

TEESSIDE PENSION FUND

Administered by Middlesbrough Council

AGENDA ITEM 8

TEESSIDE PENSION BOARD REPORT

14 NOVEMBER 2022

DIRECTOR OF FINANCE – HELEN SEECHURN

Discrimination in Provision of Survivor Benefits

1. PURPOSE OF THE REPORT

- 1.1 To provide Members of the Teesside Pension Board (the Board) with an update regarding the long-standing discrimination built into the Local Government Pension Scheme (LGPS) regulations regarding the payment of survivor benefits, and as yet unexecuted proposals to remove some of this discrimination.

2. RECOMMENDATIONS

- 2.1 That Members note this report.

3. FINANCIAL IMPLICATIONS

- 3.1 There are no specific financial implications in respect of the information contained in this report. However, the proposed extension of survivor benefits outlined in paragraph 5 will marginally increase the liabilities of the Fund. The Fund actuary is aware of this potential increase in liabilities and will be able to make allowances for it in the ongoing triennial valuation where appropriate.

4. DISCRIMINATION IN THE PROVISION OF SURVIVOR BENEFITS

- 4.1 The LGPS (or its predecessor schemes) has been in place for around 100 years. Needless to say, over this time society and social attitudes have changed considerably, as have the benefits provided by the LGPS. Currently the benefits that can potentially be provided to survivors of existing active LGPS scheme members are the same regardless of the sex of that scheme member. However in the LGPS the regulations that apply in determining someone's benefits (or their survivor's benefits) are those that were in force when they left pensionable employment, and this can mean different survivor benefits are sometimes payable to the surviving partner of a man compared to the surviving partner of a woman.
- 4.2 The exact rules are complicated and which LGPS regulations apply depends on the date the scheme member left active membership, whether they got married before or after leaving, and the date they died. As an example of the discrimination that can exist, if a married scheme member left active employment before 1 April 1998 and died from 9 January 2019 onwards their widow(er)'s pension would be worked out using all their pensionable service if the scheme member was a man, but only pensionable service from 6 April 1988 onwards if the scheme member was a woman.
- 4.3 This type of discrimination was common across many pension schemes, public and private sector, and to a certain extent reflects social attitudes at the time benefits were earned. The

Government carried out a Review of Survivor Benefits in Occupational Pension Schemes (published in June 2014) as it was required to do so under the Marriage (Same Sex Couples) Act 2013 in order to consider the differences in survivor benefits between different groups and the costs and other effects of eliminating those differences. A copy of the full review can be found at the following link:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/323874/survivor-benefits-in-occupational-pension-schemes.pdf

- 4.4 The Review gave some background on why pensions for widowers were typically (and can still be) introduced with a later effective date, and are hence lower than, pensions for widows (assuming identical scheme member service etc.):

“There are a number of historical reasons for the later provision of survivor benefits for surviving male spouses. These reflect the societal expectations of previous decades and the difference in life expectancies between men and women at that time. When survivor pensions were first introduced, men were generally expected to be the breadwinner and most women who outlived their husbands were expected to have no income or pension of their own. On average women also lived longer than men, and so it was more likely that they would require this form of income protection.

- 4.4 The Review estimated the capitalised cost (eight years ago) of removing differences in survivor benefits between opposite sex surviving couples, same sex surviving spouses and surviving civil partners in all public service pension schemes at around £2.9 billion. Only some of the amount relates to the LGPS but nevertheless the cost to the LGPS would represent a noticeable sum. No attempt was made to equalise historic benefits following this Review.

5. THE GOODWIN CASE

- 5.1 The Goodwin Employment Tribunal case was brought in 2020 against the Secretary of State for Education in relation to survivor benefits in the Teachers’ Pension Scheme. The Goodwin case identified male survivors of opposite-sex marriages and civil partnerships in the Teachers’ Pension Scheme are treated less favourably than survivors in same-sex marriages and civil partnerships.

- 5.2 The same position applies in the LGPS and other public service pension schemes and consequently the government made the following statement in July 2020:

Public service pensions, survivor benefits for opposite–sex widowers and surviving male civil partners.

The government is committed to providing public service pensions that are fair for public sector workers and for taxpayers. The government’s position remains that benefit entitlements should normally be determined based on the rules applicable at the time the member served, to maintain fairness for active scheme members and the taxpayer.

Following the *Walker v Innospec* Supreme Court ruling, the government decided that in public service schemes, surviving male same-sex and female same-sex spouses

and civil partners of public service pension scheme members will, in certain cases, receive benefits equivalent to those received by widows of opposite sex marriages. The exception to this is in specific schemes where, in the past, improvements in female members' survivor benefits have involved female members making employee contributions or increasing them.

A case brought in the Employment Tribunal against the Secretary of State for Education earlier this year highlighted that these changes may lead to direct sexual orientation discrimination within the Teachers' Pension Scheme, where male survivors of female scheme members remain entitled to a lower survivor benefit than a comparable same-sex survivor.

The government has concluded that changes are required to the Teachers' Pension Scheme to address the discrimination. The government believes that this difference in treatment will also need to be remedied in those other public service pension schemes, where the husband or male civil partner of a female scheme member is in similar circumstances.

Departments responsible for the administration of affected schemes will consult on and take forward changes as soon as possible. Schemes will notify their members of changes and any actions they need to take.

5.3 So far, no legislative changes have been consulted upon to make the necessary changes to the LGPS regulations. Even when implemented the changes would only apply to pensioners who have died since 2005 (as this is when same-sex dependants could first get a pension in the LGPS and other public service pension schemes). Also, the changes would only mean pensionable service was calculated from 1988, not from date of joining if that was earlier. This means the changes required to remove the discrimination identified by the Goodwin ruling would reduce but not eliminate discrimination in the provision of survivor benefits in the LGPS.

6. NEXT STEPS

6.1 The Board will be kept up to date with any future developments in relation to changes to the LGPS regulations as a consequence of the Goodwin case.

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