

Local Government Pensions Committee
Secretary, Jeff Houston

LGPC Bulletin 175 – August 2018

Please contact [Jayne Wiberg](#) with any comments on the contents of this bulletin or with suggestions for other items that might be included in future bulletins.

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LGPS England & Wales

High Court judgment in the case of *Elmes v Essex*

In previous bulletins, we covered the above High Court judgment with the latest position set out in [bulletin 172](#) in May 2018, which stated:

“The judgement states:

The requirement to nominate a person under regulations 24 and 25 of the LGPS (Benefit, Membership and Contributions) Regulations 2007 is incompatible with Article 1 of the first protocol to, and Art 14 of, the European Convention on Human Rights and must therefore be disapplied.”

As confirmed in bulletin 166, in our view, the judgment now enables administering authorities to pay a cohabiting partner’s pension where the member left the LGPS (England and Wales) between 1 April 2008 and 31 March 2014 (and died before 1 April 2014) without a nomination form, provided the cohabiting partner criteria in Schedule 1 of the LGPS 2013 regulations are met. We have amended the timeline regulations accordingly”.

The above position has not changed, though on 31 July 2018 the Judge (Mr Justice Walker) published his final [conclusions](#). Other than been critical of various parties, the conclusion holds no surprises. There is a small reference on the impact to children’s pensions should a survivor’s pension be paid (paragraphs 189 to 191), though only in so much to state that it is important that any affected children receive independent advice.

TPR 2017/18 Scheme return – conditional data

On 3 August 2018, Bob Holloway, secretary of the Scheme Advisory Board (SAB) informed administering authorities that, despite there being general support and agreement for a standardised basis for scoring conditional data for the purposes of the forthcoming scheme return; it has not proved feasible or cost effective for the first year.

Accordingly, administering authorities are advised to adopt their own approach for scoring their 2017/18 conditional data. In adopting a local approach, administering authorities may need to liaise with their software provider and/or actuarial adviser on how best to meet the TPR survey’s requirements. TPR has issued [guidance](#) on how to complete the 2018 pension scheme return, including the new questions on record keeping and measuring data. We understand TPR will issue the survey in September with a six-week window for completion.

It is our firm intention to re-engage with administering authorities and stakeholders later in 2018, to re-open discussions about formulating a standardised basis for scoring conditional data for 2018/19 and beyond. This more relaxed timetable will also allow us to take on board similar work we are doing on standardised data extracts as part of the academies administration project.

Updates to guides

Following the issue of the LGPS (Amendment) Regulations 2018 [[SI 2018/493](#)] by MHCLG in April 2018, the following documents have been updated and are available under [guides and sample documents](#) on www.lgpsregs.org:

- Scheme administrator guide to the 85 year rule (version 1.12)

HMRC

Countdown bulletin 36

On 14 August 2018, HMRC published [Countdown bulletin 36](#) including articles on:

- phase 7 automation (re-runs of existing solutions and scheme financial reconciliation)
- Not in scheme (NIS) Contribution Equivalent Premium (CEP) automation
- change of responsible paying authority update.

Of particular interest are the articles confirming that:

- the last date a scheme can request a re-run of their data will be **30 September 2018** (revised from 30 June 2018) and no further requests will be considered after that date.
- the deadline for submitting SRS queries which require clerical action is 31 October 2018. HMRC have confirmed that they will respond to all queries received by that date.
- an administering authority can submit automation queries after 31 October for all **available** automation re-runs. However, administering authorities must be responsible for the quality of the data submitted after 31 October, because the files rejected by automation will be returned to those authorities unchecked, and the clerical remainder from automation will be returned unworked.
- where the administering authority has not paid a CEP in response to an NIS CEP automated run, or has paid a CEP and not provided a breakdown (or all the necessary information required in that breakdown) of their payments (see [countdown bulletin 34](#)), any refresh of SRS data will temporarily show the CEP liability removed from the scheme. However, if within 3 months of the debt raised by HMRC, if not all of the monies and necessary information is received by HMRC, the CEP will be **removed** and HMRC will **reinstate** the liabilities in the scheme.
- HMRC will provide each administering authority with a **final scan** of their data in March 2019.

Further to our article in [bulletin 174](#), we strongly urge administering authorities, who have yet to raise all of their 'first time around' queries with HMRC, to do so as a matter of urgency. Where the reconciliation exercise is not completed, administering authorities are at risk of paying incorrect pensions (over and under payments) and retaining liability for GMPs that may not belong to that authority.

Contracted-out reconciliation – liability part period solutions

On 13 August 2018, on behalf of HMRC the Secretariat forwarded additional guidance for administering authorities regarding the 'liability part period' solution. The [guidance](#) should be read in conjunction with the HMRC notes below:

1. *The solution we are developing in Phase 6 is 'Liability Part Period Single'. This will be re-run 3 times in Phase 7 if funding is approved.*
2. *We are considering a 'Liability Part Period Multiple' for Phase 7 if funding is approved and volumes are sufficient. Any volumes you can get would help greatly.*
3. *POA on the spreadsheet is the TPS 'Period of Acceptance'*
4. *POD on the spreadsheet is the TPS 'Period of Discrepancy'*

Any queries regarding contracted-out reconciliation should be sent to the HMRC [Customer Relationship Team](#).

Contracted-out reconciliation – proposed phase 7 automation timetable

On 22 August 2018, on behalf of HMRC the Secretariat forwarded the proposed phase 7 automation [timetable](#).

HMRC have provided this information in anticipation of obtaining 're-run' funding approval, to allow administering authorities to prioritise their queries. The dates on the plan are fast approaching and these dates are the dates that the files must be with HMRC's supplier.

Once funding is approved, HMRC will confirm the final timetable together with their response dates.

Pension Schemes Newsletter 101

On 31 July 2018, HMRC published [pension schemes newsletter 101](#) including articles on:

- taxation of flexi access payments
- annual allowance calculator
- QROPS transfer statistics
- manage and register pension scheme service – completing enrolment information (see article in [bulletin 173](#)).

Pension Schemes Newsletter 102

On 30 August 2018, HMRC published [pension schemes newsletter 102](#) including articles on:

- manage and register pension scheme service
- master Trusts
- reporting on non-taxable death benefits.

Other News and Updates

Equitable Life

On 15 June 2018, Equitable Life [announced](#) that they have entered into an agreement to transfer the Society and all its policies to [Reliance Life](#). As a result, they hope to be able to increase the current 35% capital distribution on with-profits policies to between 60% and 70%. However, for this to take place eligible policyholders will be asked to vote (expected to take place mid-2019) in favour of removing policy guarantees as well as on the arrangements to transfer to Reliance Life.

Equitable Life's proposal (which is to be reviewed by an independent expert whose report will be made available to policyholders before voting) is as follows, to:

- increase the current 35% capital distribution to a level expected to be between 60% and 70%
- close the with-profits fund, which means the guaranteed investment return would end
- convert with-profits policies to unit-linked
- transfer all policies to Reliance Life

Following the vote, the proposal will be put before a High Court judge for approval. There is currently no action for policyholders to take. Equitable Life will provide more information in October 2019. The full background to this change can be found on Equitable Life's [website](#).

We are aware that within the [FAQs](#) on Equitable Life's website Q7 states the following:

Q7. What happens if a policyholder leaves before the values are enhanced?

A7. The opportunity to increase the current 35% capital distribution to a level expected to be between 60% and 70% would be lost. Policyholders should exercise great care before taking benefits in advance of the proposed enhancement and an Independent Financial Adviser may help with this decision. One important consideration, where there is an urgent need for cash, is to draw down only a portion of savings. Most pension policyholders over age 55 are able to make withdrawals of £1,000 or more, leaving the balance of their with-profits fund to benefit from the enhancement if the vote is in favour.

We would like to remind administering authorities in England & Wales that, notwithstanding the above, the rules governing the payment of AVCs are explained in the AVC technical guide, which can be found in the '[Guides and sample documents](#)' page of www.lgpsregs.org.

LGA LGPS pensions team

In July 2018, Con Hargrave left the LGA pension's team to work permanently for MHCLG. We would like to thank Con for all his contribution since he joined the team in November 2013 and wish him well for the future.

The LGA is currently recruiting for a part time pensions advisor. The position provides the opportunity for flexibility in terms of work pattern and location, subject to the requirements of the role. The closing date is 14 September 2018. More information and details on how to apply can be found on [jobtrain](#).

Meanwhile, until such a time those new team members are appointed we request that administering authorities and employing authorities only send urgent technical queries. Please email all queries to query.lgps@local.gov.uk.

Transfers out – failure to meet anti-fraud duties

In a recent [determination](#), the Pensions Ombudsman (TPO) found a public authority (Northumbria Police) guilty of maladministration when, in 2014, transferring the member's savings out of the Police Pension Scheme (PPS). The authority did not

carry out adequate checks on the receiving scheme and failed to provide the officer with the official TPR literature. The authority was ordered to reinstate the member's benefits in the PPS (or provide equivalent benefits) and to pay £1,000 damages for distress.

Administering authorities are reminded to make sure that their transfer-out processes, take into account the [guidance](#) issued by TPR to reduce the risk of fraud.

TPO corporate plan

TPO has published its [Corporate Plan for 2018-21](#), which sets out its priorities for the next three years, including three strategic aims:

- supporting and influencing the pensions industry
- providing a centre for the resolution of workplace and personal pension complaints
- transforming and improving its services and processes.

TPR uses Proceeds of Crime Act for the first time

TPR has used its production order power under the Proceeds of Crime Act 2002 for the first time as part of a pension fraud investigation. TPR's latest quarterly [compliance and enforcement bulletin](#) also shows that, in the period April-June 2018, TPR fined a trustee that failed to complete a DB pension scheme valuation under section 10 of the Pensions Act 1995 and prosecuted offences under the Computer Misuse Act 1990 for the first time.

Nicola Parish, TPR's Executive Director of Frontline Regulation, said: "Our actions over the quarter demonstrate how we are continuing to develop as an organisation to be clearer, quicker and tougher."

FCA and TPR launch new ScamSmart campaign

On 14 August, TPR [announced](#) that, in conjunction with the FCA they have launched a new ScamSmart TV advertising campaign to raise awareness of pension fraud and the most common tactics used by scammers.

Consultation on the Gender Recognition Act 2004

The government is currently consulting on amending the Gender Recognition Act (GRA) 2004 to make the legal gender recognition process less bureaucratic and intrusive.

The consultation also seeks initial views on the possibility of extending the GRA to provide legal recognition to a third, or non-binary, gender (see page 51). The consultation acknowledges that non-binary recognition is a complex issue, with many potential knock-on implications for the law and public service provision, which is why the consultation is only seeking views at this stage. The [consultation](#) closes on 19 October 2018.

In [bulletin 173](#), we included an article on the European Court of Justice [ruling](#) in favour of a transgender woman who was refused payment of her UK state pension in 2008 at age 60 (on the grounds that she did not have a Gender Recognition Certificate (GRC)). The impact of this ruling for the LGPS is still unclear; however, any changes

to UK legislation in light of the ruling are likely to be made as part of the reforms to the Gender Recognition Act 2004.

In the meantime, administering authorities should still request that a member produce a copy of their new birth certificate showing their acquired gender before amending their gender for pension purposes.

Teachers' Pension Scheme Pension Board - recruitment of an independent pension specialist

The Department for Education is looking for an independent pension specialist to sit on the TPS pension board. The closing date is 10 September 2018. For more information and details on how to apply, see the Pensions Careers [website](#).

Training

The London Fundamentals courses are now full; however, there are still places available at the Leeds and Cardiff venues which you can book using the links below.

Leeds	Day 1	2 October
	Day 2	6 November
	Day 3	5 December
Cardiff	Day 1	23 October
	Day 2	13 November
	Day 3	11 December

The understanding transfers course will run in September and there are still some places left at our Leeds and Manchester venues which you can book using the links below:

Leeds	4 September
Manchester	11 September

We will shortly be advertising the LGPC Governance conference, which is being held in Bristol on the 17 and 18 January from lunchtime to lunchtime. This will be open to bookings within the next few weeks.

Useful Links

[LGA Pensions page](#)

[LGPS member website](#) (England and Wales)

[LGPS 2015 member website](#) (Scotland)

[LGPS Advisory Board website](#) (England and Wales)

[LGPS Advisory Board website](#) (Scotland)

[LGPS Regulations and Guidance website](#) (England and Wales)

[LGPS Regulations and Guidance website](#) (Scotland)

[Public Sector Transfer Club](#)

[Recognised Overseas Pension Schemes](#) approved by HMRC and who agreed to have their details published.

LGPS pensions section contact details

If you have a technical query, please email query.lgps@local.gov.uk and one of the team's LGPS pension's advisers will get back to you.

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