HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Panel:	Pension Fund Panel and Board
Date:	26 March 2021
Title:	Governance: Draft policy on Employer Flexibility regulations
Report From:	Director of Corporate Resources

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Purpose of this Report

1. The purpose of this report is to provide the Pension Fund Panel and Board with information about the changes to the LGPS Regulations which allow greater flexibility for employers who are likely to exit the Fund, and to seek the approval to consult with employers on the draft Employer Flexibilities policy.

Recommendation(s)

2. It is recommended that the Panel and Board:
   - agree in principle to allow the use of the employer flexibilities regulations
   - approve the draft Funding Strategy Statement and Administration Strategy for consultation with Scheme Employers
   - delegate authority to the Director of Corporate Resources for approval of the statements following the end of the consultation period.

Executive Summary

3. In September 2020, the LGPS 2013 Regulations were amended to allow for greater flexibilities for employers who were likely to exit from the Fund. These new regulations provide for:
   - a review of employer contributions between Fund valuations
   - the spreading of exit payments
   - allowing employers to continue to pay contributions after their last active member has left, and for those contributions to be revised at future valuations (known as Deferred Debt Agreements)

4. There is no requirement for Funds to make use of the new regulations but the amendments require that an authority may only do so where it has set out its policy in its Funding Strategy Statement (FSS). This is to ensure consistency and transparency.

5. The policy must adhere to the high level principles and points set out in statutory guidance issued by MHCLG. Officers have worked with the Fund actuary to draft a policy which does this, whilst ensuring that each case can be considered on its own merits. The overriding principle is for any agreement to be in the interests of the Fund as a whole.

6. Putting this policy into the FSS has meant that the document has become significantly more detailed than previously. The opportunity to revise the format of the FSS with the use of numbered headings and appendices has been taken, but it should be noted that this is a cosmetic change and has not resulted in changes to the wording other than described in paragraph 17 below.

7. Subject to the Panel and Board approving the draft policy, the next step will be to formally consult with employers on the changes to the FSS. The Panel and Board are asked to delegate authority to the Director of Corporate Resources to approve the final version of the statement following the period of consultation.

Review of employer contributions between valuations

8. The new regulations allow a review of employer contributions to take place between valuations for one of three reasons:
   - if it appears likely that the amount of liabilities for an employer has changed significantly since the last valuation;
   - if there has been a significant change in the ability of the scheme employer to meet its obligations;
   - if one is requested by a scheme employer.

9. The draft policy allows the Fund discretion as to whether a review will take place as it may not always be an appropriate use of resources and officer time. It is important that this is written into the policy so as to set expectations for employers that in the main, the contributions set at each triennial valuation will be appropriate for the coming three year period.

10. In order to assess whether a review might be appropriate, the policy allows for a regular covenant assessment of Tier 3 employers which is already carried out for the colleges and universities. In addition the Administration

Strategy has been updated to include a list of events which should be notified to Pension Services if they occur, as set out in paragraph 18 below.

Spreading of exit payments

11. The spreading of exit payments is already an option which has been informally exercised by the Fund in certain circumstances, usually to mirror the arrangement by which employers can spread early retirement strain charges over a three year period (with interest). This flexibility has been useful for employers where it is clear that they cannot afford a one off capital sum such as some of the smaller charities or parish councils, but where there is little risk to the Fund of allowing payment by instalments.

12. The policy therefore formalises this approach to make it clear that in most circumstances a single payment will be required but that spreading the payment can be considered where it does not pose an undue risk to the Fund in relation to the employer's ability to continue to make payments over the period.

Deferred Debt Agreements

13. Deferred Debt Agreements (DDAs) are designed to remove the immediate obligation on an employer to make good any deficit when their last active member leaves employment. Instead, under a DDA, an employer will continue to be an employer in the Fund with all the same obligations as an active employer other than paying primary contributions (the contributions which fund future service being built up by employees). Instead the Fund actuary will certify an amount of secondary contributions (the contributions which fund shortfalls accruing from historic service) such that the level of deficit should reduce over time. The level of secondary contributions will be reassessed at each triennial valuation. The DDA then terminates at the earlier of certain prescribed events including:

    - the fixed end date agreed in the DDA
    - the employer admitting a new active member into the LGPS
    - the Fund actuary assessing that the deficit has been paid in full
    - the Fund serving notice on the grounds that the employer's ability to make the necessary contributions has weakened materially.

    On the termination of the DDA, the employer's exit position is recalculated and any remaining liability must be paid in full.

14. DDAs are a new concept within the LGPS, however the Fund has previously worked with some of the housing associations to develop a similar

arrangement. The draft policy reflects some of the matters which have previously been included in these bespoke agreements whilst leaving maximum flexibility to ensure that each case is taken on its own merits.

Funding Strategy Statement and Administration Strategy

15. The regulations state that Funds can only make use of these new flexibilities if the Fund's policy is documented in the Funding Strategy Statement (FSS). Accordingly the FSS has been updated with a draft policy on the three new powers. As described above, the policy is deliberately written to allow each case to be considered on its own merits but the process is described to allow for transparency. The overriding principle of the policy is to ensure that the Fund only agrees to the use of these new provisions if it is in the interests of the Fund as a whole.

16. The policy has been drafted with significant input from the Fund actuary and in accordance with both the statutory guidance from MHCLG and the further guidance from the Scheme Advisory Board on the use of these provisions. In making these changes to the FSS, the opportunity to update the format of the document has been taken. The main detail of the policy is contained in section 4 and Appendix 4 of the draft FSS attached as Appendix 1 to this report. All changes that have been made to the FSS in relation to the new policy have been highlighted in yellow.

17. Two further small amendments to the FSS have also been made which are highlighted in green in Appendix 1. The first is in section 2.1.2 where amended wording has been added to reflect actual practice for determining recovery periods. The second is in section 2.2 which has been updated to include more detail on the funding targets which have been in use since the 2016 valuation.

18. It is critical that scheme employers engage with the Fund on any matters which affect their liabilities or ability to pay contributions. Therefore to tie in with the new policy in the FSS, the Administration Strategy has been updated to codify the existing expectation that employers will contact Pension Services when they have information about a change which may affect their ability to fulfil their employer responsibilities in the LGPS. The list of notifiable events is not exhaustive but serves as a formal marker for employers to provide information to the Fund as needed, to protect the interests of all Scheme employers. The updated draft Administration Strategy is attached as Appendix 2 with the changes highlighted in a new section 10 on page 5.

19. Paragraph 8.7 in the Administration Strategy has been amended to make it clear that an employer will be recharged for all expenses in relation to the

investigation and implementation of a DDA, even if an arrangement is not subsequently entered into.

20. The FSS and Administration Strategy can only be updated after scheme employers have been consulted on the proposed changes. The Panel and Board are therefore asked to approve the draft documents for consultation.

Next steps

21. It is proposed that, subject to Panel and Board approval at this meeting, scheme employers will be consulted on the draft employer flexibilities policy contained within the FSS, as well as the amended Administration Strategy. Employers will be invited to make comments on the new policy but will be specifically asked for their views on the timescales set out in the policy to ensure that these are reasonable.

22. It is anticipated that the consultation will run for 8 weeks from 29 March until 21 May. This will give sufficient time for employers to consider the policy whilst also ensuring that the Fund can proceed with employer requests to use the new flexibilities in a reasonable timeframe. To facilitate this, the Panel and Board are asked to delegate authority to the Director of Corporate Resources to approve the final versions of the FSS and Administration Strategy following the close of the consultation period. However, if the statements require material changes following the employer feedback, these would instead be bought back to the Panel and Board for approval.

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

This proposal does not link to the Strategic Plan but, nevertheless, requires a decision because the Pension Fund Panel and Board need to approve changes to statutory statements.

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

Document	Location
None	

EQUALITIES IMPACT ASSESSMENT:

1. Equality Duty

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant protected characteristic that are connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionally low.

2. Equalities Impact Assessment:

Equality objectives are not considered to be adversely affected by the information in this report as it affects all scheme members.