

**REPORT OF SERVICE DIRECTOR – CUSTOMERS, GOVERNANCE, AND EMPLOYEES.**

**LOCAL GOVERNMENT PENSION SCHEME – GUARANTEED MINIMUM PENSION RECTIFICATION – UPDATE REPORT**

**Purpose of the Report**

1. The purpose of the report is to update Nottinghamshire Pension Fund Committee on the progress of the Guaranteed Minimum Pension (GMP) rectification exercise following the completion of the reconciliation exercise undertaken with HM Revenue and Customs (HMRC).
2. The report also seeks approval for the Committee not to seek to recover any past overpayments of pension made to members of the Nottinghamshire Pension Scheme which have been identified through the HMRC guaranteed minimum pension reconciliation exercise.

**Information  
Background**

3. The GMP reconciliation exercise was a national requirement initiated by HMRC which impacted all Public and Private Sector Pension Funds who were contracted out of additional state pension.
4. Up until April 2016 contributing members of the Local Government Pension Scheme (LGPS) paid lower rate National Insurance contributions as they were “contracted out” of the Additional State Pension which has previously been known as S2P, the state second pension or the State Earnings-Related Pension (SERPS). LGPS employers also paid reduced rate National Insurance contributions in respect of their employees who were in the LGPS. Contracting out ended from 6 April 2016 as part of the Government’s introduction of a single-tier basic state pension.
5. Between 1978 and 1997 contracting out of the Additional State Pension was undertaken on a Guaranteed Minimum Pension (GMP) basis. This required contracted out pension schemes to offer pension benefits for the period of contracting out that were worth at least as much as the benefits the additional state pension would have provided. Contracted out pension schemes had to record the relevant contracted out earnings for that period and supply HMRC with details of these. HMRC retained a record of contracted out earnings and GMP entitlement for each

individual and then advised pension schemes of GMP entitlements when the individuals reach state pension age.

6. Since October 2017, the Pension Fund has been engaged in the reconciliation exercise with support from Civica the Pension Fund software provider. The purpose of the exercise was to compare the GMP liabilities held by the Fund with the data held by HMRC. It required the investigation of discrepancies between the two sets of data to come to an agreed record, reconciled with HMRC records.
7. It was identified as important to reconcile the GMP element recorded on the pension fund administration system with that held by HMRC to ensure that pensions coming into payment, together with those already in payment, are paid at the correct amount, and that the liabilities of the pension scheme, so far as GMP values are concerned, are represented accurately at each future pension valuation.
8. The final HMRC scan data was delayed several times and was eventually received in July 2020. Following receipt of the scan the final rematching was undertaken by the Pension Fund in September 2020.
9. As a result of this exercise, certain members have been identified as having been underpaid and others having been overpaid pension nationally and within the Nottinghamshire Local Government Pension Scheme (“the Fund”).

### **The Rectification Process**

10. Schemes have a duty to pay the right benefits to the right members at the right time. Accurate records are a fundamental requirement for fulfilling this duty. An inaccurate GMP on a member’s record will result in the member receiving the wrong benefits from the scheme.
11. The Pensions Regulator regards good record-keeping as a fundamental part of good scheme governance, falling within the statutory duty to establish and operate adequate internal controls.
12. Inaccuracies in scheme data (for example, GMP amounts) could lead to over or understatement of scheme liabilities. Based on the initial identification of members requiring rectification it is estimated that the current total overpayment liabilities of £5.9m will need to be written off by the fund.
13. To progress the GMP work, the programme was split into several parts. Part 1 of the programme (Reconciliation) has been completed and the Fund is now able to progress with parts 2-4 (Rectification).

	<b>Stages of Activities</b>	<b>Activity Description</b>	<b>Project Status</b>	<b>Project Dates</b>
<b>Reconciliation</b>				
Part 1 – identification and confirmation of liabilities with HMRC	<b>Discovery Phase</b> Stage 1	Initial comparison of fund data with HMRC file and an early indication of the potential size of the reconciliation issues In Depth Analysis of results from Stage 1	Complete	October 2017
	Stage 2			- January 2018
	<b>Delivery Phase</b> Stage 3 Stage 4	Queries issued to HMRC HMRC query returns analysed and distributed into specific categories Individual investigation In-depth analysis and bulk resolution Further individual investigation	Complete	May 2018 - November 2018
	Stage 5 Stage 6			
Stage 7				
<b>Completion Phase</b> Stage 8 Stage 9	Case Conclusion-Receipt of final file from HMRC Concluded cases uploaded into the pensions administration system	Complete	July 2020 (File received) - September 2020 conclusion	
<b>Rectification</b>				
Part 2	<b>Calculation and Communication Phase</b> – Over payments – Under payments	System and individual calculation to be undertaken using reconciled GMP liability amounts to determine overpayments and underpayments  A communication strategy will need to be developed to ensure that communication is clear to individual pensioners affected by the reconciliation exercise, and where a pension in payment needs to be adjusted, to enable them to understand the potential impact of any adjustment		July/August 2023 – Onwards
Part 3	<b>Rectification and Communication</b>	Pensioner payroll records to be adjusted to reflect correct payments determined in the Calculation Phase, and communicated to members		July/August 2023 - Onwards

## **Underpayment Cases**

14. Regarding underpayment cases, the Fund's intention is to write to all pensioners and dependants who have suffered an underpayment setting out the correct pension they should now be in receipt of and confirming the historic underpayment.
15. The Fund is required to correct the pension in payment and make payment of the historic payments owed as soon as possible. In line with LGPS regulations interest will be paid on all underpaid amounts. Based on the reconciliation analysis the average total underpayment is £1681.17 over a 42-year period. To provide some context 66 records of the 154 records are less than a 50 pence adjustment per month.

## **Overpayment Cases**

16. With regards to overpayment cases, the pension in payment must be adjusted to the correct value going forward as the Fund cannot knowingly make incorrect payments to any scheme member. Each member will be contacted in writing and where necessary advising members in accordance with the LGPS regulations with no less than 1 months' notice (*The disclosure regulations for pension schemes require that pensioners be notified in advance of the change to their pension taking effect if possible and in any event within one month*). It is therefore the intention to provide pensioner with 2 months' notice of the pending change in their monthly payment in accordance with the approach taken by other LGPS Funds and considering the unique circumstances and what is deemed reasonable.
17. The average overpayment is £3,895 over 42-year period with the annual overpayment being £407.75 per year (although the maximum total historic overpayment identified is just over £31,000 over a 42-year period which is a monthly difference of £219 and an annual difference of £2,632). To provide some context in the relating to the overpayments, 228 records are £10 or less per month.

## **Total Cases**

18. The final reconciliation has highlighted 766 pensioner records in payment which need to be rectified this is 1.72% out of a total of 44,353 pensioner records.

## **Reasons for Recommendations**

19. In coming to this recommendation, the Fund has taken legal advice on the GMP rectification stage, as well as having regard to a guidance note issued by the Local Government Association (LGA) in 2017 which addressed the recovery of overpayment of pension in these circumstances. It is recommended that, in line with this guidance, the Fund does not seek to recover the overpayments for the following reasons:
  - a. Given the complexities around GMP rules, it would be unfair to assume that the affected member could have had knowledge or understanding at an earlier time that this resulted in their pension being overpaid.
  - b. Most people affected are likely to be elderly and vulnerable and already facing rising inflation and costs of living. These factors could impact the Fund's ability to recover some

or all the overpayment and lead to additional unrecoverable costs in taking any recovery actions.

- c. Consideration has been given to the recovery of the overpayments however in line with other LGPS schemes it has been determined that it will not be cost effective in many cases to pursue the overpayments as debts, given the volume of cases, the costs of legal action and the low value per claim.
- d. It can be argued that the Fund could have discovered the overpayments itself at an earlier point in time which could render some claims time barred under limitation rules.
- e. This is the approach that has been taken by the majority of LGPS and public sector funds in the same situation.

## **Statutory and Policy Implications**

20. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance, finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability, and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

## **Data Protection and Information Governance**

21. The project, by its very nature, involves reconciliation, sharing and processing of personal and sensitive data. This is covered by existing arrangements and agreements with Civica, the software provider. However, a data impact assessment has been completed for the project overall to reflect the aspects of the data sharing, and updating of data, along with ensuring the mitigation of risks arising from the project activity itself.

## **Financial Implications**

22. The Fund has reviewed 2,164 cases and identified 766 cases that require rectification. This is where the data from HMRC and what was held on the pension record did not match with HMRC and it has been identified that the members benefits need to be adjusted.

### **Estimated total cost to the Pension Fund (as of 31 March 2023)**

- Overpayments £5,900,000
- Underpayments £654,000

All costs are payable from the Nottinghamshire Pension Fund.

### **Caveats:**

- All figures quoted are based on analysis to date.
- Results could therefore be over/ underestimated as full calculations need to be completed and checked at the time of rectification, therefore actual individual results and liabilities will be closely monitored and checked and reported on each month as the calculations are verified.

## **RECOMMENDATIONS**

It is recommended that the Committee:

1. Notes the requirement to adjust any underpayments of pension and confirm that following verification of final adjustment calculations and the communication process these should be paid to members and interest paid in line with LGPS Regulations.
2. Agree that there should be no recovery of any past overpayments of pension made to members of the Nottinghamshire Local Government Pension Scheme which have been identified through the HMRC minimum pension reconciliation exercise for the reasons set out in this report.
3. That the write-off of any individual overpayments in accordance with this decision be undertaken by the Section 151 Officer in line with the delegation in the Council's Financial Regulations
4. That members should be given a minimum 2 months written notice before any reduction identified by this exercise is applied to members' pensions

**Marjorie Toward**

**Service Director – Customers, Governance and Employees**

**For any enquiries about this report please contact:**

Jonathan Clewes, Pension Manager on 0115 9773434 or [Jon.Clewes@nottscc.gov.uk](mailto:Jon.Clewes@nottscc.gov.uk)

#### **Constitutional Comments (KK 21/06/2023)**

23. The proposals in this report are within the remit of the Nottinghamshire Pension Fund Committee.

#### **Financial Comments (KP 21/06/2023)**

24. As set out in the report the GMP reconciliation has identified adjustments to pension payments that must be made. The impact of correcting previous underpayments will mean additional costs to the fund; however, this will be more than offset by the reductions because of correcting previous overpayments. Estimates of the cost to the fund are set out in the financial implications section of the report.

#### **Background Papers and Published Documents**

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- 08 March 2018 Pension Committee Report GMP Reconciliation Exercise with HMRC
- 18 July 2019 Pension Committee Report GMP Reconciliation Exercise with HMRC – Update Report.
- 10 September 2020 Pension Committee GMP Pension reconciliation exercise with HMRC – Update Report
- 02 February 2022 GMP Rectification – Update Report

#### **Electoral Division(s) and Member(s) Affected**

- All