

Local Government Pensions Committee
Secretary, Terry Edwards

LGPC Bulletin 77S – December 2010

This month's Bulletin contains a number of general items of information.

Please contact Dave Friend with any comments you might have on the contents of this Bulletin or to suggest other items that you would wish to see included in future Bulletins. [LGPC contacts](#) can be found at the end of this Bulletin.

This month [Bits and Pieces](#) includes an item on the [Timeline Regulations](#).

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Contribution bandings from April 2011

On the basis that the index to be used for benefits from 1 April 2011 is the September 2010 CPI figure of 3.1% published in October 2010 the following pay ranges will apply to contribution rates from next April.

Whole time equivalent pay range	Employee contribution rate
£0 - £12,900	5.5%
£12,901 - £15,100	5.8%
£15,101 - £19,400	5.9%
£19,401 - £32,400	6.5%
£32,401 - £43,300	6.8%
£43,301 - £81,100	7.2%
More than £81,100	7.5%

The Government's Independent Public Service Pensions Commission

The Local Government Association (LGA) has submitted [a response](#) to the Independent Public Service Pensions Commission's request for further evidence. The key points in the response are summarised below:

- the LGA supports the Government's commitment to a form of a defined benefit scheme;
- the design of the new scheme should be kept as simple as possible;
- the LGA is not in favour of either defined contribution or hybrid schemes;
- the LGA recommends a Career Average Earnings Scheme with CPI indexation;
- the core benefits package should be kept simple but there should be facilities available for members to increase their benefits;
- the LGA does not support either a cap on pensionable pay for high earners or a restriction on pension levels;
- the normal pension age should be linked to the state pension age;
- any new pension arrangements should apply to both existing and new members;
- 'old' scheme benefits should be treated as a deferred benefit at the date the 'old' scheme is closed, and those deferred benefits should subsequently be increased in line with an appropriate index;
- adequate time must be given for the reform of the LGPS to be delivered in terms of the necessary amendments to software systems, training of pensions staff and communication to scheme members;

- the LGPS should remain a funded scheme;
- Fair Deal should be retained but on a simplified basis;
- in principle, the LGA supports the idea of allowing new employees from other areas of the public sector to join a funded public service scheme provided there is a categorical assurance that no additional costs would be imposed on employers and local tax payers; and
- the LGA is against imposed consolidation of LGPS administration and / or the number of LGPS funds.

In terms of the recommendations that are to emerge from phase 2 of the Commission's review the LGA believes they should:

- not impose a detailed 'one size fits all' solution on individual schemes;
- provide a strategic policy framework within which the public service schemes can conduct their own reforms with full recognition given to their occupational, financial, governance and administrative contexts;
- recognise in full the individual distinctiveness of each scheme, including their pay and occupational / gender characteristics;
- make simplicity a major objective; and
- recognise the already strong localist credentials of the LGPS and the distinctiveness of the funded LGPS from the unfunded and notionally funded public service pension schemes.

LGPS 2008 – third tier ill-health review: member awarded second tier ill-health benefits

Where a member is moved from tier 3 to tier 2 at the review of third tier ill-health benefits, the tier 2 benefits are payable from the date the employer determines to move the member from tier 3 to tier 2. However, no additional lump sum will be payable. A move from tier 3 to tier 2 could have tax implications (see Q15 and Q28 of the [FAQs](#) document which is stored on the Statutory Guidance/FAQs webpage for England and Wales on [the Timeline Regulations](#).)

If an employer decides to uplift a member from tier 3 to tier 2 utilising regulation 20(11)(a) of the Benefit Regulations, then the employer is making a determination under regulation 20(3) of the Benefit Regulations. Regulation 20(3) says that an award under tier 2 shall include an enhancement equal to 25% of the potential membership from the date of leaving to age 65. The increased pension (i.e. the pension based on actual membership plus 25% of potential membership from leaving to age 65) is then payable, as per regulation 20(11)(b), from the date of the decision to uplift to tier 2 ill-health benefits.

Where regulation 20(13) applies, the amount of enhancement is calculated as per regulation 28 of the 1997 Regulations.

Even though the member has received some tier 3 benefits the Secretariat does not believe this means that regulation 20(13)(c) then debars the member from the protection under the 1997 Regulations. The Secretariat's reasoning is that although the move from tier 3 to tier 2 does not occur until the employer determines to move the member from tier 3 to tier 2, the enhancement is calculated as at the date of leaving. As at the date of leaving the member had not received any benefits. So it is reasonable (and equitable) to apply the 1997 Regulations protection to such a member.

The net result is:

- (a) the amount of enhancement is to be calculated under the 1997 Regulations as at the date of leaving, and
- (b) the amount of pension as so calculated is then to be paid as from the date of the decision to move the member from tier 3 to tier 2

The Consumer Prices Index (CPI)

The Office of National Statistics (ONS) are reviewing the CPI with the possibility of incorporating a new element, based on owner-occupier's housing costs, perhaps creating a new CPI. The Government's Consumer Prices Advisory Committee has issued an [annual report](#) which details the options available.

The Pensions Minister, Stephen Webb MP, covered the subject of the switch to CPI in his speech to the House of Commons on 8 December 2010. The Minister announced that the DWP had decided against amending the legislation to assist schemes (which have explicit RPI references in their scheme rules) to switch to CPI revaluation and indexation. The Minister explained the Government's justification for this decision by stating:

“that members' trust in schemes and the scheme rules could be severely damaged if we intervened to give schemes the power to change their rules when the scheme does not already have such a power. Trust in pensions is important and I believe that intervention demands strong justification.”

15 MPs have signed [Early Day Motion 1032](#) which was tabled by John Robertson the MP for Glasgow North West. The MPs want the review of CPI to be completed before any change in indexation. The motion reads:

“That this House notes the Government's proposal to use the Consumer Price Index (CPI) rather than the Retail Price Index (RPI) for the price indexation of benefits, tax credits and public service pensions; further notes that the CPI is consistently lower than the RPI; expresses concern over the impact that this will have on the incomes of pensioners and other vulnerable groups; recognises the concerns held by the Royal Statistical Society and the UK Statistics Authority that CPI excludes many housing costs which are borne by the majority of pensioner households; and calls on the Government to take these concerns into account and postpone the change from RPI to CPI until the appropriateness of CPI as a measure of price increases borne by pensioner households can be fully evaluated.”

Age discrimination retirements

The LGE's Employment Relations Unit Advisory Bulletin number 571 contained an article on an Employment Appeal Tribunal (EAT) ruling in the case of Woodcock v Cumbria Primary Care Trust (UKEAT 0489/09). The EAT upheld the finding that the employer was justified in giving notice to dismiss an employee to take effect before his 50th birthday to avoid the costs of the windfall to the employee of receiving enhanced retirement benefits.

The key facts in the case are:

- Mr Woodcock's contract of employment contained a 12 month period of notice;
- as a result of a reorganisation announced in 2005, the number of PCTs in the North West region was to reduce and Mr Woodcock's post was to disappear with effect from 1 October 2006. Mr Woodcock was seconded to an interim post as part of the transition to the new structure;
- in July 2006, Mr Woodcock was informed he was unsuccessful in his application to be a chief Executive in one of the new PCTs and he continued in his interim post;
- in October 2006, Mr Woodcock's employment transferred to Cumbria Primary Care Trust ("the PCT") and although his interim role came to an end, he then undertook a number of interim projects for other NHS trusts.
- in 2007, the PCT wanted to terminate Mr Woodcock's employment as Mr Woodcock was due to turn 49 on 17 June 2007. In view of the twelve-month notice period in the contract of employment, if he were not given notice of his dismissal before 17 June 2007, Mr Woodcock would be 50 at the date of his redundancy and would be entitled to take retirement on enhanced terms, which would cost the trust between £500,000 and £1,000,000;
- before a meeting due to be held on 6 June meeting (which was the first formal consultation meeting) the PCT therefore issued a notice of his dismissal on 23 May, which would expire while Mr Woodcock was still 49.

The Employment Equality (Age) Regulations 2006 (the Regulations) and the similar provisions carried forward to the Equality Act 2010 permit direct age discrimination as long as an employer can objectively justify such direct discrimination. To do this an employer must be able to show that the treatment was a proportionate means of achieving a legitimate aim.

Following his dismissal, Mr Woodcock brought an employment tribunal claim, including a claim of age discrimination. The employment tribunal dismissed Mr Woodcock's claim of age discrimination holding that the PCT's decision to dismiss him when it did was justified.

The tribunal found that the PCT had a legitimate aim for dismissing Mr Woodcock when it did, which was to avoid additional costs and him receiving a windfall, in the form of an enhanced pension. Having identified the aim, the tribunal then found that the PCT's actions were proportionate, taking into account the fact that his dismissal had already been delayed and no alternative job had been found.

Mr Woodcock appealed against the employment tribunal's ruling. The EAT rejected the appeal.

The EAT found that in the particular circumstances of this case, the employment tribunal was entitled to find that the PCT was justified in depriving Mr Woodhouse of a consultation

meeting by accelerating the giving of notice. The PCT had already extended the redundancy process and at the time that the redundancy situation first arose, Mr Woodhouse could have no legitimate expectation that he might still be employed on his 50th birthday.

Even though in this case the EAT questioned the position that cost grounds alone are incapable of justifying discrimination, that position still remains in place.

Therefore, authorities who are putting in place actions that may amount to direct age discrimination and/or indirect discrimination on any of the protected characteristics, should not rely on costs alone as justification for their decisions. However, as this case shows, in many cases there will be factors other than cost that allow the employer to justify its decision. In this case Mr Woodcock stood to gain a windfall from the further delay to his redundancy.

This case should also be contrasted with another EAT's decision in the case of London Borough of Tower Hamlets v Wooster, in which the EAT found there was age discrimination where the council failed to properly explore redeployment opportunities for an employee, as it wanted to dismiss him when he was 49 and not entitled to an enhanced pension benefit. The essential difference in Mr Woodcock's case was that by the time notice was issued, the giving of notice had already been delayed beyond the normal timescales that Mr Woodcock could expect.

Restriction of pensions tax relief

HMRC have created a webpage entitled "[How does the reduced annual allowance affect me?](#)" The page has a brief preamble on the new annual allowance (AA) regime followed by more than 30 questions and answers in which HMRC indicate how the new regime will work.

On 30 November, HM Treasury published a discussion document entitled "[Options to meet high annual allowance charges from pension benefits](#)". The Government "plans to legislate for individuals to meet AA tax charges from their pension in Finance Bill 2011". The closing date for responses to the discussion document is 7 January 2011 with the intention that the Government will publish the draft legislation by February which will permit scrutiny of the proposed amendments to the Finance Act 2004.

The discussion sets out the guiding principles which will underpin any amendments to the current regime. These are:

- meeting any AA charges from pension benefits is not intended to offer individuals any advantages in terms of the tax charges he or she is required to pay. Permitting individuals to defer meeting the tax charges is to ensure the payment is manageable rather than the individual reducing the amount of tax charge they pay;
- the Government will collect all of the tax charges due;
- the Government wants to collect the AA tax charges as soon as possible; and
- the Government wants to minimise the administrative impact on individuals, employers, pension schemes and HMRC.

The Finance Act 2009, Schedule 35 (Special Annual Allowance Charge) (Cessation of Effect) Order 2010 [SI 2010/2939]

The Finance Act 2009, Schedule 35 (Special Annual Allowance Charge) (Cessation of Effect) Order 2010 [SI 2010 / 2939] was made on 9 December and came into force the following day. The order switches off Schedule 35 to the Finance Act 2009, which introduced the special annual allowance charge (SAAC), with effect from the tax-year 2011-12.

Schedule 35 also permitted "high-income individuals", as defined in that Schedule, to request their schemes to refund pension contributions that they have paid which may otherwise have created a liability to the SAAC.

Schedule 35 will cease to have effect after the tax year 2010-11 save for paragraph 18 which will continue to have effect for the tax year 2011-12. Paragraph 18 covers the treatment of a contributions refund lump sum in excess of the limit specified in s205(4)(a) of the Finance Act 2004. Such refunds are not regarded as unauthorised payments and are liable to tax at the same chargeable rate which is applied to short-service refund lump sums.

Withdrawal of Central Government's Two-Tier Code: Implications for Local Authorities

The [Cabinet Office announced](#) on 13 December 2010 that the [Code of Practice on Workforce Matters in Public Sector Service Contracts](#) (commonly referred to as the Two-Tier Code) has been withdrawn with immediate effect. The Code applied when Central Government functions were outsourced to the private sector, and one of the main requirements of the Code was that new employees hired to work alongside ex-public sector employees who transferred to the private sector supplier, had to be provided with terms and conditions "no less favourable overall" to those applying to the ex-public sector workers.

The local government sector has its own version of the Two-Tier Code, [the Code of Practice on Workforce Matters in Local Authority Service Contracts](#) and this Local Government Code remains in place and local authorities should continue to apply it as appropriate on outsourcing contracts.

However, earlier this year, colleagues in the Department of Communities and Local Government (CLG) indicated to LG Employers that if the Central Government Code was discontinued, then Ministers in CLG would be likely to consider the implications this may have for the future of the Local Government Code. The Central Government Code has in effect been replaced with "[Principles of Good Employment Practice](#)" that apply on outsourcing, and although the principles are voluntary and sit outside the formal procurement process, details will be supplied to contractors. It may be that similar principles will be introduced in the local government sector.

Details of any developments that will affect local authorities will be available on the [LGE website](#). In the meantime, local authorities can find further information on using the [Local Government Code](#) on the LGE website.

Other Items

In addition to the items covered in this summary version, the full version of Bulletin 77 contains articles on the following topics:

- acceleration in increase of SPA to age 66 – correction to Bulletin 76;
- LGPS 2008 – GAD actuarial transfer and ARC factors;
- LGPS 2008 – Early payment of pension credit members' benefits;
- The LGPS (Miscellaneous) Regulations 2009 [SI 2009/3150] correction Slip;
- DWP consultation on CPI indexation in private sector occupational pension schemes;
- DWP contracting-out consultation;
- HM Treasury consultation on the discount rate for unfunded public sector schemes;
- compulsory annuity age of 75;
- Basic State Pension; and
- annuity prices based on gender.

Useful Links

[The LGE Pensions page](#)

[The LGPS members' website](#)

[LGPS Discretions](#) lists all the potential discretions available within the LGPS in England and Wales, and Scotland.

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

[Tax Guide \(Version 11\)](#)

[The Timeline Regulations](#)

LGPC Contact Details

Terry Edwards (Head of Pensions)

Telephone: 01954 202 787 or 0207 187 7346

Email: terry.edwards@local.gov.uk

Tim Hazlewood (LGPC Training & Development Manager)

Telephone: 01455 824 850

Email: tim.hazlewood@local.gov.uk

Irene Wass (LGPC Communications Officer)

Telephone: 01246 414 902

Email: irene.wass@local.gov.uk

Elaine English (LGPC Executive Officer)

Telephone: 0207 187 7344

Email: elaine.english@local.gov.uk

Dave Friend (LGPC Pensions Adviser)

Telephone: 01457 859 016

Email: david.friend@local.gov.uk

Alison Hazlewood (Part-time Administration Assistant - Training & Development)

Email: alison.hazlewood@local.gov.uk

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LGPC
Local Government Employers
Local Government House
Smith Square
London, SW1P 3HZ

or email: david.friend@local.gov.uk
tel: 01457 859016