Lancashire Local Pension Board
Meeting to be held on Tuesday, 13 October 2020

Electoral Division affected:
(All Divisions);

Regulatory Update

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Executive Summary

This report updates the Board on various pension related regulatory issues in order to assist individuals to exercise their functions as members of the Pension Board effectively.

Recommendation

The Board is asked to consider and note the contents of the report.

Background and Advice

1. McCloud Update

On the 16 July 2020 the Ministry of Housing Communities and the Local Government published a consultation on proposed remedies for the Local Government Pension Scheme (LGPS) to remove age discrimination brought about by the McCloud judgement.

In summary the consultation proposes that: -

- Qualifying members would be protected by the application of a revised underpin.
- The definition of a qualifying member will be members who were active in the LGPS on 31 March 2012 and accrued benefits in the 2014 scheme without a disqualifying break.
- Qualifying members who have already left the scheme will have the revised underpin applied retrospectively.
- Unlike the current underpin qualifying members do not have to have an entitlement to an immediate benefit when they leave the scheme.
- Members must meet the qualifying criteria in a single membership for underpin protection to apply – so where a member has had a break in service

or a period of concurrent employment, they must aggregate the benefits for the underpin to apply.

- Members who have previously chosen not to aggregate scheme employments will be given a further 12 months to reverse that decision where failure to aggregate would mean they would not meet the revised underpin qualification criteria in either or both unaggregated periods.
- The revised underpin will take account of early/late retirement adjustments.
- The revised underpin will apply to death in service and survivor benefits.
- The revised underpin will be a two-stage process with an initial check done at the ‘underpin date’ which is the earlier of leaving the scheme, reaching Normal Pension Age or death. A second check will be applied at the ‘underpin crystallisation date’ when the member takes their benefits which will take into account early/late retirement actuarial adjustments. At this point the revised underpin will, should it apply, increase the benefits payable to the member.
- Revised underpin protection will cease in respect of membership after 31 March 2022, however final salary protection will continue after that date in respect of membership before that date.
- Annual Benefit Statements should contain information on the potential impact of the revised underpin.

The Ministry of Housing, Communities and Local Government has stated that it doesn't envisage that many members will actually see an increase in benefits as a result of the new underpin. However as it is envisaged that around a third of active members will be in scope, the real issue from a Fund cost perspective is the scale of underpin calculations that will still need to be carried out for a large number of members, both on an ongoing basis and additionally as a retrospective exercise for leavers.

The consultation runs until 08 October 2020

2. Cost cap process

The Government Actuary’s Department has restarted their actuarial valuation of the LGPS as at 31 March 2016 as part of the cost control process. Previously the cost cap floor had been breached and as such legislation dictated that scheme benefits were due to be improved. This process was however paused in order to take account of the additional costs brought about by the McCloud judgement.

3. Restricting exit payments in the public sector (95k Cap)

On 21 July 2020, HM Treasury published the Government response to the consultation on restricting exit payments in the public sector. This was followed by the publication of draft regulations for capping public sector exit payments on 22 July 2020. The draft regulations include a list of employers who will be covered by the cap.

The Regulations will affect LGPS members, covered by the employers in scope, in England and Wales who currently qualify for an unreduced pension because of redundancy or efficiency retirement. If the cap is breached, then the member may have to take a reduced pension. Options to introduce choice to allow members in this position to opt for a deferred pension instead will be introduced. It is also expected that a standard strain cost calculation will be included so that the cap will apply equally across all Funds.

On 7 September 2020 the Ministry of Housing Communities and the Local Government released a further consultation. The proposals intend to bring in the government's commitment to limit exit payments within the public sector to a maximum of £95K in any single case. For the LGPS this had already been understood to include the value of any "pension strain cost" on early retirement over age 55 together with any redundancy or severance payments made.

The proposals are that the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations will be updated as follows:

- redundancy payment calculations will be limited to a maximum of three weeks' pay for every year of service, with an overall maximum of 15 months/66 weeks' pay,
- the maximum salary to be used in the calculation of redundancy pay should be £80,000, with that limit to be reviewed on an annual basis (e.g. increased by CPI).
- if the employer is paying any amount of pension strain cost as a result of paying pension benefits early, the redundancy payment made to the member cannot include any element of discretionary redundancy pay (unless the discretionary redundancy pay is higher than the strain cost in which case the difference can be paid).
- as well as limiting the strain cost to 95k, the strain cost must also be reduced by any amount of statutory redundancy pay, and this appears to be the case even if the strain cost plus other exit payments are below the 95k cap. The pension must then be actuarially reduced until the strain cost reaches the permissible level, with options for the member to 'buy out' the reduction possibly by waiving the redundancy payment. Options are also in place to defer pension benefits and take a full redundancy payment.

4. Review of employer contributions and flexibility on exit payments

Recently the Local Government Pension Scheme (Amendment) (No.2) Regulations 2020 were laid on 27 August 2020 with an implementation date of 23 September 2020. This legislation will introduce "deferred debt" provisions, which would allow employers to continue to participate in the Fund as ongoing employers after their last active member leaves in order to manage an exit payment that may be due. The Fund will develop a policy in this area once the full impact of these provisions have been reviewed, and this will be incorporated into the admissions and termination policy (currently out for consultation with employers) at a future date.

Additionally the amendments also provide the ability to review employer contributions between valuations, in circumstances where there has been a significant change to an employer's liability or covenant. Additionally an employer may also request a review where it undertakes the cost to do so. Our understanding is that reviews should only be undertaken as a result of structural change to an employer and not simply as a result of a change in market conditions.

A further response is still expected in relation to other proposals in the original consultation around changes to the local fund valuation cycle, interim valuations and the status of further education, sixth form college and higher education corporations in England and Wales.

5. Widowers Pensions

On 21 July 2020 HM Treasury confirmed that following a successful case of Goodwin against the Teachers' Pension Scheme, it has been accepted that, historically, provisions for widower's pensions in the public sector pension schemes were discriminatory. For the LGPS this will most likely affect surviving widowers where the deceased spouse left before April 1998. It is expected that the funding impact will be low but the administration in identifying cases could be challenging.

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

No significant risks have been identified

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

Paper	Date	Contact
N/A		

Reason for inclusion in Part II, if appropriate

N/A