**Notes from contracted-out reconciliation workshop at the Torquay Pension Managers' Conference 17th November 2015**

The following matters were discussed in the workshop.

**Is there a legal obligation to reconcile C-O data?**

Not as such, but administering authorities may consider they are duty bound to do so for the following reasons:

- The fourth data principle under the Data Protection Act requires that 'Personal data shall be accurate and, where necessary, kept up to date'

- 249B of Pensions Act 2004 - Requirement for internal controls: public service pension schemes
  (1) The scheme manager of a public service pension scheme must establish and operate internal controls which are adequate for the purpose of securing that the scheme is administered and managed-
  (a) in accordance with the scheme rules, and
  (b) in accordance with the requirements of the law.

- Regulation 4 of Public Service Pensions (Record Keeping and Miscellaneous Amendments) Regulations 2014 – Records of member and beneficiary information
  (1) In respect of member and beneficiary information, the records which are specified are-
  (a) the name of each member and of each beneficiary;
  (b) the date of birth of each member and of each beneficiary;
  (c) the gender of each member and of each beneficiary;
  (d) the last known postal address of each member and of each beneficiary;
  (e) each member's identification number in respect of the scheme;
  (f) the national insurance number of each member who has been allocated such a number; and
  (g) in respect of each active member, deferred member and pensioner member-
  (i) the dates on which such member joins and leaves the scheme;
  (ii) details of such member's employment with any employer participating in the scheme including-
  (aa) the period of pensionable service in that employment; and
  (bb) the amount of pensionable earnings in each year of that employment.

- Backed up by TPR Code of Practice no.14
  - complete, accurate and up-to-date records are key to effective administration

- scheme managers must establish and operate controls which are adequate for ensuring the scheme is administered and managed in line with the scheme rules

- Obligation to only pay the pension that is correctly due (public money argument).

**What are the timescales?**

The last date to sign up to get data from HMRC is March 2016. Technically this date is 5 April 2016, however, administering authorities must obtain their deferred and pensioner data by this date. Therefore, registration must take place prior to then leaving sufficient time for HMRC to process the request and to supply the data.

A key message for administering authorities was that, if they had not already done so, they should sign up and start the reconciliation process of their deferred and pensioner data as early as possible. The later administering authorities leave reconciliation, the less time they will have to undertake the reconciliation exercise. The other major public service pension scheme are likely to commence sending in their data queries in the spring of 2016 so it would be wise for administering authorities to start sending in their data queries before then to seek to avoid possible delays in HMRC response times from the spring of 2016. The current HMRC turnaround time for responding to queries is 3 months though we think this may be extended once HMRC start receiving large numbers of queries next year.

The overall exercise has to be completed by October 2018 (to give HMRC time to finalise queries before they commence issuing letters in December 2018).

Of those administering authorities participating in the workshop all had obtained data and some had started basic reconciliation work.

**Should administering authorities reconcile only pre 97 GMP liability or post 97 C-O service dates too?**

The reasons to reconcile pre 97 GMP liability are obvious:

- there would be an inaccurate pensions increase liability if the GMP relates to a fund member but is not the correct amount, or
- there would be an inaccurate pensions increase liability if the fund believes it has a GMP liability for a fund member but the person does not appear on the data supplied by HMRC
- a person could be informed by HMRC in December 2018 that the fund has a liability to pay them a pension when the GMP liability does not actually rest with the fund (because the person had never been a member of the fund, or liability has been transferred out, or a CEP has been paid).

The reasons to reconcile post 97 contracted-out dates too are, perhaps, less obvious and no national decision on whether or not to reconcile this data has yet been taken, though the LGPC Secretariat can confirm that we are working with HMT to seek a recommendation. The rationale for reconciling post 97 contracted-out dates would be:

- HMRC holds a record indicating that a member was contracted out between date X and date Y. They want the dates verified because it will impact on the foundation amount of the member's single tier state pension (which will be reduced on account of periods of contracted-out employment). However, unless the person's NI category or NI contributions/NIable pay or contracted-out dates are incorrect, or a CEP has been paid which HMRC has not recorded, there would be no error on the amount of deduction to the single tier state pension. Therefore, provided the contracted-out period and the NI category/NI contributions/NIable pay are correct, it is immaterial which scheme the person was in during the period of contracted-out employment.

- If the letter HMRC sends out in December 2018 says something along the lines of "You were contracted out of the LGPS in Fund A during the period from date X to date Y and Fund A, as a condition of being contracted-out, has guaranteed to pay you a pension" that will cause problems if the fund has not verified that the person was in contracted-out service in Fund A e.g. it may be the person was in the TPS and not in the LGPS but the person would potentially present Fund A with a letter at some time in the future asking why Fund A is not paying them a pension in accordance with the letter from HMRC.

  [NB: it is still not yet known exactly what information the December 2018 letter from HMRC will contain].

**Is there a need to reconcile GMPs where members were over SPA at 2008 and the public service scheme scheme had participated in the 2008 GMP reconciliation project?**

Although not discussed at the Torquay conference this question has been included for the sake of Scottish administering authorities (as, within the LGPS, only Scottish LGPS administering authorities participated in the 2008 exercise).

Central guidance is awaited on whether or not those cases included within the 2008 exercise should be excluded from the current reconciliation exercise. However, it should be recognised that the current HMRC data for those members could, in some cases, show different GMP amounts to those reconciled in 2008.

**Is there a need to reconcile GMPs and Contracted-Out dates for deceased members?**

It would be appropriate to reconcile any survivor's GMP (for the same reasons set out above in relation to active, deferred and pensioner members).

However, there is an argument to say that the GMP for the deceased member should itself be excluded from the reconciliation process given that, if not excluded:

- what should the administering authority do with any underpayment? They could pay to the legal personal representative (but the LPR may not welcome this if the estate has been closed).
- what should the administering authority do in respect of any overpayment? Can the administering authority recover from the estate if the estate has been closed?

**What tolerance levels should be applied?**

We would like a national agreement across the public sector pension schemes on tolerance levels in order to avoid schemes (and administering authorities within the LGPS) taking different approaches.

For example:

- a GMP tolerance level of £2 p.w. could be adopted. GAD have estimated that a figure of £2 p.w. could result in an over or underpayment of up to £400 over the lifetime of an average pensioner.

- if contracted-out dates (Pre 6 April 97, post 5 April 97 or both) are to be reconciled it is known that there can be a difference in the dates held by HMRC and those held by the scheme where, for example, the member was contracted out from March but didn't get paid until April, or the member left in March but received a further payment in April. It may be that the tolerance for contracted-out dates could be for the HMRC and scheme contracted-out dates to fall within the same tax year or plus/minus one year.

**Options if the GMP is within the tolerance level**

- Accept HMRC figure in all cases (actives, deferreds and pensioners) and recalculate pensions, sorting out any under / overpayments

- Accept HMRC figure only for actives, deferreds and pensioners under State Pension Age (meaning that schemes would continue to apply the GMP figure they already hold for pensioners who are at or over SPA and there would be no resulting under / overpayments to calculate; and although the member might get a letter from HMRC in December 2018 quoting a different GMP to the one we will be holding on the pensioner

record, this would not be an issue if schemes do not show the GMP amount on pensioner payslips)

- Take the GMP amount that leads to the most generous outcome for the member (which would be the least risky in terms of legal challenge)

- Not correct any (this would be the easiest for schemes to administer)

We are awaiting a national recommendation on the approach to take (although the second bullet point above looks the most likely recommendation).

**What action should be taken where the GMP difference is outside the tolerance level?**

If the HMRC figure is agreed as being the correct figure, administering authorities should:

- replace it on their records, and
- for pensioners
  - recalculate the pension in payment,
  - pay the correct pension going forward, and
  - pay any resulting underpayment to the pensioner.

Payment of any underpayment of pension (i.e. arrears of pension) would be an authorised pension payment under the Registered Pension Schemes (Authorised Payments – Arrears of Pension) Regulations 2006 [SI 2006/614].

With regard to any overpayment of pension it would make sense if a national approach across the public service pension schemes could be reached on:

- whether to seek recovery , or
- whether all overpayments should be written off

**Recovery of overpayments**

As mentioned above, it would make sense if a national approach across the public service pension schemes could be reached on:

- whether to seek recovery of any overpayment, or
- whether all overpayments should be written off.

If a national approach across the public service pension schemes is eventually to be provided it will need to have considered the following matters:

a) size of the overpayment
b) estoppel
c) change of position
d) relevance of member awareness
e) limitation periods

The reasons to seek recovery would be to protect the Fund / Scheme and to ensure that a member does not benefit from amounts to which they were not entitled.

There is no specific provision in the LGPS regulations for dealing with mistakes that lead to an overpayment.

**Would sums written off be unauthorised payments?**

Any overpayment that is not recovered which falls within regulations 13 or 14 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] will not be an unauthorised payment. Those regulations require that a payment made in error will be an authorised payment if:

- the payment was genuinely intended to represent the pension payable to the person,
- the administering authority believed the recipient was entitled to the payment, and
- the administering authority believed the recipient was entitled to the amount of pension that was paid in error.

However, there is a presumption in the regulations that once the error has been determined the administering authority must take reasonable steps to prevent any further overpayment to the recipient (apart from during any period where the scheme is taking a reasonable period of time to determine whether to change the scheme rules and, if so, during a reasonable period of time to actually a mend the scheme rules, in order that the higher level of pension will be paid as normal authorised payments).

**What actions should be taken if the GMP was incorrect in a transfer in or transfer out?**

If the reconciliation exercise undertaken by an administering authority shows that a GMP included in a transfer in to the LGPS was incorrect and had led to:

- a lower transfer payment than was due, should the administering authority request a further transfer value?
- a higher transfer payment than was due, should the administering authority contact the former scheme offering to repay the overpayment or wait for any contact to be made by the former scheme (unlikely)?

Note that a scheme to which the LGPS transferred a GMP may contact the relevant administering authority as a result of undertaking their own reconciliation exercise to seek payment of a further transfer value. What should be the administering authority's response? Is there a legal requirement to correct an underpayment if not requested to do so by the member or the receiving scheme? If requested by the member or the receiving scheme to correct an underpayment, can the sending scheme refuse to do so if the amount is de minimis?

We are not aware of any current proposal to issue central guidance on these points for application across the public service pension schemes (although it would probably make sense to have a consistent approach, even if this consistency were limited to transfers that occurred between public service pension schemes). If no such guidance is issued administering authorities will be left to make their own decisions in individual cases.

**What actions should be taken if the GMP used for a pension sharing CETV / CEV following receipt of a pension sharing order was incorrect?**

If the reconciliation exercise undertaken by an administering authority shows that a GMP used for a pension sharing CETV / CEV following receipt of a pension sharing order was incorrect, what action should an administering authority take?

It was suggested that we let sleeping dogs lie as the original CETV / CEV was what the Court took into account in deciding the pension split.

**What action should be taken if an administering authority believes it has paid a CEP but HMRC data does not reflect this?**

The administering authority should provide as much evidence as possible to HMRC to seek to prove that a CEP was paid. If HMRC accept this, then they will amend their records accordingly.

If HMRC do not accept that a CEP has been paid (though HMRC have indicated that they believe this circumstance will be very rare) the administering authority can either:

a) stick by its guns and refute any claim for a pension from a member who produces to them the December 2018 HMRC letter informing the person the scheme is to provide them with a pension, or
b) pay the CEP again (which, due to the relatively small amounts involved, might be cheaper than defending claims from the person if (a) above were to be adopted.

**Do administering authorities feel they need staff with detailed knowledge of GMPs to undertake the reconciliation?**

Those administering authorities who had started the reconciliation work felt it was necessary to have staff with detailed knowledge of GMPs although some of the ‘leg work’ could be undertaken by far less experienced staff.

**Cases to concentrate on**

It was agreed that the cases that administering authorities should initially concentrate on are

- cases where the HMRC record indicates the fund holds a liability for a person but the fund has no record of the person (or the liability has been discharged (e.g. via a transfer out, the payment of a CEP or trivial commutation)
- cases where fund record indicates the fund holds a liability for a person but the person does not appear on the data supplied to the fund by HMRC
- existing pensioners (at or over State Pension Age) where the GMP is outside the tolerance level
- existing pensioners under State Pension Age where only the GMP is in payment and the GMP is outside the tolerance level.

**Who is going to pick up PI on GMPs from April 2016?**

For those who attain SPA prior to 6 April 2016 the position will remain the same as now i.e. no increase on pre 88 GMP and up to 3% on post 88 GMP (unless AP<GMP). HMRC have stated that they will continue to issue AP<GMP notifications (where appropriate) for these cases.

For those who attain SPA after 5 April 2016 it was noted (in the DCLG presentation given later in the conference) that it had informally been agreed (although no formal announcement had yet been made) that for those who attain SPA between 6 April 2016 and 5 November 2018 funds will be responsible for paying full PI on both the pre and post 88 GMP (for the life of that member and any subsequent dependents).

No decision (informal or otherwise) has yet been taken in relation to those who attain SPA post 5 November 2018.

A formal decision on who will be responsible for PI from April 2016 is needed urgently (as is an amendment to the Ministerial Direction (6th July 2000)), in order that PI programmes can be re-written and tested.

**Equalisation**

Another issue (over and above contracting-out reconciliation) is GMP equalisation. Three possible solutions have been suggested only two of which are likely to be free of further legal challenge.

The first solution (the Jack and Jill solution) is for administering authorities to hold GMP information for men and women showing the GMP entitlement for their actual gender and what the GMP would have been had they been of the opposite gender. We understand that this can be obtained from HMRC) Each year the authority would, for a pensioner with a GMP, have to pay the person the greater of the amount of pension the person would have received as a man or a woman.

The second solution is to undertake a one off calculation and convert the GMP into scheme pension (which would then presumably be subject to full PI).

No decisions on this have yet been taken.

**COPE**

When a person who attains SPA after 5 April 2016 receives their State Pension statement is will show their gross state pension less a Contracted-Out Pension Equivalent (COPE) amount and the net state pension.

Administering authorities will inevitably get questions from members asking questions about COPE and information on this is attached.


Scan - Introducing COPE.pdf

Terry Edwards / Jayne Wiberg
19th November 2015