

CLWYD PENSION FUND COMMITTEE

Date of Meeting	Wednesday, 25 November 2020
Report Subject	Regulation Changes affecting the LGPS
Report Author	Head of Clwyd Pension Fund

EXECUTIVE SUMMARY

There are a number of regulatory changes that are progressing that impact on the LGPS, and therefore the Clwyd Pension Fund. This report provides background information on four key areas of reform:

- The McCloud Remedy
- The £95k Exit Cap and Wider Exit Pay Reform
- The Guaranteed Minimum Pension (GMP) Indexation Consultation for Public Service Schemes
- Review of Employer Contributions and Flexibility for Employer Exit Payments.

The Committee are asked to recognise the significant amount of reform taking place and the impact on the Fund's resources will continue to be monitored. The Committee are also asked to note that decisions may require to be made using the Fund's agreed urgency delegation process.

Furthermore, the Committee are asked to consider the information provided and agree principles to be include in a response from the Fund to the GMP Indexation Consultation.

RECOMMENDATIONS

1	That the Committee consider the information contained in the report and provide any comments.
2	That the Committee consider principles of a recommended consultation response in relation to the GMP Indexation Consultation, as outlined in paragraph 1.07, and delegate the completion of the response to the Head of the Clwyd Pension Fund.

REPORT DETAILS

1.00	REGULATORY CHANGES AFFECTING THE LGPS
1.01	<p data-bbox="320 275 507 304">Introduction</p> <p data-bbox="320 349 1393 454">There are a number of regulatory changes that are progressing that impact on the LGPS, and therefore the Clwyd Pension Fund. This report provides background information on four key areas of reform:</p> <ul data-bbox="368 461 1377 1088" style="list-style-type: none"><li data-bbox="368 461 1377 600">• The McCloud Remedy – this is an ongoing programme of work that the Committee has received previous updates on. This report summarises the latest progress in relation to the delivery of the programme and the expected changes to the LGPS.<li data-bbox="368 607 1377 824">• The £95k Exit Cap and Wider Exit Pay Reform – new HM Treasury (HMT) legislation has now come into force that could impact on employees being made redundant, but a complex situation has arisen due to the corresponding LGPS regulations not having yet been made. A waiver may be introduced in Wales which could reduce or remove the impact on affected scheme members.<li data-bbox="368 831 1377 969">• The Guaranteed Minimum Pension (GMP) Indexation Consultation for Public Service Schemes – HMT has published a consultation in relation to the ongoing indexing of public service pensions where a scheme member has an accrued GMP.<li data-bbox="368 976 1377 1088">• Review of Employer Contributions and Flexibility for Employer Exit Payments – guidance is now being developed in relation to these LGPS amendment regulations that were made in September 2020. <p data-bbox="320 1126 1345 1193">Further updates will be provided at future Committee meetings on these matters.</p>
	<p data-bbox="320 1245 659 1274">The McCloud Remedy</p>
1.02	<p data-bbox="320 1317 595 1346"><i>LGPS Consultation</i></p> <p data-bbox="320 1391 1377 1783">At the last Committee meeting the Committee approved the Clwyd Pension Fund response to the MHCLG consultation on the proposed changes to the LGPS statutory underpin protection to remove the unlawful discrimination found in the McCloud and Sargeant court cases. The consultation response was submitted prior to the consultation closing date on 8 October 2020. MHCLG's response to the consultation has not yet been issued and it is unclear when final regulations will be made. At a recent conference MHCLG noted that required changes to the Public Service Pensions Act could impact on the delivery of the LGPS amendment regulations. MHCLG confirmed that administering authorities can and should commence data collection in the meantime.</p>
1.03	<p data-bbox="320 1834 834 1863"><i>CPF McCloud Programme Progress</i></p> <p data-bbox="320 1870 1377 2078">An update on the progress of the Clwyd Pension Fund McCloud programme is attached at Appendix 1. This shows that the programme is now focussing on developing the data collection procedures with some pilot employers. It is expected that the software toolkit to assist in collating data into the administration system provided by Heywood is not likely to be available as soon as hoped. The team are working with Heywood to gain</p>

	<p>clarity on what the toolkit will provide so the programme is not delayed unnecessarily. Any delay in the amendment regulations being made, could further delay changes to the administration software, resulting in an impact on delivery of the programme timescales.</p>
1.04	<p>The £95k Exit Cap and Wider Exit Pay Reform</p> <p><i>Consultations and Regulations</i></p> <p>As reported at the last committee, HMT consulted on the implementation of a long-awaited reform of exit pay for public sector employees, relating to the introduction of an overall exit cap of £95,000 on all employer payments made when an employee exits the public sector. This generally applies in relation to redundancy but can relate to other cessations of employment. On 7 September MHCLG launched its own consultation on how the exit cap would operate in the LGPS, and also how it would interact with the employer compensation made to members. Despite requests for the two sets of Regulations to be implemented simultaneously, HMT regulations to implement the £95,000 exit cap came into force on 4 November 2020 whereas the LGPS Regulations are not expected to come into force until the new year. This now means there is a conflict between the existing LGPS Regulations and the new HMT Regulations, which puts Funds (and employers) in an extremely difficult position for members who will exceed the cap.</p> <p>However on 2 November, Welsh Government issued a letter stating that subject to legal advice they are considering introducing a general waiver applying in Wales which excludes the pension strain cost from the assessment against the exit cap where legally possible. This would greatly simplify the position in Wales, as it means that whilst members would be capped for payments made by the employer, they would still be entitled to their full pension benefits. We await further confirmation on this issue.</p> <p>Appendix 2 to this report provides more detail in relation to these developments.</p>
1.05	<p><i>Impact on the Clwyd Pension Fund</i></p> <p>Subject to the impact of the Welsh waiver, if it is provided, it may be necessary for the Fund to consider their approach to paying benefits in the LGPS whilst the conflict in the two sets of regulations continues. This would only need to be considered if:</p> <ul style="list-style-type: none"> • any scheme members exit that would be impacted by the HMT Regulations and • the Welsh waiver is not put in place as is anticipated. <p>At the point of writing, the Fund is not aware of any scheme members who are due to exit who would be impacted but this will continue to be monitored. If necessary, the Fund's urgency delegation process will be used in relation to any policy decisions that need to be made. Any such decision would be made following consideration of guidance from SAB and potentially further legal advice.</p>

1.06	<p>The Guaranteed Minimum Pension (GMP) Indexation Consultation for Public Service Schemes</p> <p><i>Consultation</i></p> <p>HMT has published a consultation on how the pensions of public service scheme members who have accrued GMP should be indexed in payment once a member retires. The new State Pension introduced from April 2016 removed the mechanism that enabled full price inflation protection for public servants' GMP, and an interim solution to this problem requiring the LGPS to provide full indexation on all GMP is currently in place for members who reach State Pension Age up to 5 April 2021. The government has put forward proposals for dealing with members who reach State Pension Age from 6 April 2021 onwards. The consultation provides options but states that the preferred policy is to make the full indexation on all GMP the permanent solution.</p> <p>Appendix 3 to this report provides more detail in relation to this consultation.</p>
1.07	<p><i>Proposed Fund Response to the Consultation</i></p> <p>Fund officers and advisors have discussed the options set out in the consultation and concluded that the government's preferred policy (option 2) of discounting conversion of the GMP and make full indexation of GMP the permanent solution is the best option for the Fund. This is on the basis that it is the simplest option to implement from an operational perspective (especially given this solution is already in place up to 5 April 2021) and also the easiest option to communicate to the affected members. However, the solution does have implications in terms of a small increase in liabilities as the affected members will now receive full indexation in line with CPI on their GMP as opposed to limited or no indexation.</p> <p>Based on the 2019 valuation data, the Fund Actuary has calculated this to be £7m for the Fund as a whole and most of this cost will fall on the major employers. This would be included at the 2022 actuarial valuation when setting employer contribution rates. It should be noted that an allowance has already been included in individual employer accounting disclosures in 2020 in anticipation of this being the preferred solution.</p> <p>It is requested that the Committee consider the principles of the above recommended consultation response from the Fund and delegates the completion of the response to the Head of the Clwyd Pension Fund.</p>
1.08	<p>Review of Employer Contributions and Flexibility for Employer Exit Payments</p> <p><i>LGPS Regulation Changes</i></p> <p>As previously reported, the change in Regulations to introduce the new powers on contribution reviews and exit payment flexibility came in on 23 September 2020.</p>

A summary of the new powers is:

Review of Employer Contributions

The regulations grant the following new flexibilities:

1. Administering Authorities may review the contributions of an employer where there has been a significant change to the liabilities of that employer.
2. Administering Authorities may review the contributions of an employer where there has been a significant change in the employer's covenant.
3. An employer may request a review of contributions from the Administering Authority subject to agreement to pay the costs. The conditions in 1 or 2 must also be met.

Where the funding position for an employer significantly changes solely due to a change in assets, the new Regulations will not allow employer contributions to be reviewed outside a full valuation.

Flexibility on Exit Payments

The regulations now allow three options for an exiting employer:

1. As currently, calculate and recover an exit payment for employers ready and able to leave and make a clean break.
2. Agree a repayment schedule for an exit payment with employers who wish to leave the scheme but need to be able to spread the payment.
3. Agree a Deferred Debt Agreement (DDA) with an employer to enable them to continue paying deficit contributions without any active members where the Administering Authority is confident that the employer would fully meet its obligations.

Statutory Guidance for the inclusion of the policy to implement these new powers in a Fund's Funding Strategy Statement (FSS) has been drafted by MHLCG and a limited consultation on the guidance ran from 2 November to 23 November 2020. The Head of the Fund and the Fund Actuary have been asked to input into the consultation. A further "guide" is being developed by the Scheme Advisory Board (SAB) to assist Funds in developing their policy with a view to having broad consistency in the key principles across all Funds.

Fund Policy and Implementation

It is clear in the draft guidance that the policy for each Fund is to be developed specifically by the Administering Authority adopting the principles. There will also need to be a consultation on the FSS policy with all employers. We expect the statutory guidance to be available in January (although it is possible it could be in December). The SAB guide is expected to be available in a similar timeframe but will be updated from time to time. In the meantime, the draft Fund policy will be developed by Fund officers in conjunction with the Fund Actuary for agreement with Committee. A consultation with the employers will then commence and the final policy will be brought back to Committee for final approval.

2.00	RESOURCE IMPLICATIONS
2.01	Most of these areas of reform will require changes to the services provided by the Clwyd Pension Fund team, including update to systems. The McCloud reform will have the greatest impact and additional resources have already been identified as a result of the McCloud programme of work. The impact on resources will continue to be monitored.

3.00	CONSULTATIONS REQUIRED / CARRIED OUT
3.01	As referred to within the main body of the report including in relation to the review of Employer Contributions and Flexibility for Employer Exit Payments which will result in the need for a consultation on the FSS policy with all employers.

4.00	RISK MANAGEMENT
4.01	The key area of risk is in relation to the delivery of services, due to the impact on the Fund's resources and systems. Additional resources have already been identified as a result of the McCloud programme of work. This will continue to be monitored. Risks are being monitored specifically for the McCloud programme and the key risks are included in the McCloud update in Appendix 1.

5.00	APPENDICES
5.01	Appendix 1 – McCloud programme update Appendix 2 – The £95k Exit Cap and Wider Exit Pay Reform further information Appendix 3 – GMP Indexation Consultation for The Public Service Schemes further information

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	No relevant background documents. Contact Officer: Philip Latham, Head of Clwyd Pension Fund Telephone: 01352 702264 E-mail: philip.latham@flintshire.gov.uk

7.00	GLOSSARY OF TERMS
7.01	<p>(a) CPF – Clwyd Pension Fund – The Pension Fund managed by Flintshire County Council for local authority employees in the region and employees of other employers with links to local government in the region.</p> <p>(b) Administering authority or scheme manager – Flintshire County Council is the administering authority and scheme manager for the Clwyd Pension Fund, which means it is responsible for the management and stewardship of the Fund.</p> <p>(c) Committee or PFC – Clwyd Pension Fund Committee - the Flintshire County Council committee responsible for the majority of decisions relating to the management of the Clwyd Pension Fund.</p> <p>(d) Board, LPB or PB – Local Pension Board or Pension Board – each LGPS Fund has an LPB. Their purpose is to assist the administering authority in ensuring compliance with the scheme regulations, TPR requirements and efficient and effective governance and administration of the Fund.</p> <p>(e) LGPS – Local Government Pension Scheme – the national scheme, which Clwyd Pension Fund is part of.</p> <p>(f) SAB – The national Scheme Advisory Board – the national body responsible for providing direction and advice to LGPS administering authorities and to MHCLG.</p> <p>(g) MHCLG – Ministry of Housing, Communities and Local Government – the government department responsible for the LGPS legislation.</p> <p>(h) JGC – Joint Governance Committee – the joint committee established for the Wales Pension Partnership asset pooling arrangement.</p> <p>(i) HMT – Her Majesty's Treasury – the government department responsible for making overriding pension legislation.</p> <p>(j) GMP – Guaranteed Minimum Pension – the minimum level of pension the Fund is required to pay for members with service between 1978 and 1997 as a result of contracting-out requirements.</p>