

Local Government Pensions Committee
Secretary, Terry Edwards

LGPC Bulletin 57S – April 2009

Please contact Dave Friend with any comments you might have on the contents of this Bulletin or to suggest other items that you would wish to see included in future Bulletins.

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LGPS - Liabilities of Former Employers

A recent Court of Appeal case has implications for the LGPS. In a decision dated on 7 April 2009, the Court of Appeal ruled in [South Tyneside MBC v The Lord Chancellor and Secretary of State for Justice and Another](#) that former employing authorities with no active members are not liable to make good any funding deficit in respect of their deferred and pensioner members.

On 1 April 2000, the former committees of five magistrates' courts in the North East which participated in the Tyne and Wear Pension Fund were abolished and the staff and their liabilities were transferred to the committee which replaced them, the Northumbria Magistrates' Courts Committee (which participated in the Northumbria County Council Pension Fund).

The Tyne and Wear Pension Fund made a transfer payment to the Northumbria County Council Pension Fund, but no deduction was made to cover liabilities in respect of the deferred and pensioner members which remained in the Tyne and Wear Pension Fund.

On 1 September 2004, by virtue of the Courts Act 2003, magistrates' court committees, including Northumbria MCC, were abolished and the liabilities of magistrates' court committees passed to the Lord Chancellor's department. Thus, on that date the department inherited the liabilities of Northumbria MCC.

The Court of Appeal had to decide whether or not the Northumbria Magistrates' Courts Committee (and, consequently, the Lord Chancellor's department) had a liability under the LGPS Regulations 1997 to make good any deficit in the funding of benefits in the Tyne and Wear Pension Fund for the deferred and pensioner members of the abolished committees.

Having considered "the exasperating opacity of the regulations" the Court of Appeal resolved that only employers with active members of the LGPS had a liability to contribute to a LGPS fund under the LGPS Regulations 1997 and that no mechanism existed within those regulations for former employers with no active members to be charged with liabilities for their deferred or pensioner members. Thus, as the Northumbria Magistrates' Courts' Committee had no active members of the Tyne and Wear Pension Fund, there was no liability for the Committee nor, subsequently, the Lord Chancellor, to make payments to the Tyne and Wear Pension Fund for liabilities in respect of the deferred and pensioner members. The Court of Appeal held that the liability for the former employees' benefits falls on the employers who currently have active members in the Fund and have the responsibility for maintaining the solvency of the fund.

Although the Court of Appeal's decision was made in relation to the provisions of LGPS Regulations 1997, the corresponding provisions of the LGPS (Administration) Regulations 2008 are essentially the same. The Court of Appeal's decision, therefore, remains relevant for the new LGPS.

In cases where an Act, or Statutory Instrument made under an Act, has not specified that the pension liability transfers to a new body, and unless the LGPS Regulations are amended to close the loophole, the decision has significant implications for Administering Authorities of, and employers participating in, those LGPS funds that have non-admission agreements employing authorities with deferred and pensioner members but no active members.

Note, however, that there are provisions within the current LGPS Regulations for an Administering Authority to obtain an actuarial valuation and revised rates and adjustments certificate where an admission agreement ceases to have effect.

GAD Press Release – Broad Comparability

On 6 April, GAD issued a Press Release entitled, “Changes to revaluation in deferment and validity of certificates of Broad Comparability”. The Pensions Act 2008 permits occupational pension schemes to limit the revaluation of deferred benefits to 2.5% per year over the period of deferment for benefits that accrued after 5 April 2009.

GAD’s Press Release reminded both contractors and public sector contracting authorities that where changes are made to a contractor's broadly comparable pension scheme before the GAD certificate expires, a new certificate may be required for employees who are to transfer from the public sector.

GAD stated where a contractor reduces the cap on revaluation of deferred benefits below the level described in its current GAD certificate, that certificate would be withdrawn by GAD. GAD would then undertake a reassessment of the broad comparability of the benefits package as a whole. GAD believe it is unlikely that contractors will be able to compensate members with other benefits of a sufficient value where the revaluation of deferred benefits are reduced to the minimum level.

LGPS 2008 – GAD Guidance on non-club transfers in

On 24 April 2009, CLG issued updated guidance in respect of individual non-Club transfers to the LGPS. The new guidance may have cost implications for those employers who agree to extend the normal 12 month time limit to permit non-Club transfer in for a pre 1 April 2008 member who was also a member before 1 October 2006.

CLG Consultation - Amendment of Accounts and Audit Regulations 2003 (SI 2003/533)

CLG issued a letter dated 30 March 2009 which announced a consultation on proposed amendments to the above regulations. At present, the regulations only require relevant public bodies¹ (that have expenditure or income in excess of £1 million per year) to disclose, when producing their annual statement of accounts, the number of staff earning over £50,000 a year in £10,000 bandings. The proposed amendments would break this down to £5,000 bandings and extend the reporting requirements to include additional information about the remuneration of senior employees. This would include information on salary, bonuses, additional payments, benefits in kind, compensation or ex-gratia payments, and pension entitlements.

CLG are seeking views on:

- whether the proposed extent and focus of remuneration reporting, when presented together, will fulfil the objective of providing a true and fair view of each senior employee’s package of benefits
- whether there would be any barriers or costs to collecting and reporting the information in published annual accounts
- how the term “senior” should be defined in the regulations and whether it should encompass those whose position may not be permanent e.g. interim managers, consultants, etc.
- whether the reduction to £5,000 bandings is appropriate.

¹ Including Councils, Joint Authorities, the Greater London Authority (and its bodies including TFL), Transport Authorities, National Park Authorities, Waste Authorities, and Police and Fire Authorities.

The LGE will be submitting a response to the proposals. The closing date for responses to the consultation exercise is 22 June 2009.

NI Contributions and Upper Accrual Point

From tax year 2009/10 onwards, the Certified Amount to be deducted from a refund of contributions when the Pension Fund makes a refund to a Scheme member, and the Contributions Equivalent Premium to but that member back into the State Second Pension will be calculated on contracted-out earnings between the Lower Earnings Limit (LEL) and the Upper Accrual Point (UAP) and not between LEL and the Upper Earnings Limit (UEL). This is inferred in the article on the UAP in the [HMRC Newsletter 35](#) and the Secretariat has confirmed this to be the case with HMRC. Administering Authorities will therefore have to amend their leaver forms to ask employers for contracted-out earnings between the LEL and the UAP for tax years from 2009/10 onwards.

Budget – pension implications

In his Budget statement on 22 April 2009 the Chancellor of the Exchequer announced the following changes to tax rates and allowances for taxpayers with income over £100,000:

- from 2010/11 the basic personal allowance for income tax will be gradually reduced to nil for individuals with “adjusted net incomes” above £100,000;
- from 2010/11, there will be an additional higher rate of 50 per cent for taxable income above £150,000;
- from 2011/12 higher rate tax relief for individuals with an annual income of £150,000 or more will be tapered away so that for those earning over £180,000 relief will be worth 20 per cent;
- from 22 April 2009 there will be a new special annual allowance charge for those whose “relevant income” is £150,000 or higher who change their normal ongoing regular pension savings and their total pension savings exceed £20,000; and
- the measures includes new powers to vary the income tax rates for the charges that apply to registered pension schemes.

These changes replace the announcements made at the 2008 Pre-Budget Report. The reduction of personal allowances affects those with incomes over £100,000 and the new tax rate affects those with incomes over £150,000.

Further information is contained in the [the full version](#) of Bulletin 57 which is available on the LGE website.

Bits and Pieces

Circular 228

The Secretariat has issued [Circular 228](#) which lists the *Understanding* workshop courses to be held in 2009. This year’s topics are Retirement Benefits, Death and Survivor Benefits and Pension Sharing on Divorce.

Timeline Regulations

The April 2009 update of the [Timeline Regulations](#) website included:

- the upload of an appeal confirming that, in respect of part-time buy-back cases, the calendar-length of the period bought back counts towards the rule of 85. The reference number is 875;
- a new browser window will open when users click on hyperlinks to appeals; and
- a letter from SPPA (dated 20 February 2009) in respect of the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulations 2008. This has been added to the Statutory Guidance and Circulars page.

Other items

In addition to more detail on all the items covered in this summary version, [the full version](#) of Bulletin 57 contains information on the following topics:

- LGPS 2008 – Interfund Adjustments;
- LGPS 2008 – AVC Service Credit Correction;
- The LGPS (Amendment) Regulations [SI 2009/1025];
- CLG Consultation – the draft LGPS (London Pension Fund Authority) Regulations 2009;
- DWP Consultation – Auto enrolment;
- LGPC Communications Update; and
- LGPC Levy.

Useful Links

[The LGE Pensions page](#)

[The LGPS members' website](#)

[LGPS Discretions](#) lists all the potential discretions available within the LGPS in England and Wales, and Scotland.

[Qualifying Recognised Overseas Pension Schemes](#) approved by HMRC and who agreed to have their details published.

[Tax Guide \(Version 11\)](#)

[The Timeline Regulations](#)

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