

**Lancashire Local Pension Board**

Meeting to be held on Tuesday, 18 October 2022

Electoral Division affected:  
(All Divisions);

**Regulatory Update**

Contact for further information:

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**Brief Summary**

This report sets out an update on various pension related regulatory issues to assist Board members to exercise their functions as a member of the Pension Board effectively.

**Recommendation**

The Board is asked to consider and note the contents of the report.

**Detail**

**1. Prudential**

Following administration delays experienced by Funds and members due to the system changes in early 2021, the Scheme Advisory Board (SAB) and the Local Government Pension Committee (LGPC) have established a subgroup to meet with Prudential to discuss any ongoing difficulties and improvements. The Fund are feeding into the group and does not currently have any identified data concerns in relation to the system changes.

This follows a letter issued by Prudential in April 2022 which describes the background to the problems and action they are taking.

Annual benefit statements for the year to 31 March 2021 were issued in August 2022. As advised in the January regulatory update, Prudential has already reported itself to the Pensions Regulator because it has missed statutory deadlines. Annual benefit statements for the year to 31 March 2022 are planned to be issued by end of October 2022.

The Fund continues to work with the Prudential Client Manager and LPPA to help raise concerns as they arise.



## 2. Update on McCloud

The Department for Levelling Up, Housing and Communities (DLUHC) has issued an update on McCloud to advise that later this year they will publish the Government's response to the [2020 consultation](#). The Scheme Advisory Board will then resume their McCloud implementation groups which will include representatives of different LGPS stakeholders and DLUHC.

DLUHC will also publish an updated version of the draft regulations, which will be subject to a further period of consultation in early 2023. The draft regulations will reflect the new powers given by the Public Service Pensions and Judicial Offices Act 2022 governing the statutory underpin as well as technical feedback from the 2020 consultation and any changes in policy. The consultation will also cover compensation and rates of interest. The regulations will be made in 2023 and will come into force on 1<sup>st</sup> October 2023. DLUHC intend to issue statutory guidance on the implementation of McCloud in 2023 following the period of consultation.

DLUHC are encouraging LGPS administrators to begin taking steps towards the implementation of McCloud remedy following the publication of the Government response and will shortly be holding a meeting with software suppliers to discuss the implementation of the McCloud remedy to this timetable.

There is a concern due to the late issue of the new draft regulations, as it gives Funds less time to implement the changes. LPPA have already been taking steps to ensure that employers have been submitting the hours and service break data that will be required to implement the new remedy, and since 2014 LPPA have continued to update these data items when provided.

Separately on 20 July 2022, the Pensions Ombudsman published a [factsheet on McCloud](#), setting out that the general starting position is that it would not investigate McCloud complaints now, but will carefully look at each case to decide whether to investigate.

Before 2023, Civica (the system provider for LPPA) will be carrying out development work so that UPM is as ready as possible for the McCloud remedy to provide bulk remedy solutions including the recalculation of benefits and annual allowance and the rectification of affected members.

## 3. HMT Consultation on Public Sector Exit Payments

On 8 August 2022, HM Treasury (HMT) launched a consultation on public sector exit payments. The Government is proposing to introduce:

- an expanded approval process for employee exits and special severance payments
- additional reporting requirements.

The guidance is intended to apply to all bodies that are classified as 'Central Government'. This **does not** include local authorities or bodies under devolved administrations. The guidance will apply to academies.



The new approvals requirement would apply to decisions made by employers to agree to an exit where the total payment to be made would be more than £95,000. This includes relevant statutory, contractual, or discretionary payments. This would include any strain cost where an LGPS member aged over 55 leaves due to redundancy or efficiency. A further approval will be needed if special severance payments (payments that are in excess of contractual obligations) are to be offered.

More information about the proposals is available in the [draft HMT guidance on public sector exits](#).

The consultation closes on 17 October 2022. This issue primarily impacts scheme employers rather than the Pension Fund itself.

#### **4. Cost cap results published**

On 29 June 2022, the Government Actuary's Department published the results of the first cost cap valuation for LGPS (England and Wales).

The cost cap was introduced by the Public Service Pensions Act 2013. The Act requires the setting of an employer cost cap rate against which changes in the cost are to be measured. If there is a change of 2 per cent above or below the rate, action must be taken to bring the cost back to the rate.

The employer cost cap for the Local Government Pension Scheme (England and Wales) was set at 14.6% of pay, following the 2013 valuation. If at subsequent valuations the cost of the scheme is outside a corridor above / below the employer cost cap, the Public Service Pensions Act 2013 requires action to be taken to bring costs back to the target cost.

In February 2019, HMT paused the cost cap element of the 2016 valuations due to the uncertainty regarding the cost following the McCloud case, and this work resumed in October 2021.

The results of the first valuation show that the cost has remained within the 2 per cent corridor. This means that no changes to benefits or member contributions are required. The second valuation will assess the cost as at 31st March 2020.

Separately the Fire Brigades Union and British Medical Association are challenging that an allowance for McCloud costs has been included in the 2016 valuations. No date has been set for when the case will be heard.

#### **5. Harpur Trust v Brazel**

The Harpur Trust v Brazel case relates to the calculation of holiday pay for part-year employees, and the final judgement means that employers should now consider revising how pay is calculated for part-year employees (to include term-time and zero hours contracts). This could lead to recalculations of contributions and both final salary and career average pay.



## 6. Pensions Dashboards Consultations

On 14 July 2022 the Government responded to the consultation on the Draft Pensions Dashboards Regulations which ran from 31 January 2022 to 13 March 2022. The Department for Work and Pensions (DWP) have also published [a summary of key policies](#) which gives an update of the policy areas.

The key areas of the response that affect LGPS are as follows:

- The staging deadline for public service pension schemes will be deferred from 30 April 2024 to 30 September 2024. This includes responding to find requests and completing matching. The provision of more detailed accrued and projected pension values (which will be done using benefit statements) will need to be provided by 1 April 2025.
- Because of fluctuations in production of annual benefit statements, value data can be derived from a statement provided to a member within the last 13 months (initially a 12 month window was proposed).
- Value data for new members will need to be provided as soon as practicable, and by no later than the date the first statement is produced.
- The regulations will be amended to clarify what schemes are to do when they return a possible match. No personal data should be returned, and further information will be required so that a full match can be made.
- Schemes must keep information for reporting to the Money and Pensions Service, the Pensions Regulator, or the Financial Conduct Authority. The regulations will be amended to be clearer on this.
- Scheme managers and trustees are legally accountable for ensuring that AVC data is available to the dashboards, although in practice DWP expects that AVC providers will publish the data. AVC providers will be required to provide annual income amounts as well as pot values.
- The regulations will refer to "retirement date" rather than "normal pension age" which gives some flexibility to schemes

The Department for Work and Pensions (DWP) launched a further consultation on pension dashboards on 28 June 2022. The further consultation supplements the above consultation on the draft dashboard regulations and closed on 19 July 2022. LGA responded to this consultation on 19 July 2022

The further consultation set out two proposals. The first proposal provides clarity on the 'Dashboard Available Point' (DAP). The second proposal allows the Money and Pensions Service and the Pensions Regulator to share information about dashboards with each other.

DWP has separately confirmed that frozen refunds will not be in scope for initial dashboards but may be included at some point in the future.

A further consultation has been issued by the Pensions Dashboards Programme on dashboard design standards which the LGA responded to on 31 August 2022.

It is expected that regulations will be laid before Parliament later this year.



## **7. Future proofing of Scheme benefits**

The chair of the Scheme Advisory Board has written to the Paul Scully MP (the new minister for Local Government) recommending reform of the LGPS rules on death grants and survivor benefits. This is to address recent challenges that the current rules are discriminatory on grounds of sexual orientation (for example the Goodwin case) or age (for example the McCloud case) and also to investigate “future proofing” Scheme benefits against potential future legal challenge. The Board has previously recommended (in a letter of 27 November 2017) that the Government should investigate the feasibility of removing all remaining differences in benefits in relation to survivor benefits.

## **8. DLUHC Consultation on Climate Risk Reporting**

DLUHC has [launched its consultation](#) regarding governance and reporting of climate change risks. The consultation seeks views on proposals to require Local Government Pension Scheme (LGPS) administering authorities in England and Wales to assess, manage and report on climate-related risks, in line with the recommendations of the Taskforce on Climate-related Financial Disclosures (TCFD). The consultation closes on 24th November 2022 and LPPI will be submitting a response.

## **9. TPR's Single Code of Practice**

The final version of the Code was expected to be published in late September 2022. However, the publication of final code has been delayed due to changes in Parliament over the summer. The Code is now not expected until later this year, or possibly early 2023.

## **10. Technical consultation on resolving low earners tax relief anomaly**

On 20 July 2022, HMRC launched a technical consultation on draft legislation that aims to resolve the tax relief anomaly. The consultation closed on 14 September 2022.

The proposed changes will be included in the next Finance Bill.

The tax relief anomaly affects pension scheme members who earn less than the personal allowance. Whether the member receives any tax relief on their pension contributions depends on the tax relief method used by their scheme. The scheme will either use the ‘net pay arrangements’ or the ‘relief at source’ method.

Under the ‘net pay arrangements’, pension contributions are deducted before income tax is calculated. This means that tax relief is equal to the member’s marginal rate. For members whose income is below the personal allowance, the rate is zero per cent. Under the ‘relief at source’ method, low earners do receive tax relief on their contributions. The LGPS uses the ‘net pay arrangements’.

The legislation proposes placing a duty on HMRC to make top up payments directly to eligible members. Eligible members are members who pay into a scheme like the LGPS that uses the ‘net pay arrangements’ and whose total taxable income is below



the personal allowance. HMRC will identify and notify eligible members and invite them to provide the necessary details for the top up payment to be paid direct to their bank account. The duty will apply for the tax year 2024/25 onwards.

## **11. Academy Guarantee**

The Department for Education (DfE) has made a written ministerial statement confirming an extension of the guarantee that the closure of an academy trust will not lead to any outstanding LGPS liabilities reverting to the fund. This guarantee was first made in 2013 and now includes a new increased annual ceiling of £20m. The Guarantee provides academy trusts with direct Government backing for certain pension costs. The DfE has asked administering authorities to ensure that this is reflected in this year's scheme valuation, both in the setting of employer contribution rates and the length of deficit recovery periods. A Parliamentary Minute which sets out the detail of the Guarantee, has been laid in both Houses.

## **12. Good Governance Recommendations**

DLUHC ministers are believed to have given approval to take forward the England and Wales Scheme Advisory Board's [Good Governance recommendations](#).

It is expected that the Good Governance requirements will be defined in regulation and supported by statutory guidance. A consultation on draft regulations is expected early next year and this will be included as a project within the 2023/24 strategic plan.

### **Consultations**

N/A

### **Implications:**

This item has the following implications, as indicated:

### **Risk management**

Without the required knowledge and skills, those charged with governance and decision making may be ill-equipped to make informed decisions regarding the direction and operation of the Pension Fund.

### **Local Government (Access to Information) Act 1985 List of Background Papers**

N/A

Reason for inclusion in part II, if appropriate

N/A

