
Pensions Technical Update

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Current and future technical matters

- Review of factors following Scheme valuation
- Dispute resolution and Ombudsman cases / Liaison with TPAS
- Equality and diversity
 - Walker
 - Firefighters and Judges
 - Brewster
 - Civil partnerships
 - Gender Recognition.
- Future matters affecting pensions and the education sector?
- Concluding remarks

Review of factors following Scheme valuation

- Potential for revised factors, including the following areas:
 - Early/late retirements
 - Transfers in / transfers out (Club and non-Club)
 - Pensions on divorce or dissolution
 - Additional Pension and other flexibilities
 - Premature retirement factors
 - Covering service which doesn't count automatically for Family Benefit
 - Scheme Pays
 - Trivial commutation and small pots lump sums
- Change in interest rates used for arrears of contributions to allow for a change in SCAPE rate.
- Teachers' Pensions await details of any embargo in relation to transfers, pensions on divorce calculations, early retirements etc.
- Awaiting guidance from HM Treasury and Government Actuary's Department

Dispute resolution and Ombudsman cases

- The Teachers' Pension Scheme moved to a 'one stage' disputes procedure in August 2013 for formal complaints. Complaints under the Scheme's Internal Dispute Resolution Procedure are dealt with by the Department for Education.
- A 'two stage' procedure continues for ill-health appeals.
- Teachers' Pensions aim to resolve complaints before advancing to Internal Disputes Resolution Procedure.
- Teachers' Pensions is reviewing its policy for non-financial injustice taking account of the Ombudsman's published tariffs.
- The number of Ombudsman cases are relatively small, but taken very seriously.
- Areas of complaint include re-marriage declarations, ill-health and overpayments.

Liaison with TPAS

- TPAS retain generic information of contacts made by members of various pension schemes. TPAS provided details of written queries from members of the TPS over a period of nearly 2 years (prior to the change on 1 April 2018). There were circa 75 written queries received by TPAS, ranging from technical enquiries, to requests for advice and complaints.
- The number of contacts were low by comparison to the Scheme membership. Half of the written contacts related to requests for advice. 10 related to concerns with the level of service, of which 5 related to difficulties in getting in touch with Teachers' Pensions via the contact centre during a particular period in 2017.
- TPAS estimated that in addition to written enquiries over this period, there were 1,000 telephone queries out of a total of 200,000 taken by TPAS advisers. Again, this is seen as a relatively low number, given the size of the TPS membership.
- The report provides useful information on the types of query TPAS receive and will be requested annually by Teachers' Pensions and the Scheme Advisory Board.
- TP meet with the TPAS and the Ombudsman on a regular basis. Teachers' Pensions will also signpost members to TPAS as part of the GMP rectification exercise in 2019.

Equality and diversity impacts: Background

- Various courts have ruled that legislation or processes may constitute direct or indirect discrimination. This is in line with:
 - Article 1, Protocol 1 of the European Court of Human Rights;
 - The Human Rights Act 1998 (UK);
 - Equality Act 2010 (UK);
 - Equal treatment directives.
- Section 4 of the Equality Act prevents discrimination in relation to “protected characteristics” - age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation...”
- The Equality Act contains a sex equality rule to put men and women on an equal footing in terms of access to Schemes from 8 April 1976 and to benefits from 17 May 1990. The Act also has power to override scheme rules where these are not consistent with the sex equality rule.
- Different factors for males and female due to different life expectancies are exempt from the ‘protected characteristic’ under the Equality Act 2010.

Equality and diversity impacts (Continued)

Walker v Innospec - Same sex civil partners

- On 12 July 2017, the Supreme Court found in favour of Mr Walker on the grounds of unlawful discrimination on the grounds of sexual orientation.
- The Court ruled that an exemption under Equality Act 2010 restricting survivors' benefits for same-sex partners was incompatible with "the Framework Directive" (EU Directive 2000/78/EC) and must be dis-applied. Mr Walker's partner now has prospective rights backdated to 1980 - prior to 17 May 1990 referred to in the Equality Act 2010.
- Public service scheme regulations automatically cover Family Benefit for civil partners from 6.4.1988. Department for Education policy is that Family Benefit service for same-sex married couples and civil partners is the same as that for widows. (i.e. For 'in-service' teachers, FB service counts automatically from 1 April 1972 and from 6 April 1978 for same sex marriages and civil partnerships formed after leaving service.)
- Regulatory changes will follow in 2019.

Equality and diversity impacts (Continued)

Why is Family Benefit service not backdated prior to 1988 for widowers?

- A High Court case was brought in 2011 against the NHS Pension Scheme by Mr Iain Cockburn who was the widower of a female doctor. Mr Cockburn's widower's pension would be £3,200 a year higher if the service from August 1982 to April 1988 counted, as it would for a widow.
- While there was direct sexual discrimination, the judge held that there was "objective and reasonable justification" for maintaining the sex disparity in survivors' pensions for service before 6 April 1988.
- As well as the cost of retrospection (estimated at £3-4 billion across public sector schemes) the Department for Health argued there was a legitimate difference in treatment due to the weaker economic position of widows at that time.

Equality and diversity impacts (Continued)

Firefighters and Judges cases heard by the Employment Appeals Tribunal:

- Two separate cases challenging the transitional protections for the Public Service Career Average Schemes for Firefighters and Judges from April 2015 on grounds of age discrimination. Both cases were heard at the same time.
- With the firefighters, the judgment on 29 January 2018 was that the London Fire Authority was pursuing a legitimate aim of cost reduction. There was still a question about whether the means were proportionate for achieving the legitimate aim and the case was referred back to the employment tribunal.
- With the Judges, the Tribunal found that while the Ministry of Justice may have been pursuing a legitimate aim, the measures were not proportionate and found that the difference between the old and new schemes was too great and failed the proportionality test. (This included the different tax treatment of pensions for older and younger Judges.) Hence, the appeal from the Ministry of Justice failed.
- Both cases are listed for 5 November 2018.

Equality and diversity impacts (Continued)

Other cases arising from equality and diversity...

1. Following the Brewster judgement on 8 February 2017, it is no longer necessary to nominate an unmarried partner to receive a pension in the event of a member's death. But the partner does still need to meet the qualifying criteria.
2. Supreme court ruled that the Government's refusal to pay an unmarried mother 'Widowed Parent's Allowance' (£117 per week) was illegal and breached the rights of the child.
3. On 2 October 2018 Theresa May announced a change in government policy to allow opposite sex civil partnerships. If the law is changed, opposite sex couples not wishing to get married could opt for a civil partnership with automatic cover in the Teachers' Pension Scheme from 6.4.1988.
4. Grand Chamber of the European Court of Justice ruled that the State acted unlawfully in preventing a transgender female from applying for State Pension at 60.

Equality and diversity impacts (Continued)

- Handling of gender reassignment cases prior to a gender recognition certificate:
 - “Gender reassignment” is a ‘protected characteristic’ under section 7 of the Equality Act 2010.
 - A member is able to be identified as the gender they want, even before a gender recognition certificate (GRC) is issued.
 - The Pensions Regulator requires Scheme Administrators to hold “common data”, which includes the person’s legal gender (i.e. the gender of birth or the new gender after a new birth certificate is issued).
 - Many factors in the Teachers’ Pension Scheme are gender neutral but not all.
 - Teachers’ Pensions perform calculations in line with the person’s legal gender, but this will not match the acquired gender until the new birth certificate is issued.
 - Therefore, we need to change the gender on the member’s record (showing on “My Pension Online”, Benefit statements, “1” and “2” membership number suffix), but in the interim period before the new birth certificate is issued, any calculations need to be undertaken under the gender of birth and reflect different Family Benefit provisions.
 - Fines under the Gender Recognition Act for disclosing a person’s change of gender.
 - Explorative consultation underway with a view to reforming the Gender Recognition Act 2004. Responses by 19 October.

Policy and technical issues on the horizon



Future matters affecting pensions / education sector?

- Guaranteed Minimum Pensions (GMP) - completion of the GMP reconciliation exercise in early 2019, rectification of pension payments in 2019 and possible conversion of GMPs to scheme benefits from 2021 onwards.
- BT challenge commenced legal action against the Government's plans for indexation and equalisation for public service pension schemes.
- Exit payments and the impact on Premature Retirement compensation.
- Will the pensions dashboard come to fruition?
- Budget - Monday 29 October 2018 - What does the Chancellor have in store?
- The lead up to Brexit - and after.
- Opposition proposals for decentralisation in education, scrapping free schools and allowing local authorities to step in where schools are failing. Also equal rights for workers from day one and a State funded supply agency.

Concluding remarks

- One thing is certain - Political uncertainty.
- It's likely to be a busy time ahead for all of us!

Caveat

- These slides are based on TP PATT's understanding of the overriding legislation, regulations and the current policy position.
- In all matters, employers and delegates should consider taking legal advice in connection with the subjects raised.

ANY QUESTIONS?

