SURREY
COUNTY COUNCIL

Surrey Local Pension Board
23 April 2018

Training Bulletin: Quarter 4

This paper presents an outline of recent developments in pensions and it is intended to help board members develop a broader understanding of the issues.

As some of the items are quite technical I have prefixed the text with a brief outline in italics which introduces the subject and tries to provide a context.

Recent developments in pensions for the Local Pension Board

1.1 GDPR

Enhanced data protection regulations which come into force on 25 May 2018.

The LGA commissioned Squire Patton and Boggs to produce an opinion on the ramifications of the GDPR, which is available here; http://lgpslibrary.org/assets/opinions/201710GDPR.pdf

In addition, the LGA Communications Group has been tasked with preparing an FAQ on GDPR.

1.2 AVC risk warnings

Certain AVC providers have written to members that they will not be able to disinvest AVCs unless they have been provided with a risk warning in accordance with FCA Handbook. In fact, the duty to provide risk warnings falls to the scheme managers under regulation 19A of The Occupational Pension Schemes (Disclosure of Information) Regulations 2013 and the LGA Communications Group is working on generic letters.

1.3 New insolvency regime for further education colleges

Although the Technical and Further Education Act 2017 was enacted in April 2017, there was a further consultation to sort out the technical detail which closed in February 2018. This will lead to a new insolvency regime for further education and sixth form colleges.

1.4 Pre-2014 cohabiting partners

There was a requirement to nominate a cohabiting partner for a survivor's pension prior to 2014; however, recent judgements have called into question whether this precondition was lawful.

There had been uncertainty following the Brewster v NILGOSC ruling because it only applied to Northern Ireland and, at first, MHCLG appeared to indicate that the subsequent ruling in Elmes v Essex had resolved this issue. However, after further reflection, MHCLG has decided to wait for the judge's reasoning to be issued before amending the regulations.

1.5 GMP reconciliation pensions overpayments

Introduction and context; the state pension used to be a two-tier scheme and everyone who paid basic (D rate) National Insurance contributions participated in the lower tier. People who did not have access to a good occupational pension scheme (such as the LGPS) paid slightly higher (A rate) NI contributions and received an additional top-up pension in return. However, the occupational scheme had to pay a pension at least as good as the top-up element provided by the state, known as a GMP, but there was also a saving for the scheme as the government met part of the cost of index-linking it. If the GMP is adjusted as part of reconciliation there is a danger that some members will have been overpaid / underpaid.

There are a range of issues, many of which were considered in HMRC Countdown Bulletin number 21.

(1) There may be practical difficulties recovering Limited Rate Revaluation Premiums (LRPs – very old cases) and Contribution Equivalent Premiums (CEPs) but transfer values should not be reduced to offset these premiums if they have not been returned.

(2) Pensions may have been overpaid and the authority and the administering authority must take a view on whether they recover them (advice on a policy decision may be required; some authorities would not recover – because the overpayment was not foreseeable and there may be estoppel issues).

1.6 Statutory minimum redundancy payments

Introduction and guidance; employers are required to pay a statutory minimum redundancy payment in accordance with redundancy ready reckoner; however, they can use actual pay, if higher, under regulation 5 of the discretionary compensation regulations 2006.

The Employment Appeals Tribunal (EAT) ruling in Drousou v University of Sunderland established that employer's pension contributions should be included in the calculation of a week's pay for the purpose of calculating a statutory redundancy payment (up to £508.00

from 6 April 2018). This is not really a problem for employer's who pay statutory improved (based on actual pay) redundancy pay.

1.7 2018 Pensions Increase award

The Pensions Increase award for 2018 is expected to be 3%, and the contribution bands will be adjusted accordingly. After a period of contraction, the lifetime allowance will be increased to £1.03 million (£1,030,000.00) to reflect the increase in the Consumer Prices Index CPI, which is currently the index currently used for increasing public sector pensions.

1.8 Money purchase annual allowance

Introduction and context; pensions are a tax efficient medium for fixed-term investment and the Inland Revenue practice notes used to control how much pension a person could build up and how fast they could accrue it, until "simplification" swept the limits away in 2006. However, tax revenues gradually fell and within a few years HMRC (the new name for Inland Revenue) introduced the annual allowance which is designed to claw back tax from people whose pensions grew too much (over £40,000) in the previous year.

The money purchase annual allowance applies to members who have flexibly (i.e. Freedom and Choice) accessed money purchase benefits (e.g. AVCs or personal pensions) as a lump sum. The Finance (No. 2) Act 2017 reduced the money purchase annual allowance from £10,000 to £4,000 with effect from 6 April 2017 and any money purchase pension contributions in excess of £4,000 would attract a tax charge. However, the MPAA (£4,000) does not reduce the overall annual allowance as any money purchase contributions would be offset against it (e.g. £4,000 MPAA + £36,000 residual AA = £40,000).

1.9 Auto enrolment review

Auto-enrolment only affects employees who not are in a qualifying scheme and, in the context of the LGPS, it usually only affects members who have opted-out.

There are a number of proposals being considered that may be adopted in the mid-2020s. They include;

(i) Reducing the lower age threshold from 22 to 18

(ii) Collecting contributions on the whole of the employee's pay as opposed to just the element above the lower earnings limit (LEL - £6,032 from 6 April 2018)

1.10 Managing outsourced pension providers

The Pensions Regulator (tPR) has produced an overview statement on managing service providers, which can be found here; http://www.thepensionsregulator.gov.uk/docs/managing-service-providers-statement-2018.pdf

1.11 CLG becomes MHCLG

The department responsible for overseeing the LGPS will, henceforward, be known as the Ministry for Housing Communities and Local Government (MHCLG).

1.12 The Pensions Ombudsman

The Pensions Advisory Service (TPAS) and the Pension Ombudsman's office (TPO) are merging to form a single entity. This is designed to streamline the customer journey but it is expected to make the investigation process (formerly handled by TPAS) less adversarial.

1.13 The pension dashboard

A drive to create a consolidated database of pension benefits providing individuals with a one stop pension tracing service.

The Department of Work and Pensions (DWP) is conducting a feasibility study on how to deliver the Pensions Dashboard (a centrally held record of all of an individual's pensions).

The choice seems to fall between a single central dashboard delivered by DWP, which may be expensive, and cheaper commercially operated models that may result in multiple dashboards – which appears to defeat the object.

Items on the horizon

(i) The cost cap, which could affect the benefit structure if there is movement of more than 2%; the cost cap was set at 19.5% (13% employer, 6.5% member) is currently running at 21.6% (14.6% employer, 7% member). Although MHCLG appears to be relaxed about this at present, will it have any implications going forward?

(ii) Will the amendment regulations expected at the end of March extend Freedom and choice (will the regulations be changed to allow members to transfer to flexible arrangements directly from the LGPS).

(iii) The Enterprise Bill of 2015 enabled the introduction of an exit CAP of £95,000, which will include termination payments and strain costs, that affects all employees leaving a "prescribed public sector authority" but further legislation is required to implement it. You can find out more about it here; http://lgpslibrary.org/assets/bulletins/2015/137App1.pdf

(iv) The government intends to make legislation that will enable the recovery of exit payments, or a proportion of them, from members who leave on a salary of £80,000 or more and return to public sector employment within one year.

(v) The Government intends to make legislation which will require high earners (earning £80,000 or more) who leave employment in the public sector with an exit payment to repay it, or a proportion of it, if they return to public sector employment within 12 months, but it has been repeatedly delayed.

(vi) The pooling of academies; will it simplify administration and avoid duplication of effort or will it lead to multi academy trusts (MATs) trying to cherry pick their administering authority depending on the employers' contribution rates?

(vii) GMPs (introduced above); will the funding of part of the index-linking of GMPs, currently met by the state, be handed to the LGPS in future?

(viii) The redrafting of the ill-health retirement regulations, which is expected to reduce the tiers of ill-health retirement from three to two and increase the qualifying period from three years to five years. The anticipated changes are expected to be cost neutral.

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