TEESSIDE PENSION FUND

Administered by Middlesbrough Council

AGENDA ITEM 6

TEESSIDE PENSION BOARD REPORT

15 NOVEMBER 2021

DIRECTOR OF FINANCE – IAN WRIGHT

Update on Current Issues

1. PURPOSE OF THE REPORT

1.1 To provide Members of the Teesside Pension Board (the Board) with an update on current issues affecting the Pension Fund locally or the Local Government Pension Scheme (LGPS) in general.

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.

4. LGPS COST MANAGEMENT PROCESS CONCLUDED

4.1 The LGPS, in common with the other public service pension schemes, has a mechanism for periodically checking whether the cost of providing the scheme falls within acceptable parameters. If the cost of the scheme is assessed as too high this results in potential reductions to future scheme benefits and/or increases on employee contributions. Conversely, if the cost is assessed as too low this can result in improvements to future benefits and/or reductions in employee contributions.

4.2 This is known as the cost management process and the outcome of the latest process based on data from the 2016 valuation revealed that the average overall cost of the scheme was 19% of pensionable pay, which is 0.5% of pensionable pay lower than the target cost for the LGPS of 19.5% of pensionable pay. Consequently, the Scheme Advisory Board developed proposals to improve scheme benefits and reduce employee contributions to bring the cost of the scheme back up to the target level.

4.3 The proposals were not enacted and the cost management process was paused when the Government lost a high court case in December 2018 (the McCloud case) which had been brought by members of the Judges' pension scheme and the Firefighters' Pension Scheme, arguing that the protections put in place when changes were made to those schemes were age discriminatory, as they only protected older scheme members. This case had implications for all public service pension schemes, including the LGPS. The Government sought to appeal the case but the Supreme Court denied the Government leave to appeal in a decision on 27 June 2019. The Government subsequently confirmed that it would make changes to the LGPS regulations to ensure it corrected the discrimination identified – more details are set out below. The cost of making these changes, when factored in to the cost management process as on the employee benefit side of the equation, means that no additional changes are required to LGPS benefits or contributions as a result of the 2016 cost management process.

4.4 The Scheme Advisory Board confirmed that they would not be recommending any changes to the benefit structure of the LGPS based on the outcome of their 2016 cost management process. This is good news for employers, who would have seen an increase in their costs if benefits had been improved, and for scheme administrators, as any improvements would have been backdated to April 2019 causing administrative complexity.

4.5 The Scheme Advisory Board also stated that it will separately look at potentially revising the third tier of ill health provision in the scheme and at contribution rates for the lowest paid members. These are two of the benefit changes that had been considered when it looked likely that the cost management process would lead to improvements for scheme members.

5. MCCLOUD OUTCOME – THE REVISED UNDERPIN

5.1 As referred to above, the Government lost a Court of Appeal case (known as 'McCloud') which meant that the transitional protections introduced when the scheme changed from a final salary to a career average pension scheme in 2014 were determined to be age-discriminatory. A ministerial statement was made on 13 May 2021 confirming how the LGPS regulations would be changed to address this discrimination.

5.2 The full statement is included at Appendix A. The key points are as follows:

- Underpin protection will apply to LGPS members who were active in the scheme on 31st March 2012 and subsequently had membership of the career average scheme without a continuous break in service of more than five years.
- The period of protection will apply from 1st April 2014 to 31st March 2022 but will cease earlier where a member leaves active membership or reaches their final salary scheme normal retirement age (normally 65) before 31st March 2022.
- Where a member stays in active membership beyond 31st March 2022, the comparison of their benefits will be based on their final salary when they leave the LGPS, or when they reach their final salary scheme normal retirement age, if earlier.
- Underpin protection will apply to qualifying members who leave active membership of the LGPS with an immediate or deferred entitlement to a pension.

- A ‘two stage process’ will apply for assessing the underpin so that, where there is a gap between a member’s last day of active membership and the date they take their pension, members can be assured they are getting the higher benefit.
- Scheme regulations giving effect to the above changes will be retrospective to 1st April 2014.

5.3 Once the regulations are introduced, this will mean everyone who was an active member of the LGPS on 1 April 2012 who has membership of the LGPS from 1 April 2014 onwards (without a continuous break of more than 5 years) will have their benefits calculated based on the better of the following two methods:

a) Based on the current rules, with final salary benefits and career average benefits calculated separately and added together and;

b) Based on their having remained earning final salary benefits beyond March 2014.

5.4 This outcome has been anticipated for some time but does cause significant administrative issue, for example:

- Scheme employers will be asked to provide or confirm the service history information they hold for all scheme members who have been earning career average pension benefits. This information includes details of part-time hours changes and leaves of absence, which are not needed when working out career average pension benefits but will be required to calculate the final salary underpin.

- The changes (and the extension of the underpin) will be backdated over 7 years (to 1 April 2014) so many leavers and retirees will need to be assessed to determine whether they would have benefited from the extended underpin.

- Further guidance will be required in how to treat death cases and individuals who may have transferred out to another pension scheme.

- There may be a requirement to reopen the transfer window for affected individuals. At present, individuals have a year from taking up an employment in the scheme (or a longer period if their employer allows) in which to decide to transfer in previous pension rights. It is possible that this will be revisited for those people who are covered by the new underpin.

5.5 HM Revenue & Customs recently announced a number of measures in connection with the McCloud remedy. This includes an intention to introduce regulations to ensure that where an individual’s benefits are retrospectively increased, this does not lead to a tax charge for exceeding the annual allowance or the lifetime allowance.

5.6 Further detailed regulations are expected within months, in the meantime XPS Administration is working with its software provider to collect information from employers and consider how best to communicate with scheme members in relation to the revised underpin.

4.5 Employers in the Fund had already been advised to act with caution in respect of any payments made to individuals who were subject to the £95,000 cap. XPS has advised that they are not aware of anyone who has left employment from a Fund employer since 4 November 2020 who would have been subject to the (now revoked) £95,000 cap regulations.

5. CLIMATE CHANGE REGULATION CONSULTATION IMMINENT

5.1 The Government is expected to consult in regulations that will required LGPS Funds to report on climate change risk, primarily in relation to their investments. Legislation has already been introduced to require private sector schemes to report in this, with larger schemes required to report sooner than smaller schemes. The expectation is the requirement for the LGPS will be introduced at the same time for all LGPS Funds and is likely to take effect from the financial year starting 1 April 2022.

5.2 The requirements for LGPS Funds are likely to be very similar to those the Government has already set out for trustees of private sector pension schemes, and will be based in part in recommendations from the Task Force on Climate Related Disclosures (TCFD).

5.3 More information will be provided to the Board when it is available. In the meantime, Appendix B contains information on assessing and reporting on climate change risk for trustees of private sector pension schemes (taken from the Government's website). This gives a useful indication of the issues LGPS schemes are likely to be asked to consider.

6. NEXT STEPS

6.1 Further updates will be provided periodically.

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