

29 July 2021

Agenda Item: 7

REPORT OF THE SERVICE DIRECTOR FINANCE, INFRASTRUCTURE AND IMPROVEMENT

LOCAL GOVERNMENT PENSION SCHEME – FUNDING STRATEGY STATEMENT UPDATE

Purpose of the Report

1. The purpose of this report is to inform the committee following changes to the Local Government Pension Scheme (LGPS) regulations on 23 September 2020.
2. To advise the Committee that following the regulation amendments, the Pension Fund needs to make changes to its Funding Strategy Statement and has produced a contributions review policy, along with a deferred debt and debt spreading agreement policy.
3. To inform the Committee that the amended Funding Strategy Statement along with the Deferred debt and debt spreading agreement policy and the Contributions review policy have been distributed to scheme employers for consultation.

Background

4. Regulation 58 of the Local Government Pension Scheme Regulations 2013 ('the LGPS regulation') requires Local Government Pension Scheme (LGPS) administering authorities to prepare, maintain and publish a 'Funding Strategy Statement' (FSS). The FSS has been amended to reflect the approach recommended by the Actuary in respect of Ministry of Housing, Communities and Local Government's (MHCLG) partial response to its 'Changes to the Local Valuation Cycle and the Management of Employer Risk' consultation.

Information

5. The Fund is required to consult with relevant interested parties on changes to the FSS. In preparing the FSS, The Pension Fund must have regard to:
 - The guidance issued by the Chartered Institute of Public Finance (CIPFA) for this purpose; and
 - Their own Investment Strategy Statement (ISS)
6. The FSS must be revised and published whenever there is a material change in either the policy on the matters set out in the FSS or the ISS.

7. On 8 May 2019 MHCLG launched its LGPS consultation 'Changes to local valuation cycle and the management of employer risk'. To date there have been two partial responses to the consultation covering separately Exit Credits and Employer contributions and Exit Payments.
8. On 27 February 2020 the Local Government Pension Scheme (Amendment) Regulations 2020 were laid before parliament. They came into force on 20 March 2020, but have effect backdated to 18 May 2018. The amended rules give LGPS funds a discretion to determine the amount of exit credits when a participating employer leaves the fund in surplus. The Fund formulated an Exit Credit policy in response to the Amendment Regulations.
9. In August 2020 MHCLG issued a partial consultation response in respect of Employer contributions and Exit Payments. Statutory Guidance following MHCLG's response will allow administering authorities, where appropriate, to revise scheme employer contributions between valuations, spreading of exit payments and deferred debt agreements.

Funding Strategy Statement

10. The Pension Fund Actuary has been closely involved in the preparation of draft revisions to the FSS, which reflects the funding approach taken to the latest triennial valuation, as at 31 March 2019. Significant changes from the previous version of the FSS are as follows:
 - Amending the wording of the FSS to allow for the revision of scheme employer contributions between valuations where appropriate, once finalised Statutory Guidance is issued
 - Amending the wording of the FSS to allow for spreading of Exit Payments where appropriate, once finalised Statutory Guidance is issued
 - Amending the wording of the FSS to allow for Deferred Debt Agreements where appropriate, once finalised Statutory Guidance is issued
11. A revised draft FSS is included in Appendix A.

Deferred Debt and Debt Spreading Policies Policy.

12. The Policy in Appendix B sets out the Nottinghamshire County Council Pension Fund's policy on deferred debt agreements (DDAs) and debt spreading agreements (DSAs) for exiting employers.
13. The main points of the policy are:

When a Scheme employer becomes an exiting employer under Regulation 64, the Fund Actuary is required to carry out a valuation to determine the exit payment due from the exiting employer to the Fund, or the excess of assets in the Fund relating to that employer. Where an exit payment is due, the expectation is that the employer settles this debt immediately through a single cash payment. However, if the employer provides evidence that this is not possible, there are two alternatives available: Regulation 64(7A) enables the administering authority to enter into a deferred debt agreement (DDA) with the employer while Regulation 64B enables

the administering authority to enter into a debt spreading agreement (DSA).

Under a DDA, the exiting employer becomes a deferred employer in the Fund (i.e. they remain as a Scheme employer but with no active members) and remains responsible for paying the secondary rate of contributions to fund their deficit. The secondary rate of contributions will be reviewed at each actuarial valuation until the termination of the agreement.

Under a DSA, the cessation debt is crystallised and spread, with interest, over a period deemed reasonable by the administering authority having regard to the views of the Fund Actuary.

Whilst a DSA involves crystallising the cessation debt and the employer's only obligation is to settle this set amount, in a DDA the employer remains in the Fund as a Scheme employer and is exposed to the same risks (unless agreed otherwise with the administering authority) as active employers in the Fund (e.g. investment, interest rate, inflation, longevity and regulatory risks) meaning that the deficit will change over time.

The policy document sets out the administering authority's policy for entering into, monitoring, and terminating a DDA or DSA.

These policies have been prepared by the administering authority following advice from the Fund Actuary and following consultation with the Fund's Scheme employers. In drafting this policy document, the administering authority has taken into consideration the statutory guidance on preparing and maintaining policies on employer exit payments and deferred debt agreements which was issued by the Ministry of Housing, Communities and Local Government, and the Scheme Advisory Board's guide to employer flexibilities.

14. The Policy sets out what would happen in the event that an employer becomes an exiting employer and an exit payment is identified. The fund should seek to receive a payment from the exiting employer equal to the exit payment in Full.
15. The policy sets out an approach that is most appropriate in each case and identifies specific scenarios in particular where an employer has temporarily no active members, or where a employer wants to minimise cost, or has affordability issues.
16. The administering Authority will have the right to refuse a DSA or DDA request if it is believed it is not in the best interest of the fund or other participating employers.
17. The Policy also confirms that whether a DDA or DSA arrangement is agreed or not is ultimately the decision of the administering authority. In the event of a dispute from an employer, this dispute will be referred to the Fund's internal dispute resolution procedure document.

Debt Spreading Agreements

18. Under a DSA, the cessation debt is crystallised and spread, with interest, over a period deemed reasonable by the administering authority having regard to the views of the Fund

Actuary and following discussion with the exiting employer. The Payments are fixed and are not reviewed at each actuarial valuation.

19. When making a request to enter a DSA, the exiting employer should demonstrate that they are unable to settle their exit payment immediately and provide any relevant information to support their request e.g. in relation to their covenant/ability to continue to make payments to the Fund. Examples of information the exiting employer may provide as evidence include the employer's
 - most recent annual report and accounts
 - latest management accounts
 - financial forecasts
 - details of position of other creditors
20. This is not an exhaustive list and the administering authority may request further evidence. In particular, the administering authority may commission a covenant assessment if insufficient evidence is provided.
21. The Policy goes on to how the administering authority will make a decision on whether to enter into a DSA and sets out how the decision will be made with a set of criteria.
22. The administering authority is not obliged to accept an existing employer's request for a DSA. For example, in the following circumstances the administering authority may consider a DSA not to be appropriate:
 - the exiting employer could reasonably be expected to settle their exit payment in a single amount.
 - there is doubt that the exiting employer can operate as a going concern during the spreading period; or
 - the exiting employer cannot afford the speeded payments over the maximum spreading period or is requesting a spreading period longer than the maximum.
23. The structure of the DSA is at the discretion of the administering authority having taken advice from the Fund Actuary and consulted with the exiting employer. The structure should protect all other employers in the Fund whilst being achievable for the exiting employer. The structure of a DSA will take into consideration, periods that the payment will be spread, the interest rate, Regularity of payment, other costs payable, and to ensure that the employer notify the administering authority of a change in circumstances.

Contribution Review Policy

24. This document sets out Nottinghamshire County Council Pension Fund's policy on amending the contribution rates payable by an employer (or group of employers) between formal funding valuations. This can be found in Appendix C.
25. It is anticipated for most Scheme employers that the contribution rates certified at the formal actuarial valuation will remain payable for the period of the rates and adjustments certificate. However, there may be circumstances where a review of the contribution rates payable by an employer (or a group of employers) under Regulation 64A is deemed appropriate by the administering authority. This policy document sets out the administering authority's

approach to considering the appropriateness of a review and the process in which a review will be conducted.

26. The events that may trigger a review are set out in the Policy along with the general process for assessing and conducting a review. Timescales are also set out however these may vary in practice depending on each individual circumstance. The Policy sets out a timeline to provide a rough guide of the administering authority's general expectation.
27. Following completion of the review process, the administering authority may continue to monitor the Scheme employer's position in order to ensure the revised contribution rate remains appropriate (where a review was completed) or to ensure the Scheme employer's situation does not change such that a review previously deemed not appropriate becomes appropriate. As part of its participation in the Fund, any Scheme employer is expected to support any reasonable information requests made by the administering authority in order to allow effective monitoring.
28. The policy also sets out where the responsibility of costs incurred as part of the review in relation to gathering evidence to present to the scheme employer, and the actuarial costs to commission the contribution review will be met by the Fund. This is with the exception of any costs incurred as a result of extra information requested by the Scheme employer which is not ordinarily anticipated to be incurred by the administering authority as part of the review. These exception costs would be recharged to the Scheme employer.
29. Any costs incurred as a result of a review initiated by the Scheme employer will be the responsibility of the Scheme employer, regardless of the outcome of the review proceeding or not. This may include specialist adviser costs involved in assessing whether or not the request for review should be accepted and the costs in relation to carrying out the review.
30. The policy goes on to set out a number of processes and scenarios in relation to triggering a contribution review. Some of these are set out in Regulation 64(A)(1)(b), a review of an employer's contribution rate between formal actuarial valuations may only take place if one of the following conditions are met:
 - (i) it appears likely to the administering authority that the amount of the liabilities arising or likely to arise has changed significantly since the last valuation.
 - (ii) it appears likely to the administering authority that there has been a significant change in the ability of the Scheme employer or employers to meet the obligations of employers in the Scheme; or
 - (iii) a Scheme employer or employers have requested a review of Scheme employer contributions and have undertaken to meet the costs of that review.
31. Conditions (i) and (ii) are triggered by the administering authority and (iii) by the Scheme employer. The key considerations under each of the conditions are detailed below.
32. It should be noted that the conditions are as set out in the Regulations therefore do not allow for a review of contributions where the trigger is due to a change in actuarial assumptions or asset values.

33. The policy goes onto describe:

- Changes which may trigger a review
- Changes in the ability of a scheme employer to meet its obligation
- How to deal with requests from the scheme employer for a contribution review

34. The policy also sets out the information that is required from the Scheme Employer in order for a review of the contribution rate to take place., assessing the appropriateness of a review, along with a methodology for reviewing contribution rates.

Consultation

35. The Fund issued a consultation document on 28 June to all scheme employers. The consultation will be incorporated into the final version of the Funding Strategy Statement which will be brought to the Committee at a later date.

Other Options Considered

36. The Pension Fund is required to have a Funding Strategy Statement, so no other options have been considered

Reason/s for Recommendation/s

37. This report has been compiled to inform the Nottinghamshire Pension Fund Committee of the update to the Funding Strategy Statement.

Statutory and Policy Implications

38. 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.

Financial Implications

39. There may be financial costs and benefits arising in the future from the changes in the Regulations. These are not possible to assess. However, the Fund is required to follow the Regulations.

RECOMMENDATION

It is recommended:

1. That the Nottinghamshire Pension Fund Committee note the consultation on the proposed Funding Strategy Statement and consider whether there are any other actions they require in relation to the issues contained within the report.

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Constitutional Comments (KK14/072021)

The proposal in this report is within the remit of the Nottinghamshire Pension Fund Committee.

Financial Comments (TMR 13/07/2021)

The financial implications are set out in paragraph 39

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.

- None

Electoral Division(s) and Member(s) Affected

- All