

SCHEME REGULATORY UPDATE FOR PENSION BOARD – 2 SEPTEMBER 2021

MCCLLOUD AGE DISCRIMINATION REMEDY

The Public Service Pensions and Judicial Offices Bill WAS laid before Parliament on 19 July 2021. The Bill amends the Public Service Pensions Act 2013 and its equivalent in Northern Ireland, making provision to rectify unlawful discrimination in the way in which Public Service Schemes were reformed in 2015 (2014 for the LGPS in England and Wales) and includes retrospective measures. As expected, it confirms the remedy period as covering membership from the date of reform (1 April 2014 for the LGPS) to 31 March 2022 for eligible members.

For the LGPS (referred to as Chapter 3 schemes in the Bill), the Bill enables LGPS regulations to make provision for final salary benefits to be paid in respect of the remedy period (1 April 2014 to 31 March 2022), i.e. it is the enabling legislation which will allow the LGPS regulations to implement the McCloud remedy by extension of the underpin. It is believed that draft LGPS regulations are expected by the end of 2021 which will hopefully enable progress to be made on upgrading administration systems to allow for the changes as well as help administering authorities plan their communication and rectification programmes.

Interestingly, for the other unfunded Public Service Schemes, the Bill confirms that the government will proceed with the deferred choice underpin, meaning that all eligible members will be treated as members of their legacy scheme for the period between 1 April 2015 and 31 March 2022, but with the choice of whether to take legacy or reformed scheme benefits when their pension becomes payable. All public servants who continue in service from 1 April 2022 onwards will do so as members of their respective reformed scheme and the legacy schemes will be closed in relation to service after 31 March 2022. The Bill also sets out parameters for the treatment of changes in pension contributions and special cases.

The provisions in relation to the unfunded schemes will come into force by 1 October 2023 at the latest and, whilst no date is specified for the LGPS, the recent Written Ministerial Statement said that the Government's intention is that regulations for the LGPS will come into force on 1st April 2023.

SPECIAL SEVERANCE PAYMENTS

The Government has issued Draft Statutory guidance on the making and disclosure of Special Severance Payments by local authorities.

What is a special severance payment?

In the context of the draft guidance, Special Severance Payments are payments made to employees, officeholders, workers, contractors, and others outside of statutory, contractual or other requirements when leaving employment in public service. Employers may sometimes consider making such a payment in situations where the individual concerned resigns, is dismissed, or agrees a termination of contract. Which types of payments are Special Severance Payments will vary according to an employees' particular circumstances.

Paragraph 11 of the draft guidance lists the following types of payments as being ***likely*** to constitute Special Severance Payments:

- a) Any payments reached under a settlement agreement between the employer and employee to discontinue legal proceedings without admission of fault;

- b) The value of any employee benefits or allowances which are allowed to continue beyond the employee's agreed exit date;
- c) Write-offs of any outstanding loans;
- d) Any paid special leave, such as gardening leave;
- e) Any honorarium payments or gifts;
- f) Any hardship payments;
- g) Any payments to employees for retraining related to their termination of employment.

Paragraph 12 then goes on to list the types of payments that ***may*** constitute Special Severance Payments, depending on the terms of the individual's contract, relevant statutory provisions, any non-statutory applicable schemes and other relevant terms and conditions:

- a) Pay or compensation in lieu of notice (depending on the contractual basis for its payment);
- b) **Pension strain payments arising from employer discretions to enhance standard pension benefits.**

Paragraph 13 then lists those types of payment that ***do not*** constitute Special Severance Payments:

- a) Statutory redundancy payments;
- b) Contractual redundancy payments, whether applicable to voluntary or compulsory redundancy, and whether agreed by collective agreement or otherwise
- c) Redundancy payments made in line with the requirements of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006;
- d) Payment for untaken annual leave;
- e) Payments ordered by a court or tribunal or agreed as part of a judicial or non-judicial mediation;
- f) Payments made to compensate for ill-health, injury or death of the worker.

The draft guidance which will become statutory guidance in due course following a period of consultation will be for 'Best Value' employers to operate and manage. However, the reference as currently made to pension strain costs requires greater clarity a point made by the LGA in their response to government.