City of BRADFORD METROPOLITAN DISTRICT COUNCIL

Report of the Director of West Yorkshire Pension Fund to the meeting of Joint Advisory Group to be held on 31 January 2019

X

Subject: Local Government Pension Scheme Regulations update

Summary statement:

This report updates the Joint Advisory Group on changes to the Local Government Pension Scheme (LGPS) 2014 and provides information on associated issues.

Recommendation:

It is recommended the Members note this report.

Rodney Barton
Director

Report Contact: Tracy Weaver
Phone: (01274) 433571
E-mail: tracy.weaver@wypf.org.uk

Portfolio:

Overview & Scrutiny Area:

1 BACKGROUND

1.1 The career average Local Government Pension Scheme (LGPS) was introduced on 1 April 2014.

1.2 On 19 April 2018 the Local Government Pension Scheme (Amendment) Regulations 2018 (“the Amendment Regulations) were laid before Parliament and came into force on 14 May 2018.

In addition to making the technical amendments previously consulted on the main changes made by the Amendment Regulations were:

- For members who left the Local Government Pension Scheme before 1 April 2014 to elect to receive payment of their deferred benefits from age 55, with reductions, without having to obtain the consent of their former employer.
- Changes to options available for members with a pre 2014 Additional Vountary Contribution “pot”.
- The requirement to refund any surplus on a Scheme employer ceasing its participation in the Local Government Pension Scheme.

2 Consultation on technical amendments to benefits

2.1 On 3 October 2018 Ministry of Housing Communities & Local Government (MHCLG) issued a policy consultation on technical amendments. This looked at 3 areas:

- Survivor benefits – introducing changes to provide that pensions paid to survivors of civil partnerships or same-sex marriages will be equal to those provided to widows of male members.
- Introducing a general power for MHCLG to issue statutory guidance.
- Correcting an unintended error in the LGPS (Amendment) 2018 Regulations to provide that deferred members who left under the 1995 Regulations are able to take payment of their LGPS pension without the need for their former employer’s consent from age 55, with the appropriate reduction for early payment.

2.2 The closing date for this consultation was 29 November 2018.

2.3 MHCLG also undertook a separate technical consultation on draft amendment regulations to give effect to the changes outlined above.

2.4 WYPF responded to this consultation on 29 November 2018, stating that we welcomed changes, however, made the following additional comments:

- WYPF supports the proposal to equalise survivor benefits payable to same sex married and civil partners with those paid to widows. However, WYPF would also suggest that the benefits payable to widowers should also be equalised, which would remove the risk of legal challenges in the future.

- WYPF agrees it would be useful to provide more flexibility in the way statutory guidance can be issued to LGPS administering authorities. However, WYPF feel this power should be restricted to matters in relation to member administration and any amendments to the LGPS Regulations to allow this would need to clearly state under what circumstances this power could be used and subject to a robust consultation process.
- WYPF supports this change which aims to correct an error in the LGPS (Amendment) Regulations 2018 to provide that the need for an employer to give consent is removed when a member who left with deferred benefits before 1 April 1998 and is aged between 55 and 59, chooses early payment of their benefits.

3.0 The LGPS (Miscellaneous Amendment) Regulations 2018

3.1 The LGPS (Miscellaneous Amendment) Regulations 2018 were laid before Parliament on 18 December 2018 and will come into force on 10 January 2018, however the changes in respect early payment of deferred benefits will be effective from 17 April 2018. The amendment in respect of payments to a surviving civil partner will be effective from 5 December 2005 and the amendment in respect of payments to a surviving spouse of a same sex marriage with a member will be effective from 5 December 2005.

3.2 Following a statement from MHCLG WYPF had already anticipated the correction to the early payment of deferred benefits provision and minimal action is required.

3.3 WYPF will be reviewing its beneficiary records to see if any beneficiaries are affected by these changes in regulations. Where necessary benefits will be recalculated and arrears paid back to the relevant date.

4.0 Consultation on Fair Deal – Srengthening pension protection

4.1 On 10 January 2019 MHCLG issued a consulation on Fair Deal – Strengthening pension protection.

4.2 This consultation seeks views on proposals to amend the rules of the LGPS that would require service providers to offer LGPS membership to individuals who have been compulsorily transferred from an LGPS employer. The proposals include a new approach to achieve this, the 'deemed employer', as an alternative to obtaining admission body status. The consulation also includes proposals that would automatically transfer assets and liabilities when employers in the Scheme are involved in a merger or takeover.

4.3 The consultation closes on 4 April 2019 and WYPF will be preparing its response in due course.

5.0 Current Issues

5.1 (i) Budget 2018 and reduction to SCAPE discount rate

On 29 October, the Chancellor of the Exchequer, Philip Hammond, presented the 2018 Budget setting out the government's plans for the economy and public finances. This included an announcement relating to public service pensions schemes, which confirmed as expected the reduction of the SCAPE discount rate to 2.4% plus CPI, indicating an increased cost to employers of providing pensions in the long-term.

The SCAPE discount rate is used to set the employer contribution rates in the unfunded public service pension schemes and determine the actuarial factors used across all of the public service pension schemes

(ii) Impact on actuarial guidance -Transfer calculations

As the reduced rate was effective from 29 October this meant that some non-club transfers, some interfund calculations and all cash equivalent transfer value calculations for divorce had to be put on hold until new transfer factors were issued. These were issued on 19 November 2018 and calculations recommenced.

(iii) Other actuarial guidance

MHCLG have confirmed that the remainder of the scheme's actuarial factors will be amended for the reduction in the SCAPE discount rate in due course. Their intention is to introduce revised factors from around February/March 2019. MHCLG and GAD have agreed that where any change to the calculation methodology is introduced this will be communicated with the software providers in advance of its introduction, in order that changes can be made to pensions administration systems in time for the implementation of the new factors.

5.2 Section 13 report published

On 27 September 2018, MHCLG published the first statutory review of the LGPS under section 13 of the Public Service Pensions Act 2013. The department is required to report on the Scheme every three years; this report covers the period up to 2016. The Government Actuary reported that in aggregate, the LGPS is in a strong financial position and funds have made significant progress since the 2013 valuation.

5.3 SF3 data published

Ministry of Housing, Communities & Local Government (MHCLG) have published "Local government pension scheme funds for England and Wales: 2017 to 2018" (SF3) statistics. Highlights include:

- Total expenditure was £12.7 billion. Removing the effect of mergers and large transfers in 2016-17 and 2017-18 there was a like-for-like increase of £0.8 billion or 7.4% on 2016-17.
- Total income was £17.4 billion. Removing the effect of mergers and large transfers in 2016-17 and 2017-18, there was a like-for-like increase of £3.0

billion or 21.4% on 2016-17. This is mainly due to an increase in employer contributions in 2017-18.

- Employer contributions amounted to £9.5 billion, up 27.7% on 2016-17, and employee contributions to the scheme were £2.1 billion. Employer contributions increased due to some large upfront pension contribution payments (deficit contributions) by some employers and higher contribution rates following the triennial valuation.
- The market value of the Scheme at the end of March 2018 was £270.9 billion, an increase of £12.1 billion or 4.7%.
- Membership encompassed 5.8 million people at the end of March 2018 (5.6 million 31 March 2017). Of this number, 2.0 million are employees who are still contributing to the scheme, 1.7 million are pensioners and 2.1 million are former employees who are entitled to a pension at some time in the future.
- The number of people leaving the Scheme due to redundancy reduced by 19.9% from 2016-17 to 10,847. A number of funds reported there were special redundancy exercises or restructuring in 2016-17 and that the large reduction in 2017-18 was a consequence of that.

5.4 Harvey v Haringey and MHCLG judgment

On 30 October 2018, in the High Court Mr Justice Julian Knowles handed down his judgment on the above case. The case relates to the non-payment of a cohabiting partner's pension where the member left the LGPS before 1 April 2008.

Ms Harvey maintained that the Council's refusal to pay her a pension was discriminatory and in violation of the European Convention on Human Rights. Mr Justice Julian Knowles found in favour of Haringey Council and MHCLG and dismissed the application for judicial review.

In his judgment Mr Justice Julian Knowles states the central and core justification running throughout this case is that spouses in the 1997 Scheme and cohabitees of 2008 Scheme members are entitled to a pension because it was costed into the relevant Schemes and paid for. Where a member left before April 2008 the member did not pay for a cohabitee to receive a benefit, nor was it otherwise costed into the 1997 Scheme.

5.5 Refund of Contributions

The LGPS Regulations 2013 require that a member who left the scheme after 31/03/2014 and who are only entitled to a preserved refund have a 5 year deadline for claiming the payment.

As the 5 year deadline is apoproaching various options on how these cases should be dealt with was discussed at the LGPC National LGPS Technical Group Meeting of 28 September 2018. WYPF's preference is to get the member to claim their refund or another alternative option before the 5 year deadline.

Where the refund is not paid leaving the money in the fund will mean that these cases will have to be reported as a breach in law and would be classed as an unauthorised payment when eventually claimed, resulting in additional tax for the members and the Fund. WYPF are looking at this area with a view to discharge the liability by paying the refunds into a Client account held by HSBC.

5.6 High Court ruling on GMP equalisation

On 26 October 2018, Mr Justice Morgan handed down judgment in Lloyds Banking Group Pensions Trustees Limited v Lloyds Bank PLC, HBOS PLC, Angela Sharp, Judith Cain, Susan Dixon, Secretary of State for Work and Pensions and HMT. The High Court has held that schemes must equalise the discriminatory effects of GMPs and that this can be achieved using several methods.

Concerns have been raised as to the impact to Public Service Pension Schemes and. HMTreasury has confirmed that this judgement "does not impact on the current method used to achieve equalisation and indexation in public service pension
schemes"

5.7 Pension scam leaflet changed

In bulletin 175, LGPC reported that TPR, in conjunction with the FCA, have launched a new ScamSmart TV advertising campaign to raise awareness of pension fraud and the most common tactics used by scammers.

As part of the ScamSmart campaign a new customer leaflet and other communication materials have been introduced. The new leaflet replaces the scorpion leaflet with immediate effect and is included with transfer packs

5.8 Civil partnerships to be extended to opposite sex couples

At the Conservative Party Conference, Prime Minister Theresa May announced that heterosexual couples will be able to enter into civil partnerships. The move follows a decision of the Supreme Court [UKSC 2017/0060] on 27 June 2018 that the existing law around civil partnerships was incompatible with the European Convention on Human Rights as it only permitted civil partnerships between same-sex couples.

5.9 Analysis of the LGPS Academy Sector

GAD has now published the work commissioned by MHCLG and DfE to review the treatment of academies within the Local Government Pension Scheme.Inparticular,GAD was asked to gather evidence on the variation in treatment of academies within and across different LGPS Funds. Data from the most recently completed valuations as at 31 March 2016 was obtained for this purpose. A copy of the report can be found at
www.gov.uk/government/publications/academies-lgps-pension-arrangements

5.10 Options for separation of host authority and pension fund

In 2015, Scheme Advisory Board (SAB) commissioned KPMG to undertake a project to examine the issues and challenges of separating the pension's functions of LGPS administering authorities from their host authorities. As part of SAB's 2018/19 work programme, a further project was established to see how the recommendations that emerged from the exercise undertaken in 2015 could be made to work in practice.

In August 2018, SAB invited interested parties to assist in developing options for change. Three bids were received before the closing date of 21 September. These were due to be considered at the next Board meeting on 10 October.

5.11 Third tier employers

At the SAB meeting on 27 June 2018, Aon presented members with a summary of the final draft report commissioned by SAB, to review the current issues in relation to third tier employers participating in LGPS funds in England and Wales. On 24 September 2018, SAB published this report on their website.

The report does not make any recommendations, instead, it outlines a range of issues raised by stakeholders and how they envisage these concerns being resolved. SAB will now establish a small working group to evaluate the options for change. The working group will report to SAB later this year with a set of recommendations for further consideration.

Once approved, stakeholders will be given the opportunity to comment on SAB's recommendations before any formal approach is made to MHCLG for changes to the scheme regulations and guidance.

5.12 HM Treasury statement on quadrennial scheme valuation of public service pension schemes

On 6 September 2018, in a Written Ministerial Statement the Chief Secretary to the Treasury, Elizabeth Truss, announced details of the quadrennial national scheme valuation of public service pension schemes.

For the unfunded schemes, initial results from the HMT Employer Cost Cap (ECC) process show that their members will get improved pension benefits over the period April 2019 to March 2023. In addition, due to the proposed changes to the SCAPE discount rate, which is used to assess the current cost of future payments from public service pension schemes (excluding Local Government Pension Schemes (LGPS)), early indications are also that the amount employers pay into the unfunded schemes will need to increase.

In the case of the funded LGPS in England and Wales, the Scheme Advisory Board England & Wales (SAB E&W) operates an additional cost cap process (called the Scheme Advisory Board Future Service Cost (FSC) process). In accordance with agreed policy, the FSC will be allowed to complete before the ECC is tested.

On 21 December 2018 SAB E&W provided an update on its cost management process. This is attached at Appendix 1. After giving considering to a number of of options to reduce the cost of the Scheme the SAB E&W the following recommendations have been put forward to MHCLG for agreement:

- Removal of the third tier of ill health
- A minimum lump sum death in service benefitof £75,000
- Enhancements to early retirement factors for all members who are active on 1 April 2019 in respect of all their service
- Removal of contribution bands from the regulations and replaced by reference to guidance with this containing the following bands for 2019-20:

Band	Pensionable pay range for an employment	Contribution rate for that employment
1	Up to £12850	2.75%
2	£12,851 to £22,500	4.4%
3	£22,501 to £36,500	6.5%
4	£36,501 to £53,500	6.8%
5	£53,501 to £64,600	8.5%
6	£64,601 to £91,500	9.9%
7	£91,501 to £107,00	10.5%
8	£107,701 to £161,500	11.4%
9	£161,501 or more	12.5%

The Chief Secretary also announced in the technical annex to a letter to Frances O'Grady at the TUC, that the scheme valuation under ECC process should be moved from the current triennial to a quadrennial cycle in line with other public service scheme valuations. This is not to be confused with local fund valuations; however, discussions with MHCLG and actuarial advisers will take place shortly to consider the implications of this change for local fund valuations.

A statement from the SAB E&W can be found at www.lgpsboard.org.

5.13 September 2018 rate of CPI

The Office for National Statistics (ONS) announced that the Consumer Prices Index (CPI) rate of inflation for September 2018 was 2.4%. Government policy in recent years has been to base both pensions increase under the Pensions (Increase) Act 1971 and revaluation of pension accounts under section 9 of the Public Service Pensions Act 2013 on the rate of CPI for September of the previous year. We await confirmation from the Government that revaluation and pensions increase for April 2019 will apply in the LGPS at a rate of 2.4%.

6.0 Recommendation

It is recommended that the Joint Advisory Group note the report.