



NEWSLETTER 74

17 MARCH 2008

Scotland for information only

BUMPER EDITION!

This edition of Campaign News is a bumper one and brings you up to date with a number of important current LGPS issues. It includes:

- 31 March 2008 closing date for buying added years
- CLG's consultation on cost-sharing
- Details of the latest guidance on ill health retirement provisions
- An update on developments in Scotland

Please take time to read it and pass on the details to Pension Contacts and LGPS members. You are also asked to respond to the CLG consultation on cost-sharing by 30 May 2008. This is an extremely important issue.

STOP PRESS...STOP PRESS...YOUR LAST CHANCE TO START BUYING ADDED YEARS IN THE LGPS IN ENGLAND AND WALES!

If you want to start buying added years, you only have until **31 March 2008** to make an election to pay extra contributions to buy them. The option to buy added years ends when the new scheme comes into force on 1 April. It will be replaced by an option for members to pay extra contributions to buy additional pension instead of added years.

Employers should have made members aware of the change. In case there are still members who haven't decided what to do, we hope the advice below will assist.

How many added years can I buy and how much do they cost?

Until 31 March, members can elect to buy up to 6 and 2/3 added years if they are under age 64.

The benefits for nearly all those buying added years will be an extra 1/80th pension and 3/80th lump sum, on the same basis as benefits under the current scheme.

The cost depends on the age that the member starts to buy added years. The older one starts the higher the % contribution needed. To get the added years you are buying in full, contributions need to continue until age 65. If you stop paying before then, the added years will be based on what you have bought up to the date you stop. Below are two examples:

A man starting at age 45 would pay 0.95% of his pensionable pay to get one added year. If his pensionable pay was £20,000 a year, the tax free contribution on that rate of pensionable pay would be £190.

A women starting at age 50 would pay 1.4% of her pensionable pay to get one added year. If her rate of pensionable pay was £16,000 a year, the tax free contribution would be £224.

As it is a percentage, the contribution to buy added years will go up as your pensionable pay goes up, but the % of pensionable pay will not. The members in the examples above would continue to pay the 0.95% and 1.4% until age 65.

How will the new option to buy extra pension be different?

The option will be replaced from 1 April by the option to buy up to £5000 extra pension a year, in multiples of £250 a year. This is more flexible, but is likely to cost more because the cost of pensions has increased recently. Also the CLG is saying that the contribution rate will be reviewed periodically and changed if the cost of the pension changes.

If I want to start to contribute extra to buy added years what must I do?

If you want to buy added years, make an 'election' right now and definitely before **31 March 2008**. This election must be made in writing to your pension fund administrator. You should not wait for a quote unless it can be sent to you within a few days. Simply requesting a quote will not be sufficient to meet the deadline of end of this month.

Can the employers stop me buying added years?

Because the added years are credited in full if you retire on ill health grounds, the employer can ask for a medical report.

Can I stop paying added years?

Yes. You can withdraw your election before your next birthday when contributions are due to start or stop paying the extra contributions at any time. You would also stop paying if you leave

I am already paying added years. Does this affect me?

No. You can carry on paying the same % contribution and get added years on the same basis as when you started paying.

Does this deadline apply in Scotland and Northern Ireland?

The option to start buying added years will also go in Scotland and Northern Ireland, but almost certainly not before their new schemes start on 1 April 2009.

CLG CONSULTS OVER COST-SHARING WITHIN THE LOCAL GOVERNMENT PENSION SCHEME IN ENGLAND AND WALES: UNISON'S RESPONSE

1. Introduction

The Department for Communities and Local Government (CLG) has begun a non-statutory consultation on a cost-sharing mechanism for the LGPS. UNISON and the other LGPS unions were not notified of its launch. **The deadline for responses is 30 May, 2008.** The consultation document "Sustaining the LGPS in England and Wales" can be accessed on the following link:

<http://www.xoq83.dial.pipex.com/whatsnew.htm>

Responses should be sent to:

Nicola Rochester
Workforce Pay and Pensions 2,
5 Floor, Eland House
Bressenden Place
London SW1E 5DU

e.mail: Nicola.rochester@communities.gsi.gov.uk

The non-statutory consultation will be followed by a statutory consultation later in the year, with a view to finalising the approach to be taken by the 31 March 2009 at the latest. Any changes to members' contributions would take effect from 1 April 2011 or 2012, if it is demonstrated that costs have increased. **It is vital that all Regions and branches respond to it and that Pension Contacts are**

asked to make members aware of its contents. The key points to be made are outlined at the end of this section of Campaign News.

UNISON and the other unions had already agreed an arrangement for looking at increased costs **and** savings arising from scheme changes at each valuation period with CLG (then ODPM), the Local Government Association (LGA) and the Local Government Employers (LGE). Any adjustments agreed necessary would have been negotiated and considered following triennial evaluations. We have made it clear at each meeting of the Policy Review Group that we believe this agreement should be honoured and that we are not in favour of a fixed cost-sharing mechanism. However, the 2007 Benefits, Membership and Contributions Regulations on the new look LGPS unexpectedly contained Regulation 40, which said that:

“Administering and employing authorities shall have regard to guidance to be issued by the Secretary of State, before 31 March 2009, as to the manner in which the costs of the scheme will be met after 31 March 2010.”

Attached to the end of this briefing is UNISON’s outline response to the consultation. More detailed arguments will be circulated in a future Campaign News.

2. CLG Policy

The consultation reflects Parliamentary Statements by former Local Government Minister, Phil Woolas, who said that the intention throughout the reform process has been to:

- Ensure no additional costs are imposed on the tax payers
- Establish a mechanism for sharing future cost pressures
- Maintain stability of costs by managing effects of changing liabilities
- Maintain a fair, rigorous and equitable balance in its long term funding between members, employers and the tax payer
- Provide a ‘rigorous framework’ within which to manage specific necessary changes to contribution levels or benefits
- Raise awareness among the membership of the full costs of guaranteed, final salary pensions and
- Foster a mutuality of responsibility between local authority employers, and scheme providers and scheme members

UNISON would wish to clarify the 'rigorous framework' to ensure that this does not mean a detailed formula which elsewhere CLG say is not appropriate. Our position is that we should retain the flexible, non-formulaic approach of structured meetings between stakeholders to agree any proposed changes. Regulation 40 of the 2007 Regulations does allow flexibility to be agreed in any mechanism.

The LGPS Trade Union Side believes that we should support measures which sustain the LGPS for the future, such as increasing scheme membership, reducing administration costs and making scheme data available and transparent. The lack of available data on the LGPS has proved to be a major problem in all the negotiations to date. However, we are adamant that any future change must be fair and equality proofed and based on agreed assumptions and transparent data.

The consultation document accepts UNISON's view that the varied nature of the scheme and the significant differences between employers' contributions undermines the case for a formulaic approach to cost sharing as in the NHS and Teachers' Pension Schemes, where there is a fixed employer contribution cap.

3. CLG Proposals for Cost Sharing

CLG has made proposals within the Policy Review Group about the types of risk/cost they believe could trigger measures to ease increased costs. In their paper the CLG suggests who should bear or share each type of risk. We respond to these below. UNISON's view is in bold at the end of each section.

a. Investment returns

Until now there has been a shared view that investment returns are so volatile and vary so much between funds that they should be excluded from any cost share and the risk and any cost/savings borne entirely by the employer. This is the position set out in the CLG paper.

The LGPS is a 'statutory scheme' like the NHS Pension Scheme and Teachers Pension Scheme. This means that benefits do not rely on whether there are sufficient funds there to pay for them. However, unlike the other schemes, the LGPS has real funds and requires employers to ensure funds are able to meet all the liabilities of their schemes. There is real money to back up most of the benefits in the LGPS. On the down side, this means that at times of economic uncertainty, trying to fund to solvency will reduce the funding position and increase the cost of the scheme.

UNISON believes that the fact that the scheme is funded should not undermine the statutory protection members enjoy.

In 2005 UNISON was able to persuade the Deputy Prime Minister that employers were solely responsible for the past service deficits, mainly caused by past under-funding and declining investment returns. Past deficits were therefore

excluded from the costing of the new LGPS. If they had been shared, the new scheme the package would have been significantly worse.

UNISON believes that if there was a cost sharing formula or employer contribution cap at each triennial valuation, it would be essential for investment returns to be borne by the employer.

If CLG were to include investment performance, UNISON would want a method of assessing long term trends in investment returns so that if long term trends improve in the future the members should benefit without the risk of short term fluctuations that occur at the three year valuations.

b. Financial assumptions

The paper suggests that the employer should bear the full cost of inflation protection and other external cost pressures.

UNISON believes there should be long-term planning for the LGPS, but a long term view needs to be taken and short term volatility of – say - inflation rates but these should not be a cost to members.

c. Changes in longevity

CLG puts forward the view that the cost of increased longevity should be shared or even borne entirely by scheme members.

The assumptions underlying increased life expectancy have changed significantly in recent times and are likely to be revised again upwards in the near future.

Returns so far received from the 2007 valuations suggest that longevity is likely to have improved over a year since the last valuation three years ago. This could add in the region of a 0.6% increase in cost.

UNISON recognizes that improved longevity is an increasing cost to the scheme. Any negotiation or cost share mechanism would have to take it into account, as is the case in all other pension schemes.

However, UNISON believes that assumptions about longevity have to be transparent and subject to challenge. Urgent work needs to be done to ensure that the assumptions take into account the high proportion of low paid members and very low pensions in payment overall. The majority of LGPS members are women, the fact that women's life expectancy is 'catching up' with men's, means that the rate of increase could be lower than national trends.

Any discussions on bearing some of the risk would have to take into account past assumptions and whether they have been too low, maintaining artificially low employer contributions.

UNISON believes that any increase should also be offset against savings resulting from new lump sum commutation arrangements and the overall savings of increasing the retirement age for new joiners.

d. Demographic changes

Demographic change effectively means changes in the average age of members. If it gets higher, the cost of the scheme goes up. The CLG believe the risk should be shared.

Together with investment performance and difference in longevity, differing age profiles in schemes partly explains why there is such a wide variation in employer contributions.

While recognising its effect on future costs, UNISON believes that any increase in average membership age should be offset against savings elsewhere, before any discussion on cost-sharing.

e. Pay increases

UNISON agrees the employer should bear this risk. However if there is any pay constraint imposed by Government, any saving should be used to offset any increased cost elsewhere in the scheme.

f. Benefit structure

UNISON believes changes to the benefit structure should only occur after negotiation between the stakeholders. Any remaining changes needed to equality proof the scheme should be borne by the employer. Any changes caused by future changes in the law such as to require schemes to allow flexible retirement in the future, should be part of the general discussion between stakeholders.

g. Options for using savings from scheme changes

UNISON has pushed for the savings resulting from changes to lump sum commutation and the 85 Rule to be ploughed back into the scheme to offset increases elsewhere.

h. Ill Health Retirement

Although not specifically mentioned in the CLG paper, UNISON believes that the cost of ill health retirements should be dealt with separately from any cost sharing mechanism. Of all the contingent benefits, ill health retirement has the

most marked effect on the cost of the scheme. The new ill health package from 1 April is estimated to save the scheme 1% of payroll.

UNISON believes that the continuing trend for fewer ill health retirements and the likelihood that most future ill health retirement will be on lower benefits means the savings will be greater than 1%. We want the true cost to be closely monitored. If savings are greater than expected, we want them to be used to improve ill health retirement benefits, especially for those falling into level 3. Only then should savings considered for offsetting other scheme changes.

i. Establishing a model scheme

The LGPS in England and Wales has 89 funds each with hundreds of employers nearly all paying different employer contribution rates, unlike the other centrally managed public service schemes, such as the NHS and Teachers' schemes. Although the benefits and contribution rates are the same for LGPS members, being a funded scheme means employer contribution rates vary depending on factors like the make up of the membership and the investment performance of the fund.

The CLG is proposing that there should be a model 'notional fund', maintained centrally by the CLG, supported by the Government Actuaries Department. It would not be a real fund, but would be simply based on the data supplied by the 89 funds. In principle it would not be significantly different to the benchmark fund used to determine the cost of the new scheme, but it would be based on a much bigger sample of real funds.

If CLG proceed with a cost-sharing mechanism and the notional fund, it could be agreed that some factors – such as investment returns - would not be part of the cost share mechanism, in the same way that investment returns were excluded in the benchmark cost for the new scheme.

UNISON believes strongly that better and transparent data should be available to assess national trends in the scheme. The unions have asked for a comprehensive list of data to be used by GAD to form its assumptions. The notional scheme should reflect actual experience, not GAD assumptions which cannot be verified. Any assumptions used should be jointly agreed by the stakeholders. Even if investment performance were excluded from any cost share discussions, such data should be collected centrally to assess how schemes compare to average performance.

j. The proportion of risk to be shared

The CLG propose that shared cost changes identified in the notional scheme should then be split 50:50 between members and employers.

UNISON does not accept that 50:50 is a fair split. Historically the employer has paid 2:1 over the long term. It must not be forgotten that the current increase in employer contributions was largely due to past under funding when most employers paid less than the members for a number of years and some employers paid nothing at all!

UNISON – and the other LGPS unions – do not support a formulaic approach to cost sharing and would like to proceed on the basis of the earlier agreement with LGA, CLG (ODPM) and LGE outlined above. If a cost sharing mechanism is imposed, we believe the way forward would be for the stakeholder group to meet if the cost of the notional scheme went up overall by more than a figure of around 0.2%.

k. Employer contribution cap

The CLG also suggest that there could be an employer contribution cap of around 14% in the notional scheme - which is around the level in the NHS and Teachers' Pension Schemes.

UNISON does not agree with an employer cap. The suggestion appears to be at odds with CLG's view stated elsewhere that there should not be a detailed formulaic approach. Even excluding investment performance, the benchmark employer contribution in the notional scheme is liable to be around 13.7%. A 14% cap would simply transfer most of the future risk on to the members and there is likely to be a significant increase in member contributions in one go, especially if short term investment returns were part of the equation.

With significant variation between funds and employers it is difficult to see how this would be workable or fair across the LGPS. It could lead to members either leaving en masse or the break up of the scheme.

4. Summary of UNISON's Response

Regions and branches are asked to respond to CLG, making the following points. A more detailed draft response will be circulated once we have more information on the forthcoming valuation reports, which we are gathering and scrutinising.

- Any changes should be subject to a rigorous equality impact assessment within the framework of the Public Sector Equality Duties and the Equal Pay Act
- There should be no fixed proportion of savings/costs between employers and members. Employers should not be allowed to go below the 2:1 ratio over the long term
- There should be no employer cap

- The requirement in the Regulations to have a mechanism in place for sharing future cost pressures does not require a formula that is automatically applied
- Instead joint meetings between stakeholders should be developed into a joint governance group whose role would be to agree the terms and assumptions to be used in setting up a national notional fund
- This should be informed by new governance arrangements in line with European legislation which provides for far greater member participation in schemes than is currently the case
- If the overall cost of the notional fund changed significantly at future valuations, the group could then determine what changes to future benefits or contributions might be appropriate. It would need to ensure that any future increase in member contributions did not impact disproportionately on women and low paid members, or how savings could be shared equitably.
- If CLG proceed, careful consideration should go into what cost pressures are included in any notional fund to trigger debate on possible changes
- If CLG proceed, only long term trends in investment performance should be included
- Past service deficits caused by past under funding should continue to be excluded
- There is already a mechanism to ease long term cost pressures, rather than fundamentally change the scheme. Employers should still pay the balance of the cost in the future as now.
- The assumptions underlying improving life expectancy should be questioned by use of specific data on the LGPS and its gender composition, which is predominantly female
- Savings arising from greater lump sum commutation should offset any increases in costs elsewhere
- Savings caused by the increasing proportion of members who join after April 2008 should also help offset increases elsewhere
- Ill health retirement should be dealt with separately. A priority use of any savings should be to improve ill health benefits to an acceptable level

- The LGPS should remain a single scheme, covering England, Wales and Northern Ireland. There should not be a lottery as to what a member pays or receives depending on where they work. Any agreement should apply across the scheme

ILL HEALTH PROVISION – NEW CLG GUIDANCE

UNISON has been involved in ongoing discussions with CLG to attempt to secure improved third-tier ill health provisions and protection for existing scheme members wanting ill health retirement before the new scheme comes into effect on 1 April 2008. CLG published further guidance on ill-health retirement on 4 March 2008 which gives us ongoing concern. You can access the guidance on <http://www.xoq83.dial.pipex.com/whatsnew.htm> The timing of the guidance and the remaining outstanding issues do not help give certainty to vulnerable LGPS members.

1. LGPS Benefit Regulations – Ill health provisions

The original proposals that UNISON consulted members on stated that:-

“(1) If an employing authority determines, in the case of a member who has at least two year’s total membership—

(a) to terminate his local government employment on the grounds that his ill-health or infirmity of mind or body renders him permanently incapable of discharging efficiently the duties of his current employment; and

(b) that he has a reduced likelihood of obtaining gainful employment (whether in local government or otherwise) before his normal retirement age, they shall pay him benefits under this regulation.”

It has now been advised that the intention is to reduce the two year minimum service to three months.

UNISON believes that these proposals mean that anyone certified as permanently incapable is entitled to a pension and that CLG should therefore tell employers and members how much this pension should be.

When the Regulations were published those who were permanently incapable of gainful employment (level one) and those who cannot obtain gainful employment within a reasonable time (level two) were covered. But those capable of gainful employment within a reasonable time of leaving were not (level 3).

CLG agreed that the third level should be in the LGPS and we are still awaiting the amendment to the regulations to include them. The CLG guidance confirms that gainful employment is not comparable employment

which is what UNISON wants. It states that the test will be whether the member is able to undertake 'general employment of a remunerative nature', UNISON believes this definition is far too wide.

The CLG guidance still does not define 'reasonable period' which is key to determining whether a member will fall into level 2 or 3. UNISON has said that the period should be short so that only those genuinely able to be reemployed when they leave fall into level 3.

The Regulations need to be amended to make clear what amount of pension members who fall into level 3 should be paid. It is clear as the Regulation stands that all those certified as being permanently incapable of doing their job are entitled to an ill health pension – a position UNISON agrees with.

2. Transition

The first part of paragraph 27 of the guidance gives the impression that the new scheme's ill health provision is broadly equivalent to that provided under the LGPS 1997. Unfortunately it isn't and in most cases is likely to be significantly worse. Very few members are likely to be granted a level 1 pension and even with the underpin, some members receiving a level 2 pension could be worse off. Those who are permanently incapable, but not covered by the two top tiers are almost certainly going to lose out under the 2007 Regulations.

No comprehensive research has been undertaken by CLG to assess the likely number of ill health retirements in each tier. It is therefore very misleading for this guidance to claim that in most cases the provision will be 'benefit neutral' or be to members' advantage.

This guidance indicates that some transitional arrangements providing for the payment of ill health pensions on the basis of the better of the two schemes' rules will be issued. With such a short amount of time before the new scheme commences on 1 April, UNISON wants a quick decision on the terms of these arrangements. In the absence of detail on the transitional arrangements, the message to practitioners sent out by paragraph 28 is deeply concerning.

Delaying consideration of currently active cases until after 31st March might seem appropriate to CLG and employers, but this does not address the fears of members left only with the suggestion in the guidance that transitional arrangements will be in place and the very real fear that they will receive less ill health pension as a result of the delay.

UNISON has just received a note from CLG stating that it is the intention that transitional protection will mean that those who retire before 30 September 2008 will have benefits that are no worse than they would have got under the current Regulations. This is informal advice and still needs the Minister's signature.

3. Review

Paragraph 30 reflects a move away from the proposal for the 3rd level provision last consulted on by the CLG. A further worsening of it is indicated with the introduction of an automatic review that could stop 3rd level pensions in payment. Paragraph 31 outlines an employer-driven second review to ascertain whether the member could qualify for level 2 pension, although the backdating of this payment is explicitly ruled out. It seems that the guidance is intended to limit members' protections under level 3 and maximise the scope for employers to move members from level 3 to no provision, while minimising their obligation to increase a pension from level 3 to level 2, even if the member remains unable to secure gainful employment.

4. Protection

UNISON remains extremely dissatisfied with the limited protection provided in the Regulations (SI 2007 1166, as amended). Regulation 20 (5) only provides protection for those existing members aged 45 or over. This means that some long-serving members below 45 will be worse off if they retire on ill health grounds under Tier 2 benefits than if they had been retired from the LGPS 1997 scheme on grounds of ill health. In UNISON's view Regulation 20 (5) does not ensure that existing members do not receive less under the new ill health rules than they would have done under the rules of the current scheme. We will continue to seek the removal of the age restriction from this Regulation. In our view it is not clear that this Regulation complies with Age Discrimination legislation.

5. More discussion needed!

The problems with the new guidance and the Regulations covering ill health retirement, lead UNISON to believe strongly that there should be a moratorium on the changes to the LGPS ill health provisions. They should be thoroughly researched and debated before implementation, which is not possible before 1st April 2008. It might be possible and advisable to require medical practitioners to advise whether, in the case of each member they certify as being permanently incapable, the individual would be able to undertake other gainful employment before age 65. It would then be feasible to ascertain what proportion of people would fall into each proposed tier, enabling all stakeholders to decide on the appropriateness of the tiers and the likely ongoing cost factors. It should then be possible to discuss new ill health provisions on an informed basis. Currently this is impossible and UNISON will continue to press CLG for the required changes to the ill health provisions.

CONSULTATION ON THE NEW LGPS IN SCOTLAND

UNISON Scotland is currently consulting members over the proposed new look scheme to take effect on 1 April 2009. At present there is no proposal for cost sharing in the Scottish LGPS and contributions are calculated differently.