

Pension Fund Committee

Meeting to be held on Friday, 1 December 2017

Electoral Division affected: (All Divisions);
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Lancashire County Pension Fund - Voluntary Scheme Pays

(Appendix A refers)

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Executive Summary

HM Revenue and Customs impose controls on the amount of pension savings members of the LGPS can make without having to pay additional tax. One of these controls is known as the Annual Allowance. Where that allowance is breached then, in prescribed circumstances, the member has a mandatory right to ask the fund to pay that tax charge in return to having a reduction applied to their pension once that comes into payment, in a process known as 'scheme pays'.

This report informs the committee of the availability of "Voluntary Scheme Pays" which effectively gives the fund the discretion to extend the current criteria under which the member can ask the fund to pay a tax charge where the annual allowance is breached.

Recommendation

The Pension Fund committee is asked to:

Approve the use of Voluntary Scheme Pays in the following circumstances:

1. Where a member's pension savings are subject to the tapered annual allowance and the tax breach relates only to Lancashire County Pension Fund benefits rather than as a result of growth in multiple pension schemes.
2. Where a member, as a result of administrative difficulties beyond their control, misses the 'mandatory Scheme pays' deadline (e.g. where the member was not provided with the necessary information on time).
3. Any other cases which are not covered under the mandatory requirements for 'scheme pays' or covered under the 'voluntary scheme pays' criteria identified in (1) and (2) above where it can be demonstrated that exceptional circumstances apply, approval is delegated to the Head of Fund.

Background and Advice

Where a member exceeds the annual allowance (plus any unused annual allowance carry forward from the previous 3 years), the member is liable to pay a tax charge.

Where certain conditions are met, the member can require the scheme to pay the charge on their behalf to HMRC in return for a permanent reduction to their pension benefits. This is known as 'mandatory scheme pays'.

Where those conditions are not met, the member would have to pay the charge directly to HMRC. However it has been established that pension schemes have the legal power to voluntarily pay the charge on the member's behalf in return for a permanent reduction to their pension benefits, known as "voluntary scheme pays".

Although the Local Government Pension Scheme Regulations are silent on the matter of 'voluntary Scheme pays', the Local Government Pension Committee (LGPC), having taken legal advice, believe that an administering authority can determine whether or not to accept a "voluntary scheme pays" request. The committee's response is set out below:

The LGPC Secretariat has obtained legal advice from Eversheds to the effect that English administering authorities which are local authorities have a general power of competence under the Localism Act 2011 and so it is arguable they are thus able to agree to a 'voluntary Scheme pays' request. There is no express prohibition on them doing so and it can be argued that, given there would be a corresponding reduction to the member's pension benefits, agreeing to a 'voluntary Scheme pays' request would be a reasonable exercise of the general power of competence (particularly in respect of members subject to a sizeable annual allowance tax charge as a result of the tapered annual allowance who may not be able to access the 'mandatory Scheme pays' option or where the 'mandatory Scheme pays' option would only cover a small proportion of their annual allowance tax charge.

From tax year 2016/17, the annual allowance is reduced for high earners, known as the 'tapered annual allowance'. This can have the effect of potentially reducing a member's standard annual allowance from £40,000 to £10,000. However, the government have not amended the mandatory scheme pays rules. The effect is that members will not be able to request mandatory scheme pays for the part of the tax charge that relates to the excess between the tapered annual allowance and the normal annual allowance.

Specifically as it currently stands, Scheme members who breach the tapered annual allowance have only the following options

- Pay the whole of the tax charge directly to HMRC
- Opt for Mandatory Scheme Pays option for the breach over the standard annual allowance and pay the rest directly to HMRC

As such if a member's annual allowance had been reduced to £10,000, they would have to pay a potentially significant tax charge directly to HMRC on the amount between £40,000 and their tapered allowance, i.e. tax on potentially £30,000.

The Voluntary Scheme Pays option can be utilised to the benefit of Pension Fund members in such circumstance by enabling the tax charge on the £30,000 tapered annual allowance to be paid by the Pension Fund and recouped on a cost neutral basis to the Fund by actuarially reducing future benefits.

As such the committee is asked to accept the recommendation outlining the circumstances under which voluntary scheme pays will be offered to scheme members.

For further background a factsheet providing more details on the annual allowance and the application of scheme pays' options is contained within appendix 1.

Consultations

n/a

Implications:

This item has the following implications, as indicated:

Financial

Guidance on the calculation of the reduction in pension benefits following a Scheme Pays election has been issued by the Secretary of State for Communities and Local Government in conjunction with the Government Actuaries Department (GAD) in order to ensure the Scheme Pays offset is cost neutral to the scheme.

Risk management

All calculations relating to the application of scheme pays are subject to prescribed statutory actuarial guidance and associated legislation, as such adhering to this minimises the risk to the Fund.

Local Government (Access to Information) Act 1985 List of Background Papers

Paper	Date	Contact/Tel
N/A		