

**PENSION FUND COMMITTEE**  
**05 MARCH 2021**

**ADDENDA – ADDITIONAL RECOMMENDATION AND ASSOCIATED  
BACKGROUND TO AGENDA ITEM 16 – ADMINISTRATION REPORT**

**New Recommendation**

- d) **determine whether they wish to amend the Scheme Pays Policy to allow members to make backdated applications, for voluntary scheme pays elections, to the Fund, providing the Fund has the legal authority to accept these. All applications will be subject to the scheme member agreeing to meet all additional charges and costs, and Pension Services having the necessary resources to administer the late application.**

**Background Information**

1. In December 2017 this committee exercised their discretion to introduce a policy of voluntary scheme pays for scheme members with tapered annual allowances to elect for the Fund to pay their tax charge not covered by the mandatory scheme. The Fund would recover the cost through reductions to the member's future pension benefits.
2. The Policy stated that any voluntary scheme pays election should meet same criteria as applied to mandatory scheme pays:
  - (i) Tax charge must be in excess of £2,000
  - (ii) Election must be made by 30 November following tax year end
  - (iii) Payment of monies to HMRC by 31 January following tax year end.
3. A scheme member is now asking whether this committee would consider extending the scope of this policy so that retrospective voluntary scheme pays applications can be made where the deadlines for meeting a mandatory application have been missed.
4. This scheme member has exceeded their annual allowance for several years – 2016/2017, 2017/2018 and 2018/2019 and is asking if the Fund would accept a retrospective application for voluntary scheme pays. Under the current policy such an application cannot be accepted as it fails to meet the deadlines included within the Policy.
5. The scheme member has challenged the current policy. Therefore, officers have sought further advice which indicates that, providing the Fund is satisfied that they have the legal powers to do so, that they can pay the member's annual allowance charge on a voluntary basis.

6. Late payment of these monies will incur charges for both interest and late payments which should fall to the scheme member for payment. There is, however, some concern on the mechanics of how HMRC would process this and whether the charge would be made to the Fund rather than the individual, which could be an administrative challenge to resolve.

### **Legal Implications**

7. Local Government Association guidance does not specifically cover this situation. However, paragraph 191 states “*Where a member does not meet the conditions for ‘mandatory scheme pays’ to apply or they do not make their nomination in time, the scheme administrator or, in the case of a Scheme such as the LGPS which is covered by the Registered Pension Schemes (Splitting of Schemes) Regulations 2006 [SI 2006/569], the sub-scheme administrator, may agree (if they have the vires to do so) to pay the member’s annual allowance charge on a voluntary basis.*”
8. The Fund therefore needs to be satisfied that it has the legal power to accept a backdated election – this has been referred to Legal for advice.

### **Staffing Implications**

9. An initial assessment indicates that given the retrospective nature of the application, there would need to be manual intervention in the calculations; manual intervention to correct system records and it unclear whether what level of correspondence with HMRC will be needed to ensure that any fines and charges for late payment are sent to the scheme member rather than the Fund. Any additional administration resources should be chargeable to the scheme member.
10. As noted elsewhere in this report, there are insufficient trained resources in the team to meet the current service level targets, so any application would need to be determined in light of whether sufficient resources could be identified (e.g. through agreed overtime) to undertake the necessary administration