ASSOCIATION OF LOCAL AUTHORITY CHIEF EXECUTIVES AND SENIOR MANAGERS

CONSULTANTS' ANNUAL REPORT FOR 2014/15

Summary

- The year to 31st May 2015 saw a 10% drop in the total number of cases dealt with by consultants to 106 (slightly greater than the 6% drop in total members). However, that was not reflected in a drop in time spent by the consultants.
- The reduction in case numbers was primarily explained by a 27% fall in the number of pensions-related enquiries, following the introduction of major pension changes in April 2014. However, pensions still made up by far the largest category of cases (42%) – and a full update on developments appears at the end of this report.
- Termination cases (including redundancy) returned to their prevailing level after an abnormally low year, rising to 21%. Female members and members other than Heads of Paid Service (HoPS) were disproportionately represented among those needing assistance under this category.
- The other categories that saw an increase were pay and conditions (other than pensions) and internal restructuring cases. With the latter, it is perhaps not surprising that council directors accounted for all five of the cases; but it is notable that four of the five involved female members, as did both cases involving council attempts to reduce pay or conditions.
- The proportion of cases involving council HoPS fell from 64% to 46%, with a corresponding increase in cases involving council directors from 28% to 42% – higher than the latter's share of the total membership.
- Members not employed by a principal council accounted for 12% of cases, up from 8% in 2013/14 – more than twice their share of the membership.
- Cases involving women members rose slightly (from 39% to 43%), marginally ahead of their growing level of representation in the membership.
- The number of cases centred on social care rose from 3 to 11, all but one involving children's social care.
- The consultants also undertook work on the chief executives' pay claim, the threat to statutory protection, proposals to reclaim termination payments, the Welsh government's White Paper, revising the Employment Guidance Notes and Pensions FAQs, recruiting members, and enhancing collaboration with SOLACE.
- As in previous years, consultant time devoted to pensions was spent not only on helping individual members by providing information and liaising between them and the Association's two bespoke pension-related services, but also on keeping track of complicated changes to both pensions and their taxation. Very recent new information appears later in this report.

Consultants

1. The five ALACE consultants are Peter Bounds, Cheryl Miller, Roger Morris, Richard Penn, and John Schultz. They act under the guidance of the Hon Secretary and ALACE Council, to whom they report regularly. Their particular areas of responsibility and contact details appear on the Association's website and at the end of this report.

Casework in 2014/15

2. This consultants' annual report covers the year to 31st May 2015. The raw numbers of cases should be taken as only a general guide, since some cases last many months, while others are resolved in a single phone conversation; a case that runs into a more than one recording year will usually be recorded against all the years; and some cases that start in one category develop into another.

3. Cases are categorised as follows.

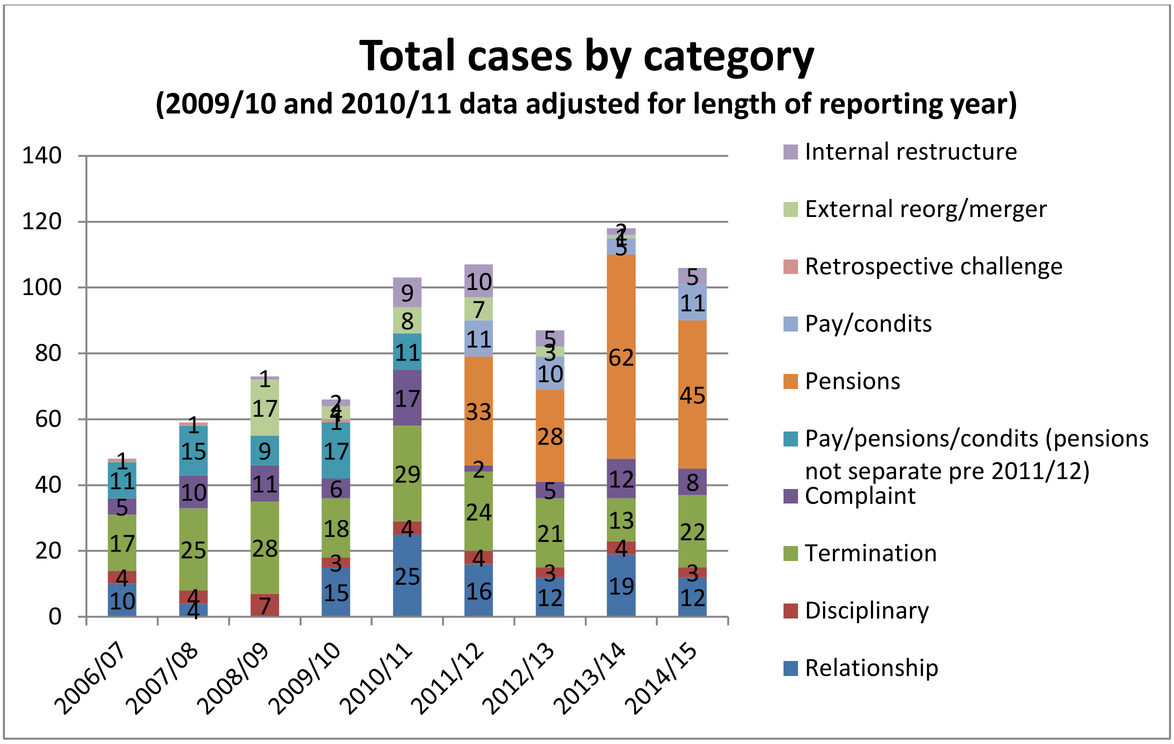
- **Relationship.** Advice on dealing with elected members, chief officers (in the case of HoPS), the HoPS (in the case of chief officers), the external auditor, the standards committee, the media, members of the public, etc
- **Disciplinary.** Cases of actual or potential disciplinary or capability procedures
- **Termination.** Support relating to termination or possible termination of employment (including redundancy)
- **Complaint.** Cases where a member has been the subject of a complaint
- **Pensions information**
- **Pay and conditions of service** (other than pensions)
- **Retrospective challenge to package.** Cases where there is questioning of previously agreed termination terms, usually by an external auditor
- **External reorganisation or merger,** including management mergers
- **Internal restructuring**

4. This report has adopted the title "head of paid service" (HoPS) in preference to "chief executive" for the most senior officer in a principal council, as an increasing number of such councils no longer style their most senior officer "chief executive". But the report has retained the term "chief executive" for other authorities, as the term "HoPS" does not usually apply to them.

5. Chart 1 provides an overview of case numbers in each category for June 2014 to May 2015, and for the eight preceding years.

6. The total number of cases dealt with by the consultants in 2014/15 fell by 10%, in contrast to the 36% rise experienced the previous year, taking the level back to roughly what it had been in 2010/11 and 2011/12. (Total membership fell 6% over the last year.) Pensions enquiries fell by 27% following the major changes already introduced at the start of the tax year (April 2014), but were still running at a higher level than in any previous year other than 2013/14 (45 cases, 42% of the total), demonstrating that this is still a huge area of concern for members – hardly surprising in view of the scale of recent changes to pensions and their taxation, and the impact on higher earners in particular. The topic of pensions is covered in greater detail at the end of this report, where mention is made of very recent developments, and the three further pensions seminars that have been arranged.

Chart 1



7. Following a marked lull the year before, termination cases again picked up to a level (22 cases, or 21% of the total) more akin to most previous years. One factor observed by the consultants (although obviously not wholly responsible for the rise) is the increased vulnerability of those directors assuming ever-wider spans of control, going way beyond fields for which they are professionally qualified or experienced. That is not to argue against general management (which is, of course, a particular forté of chief executive members): merely to flag up that the consultants have increasingly been called on to help ALACE chief officer members who have been blamed for failures in areas in which they are not expert.

8. The other casework categories to see an increase were pay and conditions (other than pensions), which doubled from 6 to 12, and internal restructuring, although the numbers (at 5) were still small.

9. Help to members facing termination or possible termination of employment (including redundancy) remains what many see as the consultants’ core service. Often this includes negotiating the most favourable package possible. However, councils have a statutory requirement to be satisfied that an exit settlement would not “lead to a serious loss of confidence in the public service”, and is “workable, affordable, and reasonable, having regard to the foreseeable costs”, and of the risks entailed if perceived high costs discourage the external auditor from acquiescing in the settlement. In addition, statutory guidance puts local authorities under pressure to offer the full council meeting the opportunity to vote before severance packages over £100,000 are approved. This has had the effect of constraining settlements, as have the more restrictive redundancy policies adopted by many councils.

10. So, for members not entitled to immediate access to their pension and unable to persuade their employer to exercise discretion to allow it, around one year’s pay remained the most that could usually be negotiated – and even that was by no means always achievable, as employers continued to be extremely frugal in exercising the discretions they still have on termination. Matters are set to become even tighter, as the

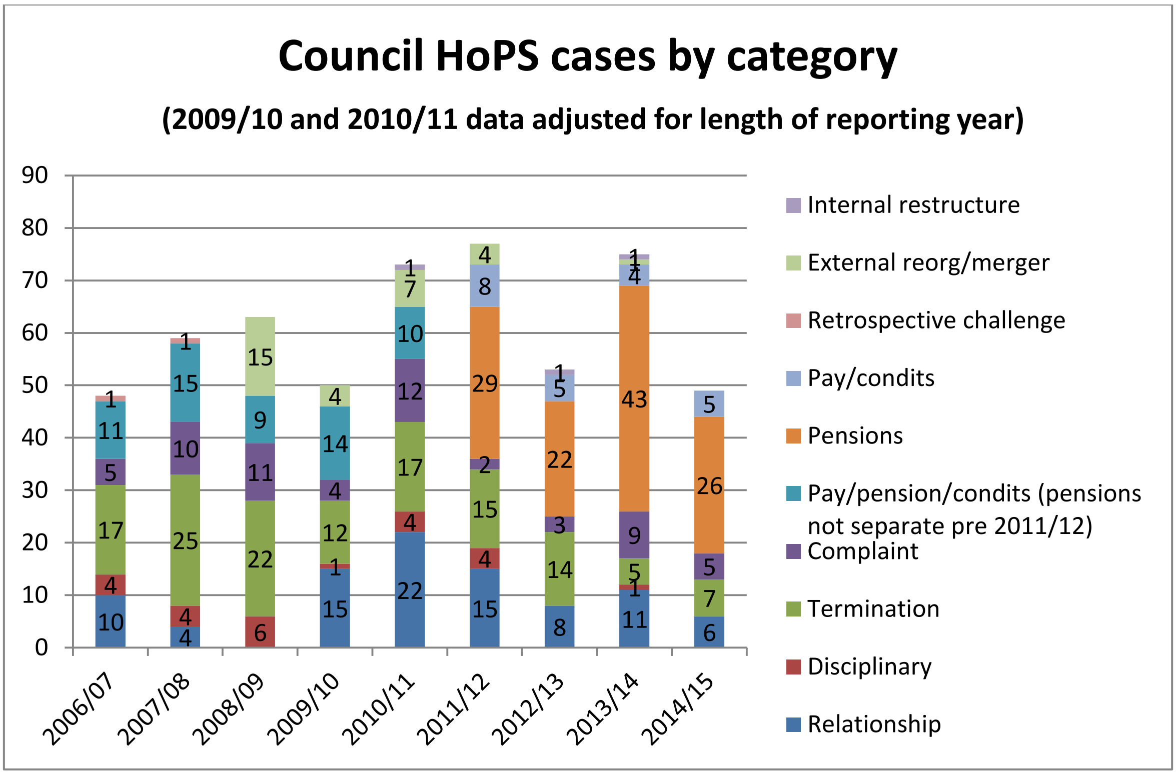
government has recently announced legislation to cap any redundancy deals for public sector staff to under £100,000.

11. As if that were not enough, the government also announced its intention to legislate to require high-earning former public sector employees to repay some or all of their exit payments if they returned to similar work within a year of departure. Based on work by the consultants, the ALACE Council responded to the consultation, and secured three changes to the proposals. Regulations to bring the legislation into effect are awaited.

12. Ill-health retirements have become rare, since the criteria are now much harder to meet. For the second year running, no such case was assisted by the ALACE consultants.

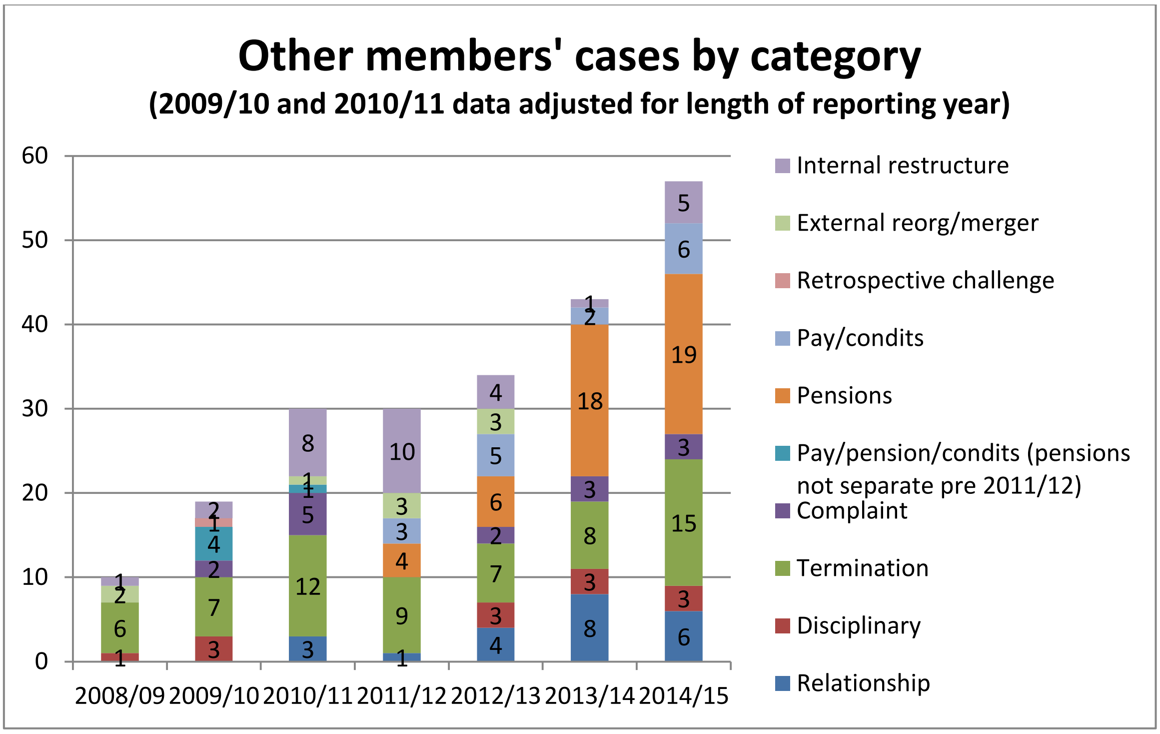
13. Nevertheless, these constraints should definitely ***not*** lead ALACE members to conclude that nothing can be done when faced with the threat of termination. Quite the contrary: the greater the constraints, the more important it is to obtain skilled support; and it remains the case that the involvement of experienced ALACE consultants usually secures some improvements in the packages originally offered, as well helping to protect reputations and obtain helpful references.

Chart 2



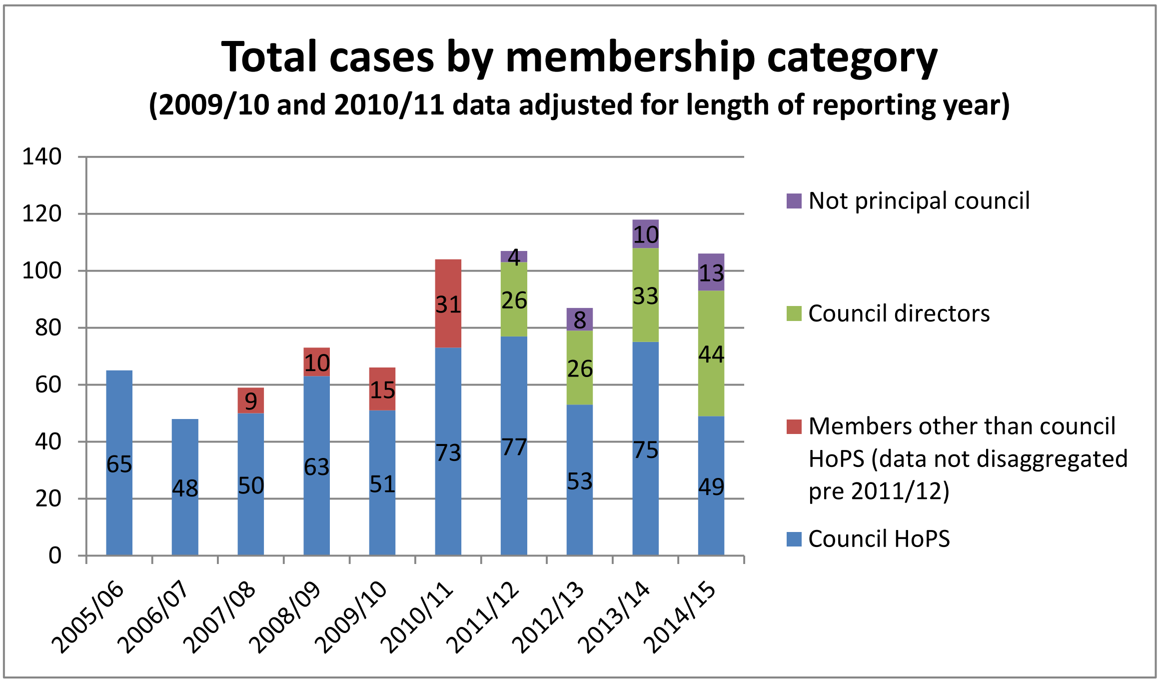
14. As in 2013/14, the pattern of casework in 2014/15 differed somewhat between types of ALACE member (charts 2 and 3). Pensions cases remained more prevalent among council HoPS than with other members (50% of HoPS cases compared with 34% of others). By contrast, termination cases were markedly more prevalent among members who were not council HoPS (26% compared with 14%), and termination cases involving council directors all but doubled (from 6 to 11) compared to the previous year, as did termination cases involving members not employed by a principal council (from 2 to 4). The five members seeking assistance over cases of restructuring involved exclusively non-HoPS council officers, as would be expected.

Chart 3



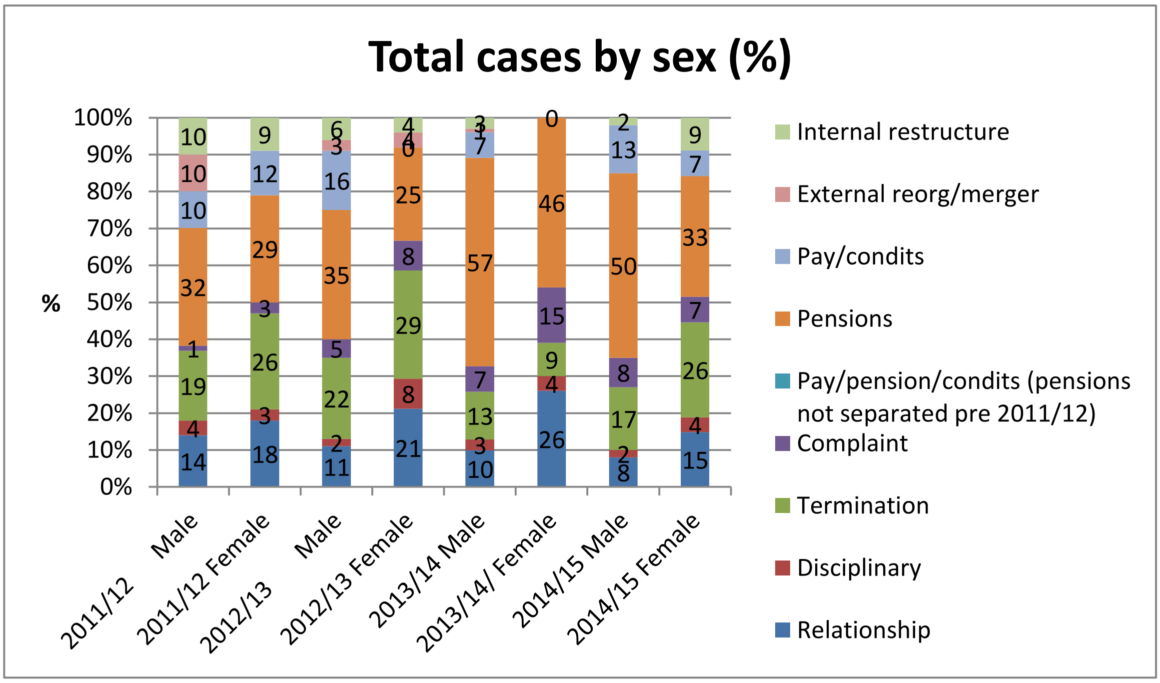
15. The number of cases where the consultants assisted HoPS fell by a third, from 75 to 49, while council directors' cases rose by a third, from 33 to 44 (see chart 4). The proportions, at 46% and 42%, were closer than ever before. The level of council director cases was higher than might be expected when compared with their proportion in the total membership (35%). The proportion of cases involving members not employed by principal councils also rose, from 8% to 12%, more than twice their share of the total membership. These members include town/parish council clerks, policing and crime chief executives, and senior officers in other public bodies.

Chart 4



16. Women accounted for a slightly higher proportion of cases in 2014/15 (up from 39% to 43%), a little ahead of their level of representation in the membership (up from 35% to 39%). Chart 5 shows that, for female members, termination cases saw a resurgence to the prevalence experienced before 2013/14: female council directors made up a third of all ALACE members seeking assistance over termination. And all but one of the cases involving requests for assistance over internal restructuring were from women, as were both cases involving councils seeking to reduce a senior officer's pay or conditions of service.

Chart 5



17. Eleven requests for assistance centred on social care (10 related to child protection and 1 to adult social care), well up on the figures of 2 and 1 respectively in 2013/14. We have predicted for the last few year that this type of case would continue, as increasing numbers of high-profile (sometimes historic) instances of abuse come to light, putting senior council officers under the spotlight –chief executives as well as directors, retired as well as in service.

18. Although there were no requests in 2014/15 for assistance involving a management merger between councils, they were a notable feature of some previous years – and may well return. If budget pressures trigger further interest in such changes from councils in the future, ALACE members affected would be well advised to seek advice at an early stage. In handling such cases, ALACE consultants start from the position that the appointment of a shared chief executive (or HoPS) should be made from a ring-fenced group consisting of the chief executives of the authorities intending to share – unless that is against the wish of the ALACE member(s) affected.

<u>Pay</u>

19. A pay offer for 2015/16 was made to chief executives (and also to chief officers) of an increase of 2%, but only to be paid to those in receipt of a salary not exceeding £99,999.

20. This was the first pay offer to chief executives since 2008; and inflation means that salaries have diminished in value by nearly one-fifth since then. In addition, chief executives have been subject to higher than average increases in taxation and pension contributions, and many have also been subject to taxation of their pension pots. For many of our members, their take-home pay has reduced by more than 10% in monetary terms, bringing the total real-terms diminution in value of income over this period to nearly 30%.

21. The ALACE Council was willing to accept a general pay offer of 2%, but was unwilling to accept an offer of 0% for those members on £100,000 and above. The consultants therefore helped prepare and present material to support the case in the JNC for an across-the-board increase. The Employers' Side resisted this completely and, then, when ALACE sought to refer the dispute to arbitration, refused this too. There was some sympathy for our case on the Employers' Side in the JNC meeting – in particular, acknowledgement that local government had handled austerity better than other parts of the public sector, and that chief executives had very effectively led this work in councils – but it was unfortunately not possible for the ALACE members of the JNC to convert this sympathy into an improved offer.

Statutory protection

22. Devotees of this annual report will recall the long-running saga of ALACE's attempts to challenge attempts by some councils to ignore statutory protection for heads of paid service, monitoring officers, and chief finance officers of local authorities, and then the government's threat to remove it altogether.

23. In the latest development, ALACE members will have received a letter from the Honorary Secretary, referring to the changes to statutory protection introduced by the Secretary of State by regulations made on 25 March 2015 and which came into effect on 11 May 2015. These purport to replace the Designated Independent Person (DIP) procedure with an Independent Panel (IP) made up of (or including – it's not clear which) persons already appointed for a quite different purpose, ie to advise on allegations against elected members.

24. ALACE has many concerns about the new proposals, notably: (a) the fact that every disciplinary procedure needs to include an investigation to establish the facts, and removing the requirement for a DIP does not avoid the need for an investigation; (b) the lack of independence in the appointment of the IPs; and (c) the assumption that persons appointed to advise on allegations against elected members are suitable by relevant experience and knowledge to advise on the dismissal of senior officers.

25. The LGA also has many concerns about the new regulations, and has written to DCLG (as ALACE has) outlining these concerns, and suggesting that the new regulations be revoked and that the DIP arrangements be revived pending further discussion.

26. Supported by the consultants, ALACE has met the LGA to discuss the way forward, together with the GMB and UNISON. The next steps depend on DCLG's reply. If there is no change to the regulations, the JNC will need to produce new disciplinary procedures which comply with the new regulations.

27. In the meantime, ALACE is taking the view that, wherever possible, the present processes will remain in force by virtue of their inclusion in existing contracts of

employment, and has obtained opinion from leading counsel that endorses this approach.

Welsh White Paper

28. The Welsh Government published a consultative White Paper earlier this year, setting out its vision for the future of Welsh local government. Many of the topics consulted on were directly relevant to ALACE as a trades union, including:

- role clarification
- performance management of chief executives
- anti-bullying and anti-harassment responsibilities
- restrictions on separate payments for local election duties
- term limits for chief executives
- restrictions on the number of senior officer posts
- consistency between councils in senior officer salaries
- the involvement of an Independent Remuneration Panel in changes to senior officer salaries
- the control of senior officer deployment by a Public Sector Staff Commission, and
- the involvement of a Public Sector Appointments Commission in the appointment of senior officers.

29. Supported by the consultants, and in full consultation with ALACE members serving in Welsh local government, the ALACE Council made a detailed response to the Welsh Government.

Guidance Notes and Pensions FAQs

30. A considerable amount of consultant time and effort goes into keeping the Employment Guidance Notes and Pensions FAQs up to date. Both were fundamentally revised during 2014. They are readily accessible on the website, and ALACE members are encouraged to turn to them in the first instance.

Collaboration with SOLACE

31. The consultants have been helping the Hon Secretary to build up ALACE's collaborative relationship with SOLACE. After all, we share a predominantly common membership.

Enlarging the membership

32. During 2014/15, the consultants were involved in seeking to increase the number of ALACE members, principally through addressing gatherings of the Association of Directors of Children's Services and the Association of Policing and Crime Chief Executives, and preparing material to be used at SOLACE courses and briefings.

33. As far as we are aware, the pensions-related services for high earners supplied by ALACE is not available from any of the other trades unions which potential ALACE members are eligible to join. Existing members may therefore wish to encourage their colleagues who are eligible to join ALACE, not only to obtain access to the pension-related services (which have saved some members six figure sums), but also the other

services provided by the Association. As indicated below, the impending reduction in the standard LTA is likely to affect all those eligible to join ALACE. What is more, the larger the union, the better placed it will be to support and defend its members.

34. An increasing number of senior officers still wait until they need help before applying to join. (There have even still been some who believe that being a member of SOLACE automatically confers membership of ALACE.) In such circumstances, a service is offered by ALACE consultants – but the officer rather than the union pays (and the case doesn't count as an ALACE one in the statistics in this report). The bill, although charged at a modest rate, is never less than a good few years' ALACE subscriptions, and sometimes very considerably more.

Pensions

35. Although there was a fall of over a quarter in the number of members raising queries with our consultants about their pensions, this was unsurprising given the significant changes that were introduced in April 2014 both to the English and Welsh Local Government Pension Scheme (LGPS) and to the legislation on pensions and taxation. Similar changes were introduced to the Scottish and Northern Irish LGPSs a year later in April 2015. The legislative changes introduced in April 2014, particularly the lowering of the standard Lifetime Allowance (LTA) from £1.5 million to £1.25 million and the Annual Allowance (AA) from £50,000 to £40,000, applied to all our members in the UK from April 2014.

36. The LTA is the maximum amount of pension savings/benefits one can have in one's pension pot without incurring an additional income tax charge when one draws one's pension (it is recalculated each time a pension is 'crystallised' or taken). Savings and benefits are counted from all sources other than the national state pension (e.g. from the LGPS, returning officer pensions, occupational pensions from previous employments, private pensions, Additional Voluntary Contributions (AVCs), Additional Pension Contributions (APCs), awards of additional pension, etc.).

37. The AA is the amount by which one's total pension pot (from all sources other than one's national state pension) is allowed to increase during a "pension input period or PIP", roughly equivalent to a single tax year, before the excess above it becomes subject to an income tax charge.

38. To ameliorate the reduction in the LTA for those whose pension pots already exceeded (or were expected to exceed by the time they retired) the former level of £1.5 million, the Government also introduced some new individual LTA protections. These were:

- Fixed Protection 2014 (FP14), to give a personal LTA of £1.5 million. FP14 can be lost if the growth in an individual's pension (as measured for LTA purposes) in any one financial year exceeds the percentage growth in the CPI in the September of the previous financial year.
- Individual Protection (IP), to give a personal LTA equivalent to the value of an individual's total pension pot from all sources (other than the state pension) up to a maximum of £1.5 million, as at the end of the 2013 -2014 financial year. To be eligible to apply for IP, an individual's total pension pot must have been worth over £1.25 million as at 5 April 2014. The personal LTA protected by IP cannot be lost as a result of pension growth.

39. Many of the queries over the last year were from members wishing to know whether they had exceeded the allowable limits for FP14 (and for Fixed Protection 2012, which gave a personal LTA of £1.8 million) and whether they had therefore lost their protection. Unfortunately, despite the regular advice ALACE has circulated showing how to calculate this and the importance of keeping a check on pension pot growth, a number of members discovered that they had inadvertently lost their protection.

40. It is important for all members who hold one of the two forms of fixed protection (FP) to understand how to calculate growth in their pension pot and to check that they are not going to exceed the allowable limit, as the loss of their FP could cost them tens, possibly hundreds of thousands of pounds in tax. Your pension fund should be able to help you with the calculation. Otherwise you may wish to contact our consultant, Cheryl Miller, who will be happy to support you and explain the possible options open to you.

41. One way that ALACE members have been able to keep the growth in their pension pots below the allowable limit (the relevant CPI percentage figure), and thereby retain their FP, has been to leave the LGPS temporarily for part of the financial year, making sure they return to it before the end of the financial year, and then to aggregate their pension benefits. Unfortunately, from 11 April 2015, the government has changed the statutory regulations applying to the English and Welsh (E&W) LGPS so that it is no longer possible for members to do this. Anyone leaving the E&W LGPS and then returning to it cannot, in future, aggregate their benefits. This means that members will ***not*** now be able to retain their protections by opting in and out of the Scheme.

42. This leaves holders of FP with some unpalatable choices.

43. Those holders of FP who have already opted out of the E&W LGPS since 11 April 2015 can:-

(i) remain out of the LGPS permanently. This will allow them to retain their FP but they will not be able to accrue any more pension benefits. There are also other serious implications relating to early retirement and the Death Grant; or
(ii) rejoin the E&W LGPS and lose their FP. If eligible they may be able to apply for Individual Protection (IP) as an alternative (see paragraph 38 above).

44. Those holders of FP who are still in the E&W LGPS can:

(i) opt out of the LGPS before the growth in their pension pot in this financial year exceeds the relevant 1.2% CPI figure and then remain out permanently. The implications will be as in paragraph 43 (i) above; or
(ii) stay in the E&W LGPS and lose their FP and, as with those covered by paragraph 43 (ii) above, they should consider applying for IP if they are eligible to do so; or, possibly,
(iii) move to the 50:50 option (whereby they only pay half the employee contributions and only get half the pension benefits), provided this would keep the growth in their pension pot below the relevant CPI figure. (They would need to confirm this with their pension funds.)

45. The pros and cons of these possible choices are outlined in more detail in the Pensions Update circulated by the Honorary Secretary on 16 June 2015.

46. Major changes, similar to those introduced into the E&W LGPS in April 2014, were not introduced into the Scottish and Northern Irish LGPSs until a year later in April

2015. One of the consequences of this was that HMRC regarded the “new” Scottish and Northern Irish LGPSs as “new arrangements” for the purposes of FP. This meant that any holders of FP in the Scottish and Welsh schemes automatically lost their FP if they moved from their “old” LGPS to the “new” one. This was not the case when FP holders moved from the “old” E&W LGPS to the “new” one in April 2014; but we understand that decision is now under review by DCLG Ministers and HMRC. Clearly, if they reverse their original view, and moving from the “old” E&W LGPS to the “new” one is also regarded as a “new arrangement”, this could have serious consequences for FP holders in the E&W Scheme, especially if it is applied retrospectively. An update on this issue will be given at the ALACE AGM on 1 July.

47. The rules on the LTA (including the operation of the various protections – Primary, Enhanced, Fixed, and Individual) and the AA have now become so complicated that separate appendices on each are included in ALACE’s key information document on pensions (“Pensions: Frequently Asked Questions”), the latest (2014) version of which can be found in the members’ Section of the ALACE website. Members are advised to look at these carefully, especially in view of the government’s impending legislative changes to the LTA which are outlined below.

48. The government has announced its intention to reduce the standard LTA still further from £1.25 million to £1 million. At the time of writing we do not know for certain when this change will be introduced, but April 2016 is likely. It is also expected that, when lowering the LTA, the Government will follow its previous practice of introducing new personal LTA protections that can be applied for by those whose pension pots already exceed £1 million at the time the change is introduced (or will by the time they retire).

49. We are not aware, again at the time of writing, of any intention by the government to lower the AA still further. However, even the current level is likely to result in additional tax charges for any member who gets any sort of pay rise at all (and some high earners who don’t), whether from a cost of living increase, increment, bonus, or promotion.

50. It is also likely that almost all ALACE members will be affected by the impending new lower LTA of £1 million which could cost individuals tens and possibly hundreds of thousands of pounds if they do not take appropriate action. In view of this it has been decided to hold ***three further Pensions Seminars – in Edinburgh on 26 June, in Manchester on 14 July, and in London on 17 July.***

51. There will be presentations at these seminars by our experts from Hymans Robertson on both the LTA (including the latest position on the LTA protections) and the AA, their tax implications, and the options available to members for mitigating any additional tax charges; and from our experts from Close Asset Management on financial planning and investment opportunities at the pre-retirement, retirement and post-retirement stages, including the possible alternatives to remaining in the LGPS.

52. All ALACE members are encouraged to attend one of these seminars if possible (without charge). Non-ALACE members are able to attend them, but for a fee of £300, which will also allow them free membership of ALACE for the remainder of the membership year if they apply to join ALACE within 14 days of attending a seminar. Priority for seminar places will, however, be given to current ALACE members.

Peter Bounds
Cheryl Miller
Roger Morris
Richard Penn
John Schultz

June 2015

The initial approach for support should generally be made through the Secretary:

Amar Dave

07975 539837
daveamar@aol.com

However, members are urged not to delay. If you think you may need help or advice, you should make contact as soon as possible. In the case of urgency, you may approach the appropriate consultant direct. They will cover for each other as necessary.

Peter Bounds looks after members in Scotland, the Northwest, Yorkshire and Humberside, and the Northeast.

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Cheryl Miller leads on providing advice (and undertaking policy work) on pensions and finance, as well as advising individual members with work-related issues.

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Roger Morris looks after members in Northern Ireland, the East Midlands, the East of England, and the South East (excluding Greater London), and leads on the Local Government Pension Scheme regulations.

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John Schultz provides practical advice and support to individual members with work-related issues, and also supports on policy matters.

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