

Updated approach relating to employer contributions during the coronavirus emergency, including requests for deferral of payments

1. Background

The current COVID-19 pandemic has created financial and operational challenges for many of the employers who participate in West Yorkshire Pension Fund (WYPF), and as the administering authority we recognise those challenges. Many employers will have suffered severe financial shocks, will have been operating with reduced staff numbers due to furloughing, or unable to generate their usual income due to reduced social interaction and the closure of facilities. This will have resulted in many of our employers having to change their business and operational models. While the crisis may hit some of our smaller employers hardest and cause financial and cashflow issues, we recognise that larger employers and tax raising bodies may not be immune.

Regulations 67 and 69 of the Local Government Pension Scheme (LGPS) Regulations 2013 provide the statutory basis for the requirement for participating employers to pay contributions to relevant LGPS funds, and the timeframe over which such payments must be made. This legislation is ultimately what will guide WYPF when deciding when employer payments should be made, which will help it determine where variations to current arrangements may be appropriate.

The Pensions Regulator (tPR) issued guidance on 20 March 2020 which indicated that trustees of private sector pension schemes should consider requests from employers to suspend or defer contributions for up to three months. Whilst this guidance does not apply specifically to public sector schemes, such as the LGPS, and most WYPF our employers will continue to be able to make their usual contribution payments, we understand that some employers may want to take advantage of any easements at this difficult time. WYPF is not averse to considering approaches from affected employers, but will need to consider any such requests in detail, and where necessary take appropriate legal and actuarial advice before consenting to such a request.

In the current exceptional circumstances, WYPF will:

- consider request for deferral of employer contributions, provided payments due during the financial year as confirmed in the Rates and Adjustments Certificate are made good by the end of the same financial year (for the avoidance of doubt this being 31 March 2021)
- still require employee contributions to be paid by the due date. This is covered in overriding legislation which states that any employee contributions deducted must be paid to the relevant pension fund by the 19th of the month following the month of deduction or by the 22nd day if paid electronically.
- not consider any requests to permanently reduce or cease the payment of employer pension contributions.

Where an employer is required to pay additional deficit contributions WYPF currently allows a degree of flexibility about when those payments are made, for example on a quarterly or six monthly basis.

Where an employer makes a request for the deferral of employer contributions due to cashflow or liquidity constraints, this must be accompanied with a clear business case and reasons for the request, including the following supporting documentation.

- An updated assessment of the employer's position as a 'going concern'
- Cashflow projections for the remainder of the financial year
- Financial assessment/projections for the remainder of the financial year

Employers will be required to provide this information to WYPF within four weeks so that it is able to carry out the necessary due diligence. Any delay in providing that information could limit WYPF's ability to consider such requests favourably, and will limit the period over which any outstanding contribution payments could be made good.

In addition, WYPF will require assurances that other financial obligations, such as loans, dividends and other forms of shareholder return (where applicable) are also deferred or suspended so as to show evidence of consistency of treatment between WYPF, other pension funds and other creditors. WYPF would also require assurances that executive pay is being controlled or reduced to support the employer in these difficult times. As a number of our participating employers may also be able to access government support such as the employee retention scheme, we would need assurances that such support had been sought and accessed as part of any due diligence.

Some employers such as admission bodies will participate due to contractual arrangements with a local authority or another public sector body ("Scheme employer"), and may continue to receive payments due under a contract to provide services. Therefore, it will be necessary to consult with these bodies about ongoing contractual arrangements and the support provided during the current crisis before we consent to agree any contribution deferral.

2. Scheme employer duties

Scheme employers must be party to the deferment and WYPF will need to contact them in all cases regardless of agreement to pay before the end of the year.

Contractual agreement to defer:

- i. Deficit deferment – by allowing payment by year end 31 March 2021, employers may continue to struggle and might not pay or may cease trading. In this case the default employer is the scheme employer, so WYPF will require the scheme employer's agreement.
- ii. For employer contributions and other payments due (strain costs etc) the scheme employer must be party to any agreement, on the basis that:

1. the scheme employer would have continued to pay the admitted employer the full cost of services, and
2. in case of default or bankruptcy the scheme employer is the default employer.

WYPF will also require a legal commitment from employers to make good any payments due by the end of the financial year, to provide timely information to WYPF to assess employer covenant, and to inform WYPF immediately of any further changes in circumstances which could impact on their ability to make good deferred contribution payments. Any agreement between WYPF and an employer making a request will be considered on a case by case basis and approved by WYPF Director once WYPF has taken any appropriate advice deemed necessary.

3. Deferral costs

Deficit deferral

- i. If paid by 31 March 2021 – no cost
- ii. If paid after 31 March 2021 – we need recertification by actuary

Employer contributions and any other pension payment paid late a statutory interest charge of 1% + Bank of England base rate from 30 days after due date. Compound daily calculation until the amount owed is paid. WYPF will normally raise an interest invoice after the amount due has been paid.

4. Summary

In summary, the process for considering requests from employers to defer the payment of contributions will be as follows.

1. An Employer should make a formal request in writing to defer payment.
2. WYPF will ensure detail of the request meets statutory legislation and tPR guidance, i.e. cannot defer employer contributions beyond 31 March 2021; ceasing employee contributions is not permitted.
3. WYPF will respond to employer requesting financial and business information to carry out relevant due diligence related to request.
4. WYPF will consider information provided on receipt, and consult with any other WYPF employer providing a guarantee to its admission, or providing financial support.
5. If WYPF agrees in principle to contribution deferral, this will be subject to a legal agreement and where necessary a tripartite agreement.
6. All parties to sign agreement. Any request granted will be reported to the WYPF Joint Advisory Group and WYPF Pension Board for appropriate scrutiny.
7. If WYPF does not consent to the request for contribution deferral:
 - i. WYPF will request more information to assist in making a decision, or

- ii. WYPF will set out reasons why request was refused.
8. WYPF will monitor situation, and resume normal employer payment procedures once the deferral period ends.
 9. If an employer requests further deferral, WYPF will follow the above steps again

Please note that WYPF has a statutory obligation to record any failure to make payment of any contributions (employees and employers) and to report these to tPR where we deem this is of material significance. However, we believe that tPR will be flexible when deciding whether to use its supervisory powers at the current time. Nevertheless, in all circumstances employee contributions must continue to be paid over to WYPF in accordance with statutory and WYPF Pension Administration Strategy deadlines.