published its response to this consultation, confirming their intention to proceed with the implementation of the cap which remained set at £95,000 with no intention for this amount to be index linked going forward.
 - (3) On 7 September 2020, MHCLG launched their own consultation on the changes required to the LGPS regulations to accommodate the cap, but also proposals for further reforms to exit payments for the LGPS only, which are:-
 - a) The actual pay used in severance calculations will be limited to £80,000;
 - b) The maximum severance (including statutory redundancy pay) will be limited to 3 weeks' pay per year of service or 15 months' pay, whichever is the lower
 - c) The amount available for any strain cost will be reduced by the statutory redundancy payment in all cases
 - (4) On 15 October 2020, the regulations to implement the £95k cap, across the whole of the public sector, were signed and come into force on 4 November 2020. However, the LGPS amendment regulations required to implement the £95k cap are not likely to be implemented before 2021.
 - (5) This leaves us in a position of legal uncertainty from the 4 November 2020 until such time as the LGPS amendment regulations come into force. APF obtained legal advice on the best course of action to take in the interim period, and as a result of that advice have taken the decision to offer a member who exceeds the 95k cap the option of taking immediate payment of fully reduced benefits or the option to defer their benefits for payment at a later date. This is also inline with the Government and Scheme Advisory Board recommendations.
 - (6) On 22 December 2020, three requests for Judicial Reviews of the Restriction of Public Sector Exit Payment Regulations 2020 were given permission to proceed. These requests contest the regulations on a number of grounds, including their effect on the LGPS regulations. It is expected the requests will be heard towards the end of March 2021. MHCLG has confirmed that these hearings will affect the timing of LGPS regulation changes.
 - (7) On 12 February 2021, HMT published directions disapplying the cap with immediate effect with the regulations revoking the cap coming into force on 19 March 2021. HMT expects employers to pay the additional sums that would have been paid, had the exit cap not applied in respect of employees who left between 4 November 2020 and 11 February 2021

3.2 McCloud and Sargeant Court Case

- (1) This case concerns the transitional protections provided to older members of the judges and firefighter pension schemes following their reform in 2015 as part of the public sector pension scheme changes.
- (2) In December 2018, the Court of Appeal found the transitional protections to be unlawful on the grounds of age discrimination
- (3) In June 2019, the Supreme Court denied the Government's request for an appeal and as such the case has been returned to an Employment Tribunal for remedy.

- (4) In July 2019, the Chief Secretary to the Treasury announced in a written statement that 'the government believed that the difference in treatment will need to be remedied across all public sector schemes, including the LGPS'.
- (5) This is likely to have a significant impact on the administration team.
- (6) The SAB agreed to establish two working groups, one to assist MHCLG in considering any areas of policy not centrally determined and the second to consider the challenge of implementing and communicating any changes.
- (7) In July 2020, MHCLG launched a consultation on amendments to the statutory underpin which are designed to remove age discrimination from the LGPS. The consultation closed on 8 October 2020 and we await their response.
- (8) In the meantime, APF have commenced a data collection exercise with their employers to ensure any additional hour change and service break data is available for members that will be covered by the changes, to enable us to apply the remedy once it has been decided.
- (9) On 4 February 2021, HMT published its response to the consultation on changes to the transitional arrangements in respect of the unfunded public service pension schemes only. As previously advised, changes to the LGPS were consulted on separately by MHCLG and we expect them to make a Written Ministerial Statement outlining some key remedy policies shortly and a full consultation response will follow later in the year.

3.3 LGPS SAB Cost Management Process

- (1) The Public Service Pensions Act 2013 set out that public sector schemes were to be monitored to ensure that they are affordable and sustainable. Unlike the unfunded schemes LGPS also has a built in check driven by the Scheme Advisory Board
- (2) In September 2018 HM Treasury announced that as a result of scheme valuations all public service pension schemes, including the LGPS had breached the 2% cost cap floor which would lead to member benefits improvements. However, the SAB has its own cost management which allowed any changes to benefits to be taken into account before the HM Treasury process begins.
- (3) A proposed package of changes was put forward to SAB for approval with the intention that all scheme changes would be effective from 1 April 2019 and will apply until at least March 2023.
- (4) However, in January, the Government announced a pause in the cost cap process due to uncertainty caused by the McCloud and Sargeant court ruling on elements of the 2014/15 scheme reforms and subsequently the SAB confirmed that they would also be pausing their own cost management process until the effects of the outcome of this case is clear.
- (5) Therefore, scheme changes were not put in place for 1 April 2019 and the LGPS SAB Cost Management Process continues to be paused until the effects of the outcome of the McCloud and Sargeant Judgement is clear.
- (6) When this process resumes, if changes are still required, this will have a significant impact on the administration team.
- (7) On 16 July 2020, the Government announced that the cost control mechanism pause would now be lifted, for the unfunded public sector schemes, and the process restarted taking into account the costs of the McCloud remedy. We await further

confirmation from SAB as to the position in relation to the LGPS process which is likely to be clarified in 2021 following the outcome of the McCloud consultation.

- (8) On 4 February 2021, the Government announced updates on the 2016 valuation and cost control mechanism for the unfunded public sector pension schemes advising that the cost control element of the 2016 valuations will now be completed incorporating the cost of implementing the McCloud remedy. There will be no reduction to member benefits as a result of completing the 2016 valuation if the cost ceiling is breached. However, if the cost floor is breached, this will be honoured by implementing increases in benefit accrual and/or reductions in member contributions backdated to 1 April 2019.

3.4 SAB Good Governance in the LGPS

- (1) Previously known as the separation project which was developed to identify the potential benefits of further increasing the level of separation between the host authority and scheme manager role. In November 2018, the project was awarded to Hymans Robertson and was also re-named to “Good Governance in the LGPS” which better reflected the aims and ambitions of the project to enhance the delivery of the function within local authority structures.
- (2) In April 2019, Hymans launched the Good Governance Project Survey to capture as many views as possible from those working within the LGPS with the findings forming the basis for a Phase I report which was presented to the SAB in July 2019.
- (3) In November 2019, a Phase II report which made recommendations for new standards of governance and administration and proposed how they could be measured and assessed independently was presented to the Board.
- (4) On 15 February 2021, the Scheme Advisory Board published Good Governance: Phase 3 Report which was produced by the Hymans Robertson project team. The Phase 3 report provides further details on some of the recommendations that were included in the Phase 2 Report.
- (5) The Board agreed that the Chair should submit the Board’s Good Governance Action Plan to the Local Government minister for consideration.

4 FINANCIAL IMPLICATIONS

- 4.1 The administrative and management costs incurred by Avon Pension Fund are recovered from the employing bodies through the employer’s contribution rates.
- 4.2 Any other specific financial implications will be reported as appropriate.

5 RISK MANAGEMENT

- 5.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council’s decision making risk management guidance.

6 EQUALITIES STATEMENT

- 6.1 A proportionate equalities impact assessment has been carried out using corporate guidelines and no significant issues have been identified.

7 CLIMATE CHANGE

7.1 The Fund is implementing a digital strategy across all its operations and communications with stakeholders to reduce its internal carbon footprint. The Fund acknowledges the financial risk to its assets from climate change and is addressing this through its strategic asset allocation to Low Carbon Equities and renewable energy opportunities. The strategy is monitored and reviewed by the Committee.

8 OTHER OPTIONS CONSIDERED

8.1 None

9 CONSULTATION

9.1 The Council's Monitoring Officer and Section 151 Officer have had the opportunity to input to this report and have cleared it for publication.

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| Contact person | <i>Kate Shore, Technical & Compliance Advisor; Tel 01225 395283</i> |
| Background papers | <i>LGA Bulletins SAB Meeting Minutes National Technical Group Meeting Minutes</i> |
| Please contact the report author if you need to access this report in an alternative format | |