

**Issue 29 August 2011**

The technical newsletter of the  
West Midlands Pension Fund

WEST MIDLANDS



PENSION FUND

# the brief





# Brian Bailey

## Director of Pensions

It would seem the pace at which the LGPS is to react to Government's wishes to reform is to become truncated with consultation beginning by late September on the contributions to be paid by contributing members from April 2012. It would seem logical that as soon as this is known, further consultation will begin on the further reforms required in the light of the Hutton review.

As this information becomes available, we will inform employers - and relevant information will be placed on the Fund's website in due course.

There's no doubt there is a level of uncertainty and, some would say, unease about the changes to the LGPS, and what they will mean for employees/members. With this in mind, the Fund has prepared posters and leaflets (*see below*) that have already been made available to employers to combat any 'knee-jerk' reaction to change, as clearly the situation for individuals is not yet

fully understood.

Although, ultimately, the decision is the employees to make, we would suggest that members may wish to remain in the Scheme currently rather than opt out. The decision to join the LGPS remains a valid one, as the benefits or structure of contributions have not yet changed.

With regards to changes that may or may not take place at some point in the future, it is suggested that members would then need to reevaluate the LGPS and the benefits provided and the cost of those benefits against the alternatives offered.

With this in mind, now more than ever, it is important that employees are in a position to make an informed choice about the arrangements that the LGPS presents them with. I know that employers will join the Fund in ensuring that employees are provided with as much information as possible in these difficult and uncertain times.

**I've decided to opt out. What could possibly go wrong?**

It's all too easy to think that by opting out of your pension scheme, you've found an easy way of saving money particularly when your money is being stretched. But if you consider the benefits you'll miss out on in the future, you'll see that - by opting out - you can lose a lot more than you gain.

**LGPS DON'T OPT OUT**

**SAVING UP YOUR PENSION IS LIKE SAVING AWAY YOUR MONEY**

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**You wouldn't just give away your money, would you?**

It's all too easy to think that by opting out of your pension scheme, you've found an easy way of saving money, particularly when your finances are being stretched. But if you consider the benefits you'll miss out on in the future, you'll see that - by opting out - you can lose a lot more than you gain.

**LGPS DON'T OPT OUT**

**SAVING UP YOUR PENSION IS LIKE SAVING AWAY YOUR MONEY**

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**Think you'll save money by opting out? Don't hold your breath!**

It's all too easy to think that by opting out of your pension scheme, you've found an easy way of saving money, particularly when your finances are being stretched. But if you consider the benefits you'll miss out on in the future, you'll see that - by opting out - you can lose a lot more than you gain.

**LGPS DON'T OPT OUT**

**SAVING UP YOUR PENSION IS LIKE SAVING AWAY YOUR MONEY**

# Ministerial statement on public service pensions - a summary

**The Chief Secretary to the Treasury, the Rt Hon Danny Alexander MP (*right*), made a ministerial statement to the House of Commons on 19 July in respect of public sector pensions.**

The statement makes it clear that there are to be scheme-level discussions to deliver, by the end of October, initial proposals for reformed public service pension schemes. With regard to the requirement to find savings equivalent to a 3.2% increase in employee contribution rates, the statement says:

"Scheme-specific discussions will make proposals on how these savings are achieved and will be required to make proposals by the end of October this year. For local government, the Government recognise that the funded nature of the Scheme puts it in a different position and will discuss whether there are alternative ways to deliver some or all of the savings."

The Secretary of State for Communities and Local Government has written to the Local Government Group inviting it to conduct discussions with the local government trade unions to establish, by no later than 9 September 2011, a package of measures to secure the short-term savings by 2014/15, with any necessary legislation to be in place by 1 April 2012.

The package can include alternative ways to deliver some or all of the savings, while providing protections



from contribution increases for the low paid, and can give consideration to other issues that are important to the longer term sustainability of the LGPS. The Local Government Group and the unions held their first joint meeting on 27 July 2011.

## Written ministerial statement: **Public service pensions update**



### **The Chief Secretary to the Treasury (Rt Hon Danny Alexander):**

The Coalition programme gave a commitment to review the long-term affordability and sustainability of public service pensions, and Lord Hutton's Independent Public Service Pensions Commission has demonstrated that reform is needed. At Budget, the Government made clear that it accepted Lord Hutton's recommendations as a basis for consultation with public sector workers, trades unions and others and that we would set out proposals in the autumn that are affordable, sustainable and fair to both the public sector workforce and the taxpayer.

The Government has already committed to retaining a form of defined benefit pension in the public sector and protecting accrued rights so that all the benefits that members have earned up to the point of change will be protected. Today, I would like to inform the House of the progress that has been made and the process going forwards.

The Government and the Trades Unions Congress (TUC) have held a series of constructive meetings to discuss public service pension reform which have covered Lord Hutton's key recommendations and the Government's proposed employee contributions increase. A basis for agreement has been established in several areas, but differences remain on some of the key recommendations.

The Government and the TUC have agreed that to further inform the discussions on Lord Hutton's recommendations, there should be scheme level discussions alongside the central process already established.





# HM TREASURY

Scheme level discussions will ensure a fuller understanding of the implications of reforms, before final conclusions are reached.

These scheme-level discussions will deliver initial proposals for reformed schemes by the end of October this year, allowing further work to finalise detailed scheme design before the Government introduces legislation in due course.

Lord Hutton's recommendations will inform these scheme level discussions and the Government will provide scheme-specific cost ceilings. These ceilings will be based on Lord Hutton's proposals, but will go further and ensure that the pension individuals receive at normal pension age, would be broadly as generous for low and middle income earners as it is now. These cost ceilings will ensure that public service pensions remain affordable and sustainable, by setting a limit on the contribution made by the Government and ultimately the taxpayer.

Further to the rationale for short-term savings set out in Lord Hutton's interim report, the Government announced plans to target £2.8bn savings per year by 2014-15 through public service employee pension contributions at Spending Review 2010. The scheme-by-scheme consultations for the unfunded public service pension schemes to deliver the first years' savings of £1.2bn will commence by the end of this month. Reflecting the Government's commitment to protect the low paid, the Government has set out its preferred parameters for any design.

There should be no increase in employee contributions for those earning less than £15,000 and no more than a 1.5 percentage point increase in total by 2014-15 for those earning up to £21,000. This amounts to a 0.6 percentage point increase in 2012-13 on a pro-rata basis. It is proposed that higher earners will pay more but the Government has proposed a cap on the maximum increase of 6 percentage points (before tax relief) by 2014-15. This amounts to a 2.4 percentage point cap in 2012-13 on a pro-rata basis. These consultations will be completed by the end of October, in order to ensure implementation by April 2012.

The Government remains committed to securing the full spending review savings of £2.3bn in 2013-14 and £2.8bn in 2014-15, requiring each scheme to find savings equivalent to a 3.2 percentage point increase. Scheme-specific discussions will make proposals on how these savings are achieved and will be required to make proposals by the end of October this year. For Local Government, the Government recognises that the funded nature of the scheme puts it in a different position and will discuss whether there are alternative ways to deliver some or all of the savings.

I have today exchanged letters on these issues with the General Secretary of the Trades Unions Congress and copies of these letters have been deposited in the Libraries of both Houses.

**HM Treasury**  
19 July 2011

**DCLG letter dated 28 July 2011**

www.communities.gov.uk  
community, opportunity, prosperity



Dear Colleague

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28 July 2011

#### **LOCAL GOVERNMENT PENSION SCHEME**

1. With the agreement of Ministers, this letter sets out the initial and medium term context for the Local Government Pension Scheme in England and Wales, following the Ministerial Written Statement by the Chief Secretary to the Treasury on 19 July 2011 to the House of Commons, and indicates anticipated next steps.

#### **Ministerial Written Statement on Public Service Pension Schemes**

2. The Chief Secretary's Statement to Parliament sets out the basis upon which the Government now intends to proceed to implement policies first announced in the Autumn Spending Review on employee contributions, and on taking forward initial scheme specific discussions for long term pension reform announced in Budget 2010.
3. The Government has accepted the broad principles set out in Lord Hutton's final report as a basis for consultation. Against the high level discussions held with the TUC, scheme specific discussions are now to take place on taking the principles forward. Long term reforms are unlikely to come into force before 2015.
4. The Government's position is that public service pensions will remain among the very best available, providing a guaranteed pension level for all employees. However, given that people are living much longer and so pensions become more expensive, people need to work for longer before drawing their pension. Employees are, therefore, being asked to ensure a fairer balance between what employees pay and what other taxpayers have to pay. The processes for taking this forward are described in more detail below in paragraphs 6- 9. For the longer term reform timetable, paragraphs 10- 12 summarise the anticipated next steps.
5. The principle elements for public service pension scheme reforms, as set out in the Statement (which can be accessed at [http://www.hm-treasury.gov.uk/press\\_83\\_11.htm](http://www.hm-treasury.gov.uk/press_83_11.htm); a copy is attached for ease of reference), are as follows:-
  - central talks between Ministers and the trade unions will continue alongside scheme-specific discussions;
  - scheme-specific discussions are now to begin on wider reform arising from Lord Hutton's report;
  - cost ceilings will be set by 1 October by Treasury, based on Government Actuary's Department advice;
  - schemes will have the freedom to design the future shape of reforms within the cost ceiling and are subject to Treasury's approval of each scheme's longevity risk management arrangements;

- using the LGPS' agreed cost ceiling, initial scheme specific proposals for reform in headline terms are required to be established by the end of October;
- detailed scheme designs discussions will then continue to allow the relevant legislation being introduced in the Parliamentary session 2012/13 to allow for a 2015 implementation date.

### **Employee Contributions**

6. The position of the Local Government Pension Scheme in England and Wales, in relation to employee contribution rate tariff reform, is specifically clarified in the Written Statement, as follows:-

“...the Government recognises that the funded nature of the scheme puts it in a different position and will discuss whether there are alternative ways to deliver some or all of the savings.”

7. Following that clarification, the Local Government Group has now been invited by the Secretary of State to conduct discussions with the local government trade unions to establish a package of measures to secure the necessary short term savings in the LGPS equivalent to the 3.2% percentage point increase in other schemes. The package will include protections from contribution increases for the lowest paid. Other issues important to the long term sustainability of the LGPS may also be discussed.
8. The Secretary of State has requested the outcome of the discussions to be reported to him by 9 September in time to allow the formal, statutory consultation exercise to begin by the end of September.
9. The onward timetable from that point, as required by section 7 of the Superannuation Act 1972, is as follows:-
- a. a 12 week statutory consultation exercise in October, November and December 2011 on amending regulations;
  - b. consideration of responses and decisions by Ministers in early 2012;
  - c. making and laying of the amending regulations as soon as possible thereafter; and
  - d. scheme changes coming into force on 1 April 2012.
10. In parallel, the Scheme's Policy Review Group has initially discussed the context for these discussions, as indeed has the Local Government Pensions Committee's Officer Advisory Group. A pre-arranged meeting of the Local Government Group and the local government trade unions took place on 27 July. A meeting of the Policy Review Group is now scheduled for 15 August. The extended consultation period will allow a continuing series of discussions across all Scheme interests as part of the process to ensure the most effective outcome for the Scheme as a whole, including additional meetings of the Policy Review Group.

### **Post-Hutton Reforms**

11. The Chief Secretary's Written Statement sets out an indicative timetable for the anticipated scheme-specific discussions now to take place. The Government intends to set individual scheme cost-ceilings to ensure on-going affordability and sustainability. These will replace the previously envisaged 'cap and share' mechanism for the LGPS. The data stream aspects and adjustment to contribution provisions will remain in place or be modified as necessary.

12. The cost ceilings will be based on Lord Hutton's proposals, but will go further and ensure that the pension individuals receive at normal pension age will be broadly as generous for low and middle earners as it is now. The ceilings will ensure that public service pension schemes remain affordable and sustainable, by setting a limit on the contribution made by employers and ultimately, the taxpayer. Further details on how the cost ceilings are to be set will follow.
13. From that position, Schemes are being invited to provide initial reform proposals in headline terms by the end of October. The programme envisaged then is to finalise detailed Scheme design elements so that the relevant legislation can be introduced in the 2012-13 Parliamentary session. This will allow full implementation for April 2015.
14. This clearly requires a tight focus on the LGPS Policy Review Group and the supportive bodies around it who contribute and who have commented so much expertise to the present structure and Hutton process.
15. If, in the meantime, Scheme interested parties would like discuss any aspect of this work in relation to the LGPS, please contact Bob Holloway at [Robert.holloway@communities.gsi.gov.uk](mailto:Robert.holloway@communities.gsi.gov.uk) to arrange a discussion.



**TBJ CROSSLEY**

# Legal update - case law round-up

## **Eversheds Pensions Seminars - Leeds and Birmingham - June 2011**

Following the legal update talk given by Sarah Forster at Eversheds' Hutton and Beyond seminars in Leeds and Birmingham, this special extract of the LGPS speedbrief contains links to the full reports of the cases Sarah mentioned.

To subscribe to our Eversheds' free LGPS speedbrief service visit the following address  
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## **Outsourcing and contracts**

**Daventry DC v Daventry & District Housing** [2010] - A High Court case involving an attempt to rectify a clause in a housing stock transfer agreement whereby the council inadvertently agreed to pay a £2.4 million deficit in the LGPS relating to the transferring staff. The council's application for rectification failed on the basis there was no mutual mistake. The case demonstrates the importance of ensuring that the terms of any commercial deal are clearly understood by all parties, and that the final contract correctly reflects those terms.

*Daventry District Council v Daventry & District Housing Limited* [2010] EWHC 1935 (Ch).

This speedbrief summarises the facts and the lessons to be learnt.

After several months of negotiation, Daventry District Council (**DDC**) signed a contract, dated 5 November 2007, with Daventry & District Housing Limited (**DDH**) for the transfer of DDC's council housing stock to DDH. In addition, DDC agreed to transfer its housing department to DDH. The staff transferred were members of the LGPS and DDH became an admission body in the LGPS. In addition, a clause was introduced only a few days before the contract was signed which provided that DDC would be liable for the LGPS past service deficit (£2.4m) in relation to the transferring employees on completion.

DDC claimed that the clause was included in error and argued that both it and DDH intended that DDH was to be responsible for the £2.4m pensions deficit even though the clause clearly provided the opposite. DDC asked the High Court to rectify the contract on the grounds of mutual mistake or because its unilateral mistake meant that it would be unconscionable to refuse rectification.

The court rejected DDC's application and held that the law on rectification for mistake was settled. The key requirement for rectification was that there had to be convincing proof that the clause did not represent the common intention of the parties. The court held that an objective reading of the emails exchanged in the lead up to signing showed that the parties intended the final form of the clause to be as stated and that the clause unambiguously provided that DDC would be liable for the £2.4m past service pensions deficit. The judge considered that DDC's mistake was to fail to read and understand properly the contents of the new clause.

This case demonstrates the importance of ensuring that the terms of any commercial deal are clearly understood by all parties, and that the final contract correctly reflects those terms. This may seem like an obvious comment to make but as DDC discovered, failing to follow these simple principles can result in costly and irretrievable mistakes which may prove impossible to rectify.



## **Pensions loss - maladministration**

### **Halford [2011 - 81134/1]**

A Pensions Ombudsman complaint for maladministration brought by Mr Halford against Hertfordshire County Council and Serco for failure to award him a partner's pension.

The ombudsman upheld the complaint against the council as the council had failed to comply with a statutory duty to inform Mr Halford's partner, Ms Kerim, of the benefits payable on her death and the requirements to complete relevant forms. Had they done so, the ombudsman held that she would have nominated Mr Halford.

The ombudsman ordered the council to pay Mr Halford compensation equal to the amount of the partner's pension that he would have received had the nomination form been completed and to do so within 28 days by either paying the pension directly to him or securing an annuity equivalent to the amount of the pension.

The ombudsman did not uphold the complaint against Serco as Serco's involvement was limited to following the instructions of the council.

### **Cooper [2011 - 81260/1]**

A Pensions Ombudsman complaint of maladministration brought by Mr Cooper, relating to an application for early payment of his deferred benefits on the grounds of ill health. He brought his claim against his employer, Enterprise Limited and against the administering authority, London Borough of Barking and Dagenham.



The ombudsman upheld the complaint against Enterprise on the grounds that it had not considered whether Mr Cooper's ill health was likely to be permanent if untried treatment options were undertaken and also upheld the complaint against the administering authority on the grounds that they had caused unnecessary delay, distress and inconvenience.

**Mrs A [2011 - 79435/1]**

A Pensions Ombudsman complaint involving Mrs A and East Sussex County Council and again, Serco as administrators, relating to errors in record keeping. The complaint of maladministration was upheld against both the council and Serco as their errors had caused Mrs A to believe that all of her LGPS service had been transferred to East Sussex Pension Fund and that benefits for all her service would be calculated on her final salary.

She had been a probation officer with West Sussex County Council and was transferred to East Sussex County Council. There appears to have been some confusion between West Sussex and East Sussex as to whether Mrs A was included on the list of employees who elected to transfer their benefits. East Sussex updated their records to show that she had transferred her benefits, when, in fact, this was not correct. The ombudsman noted that while West Sussex may have misinformed East Sussex as to whether Mrs A had transferred her benefits, there was still an error in East Sussex's administrative process that led them to conclude that they were liable to pay for benefits for which they had not received a transfer of assets.

The ombudsman made a direction to put Mrs A in the position she would have been in if the errors had not been made.

## Scheme Pays

On 3 March 2011, the Government announced final details on 'Scheme Pays', which is the process by which members who exceed the annual allowance can have their relevant tax charge paid via the pension scheme.

### What is Scheme Pays?

Scheme Pays is the mechanism whereby the member can request their pension scheme to pay the AA charge on their behalf, and the scheme will then reduce the benefits the member is entitled to from the scheme.

### Background

As a result of the significant reduction in the AA from £255,000 to £50,000, it is expected that there will be many more people than is currently the case whose benefit accrual will exceed the AA and who will, therefore, be subject to tax (called the AA charge) on the excess. In recognition of this, the Government has introduced Scheme

Pays in order to help people meet those tax charges.

The Government's document called '*Options to manage high annual allowance charges from pension benefits: a summary of the discussion document responses*' is available at the following address:

[http://www.hm-treasury.gov.uk/d/pensions\\_benefits030311.pdf](http://www.hm-treasury.gov.uk/d/pensions_benefits030311.pdf)



## Change in Administration (Fund procedure)



The Fund will, with effect from the end of August, cease to notify employers where an employee has elected to receive the deferred benefits due from the LGPS, where an election has been made prior to the scheme normal retirement age and that as such deferred benefits are being put into payment as a result of a member's election.

If an employer envisages any reason that they could incur any difficulty, they should contact the Fund's Employer Services section immediately to discuss how the revised arrangements may affect them in detail.

# Monthly payroll reconciliation

As the Fund moves towards employer monthly payroll/contribution reconciliation, required due to the complexity of the contribution bandings, it is ever more vital that employers submit data in the correct format to avoid unnecessary data being rejected/returned. If you have any doubt about the format that data should be submitted, please contact the Fund's Head of Financial Services or the employer services team and they will provide the appropriate information/ contact details as required.

Failure to submit contributions by the 19th of the month, following the month in which it was deducted, is a civil offence under the Pensions Act and should be reported as such by the Fund. Failure to submit correct contributions data may also impact upon annual benefit production and may lead to members not receiving an annual benefits statement, with members being informed of the reason why the Fund is unable to issue a statement.

## Workload issues

We are aware that many employers, due to the financial constraints that the public sector is currently operating under, have made provision for workforce cuts during this financial year, with some indicating that September or December would be the likely time that employees would be leaving the organisation. We will, of course, do all we can to ensure that payments reach members as soon as reasonably practical after the necessary paperwork has been received.

While it is understood that employers will focus on paperwork for these members (who are due to receive immediate benefits due to their age/reason for leaving), employers should also be mindful of the need for the Fund to process, in any event, **all** leavers within the financial year that the leaving date occurs, due to the implications on the member movements and the need to record



accurately member movement alongside the organisational data required both for valuation purposes and those of DCLG.

Failure to inform the Fund of the correct member movements - within any of the financial periods within a valuation cycle - could have significant impact upon the contributions levied at subsequent valuations.

If any employers are aware of significant workloads of which they have not yet made the Fund aware, they should do so immediately by contacting the Fund's Employer Services.

# IAS 19 employee benefits

Many of you will be aware that over the next few years FRS17 will be replaced by IAS19 as the standard accounting disclosure for employers in the LGPS. The Fund's actuary, Mercer, looks at the standard.

## Introduction

The International Accounting Standards Board (IASB) issued its revised version of IAS 19 Employee Benefits on 16 June 2011. It applies to employers reporting under International Financial Reporting Standards (IFRS), including local authorities; however, it will also be of interest to other employers given the potential for UK generally accepted accounting principles to move towards IFRS.

## Timing

The revised IAS 19 will come into effect for financial years starting on or after 1 January 2013. It is possible that earlier adoption could be required for local authorities and other public sector employers. However, the timescale will be advised by CIPFA, and will depend on when the EU formally endorses the changes.

Other employers may need to:

- Assess the impact of the changes.
- Determine if the impact requires disclosure under IAS 8 (accounting policies, changes in accounting policies, changes in accounting estimates and errors) before the revised IAS 19 is adopted.
- Decide whether to early adopt the new IAS 19.

## What are the key changes?

The main changes introduced by the revised IAS 19 are as follows:

- I&E is no longer affected by expected rate of return on assets
- Immediate recognition of gains and losses (already applies to local authorities)
- Re-presentation of the I&E figures into service cost, net interest cost, and remeasurements
- Consistency in relation to some minor areas of different approaches
- Significant new disclosures.

## Summary

The main effect on the figures for local authorities will be a worsening of the I&E position, because the expected return on assets is being replaced by a 'net interest cost', based on the discount rate. The 'statement of financial position' (AKA balance sheet) will remain unchanged. The change to I&E is illustrated in the example below:

**Example (all figures in £000s)**  
**Employer A has pension assets of £8,000 and defined benefit obligation of £10,000. The current service cost is £500 per annum.**

	Current IAS 19	New IAS 19
Pension expense charged to I&E		
Service cost	500	500
Expected return on assets	(560) <small>(Expected return on asset of 7%)</small>	100 <small>(Discount rate applied to the funded status called the net interest cost)</small>
Interest cost	500 <small>(Discount rate of 5%)</small>	
<b>Total</b>	<b>440</b>	<b>600</b>

**Mercer comment**

The change to a net interest cost means that there is no longer any benefit to an employer's I&E from holding equities rather than bonds. While we do not believe this to be a major issue for local authorities, for some employers it will change the dynamic by which the cost of risk and the benefit of risk are represented. We expect this will give rise to more interest from some employers towards increased de-risking, with more emphasis on a shift from return-seeking assets to risk-hedging assets.

**An increase in disclosures on employer benefit plans**

The new requirements for disclosure are more principles-based than in the past. They are intended:

- To explain the characteristics and risks of the employer's pension commitments
- To explain more details of the amounts in the financial statements
- To describe the effect on the employer's future cash flows.

Most of these disclosures are mandatory, including a sensitivity analysis but, in general, the employer needs to determine what must be disclosed, depending on overall materiality. Given that the disclosures are principles based, this may require more thought than a 'tick-box' exercise.

**Mercer comment**

An increase in disclosure will mean administering authorities should review the governance of their Fund and review the overall risk taken, given that increased disclosures will make the risks more transparent for employers. The issue of risk management is much wider than in relation to accounting disclosures and we would recommend Funds begin to consider the implications.

**Other issues**

The treatment of administration costs may need to be reviewed, as it will no longer be possible to deduct from the return on plan assets any administration costs that are unrelated to the assets. This will generally lead to these administration costs being expensed as the services are incurred. A number of other changes to the accounting standard (for example, termination benefits, risk sharing plans and tax) need to be understood, as they may have an impact in specific circumstances. The split of the pension expense between the operating charge and the financing charge may also need to be reviewed.

**To find out more**

**For more detail on these changes, and how they affect the reported figures and the potential implications, please contact John Livesey (0151 242 7324) or Paul Middleman (0151 242 7402).**

# A rapid read of recent LGE bulletins

The full text of bulletins can be obtained from the LGE website

<http://www.lge.gov.uk/lge/core/page.do?pageId=119558>

**The Fund publishes the summaries below as an aide memoir and does not intend that employers disregard the full text or context of the LGE bulletins issued.**

## **Bulletin 81: Contributions to pension schemes other than the LGPS**

The LGPC Secretariat understands that a local authority has been approached by a company offering an employer-funded retirement benefits scheme (EFRBS) aimed at high earners and those potentially caught by recent changes to tax on pension savings. As the name implies, the EFRBS would be funded entirely by the employer, with no contributions from the employee.

While there is nothing in the LGPS regulations that states that a local authority cannot make a contribution to another pension scheme for employees who are eligible for membership of the LGPS, local authorities are statutory bodies. As statutory bodies, local authorities' powers to act are limited to those matters for which they have an express or implied power. There is a specific power requiring local authorities to contribute to the LGPS - under the LGPS (Administration) Regulations 2008 - and so, local authorities must offer their employees membership of the LGPS. As there is currently, as far as the Secretariat is aware, no express or implied power for local authorities to contribute to another pension arrangement, it is the Secretariat's

understanding that they cannot do so (see the Court of Appeal decision in *Allsop v North Tyneside MBC* [1992] ICR 639 (CA)).

This is a view that the Secretariat checked with a legal firm at the time that stakeholder pensions were introduced. The legal opinion agreed with the Secretariat's views. The legal firm also considered the incidental powers in sections 111 and 112 of the Local Government Act 1972 but concluded: "we are of the view that a local authority does not have the necessary powers, whether express, implied or incidental to offer a concurrent stakeholder pension scheme." The same would apply to an employment-funded retirement benefits scheme (EFRBS). Readers should note that HMRC are tightening up the rules on EFRBS.

## **Warning on pension liberation attempts**

The Secretariat have been made aware by an administering authority of a pensions liberation attempt using AXA's name. The liberation operates as follows: the current pension providers receive a pension transfer form requesting payment by cheque to AXA at 20 Winchcombe Street, Cheltenham, GL52 2LY. The payee is '*AXA re: policyholders name only*'. The perpetrators often include HMRC documents in order to make the transaction appear genuine. Please note that the address given is not an AXA office but a mail forwarding company. The current attempts share the same

methods as those using AMP/Pearl's name in 2005 and AXA's name previously in 2007 and 2009.

### **LGPS 2008: final pay and pay freezes**

The Secretariat has received numerous queries regarding the calculation of final pay where there has been a pay freeze. Under regulation of 8 of the Benefits Regulations, a Scheme member can only use one of the previous two years' pay if, excluding inflation, it would produce a higher final pay figure than the final year's pay. Only if it is actually higher can it be used, and only then can PI be added in accordance with the Pensions (Increase) Act 1971.

Does regulation 10 of the Benefits Regulations apply? It would be highly unusual for a person to have a contract that spells out that they are contractually entitled to a pay rise every year. The vast majority of local government employees might like to get a pay rise every year but they are not contractually entitled to a rise every year - so it is the Secretariat's view that regulation 10 of the Benefits Regulations would not apply to them.

### **Case Law - Schofield v. Schofield (Court of Appeal)**

A British husband and his German wife obtained a divorce in Germany. The German court, however, had no jurisdiction to make a pension sharing order against the husband's army pension. The wife was refused leave to appeal for a pension sharing order in the United Kingdom by an English judge.

The Court of Appeal allowed her appeal on the grounds that there should be judicial collaboration across state boundaries to ensure that adjudication between the parties was complete and comprehensive. The Court of Appeal also added that the original judge's view that

the army pension was "paltry" was unsustainable.

### **Prudential survey**

The Prudential have conducted a survey of those people who intend to retire in 2011. It found that 20% of them have no private or occupational pension, so their sole source of income will be state benefits. 10% of men and 28% of women will rely on the state pension and any personal savings in their retirement. A quarter of those over-estimated what they would receive from the state.

### **Bulletin 82:**

#### **Abolition of contracting-out for defined contribution pension schemes**

The Pensions Act 2007 (Commencement No.4) Order 2011 [SI 2011/1267] abolishes contracting-out of the state additional pension for defined contribution pension schemes with effect from 6 April 2012. The Pensions Act 2007 (Abolition of Contracting-out for Defined Contribution Pension Schemes) (Consequential Amendments) Regulations 2011 [SI 2011/1245] makes the necessary amendments to the subordinate legislation and makes transitional arrangements for the three years after 6 April 2012.

The Pensions Act 2008 (Abolition of Protected Rights) (Consequential Amendments) Order 2011 [SI 2011/1246] and the Pensions Act 2008 (Abolition of Protected Rights) (Consequential Amendments) Order 2011 [SI 2011 No.1266] remove protected rights for members for contracted-out defined contribution pension schemes. These SIs accompany SI 2011/1267.

**The SIs do not directly affect the LGPS but, along with the proposals contained in DWP's paper on the state pension, they indicate that it is likely**

**that contracting-out from S2P by defined-benefit schemes will be reviewed by the Government.**

**LGPS 2008: trivial commutations**

Paragraph 2.9 of the GAD guidance (issued on 6 May 2010) on trivial commutation refers to the 'no more than £2,000' provision introduced by The Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171].

The Secretariat has previously pointed out that an amendment to the wording of regulation 39 of The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 is required in order for this provision to be available to LGPS members. This is because regulation 39 only permits 'a trivial commutation lump-sum within the meaning of section 166 of the Finance Act 2004 or a trivial commutation lump-sum death benefit within the meaning of section 168 of that Act' whereas a payment under the 'no more than £2,000' provision would be under section 164(1)(f) of the Finance Act 2004.

Therefore, regulation 39 of The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 needs to be amended to add a reference to section 164(1)(f) of the Finance Act 2004.

The Secretariat recently contacted DCLG to state that it has received a number of representations from administering authorities requesting that such a minor amendment be made in the next available amending SI in order to enable administering authorities to be able to discharge trivial benefits by using the provision contained in section 164(1)(f) of the Finance Act 2004.

DCLG have confirmed that they will consider making such an amendment.

**Judicial review of indexation by reference to CPI**

On 6 May at the High Court, the trade unions (FBU, NASUWT, PCS, POA and Unite) jointly initiated proceedings for a judicial review of the Government's decision to use CPI as the basis for the indexation public sector pensions. The trade unions are arguing that:

- a change to use the CPI index is inappropriate;
- unreasonably negates members' legitimate expectations for pensions increases based on RPI;
- is legally wrong; and
- represents a change in members' benefits which was implemented without following an appropriate consultation exercise.

The outcome of the judicial review will be reported in a future bulletin.

**Bulletin 83:**

**Public sector pension schemes: employee contribution rates**

On 17 June, the Chief Secretary to the Treasury, Danny Alexander, gave a speech to the Institute for Public Policy Research in which he outlined the Government's case for reforming the public service pension schemes, moving to a career average revalued earnings (CARE) scheme, linking normal pension age to state pension age, and protecting accrued rights.

The Chief Secretary to the Treasury also provided information on the proposed increases in employee contribution rates to the public service pension schemes, saying that those earning less than £15,000 (whole-time) per annum will not face an increase in contribution rates while those earning £15,000 or more but

less than £18,000 will face a maximum increase of 1.5%. The Government wants the contribution rate to increase by an average of approximately 3.0% across the public sector schemes, meaning that there will be much greater increases in employee contribution rates for those individuals on higher earnings.

The Government intends to implement the increased contribution rates in stages between 2012 and 2014. However, it has been reported in the Local Government Chronicle (23 June) that when questioned after the speech as to whether increases in employee contributions, the LGPS could be dealt with in a different way 'Mr Alexander said arguments made by employers, unions and actuaries for the funded Local Government Pension Scheme (LGPS) to be treated differently from unfunded schemes were "something we continue to discuss"'.

In his speech to the Institute for Public Policy Research on 23 June, Lord Hutton said: "Ministers will, I hope, in particular listen very carefully to concerns that have been expressed about the proposed increases to pension contributions in the Local Government Pension Scheme. Employers and trade unions have put forward some substantial arguments that there might be better options open to us that can achieve the same effect without running a high risk of an increase to drop out rates. I hope these are given serious consideration."

The Prime Minister, in his speech to the LG Group annual conference on 28 June 2011 said: "Of course, because it is a funded scheme, the Local Government Pension Scheme is different from other public sector pension schemes. That's why we will have a more in-depth discussion with local government unions and the TUC about how we take this into account."

## **LGPS Trustees' Conference 2011**

The 8th Annual LGPS Trustees' Conference was held in Bournemouth on 8 and 9 June. Feedback from delegates indicates that this Trustees' Conference was one of the best and most successful held to date.

The theme for the conference was '*All Change?*' and every aspect of the LGPS was discussed over the two days of the conference.

The Rt Hon Bob Neill MP, Parliamentary Under Secretary of State for Communities and Local Government, delivered the keynote address. He stated that the Government is keen to improve the stewardship and transparency of the LGPS. He added that the biggest challenge is how to implement changes to the benefit structure of the LGPS and higher employee contribution rates without causing a marked increase in opt out rates by Scheme members.

Ged Dale (Greater Manchester Pension Fund) discussed the effect of the proposed increase in employee contributions. The targeted saving is £900 million per year. Given the effect of rising inflation and the fact that employees in Local Government have not generally had a pay increase for two years, a number of scheme members are experiencing pressure on their budget. This is already leading to some increase in opt out rates and this would only be exacerbated by a rise in employee contribution rates to the LGPS.

The Fund recognises the potential for an increase in 'optants out' in these uncertain times and, as such, has worked with Tameside to produce some posters and flyers that have been produced (based on work Tameside have done recently) aimed at informing and educating members about the need to understand the changes as they happen,

and not to react prior to the changes being announced. The Fund acknowledges the assistance Tameside have provided in relation to this area of discussion and would also encourage employers to circulate the posters and leaflets provided as widely as possible within the workforce. Further supplies are available from the Fund upon request.

**Bulletin 84:**  
**Role of Secretary of State - disputes between funds and admitted bodies**

At the Technical Group on 29 June 2011, DCLG reminded those present that, following the deletion by SI 2010/2090 of regulation 7(5) of the LGPS (Administration) Regulations 2008, disputes between an admission body and an administering authority over the meaning of wording used in an admission

agreement can no longer be referred to the Secretary of State, even if the admission agreement contains a clause to the contrary.

Where an admission agreement contains such a clause, the Fund wishes to remind employers that the clause is no longer enforceable.

**Bulletin for August 2011**

The LG Group is changing the style and format of the various documents it produces, including bulletins. This will mean that there will be no standard bulletin issued during August 2011. Normal service will resume from September 2011. Our thanks to the Local Government Pensions Committee - Secretary, Terry Edwards for allowing the Fund to promote the work of the LGPC by printing the summary as shown above.

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