

Notice of Non-key Executive Decision

Subject Heading:	Guaranteed Minimum Pension (GMP) Reconciliation Project
Cabinet Member:	Cabinet Member for Financial Management: Councillor Roger Ramsey
SLT Lead:	Jane West Section 151 Officer
Policy context:	Local Government Pension Scheme Regulations 2013
Financial summary:	Request for funding from the Pension Fund of an initial £66,197 with additional funding required to complete the GMP Reconciliation Project. The potential cost of not carrying out the work could be an estimated £1,082,413.20 pa based on the average enforced GMP.
Relevant OSC:	Overview and Scrutiny Board
Is this decision exempt from being called-in?	It is a non-key decision by a member of staff and is therefore exempt from being called in.

The subject matter of this report deals with the following Council Objectives

Communities making Havering	[x]
Places making Havering	[x]
Opportunities Making Havering	[x]
Connections Making Havering	[x]

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

1. Employees contributing to the Local Government Pension Scheme were contracted out of the State Second Pension (S2P) and schemes are now required to ensure that a member's pension is at least equivalent to what they would have earned under S2P. This is known as the Guaranteed Minimum Pension (GMP). The GMP also has an effect on the annual pensions increase payable by the London Borough of Havering.

In April 2016, the Government introduced a new Single Tier State Pension and contracting out ceased. This new state pension is reduced according to the member's contracted out service, so an error in contracted out records could potentially lead to a shortfall in the state pension benefits.

As a scheme, Havering need to ensure that the liabilities we hold against our Scheme are the same as those held on the HMRC records. Failure to do this may result in incorrect pension payments and Havering paying benefits to people who have transferred out, or never been a scheme member with Havering.

2. HMRC launched a reconciliation service to assist pension schemes in reconciling their records against HMRC records. They will be withdrawing the service at the end of this year, and will not accept any queries from October 2018 with a view to issuing final statements to individuals stating who is responsible for paying their contracted out benefits in early 2019.
3. It is not compulsory that we carry out the reconciliation, however, it is considered good practice to maintain accurate records and to minimise risk of breaching the law and the Public Service Pensions (Record Keeping and Miscellaneous Amendments) Regulations 2014.
4. It is also very important that we review and clarify the LBH actual pension liability to ensure it is identical to the information held at HMRC. Any differences identified as part of the reconciliation project will be analysed and any liabilities proven not to be the responsibility of LBH will be disputed and discharged. This information is then used to calculate members pension entitlements.
5. Pension schemes are required to provide an annual scheme return to The Pensions Regulator. For the 2017/18 return, we are required to report a record-keeping score to help improve data quality. This score will look at the common data held for our scheme members, including the dates of service; the formula used to calculate a member's or beneficiary's pension; any increase to be applied to a pensioner or beneficiary's pension in payment each year. All of these are potentially affected if incorrect GMP is held on a member's record.

The Pensions Regulator has a range of powers to protect workplace pensions. If they find inaccuracies, they can enforce action against those involved.

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6. The Pensions Regulator has issued guidance on good record keeping which states:
All pension schemes collect and hold records about scheme members' identities and their time in the scheme in order to calculate and pay out benefits. Records range from basic member information such as name, address and date of birth to more complex scheme-specific information like transactions, investments and guaranteed minimum pension (GMP) benefit entitlements.

Record-keeping is a vital part of running a scheme and failure to maintain complete and accurate records means you are at risk of failing to meet your legal obligations. Crucially, it can affect a scheme's ability to carry out basic functions such as paying members the right amount at the right time.

Poor record-keeping can have a huge impact on members and it can be very expensive for your scheme if things go wrong because of bad or missing data. As trustee or scheme manager, you are accountable for the record-keeping of your scheme, even though administrators may look after the records on a day-to-day basis.

7. I have consulted with the London Pension Officer Group, consisting of the Pension Managers from across London, regarding their approach to undertaking the GMP reconciliation work. From the research, managers have confirmed that they will be completing the GMP reconciliation project and will not be taking the risk of non-compliance.
8. Therefore based on the information above it is proposed that London Borough of Havering establish a project to complete the GMP reconciliations for all pension scheme members to analyse, match and identify anomalies and achieve accurate records.
9. The project has been scoped as five phases which covers our active, deferred, pensioner and dependant records to achieve the full reconciliations. The phases are:
- Phase 1 Record amendments and multiple record matching
 - Phase 2 Query list generation
 - Phase 3 Investigation of data query list
 - Phase 4 Review of returned queries
 - Phase 5 Review of actives (date to be confirmed)

We propose to engage the Local Pensions Partnership (LPP) to carry out reconciliation exercise. LPP are now the third party administrators for the London Borough of Havering and therefore have the appropriate access to records and systems to be able to carry out the task. This will incur a project cost which has initially been estimated at £126,197.

10. The reconciliation project will review the results from the initial analysis and raise queries with HMRC. It will seek to resolve all queries to ensure that all contracting out data associated with the London Borough of Havering and our scheme members is correct.

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11. The work to be undertaken cannot be achieved using existing resources as it is a complex project that includes:

- Schemes Register with HMRC for data download – Havering have registered and downloaded the deferred, pensioner and dependant data.
- Schemes compare data held on Altair (pensions system) for Deferred, Pensioner and Dependants against HMRC data download – initial comparison has been carried out on Havering Data.
- Schemes investigate mismatches and raise queries with HMRC.
- Schemes reconcile with HMRC and update pension records.
- Schemes agree a tolerance and agree a strategy for over or underpaid pensions.
- Schemes rectify any over or underpaid pensions.
- Schemes communicate to members.

12. It should be noted that HMRC support was made available for a finite period of time to assist pension scheme administrators to reconcile pension records against those held by HMRC. The deadline for submitting membership queries is October 2018 with an aim that HMRC will have answered most queries by December 2018.

HMRC will issue a membership report to schemes in early 2019 to confirm the final liabilities held by the fund and statements to individuals to confirm where their contracted out benefits are held. The risks to the LBH pension fund are not known or fully understood until this work is complete.

13. The Pensions Regulator has suggested a tolerance level of £2 per week for differences in GMPs between HMRC and Pension Fund records. It is proposed that Havering accept this guidance and therefore differences of £2 a week or less can be discounted.

14. Having researched how other Local Authorities are dealing with potential over and underpayment of pension it seems that they are awaiting guidance from HM Treasury being issued to Fire Authorities and they will follow suit.

Havering will need to establish a strategy being mindful of reputational damage, rules of estoppel and potential Ombudsman claims

15. Havering registered with the HMRC reconciliation service for the download of data. From the data received the initial analysis has been carried out for deferred, pensioner and dependant members.

RECOMMENDATION

1. For Section 151 Officer to consider funding all five phases of the GMP reconciliation project.
 - Agree funding of £66,197 for phases 1 to 3 with an estimated further funding of £60,000 to cover phase 4 for LPP to undertake this work, depending on the number of returned queries from HMRC. Funding to complete phase five will be determined at a later date.
 - To agree to establish a project to be completed with HMRC support till March 2019.

AUTHORITY UNDER WHICH DECISION IS MADE

Part 3 of the Constitution, Section 3.10.3 (j) Section 151 Officer Functions which states:

To manage the Council's loan debt, investments and temporary investments, pension scheme and pension fund, insurance fund, act as registrar of loan instruments, manage all banking arrangements including numbers and types of accounts and arrange insurance of property and the selecting and accepting of tenders for insurance cover and related services which are considered to offer best value for the Council promoting good risk management practices at all times.

STATEMENT OF THE REASONS FOR THE DECISION

If the London Borough of Havering do not carry out the GMP reconciliation process, or miss the deadline for submitting queries to HMRC the risks are:

1. Not being compliant with the Public Service Pensions (Record Keeping and Miscellaneous Amendments) Regulations 2014.
2. If we do not undertake the GMP reconciliation, we risk being in breach of the law.

The Pensions Regulator states:

Certain people must report breaches of the law to us where they have reasonable cause to believe that:

- *a legal duty relevant to the administration of the scheme hasn't been or isn't being complied with: this could relate for instance to keeping records, internal controls, calculating benefits and, for funded schemes, includes investment governance and administration matters*
- *this failure to comply is likely to be of 'material significance' to us*

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3. Enforced GMP liabilities, for people who have transferred out of Havering LGPS or who have never been in the scheme, and having to pay a pension. HMRC hold records against LB Havering for 545 people who have transferred out and 353 people who we do not hold a record for, after the initial matching process. The potential cost of this enforced liability could be an estimated £1,082,413.20 pa based on the average weekly enforced GMP. This would lead to an increase in contribution rates across all the fund's employers, with the Council having responsibility for the majority of the liability.
4. The London Borough of Havering risks being non-compliant with the new General Data Protection Regulations coming into force in May 2018 which bring in increased record keeping obligations including only keeping data that is relevant and necessary. Havering Pension Fund should not hold data for people who have no liability within the scheme
5. Contracted out members' benefits may be inaccurate, resulting in over and underpayments of pension and annual pension increases being incorrectly calculated. From initial reconciliation work there are at least 557 pensions in payment that are potentially being incorrectly paid. The impact of this cannot be assessed until the next phase of work is approved. Administering authorities are obliged to correct any error they become aware of within a reasonable period of time. To do otherwise would render any continuing overpayments unauthorised under Regulation 14 of the Registered Pension Scheme (Authorised Payments) Regulations 2009 [SI 2009/1171]. HMRC have provided a clear steer with regards to timing stating that 'when a scheme discovers an overpayment it immediately becomes unauthorised and is subject to an unauthorised tax charge'.
6. There may be additional workloads on the pensions administration team, which could result in an additional cost to Havering if they are considered too large to absorb into the daily work.
7. Reputational damage to the Borough. Previous errors in administration and poor recording keeping in relation to GMP's over 5 other public service pension schemes, made national press in 2008 and resulted in intervention by the National Audit Office and the Chancellor of the Exchequer.

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OTHER OPTIONS CONSIDERED AND REJECTED

1. **Option 1 - Not to carry out the reconciliation**
Clearly doing nothing is not an option as identified in the statement of the reasons for the decision and following the initial matching process.
2. **Option 2 - Undertake the reconciliation in-house**
The Pensions Administration Service is outsourced to LPP and initial analysis of this work has demonstrated that there are no resources available in-house to undertake the task.
3. **Option 3 – To delay the reconciliation**
This is not an option. HMRC aim to clear all queries received by their deadline by December 2018. There will be no opportunity to query liabilities after this time. Any GMP held against Havering at this date will become an enforced pension payment. Initial reconciliation work shows that HMRC hold records against Havering for 898 people that we believe have either transferred out or have never been members of Havering's pension scheme.

PRE-DECISION CONSULTATION

None

NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name: Caroline Berry

Designation: Pensions Projects and Contracts Manager

Signature:



Date: 24th May 2018

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Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

As stated in the Report there are some legal risks involved if this project is not undertaken and therefore the proposal should mitigate the risk as far as possible.

FINANCIAL IMPLICATIONS AND RISKS

Due to the abolition of contracting out for Defined Benefits schemes in April 2016 it is a requirement that all schemes reconcile their GMP liabilities so the costs arising from the project is a cost that will need to be met by the Pension Fund. The total cost of phase 1 to 4 is £126,197 with Phase 5 costs yet to be determined.

The costs to the General Fund will net to zero but there will need to be a budget adjustment to reflect the increase in expenditure and an increase in the income from the recharge to the Pension Fund.

A report will be presented to the Pensions Committee for noting so that the Committee are aware of the increase in Pension Administration costs.

The potential cost of this enforced liability could be an estimated £1,082,413.20 pa based on the average weekly enforced GMP. This would lead to an increase in contribution rates across all the fund's employers, but with the Council having responsibility for the majority of the liability.

HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)

Although employees' pensions may be affected by the outcome of the project, there are no HR implications directly arising from the Recommendations set out in the report.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

There are no direct equality implications regarding this matter.

BACKGROUND PAPERS

None

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Part C – Record of decision

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Proposal agreed

Delete as applicable

~~Proposal NOT agreed because~~

Details of decision maker

Signed

Jane West

Name:

JANE WEST

Cabinet Portfolio held:

CMT Member title:

Head of Service title

Other manager title:

Date:

29/5/18

Lodging this notice

The signed decision notice must be delivered to the proper officer, Andrew Beesley, Committee Administration & Interim Member Support Manager in the Town Hall.

For use by Committee Administration

This notice was lodged with me on 29/5/18

Signed

J. J. R.

