

# Cost Management, Benefit Design and Administration Committee

DATE:	24 <sup>th</sup> May 2018
VENUE:	Eaton-Cockell Room, 7 <sup>th</sup> Floor, 18 Smith Square, London SW1P 3HZ
TIME:	10.00AM – 12.00PM

## AGENDA

Item		Page(s)	Timings
1	Welcome, introductions and apologies	-	10:00
2	Matters arising	<b>Paper A</b>	10:05
3	Scheme Advisory Board Cost Management Process – Update		10:15
4	50/50 awareness project	<b>Paper B</b>	10.45
5	Late retirement factors – Update		11.00
6	Exit payments, clawback, etc – Update		11.10
7	Academies/3 <sup>rd</sup> tier employer projects – Update		11.20
8	Equality cases	<b>Paper C</b>	11.30
9	Amending regulations – Update		11:40
10	AOB (AVC provider training + exit payments)		11.50
11	Date of next meeting		11.55

# Cost Management, Benefit Design and Administration Committee

## Item 2 Paper A

### ACTIONS AND AGREEMENTS

**MEETING HELD ON 29th JANUARY 2018 – 10.30am**

**AT LOCAL GOVERNMENT ASSOCIATION, 18 SMITH SQUARE,  
WESTMINSTER, LONDON, SW1P 3HZ**

### PRESENT

Naomi Cooke	Chair
Kevin Gerard	Technical Group
Rachel Brothwood	CIPFA
Geoff Reader	Practitioners
Emma Mayall	Practitioners
Sean Collins	Practitioners
Glyn Jenkins	Members (UNISON)
Bryan Freake	Members (Unite)
George Georgiou	Members (GMB)
Melanie Stephenson	Actuaries: Barnett-Waddingham
Clive Lewis	Actuaries: Mercer
Alison Murray	Actuaries: Aon Hewitt
Barry McKay	Actuaries: Hymans Robertson
Robert Holloway	LGA - Board Secretariat
Liam Robson	LGA - Board Secretariat
Mike Scanlon	GAD
Jeremy Hughes	MHCLG

### APOLOGIES

There were no apologies

#### 1. Welcome, introductions and apologies

The Chair welcomed all in attendance to the meeting.

#### 2. Matters arising

Subject to a minor edit to the attendee list, the Committee agreed the minutes for the previous meeting.

#### 3. Changes at DCLG/MHCLG – update

# Cost Management, Benefit Design and Administration Committee

The Committee noted that Marcus Jones MP, had left his position as Local Government Minister at DCLG to take up a new role as Local Government Vice Chair at Conservative Campaign HQ. Rishi Sunak MP had been appointed as Marcus Jones' successor with responsibilities for the scheme and its advisory board. A meeting with Rishi Sunak MP and the Chair and Secretary of the Advisory Board was scheduled for 5<sup>th</sup> February 2018.

Under another part of the government's changes, DCLG will in future be known as the Ministry of Housing, Communities and Local Government (MHCLG).

## **4. SAB Cost Management Process – SAB assumptions**

The Committee noted that the paper summarising the adoption of assumptions for the Board's cost management arrangement based on advice from Colin Wilson, the Board's actuarial adviser. The assumptions covered by the paper and annexed GAD report were discount rate, pay increase assumption and 50/50 take up rate.

Discussions around the 50/50 assumption concluded that the existing assumption should continue for now but considered again at the next valuation cycle. This will allow account to be taken of the proposed 50/50 awareness program. (see Item 5, Paper C of the 29<sup>th</sup> January 2018 agenda)

**Agreed – that the SAB cost management arrangement will :-**

- **adopt the lower SCAPE rate of 2.8% above inflation and follow any other future changes in the official rate;**
- **assume a general pay increase of 1.5% above inflation, and**
- **adopt an assumption that 5% of the overall scheme membership will opt to join the 50/50 section, equivalent to the existing assumption of 10% of total members, all with salary below £21,000 (FTE) opting to join the 50/50 section.**

**Action – the Secretariat to draft a letter for the Board's Chair to send to GAD confirming the decisions taken by the committee for consideration by the Board when it meets on the 26<sup>th</sup> February 2018.**

## **5. 50/50 awareness project**

# Cost Management, Benefit Design and Administration Committee

An online survey on the 50/50 option confirmed that there was scope for improving the level of awareness among scheme members and others completing it. The committee discussed the points raised in the meeting paper, and in particular, highlighted the practical difficulties around scheme employer v administering authority responsibility and the difficulty of targeting any planned communications to the right audience. Any proposal to restrict the option to any particular group of the scheme's membership was rejected on the grounds that it would lower the overall take up and in turn, increase the cost pressure under the cost management arrangement.

In agreeing that proposals for a 50/50 awareness programme should be put before the next Board meeting on the 26<sup>th</sup> February 2018, the committee recognised the importance of monitoring any project to ensure that it was effective in increasing awareness.

**Agreed – that proposals for a 50/50 awareness programme should be presented to the Board for consideration.**

**Action - that the Secretariat will circulate to committee members for comment a draft paper setting out proposals for a 50/50 awareness programme to present to the Board meeting on the 26<sup>th</sup> February 2018.**

## 6. IDRP improvement

Previously, it had been agreed that the IDRP should remain as it is, i.e. not to move from the current two stage arrangement to a single stage, but that the committee should examine the scope for improving the current arrangements.

The committee was asked to highlight any particular issues where improvement was needed. The consensus was that as the majority of IDRP cases are in relation to appeals against medical decisions, any future work on IDRP should be left to the committee's ill health retirement working group.

**Agreed – that all future work on improving IDRP should rest with the ill-health retirement working group.**

**Action – for the Secretariat to arrange a meeting of the ill-health retirement working group.**

# Cost Management, Benefit Design and Administration Committee

## 7. **Late retirement factors - update**

A letter for the Minister regarding the application of late retirement factors had been sent on 1<sup>st</sup> December 2017. The new Minister had replied in acknowledgement and confirmed that a response will be sent shortly. Subject to the content of the response, further discussions will proceed with MHCLG, GAD and other stakeholders on implementing the agreed policy.

## 8. **Ill health retirement group - update**

On consideration of MHCLG's reluctance to prioritise non-essential amending regulations, it was agreed that the group should nevertheless continue to progress work to ensure that a fully worked up and approved set of proposals is ready to be actioned at the appropriate time.

**Agreed – that the work of the ill-health retirement working group should continue.**

**Action – for the Secretariat to arrange a meeting of the ill-health retirement working group.**

## 9. **Academies/3<sup>rd</sup> tier employer projects - update**

Two working groups for academies; administration and funding, had met on 26<sup>th</sup> January 2018. The administration working group agreed that a standard template for data consistency and 'kite mark' for payroll providers would help improve administration efficiency. Initial discussions of the funding working group explored the concept of a single contribution rate for academy 'pools' or Master Academy Trusts (MATs). The strength of DfE's guarantee on exit liabilities and the requirement for stability of rates was also discussed.

Further meetings of the working groups were to be scheduled on a monthly basis.

The survey for the 3<sup>rd</sup> tier project had been completed by around 55 administering authorities, 297 employers, and 2,617 members. An interim report on the project will be given at the Board meeting on 26<sup>th</sup> February 2018.

## 10. **AOB**

# Cost Management, Benefit Design and Administration Committee

a) Emma Mayall raised the issue that administering authorities were having to expend a disproportionate amount of time on tax related queries relative to the number of members concerned. The question of whether the Board could provide some form of guidance or other means of assistance was discussed.

**Agreed – that further work should be undertaken by the Secretariat to assess the extent to which the Board could provide guidance and help at a national level.**

b) Glyn Jenkins reported that the law and guidance on fair deal appeared to be unclear regarding cases caught between the 2007 direction and 2003 circular.

**Action – that the Board should be asked to approve advice from the Scheme Advisory Board legal advisor being sought.**

c) Bob Holloway informed the committee that employee contribution bandings were due to be revised soon in line with the recent CPI increase. However, HM Treasury have yet to publish their Pension Increase Order and although the CPI for September is known to be 3%, increase processes cannot begin without the policy paper. Emma Mayall asked if this process could be accelerated in any way to give administering authorities more time to implement the changes. Bob Holloway agreed to take this up with the pension's team at the LGA.

d) Geoff Reader asked for an update on proposals for new legislation on exit payments, clawback, etc. Jeremy Hughes said that he was not in a position to confirm any details but did offer the view that one option might be for each public service pension scheme to come forward with their own proposals. .

e) Jeremy Hughes confirmed that amending regulations were expected in the next few months.

## 11. Date of next meeting

The next meeting dates were to be confirmed.

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**COST MANAGEMENT, BENEFIT DESIGN  
AND ADMINISTRATION COMMITTEE**  
**24 May 2018**

**Item 4 Paper B : 50/50 Awareness  
Programme**

**Background**

1.0. As part of the internal cost management process, the Scheme Advisory Board tasked the LGPC Secretariat to produce an online survey to ascertain the reason for the low take up of the scheme's 50/50 section. Administering authorities in England and Wales were asked to make their members aware of the survey and encourage them to complete it, where applicable.

1.1. The survey was live on the homepage of [www.lgpsmember.org](http://www.lgpsmember.org) between 6<sup>th</sup> April and 29<sup>th</sup> July 2017 during which 8,716 responses were submitted.

1.3. Amongst other things, the survey confirmed the anecdotal evidence that the number of scheme members choosing to opt into the 50/50 section is far less than the Treasury's assumption when the new scheme was designed that 10% of scheme members earning less than £21k would opt into the 50/50 section. The cost of future service of 19.5% was partially based on that assumption. The low take up rate was further evidenced by the choice made by some fund actuaries at the 2016 valuation to assume a zero level of optants into the 50/50 section.

1.4 The survey indicated that the low take up rate could be attributed to poor communication of the 50/50 option. Improving the level of awareness amongst the scheme's membership, in particular, optants out and those considering opting out of the scheme should result in an increase in the take up rate and in turn, the prospect of the scheme savings assumed from the Treasury's assumption on take up being realised.

1.5. It is important to note that the current assumption on take up rate of 10% relates only to those members earning less than £21k whereas the data on actual take up rates covers the scheme as a whole. The Board's actuarial adviser has suggested that the same cost savings would accrue from either a take up rate of just 4%-5% across the scheme or a 10% take up rate amongst those members earning less than £21k

1.6 At its meeting on the 16<sup>th</sup> November 2017, the Board agreed that the Secretariat should prepare a paper setting out options for improving the level of awareness of the 50/50 section through better communication. The paper is attached at Annex A.

1.7 The paper was agreed by the committee on the 29<sup>th</sup> January 2018 with the recommendation that it should be presented to the Board meeting on the 26<sup>th</sup> February 2018.

1.8 The Board agreed on the 26<sup>th</sup> February 2018 that the committee should prepare a detailed paper setting out proposals for a 50/50 awareness programme for consideration by the Board when it meets on the 27<sup>th</sup> June 2018.

## **Proposal**

2.0 The proposal for the committee to consider as a recommendation to the Board includes a follow up survey of administering authorities to establish their communication policies and procedures on the 50/50 option (see section 3 below).

2.1 Subject to the outcome and findings of the proposed survey, the awareness programme could be extended to include :-

- A standard information pack on 50/50 to be given to all new joiners, those seeking to opt out of the scheme and others enquiring about joining the 50/50 element of the scheme;
- A recommendation to MHCLG that by regulation or statutory guidance, annual benefit statements sent to deferred members who opted out of the scheme should include reference to the proposed information pack, and
- A recommendation to MHCLG that Regulation 61 (Statements of policy concerning communications with members and scheme members) is extended at Regulation 61(2) to include the administering authority's policy on communicating the 50 50 section of the scheme to scheme members and employers.

## **Follow up survey**

3.0 There is anecdotal evidence to suggest that information issued to scheme members and would-be scheme members about the 50/50 section of the scheme by administering authorities varies significantly and that in some cases, administering authorities have taken the decision not to publicise the option in any way on the grounds that they are acting in their members' best interest to keep them in the main scheme earning full benefits.

3.1 Although the very low take up rate of the 50/50 option is supported by evidence from last year's survey and data from the Government Actuary's Department, there is less clarity about the underlying cause. It is often suggested that poor communication has been a major factor in the lower than expected take up rate but there is very little evidence to substantiate this claim. It is proposed therefore that all administering authorities in England and Wales should be asked to complete and return a simple survey to determine the extent and quality of communication on the 50/50 option.

3.2 The survey could include the following questions :-

- Do you issue an information pack to all new joiners?



- If so, does this include reference to
  - the 50/50 option?
  - a contact point for further information?
- How often in the past 12 months have you issued a communication to scheme members about the 50/50 option?
- Does the scheme members' section of your web site
  - give details of the 50/50 option?
  - A contact point for further information?
- Is there an application form for scheme members to apply to join the 50/50 section of the scheme?
- Are you able to identify those deferred members who opted out of the scheme?
- Do you engage in any communication with those scheme members in the 50/50 section of the scheme?
- Would you find a standard information pack on the 50/50 section of the scheme helpful?

3.3 It is proposed that the survey would be conducted via email with administering authorities given 6 weeks to complete and return the survey. Administering authorities would also be invited to include any general comments about the operation of the 50/50 section of the scheme in their fund and to submit a copy of their communication pack.

## **Conclusion**

4.0 Deferring any consideration of the proposals summarised at section 2.1 until the outcome of the proposed survey is known will ensure that the time and effort involved is only spent if the evidence from the survey substantiates the claim that poor and ineffective communication is the key factor behind the low take up rate.

**Recommendation – That the committee considers the proposal summarised in sections 2 and 3 above and agrees to present this to the Board meeting on the 27<sup>th</sup> June 2018.**

**Annex A**

## **COST MANAGEMENT, BENEFIT DESIGN AND ADMINISTRATION COMMITTEE 29<sup>th</sup> January 2018**

### **Item 5 Paper C : 50/50 Awareness Programme**

#### **Background**

1.0. As part of the internal cost management process, the Scheme Advisory Board tasked the LGPC Secretariat to produce an online survey to ascertain the reason for the low take up of the scheme's 50/50 section. Administering authorities in England and Wales were asked to make their members aware of the survey and encourage them to complete it, where applicable.

1.1. The survey was live on the homepage of [www.lgpsmember.org](http://www.lgpsmember.org) between 6<sup>th</sup> April and 29<sup>th</sup> July 2017 during which 8,716 responses were submitted.

1.3. Amongst other things, the survey confirmed the anecdotal evidence that the number of scheme members choosing to opt into the 50/50 section is far less than the Treasury's assumption when the new scheme was designed that 10% of scheme members earning less than £21k would opt into the 50/50 section. The cost of future service of 19.5% was partially based on that assumption. The low take up rate was further evidenced by the choice made by some fund actuaries at the 2016 valuation to assume a zero level of optants into the 50/50 section.

1.4 The survey indicated that the low take up rate could be attributed to poor communication of the 50/50 option. Improving the level of awareness amongst the scheme's membership, in particular, optants out and those considering opting out of the scheme should result in an increase in the take up rate and in turn, the prospect of the scheme savings assumed from the Treasury's assumption on take up being realised.

1.5. It is important to note that the current assumption on take up rate of 10% relates only to those members earning less than £21k whereas the data on actual take up rates covers the scheme as a whole. The Board's actuarial adviser has suggested that the same cost savings would accrue from either a take up rate of just 4%-5% across the scheme or a 10% take up rate amongst those members earning less than £21k

1.6 At its meeting on the 16<sup>th</sup> November 2017, the Board agreed that the Secretariat should prepare a paper setting out options for improving the level of awareness of the 50/50 section through better communication.

## **Consideration**

2.0. Although it can be inferred from the Board's survey that poor communication and awareness are the main factors responsible for the lower than assumed take up rate, there is no reliable evidence that would allow the Board to assess either the extent of the problem at local level or how individual administering authorities both communicate the 50/50 option to participating employers and their scheme members and process applications.

2.1. The committee is therefore invited to consider whether the Board should be recommended to undertake a follow-up survey of administering authorities practices and procedures. The survey could ask administering authorities for details of the way in which they currently communicate the 50/50 section and whether this is included as part of their new joiners pack. The survey could also ask how often in the past

communications on 50/50 have been circulated to members and also for details of how scheme members can apply to join the 50/50 section. It would also be useful to ask for data on the number of deferred members who have opted out of the scheme given that this is the main target audience for the 50/50 section. The results of the survey would enable the Board to consider a more focussed and targeted approach to resolving the communication and awareness issues.

2.2. It is unlikely that all 88 administering authorities employ the same communication package or application process. On that basis, the committee may also wish to recommend to the Board that a standard template for both communication and for members wishing to apply for 50/50 should be prepared by the Secretariat for further consideration. To avoid any inference that we are encouraging members or optants out to join an inferior scheme, any standard communication package issued to administering authorities should go under the banner of “contribution flexibility” rather than “saving money”.

2.3. To increase the awareness of 50/50 in the main target audience, steps could be taken, either by way of guidance or by regulation, to ensure that a reference to the arrangement is included in deferred members’ annual benefit statement if they have opted out of the scheme. An alternative would be to ensure that administering authorities undertake an annual mailing for those who have opted out of the scheme to remind them that they can opt back into the scheme and only pay 50% of contributions if they wish.

2.4. The committee may also wish to consider whether any such provision ought to be extended to include active scheme members, but bearing in mind that a balance needs to be struck between raising awareness and not actively encouraging active members to leave the 100/100 section of the scheme. One option might be to include in new joiners packs wording to the effect that scheme members should contact their administering authority if they are thinking of opting out of the scheme.

2.5 Steps could also be taken to ensure that all administering authorities include information about 50/50 and an application form as part of their new joiners pack.

2.6. A secondary issue for the committee to consider is whether access to the 50/50 section should be restricted to scheme members earning less £21k to ensure that cost savings accruing from the take up rate is commensurate with the assumption adopted under the SAB cost management mechanism.

## **Conclusion**

3.0. The options set out in section 2 of this paper represents a fair and proportionate approach to resolving the communication and awareness issues identified in last year’s survey. However, the main issue for the committee is whether tangible results can be achieved through guidance alone or whether this would need to be supplemented by changes in the scheme’s regulations to ensure compliance and consistency across all 88 administering authorities.

**Recommendation – That the committee considers the options summarised in section 2 above and agrees a proposal to present to the Board meeting on the 26<sup>th</sup> February 2018.**

# Cost Management, Benefit Design and Administration Committee

**Meeting of the Committee 24<sup>th</sup> May 2018**

## **ITEM 8 Paper C**

### **Partner's benefits in the LGPS**

1. A number of legal judgements have been handed down recently which question the rules of pension schemes with regard to benefits payable to partners of scheme members. The three most important cases are summarised below.

### **Brewster v NILGOSC**

2. In February 2017, the Supreme Court held that the nomination requirement for a survivor pension to be paid to unmarried partners in the NI LGPS was unlawful under European discrimination law and that any such requirement should be disapplied with immediate effect.
3. Nomination forms for co-habiting partners were a requirement in the LGPS in E&W since 2008 but was dispensed with when the new scheme was introduced in April 2014. Since then, the payment of a survivor pension to a co-habiting partner has to be paid regardless of whether or not any nomination has been made provided that the various qualifying conditions are satisfied.
4. The primary concern for the E&W LGPS, and one which remains unanswered, is whether or not the Brewster judgement, being made under EU law, has a direct read across so that any requirement for a nomination in any public service pension scheme, including the LGPS, must be dis-applied.
5. If the read across exists administering authorities will need to determine whether or not payment of a survivor's pension between 2008 and 2014 was denied or if no claim was made because no nomination existed. Furthermore if full children's pensions are in payment these would need to be reduced to take account of any partner's pension now being paid.
6. In the immediate aftermath of the Brewster judgement, HM Treasury advised the then DCLG, as the scheme's responsible authority, that scheme managers could be advised to make these payments and in

# Cost Management, Benefit Design and Administration Committee

doing so, could take comfort from section 3 of the Human Rights Act 1989.

7. DCLG deferred any direct guidance pending the outcome of a similar case that is E&W LGPS specific (Elmes v Essex CC). That case was determined by the High Court in January 2018 but as of the date of this paper, no summary of the judgement has been published. MHCLG has made it clear that it will not consider making any statement or announcement until the full judgement has been published.
8. We are also aware that one administering authority has obtained Counsel's opinion confirming that making any payment as a result of Brewster prior to a change in the E&W regulations would be ultra-vires.
9. The current, unhelpful position, is that some administering authorities have made payments in the spirit of the Brewster judgement whereas others have decided not to do so until the scheme's regulations are amended to remove the nomination requirement between 2008 and 2014.
10. In view of the growing uncertainty, a survey was conducted amongst the LGA's Comms group. As expected, this showed that a minority of administering authorities were taking proactive action to trace Brewster/Elmes type cases and to make payments but that a small majority were either doing nothing in the absence of any MCHLG advice or guidance or taking minimal action only when contacted by affected individuals.
11. To assist administering authorities, the following statement was circulated to authorities by the LGA on the 8<sup>th</sup> May 2018 :-

"It has come to our attention that there is some confusion about the status of regulations 24 and 25 of the LGPS (Benefit, Membership and Contributions) Regulations 2007 following the Elmes V Essex High Court judgement. To confirm, the High Court judgement handed down by Mr Justice Walker on 22 January 2018 strikes out the requirement to nominate a cohabiting partner under the regulations. 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."*

# Cost Management, Benefit Design and Administration Committee

As confirmed in bulletin 166, in our view the judgement 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.

We are aware some administering authorities are still not making payment to affected cohabitees. Whilst each administering authority is responsible for the interpretation and application of regulations and judgements in relation to them, not making payment would, in our view, place the authority at risk of the Pensions Ombudsman ruling against it should a cohabiting partner appeal a decision where payment of a survivor's pension is refused because a nomination form is not in place. We therefore recommend that authorities advertise the judgement on websites and in newsletters, as appropriate."

## **Walker v Innospec Limited**

12. On 12 July 2017, the Supreme Court handed down its judgment in the case of *Walker v Innospec Limited*. In a landmark ruling, it overturned the Court of Appeal's 2015 judgment, and unanimously agreed that Mr Walker's husband should be entitled to a full survivor's pension
13. The Supreme Court ruled that an exemption in the Equality Act 2010 ("EA10"), which permits the restriction of survivors' benefits for same-sex partners, is incompatible with EU Directive 2000/78/EC ("the Framework Directive") and must be disapplied.
14. Occupational pension schemes must now provide civil partners and same-sex spouses with the same survivors' benefits as opposite sex married couples.
15. In the LGPS active members' partner benefits are equal for same and opposite sex marriages and civil partnerships however for post-retirement partnerships the situation is different.
16. For post-retirement marriages same sex and male spouses of female pensioner members receive a pension based on the member's service back to 1988 whereas female spouses of male members get a pension based on service back to 1978.
17. For post-retirement same and opposite sex civil partnerships survivor benefits are based on membership after 5 April 1988, or on all



# Cost Management, Benefit Design and Administration Committee

membership if the member became a pensioner before 1 April 2014 and made an election before 1 April 2015 for pre 6 April 1988 membership to also count.

18. The situation with regard to post retirement co-habiting partners is further complicated by the requirement for members to have paid additional contributions for membership prior to 1988 to be included.
19. Therefore on one measure (same sex and male spouses and all civil partners) the 'same benefit' is offered by the LGPS however as female spouses receive benefits based on service back to 1978 there is a potential point of challenge.
20. If a male spouse of a female member should win a case arguing that benefits should be calculated on all service back to 78 as it would for a female spouse of a male partner then because of Walker the benefits for same sex spouses and civil partners would therefore have to follow suit.
21. Even as things stand there is an argument that benefits are not the same in principle even if they do not directly contravene Walker – a male survivor gets the same benefits from both a same and opposite sex post retirement marriage or civil partnership.

## **O'Brien v Ministry of Justice**

22. This case concerns the treatment of part time service prior to the introduction of EU legislation and UK domestic legislation on part time workers but is similar in principle to the Walker v Innospec case.
23. However, the Supreme Court was unable to reach a clear verdict and referred the matter to the EU Court of Justice where a decision has yet to be given.

**Recommendation – that the committee notes the above report and asks the Board to maintain pressure on MHCLG to come forward in a timely manner with clear and authoritative advice or guidance on the handling of relevant cases.**