

PART ONE - PUBLIC

Decision Maker: GENERAL PURPOSES AND LICENSING COMMITTEE
COUNCIL

Date: 14th February 2013
27th February 2013

Decision Type: Non Urgent Non-Executive Non-Key

Title: WORKPLACE PENSIONS: AUTOMATIC ENROLMENT

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Chief Officer: Mark Bowen, Director of Resources
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Ward: Borough Wide

1. Reason for report

- 1.1 Under reforms originally introduced in the Pensions Act 2008, every employer will be required to automatically enrol their eligible jobholders into a pension scheme and to pay contributions to that scheme in respect of that worker with effect from a "staging date". Automatic enrolment is being phased in between 1st October 2012 for the largest employers, extending to 2017 for small employers. The Council's 'staging date' for its own workers, including teachers, is 1st March 2013.
- 1.2 This report considers how this requirement sits with the Council's current pension arrangements, including the impact on those employees who have previously decided to opt out of the Local Government Pension Scheme (LGPS) or the Teachers Pension Scheme (TPS).
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2. RECOMMENDATION(S)

The General Purposes and Licensing Committee is recommended to:

- 2.1 Agree to use the transitional period to defer automatic enrolment for eligible jobholders who, on 1st March 2013, are not members of either the LGPS or the TPS on the basis that they have previously opted out and have the right to join the relevant scheme at any time whilst they continue in employment (see paras. 3.14 to 3.16 below).
- 2.2 Recommend to Council that authority be delegated to the Assistant Chief Executive (HR) and the Finance Director to:
- (i) use postponement for workers on short-term contracts and in circumstances where it aids administrative processes;
 - (ii) take all necessary action to ensure that the Council's responsibilities under the requirements of automatic enrolment are met.

Corporate Policy

1. Policy Status: Existing Policy The Council's Pension Fund is a defined benefit scheme operated under the provisions of the Local Government Pension Scheme (LGPS) Regulations for the purpose of providing pension benefits for its employees
 2. BBB Priority: Excellent Council
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Financial

1. Cost of proposal: It is not currently possible to quantify the financial impact of meeting the new requirements.
 2. Ongoing costs: N/A
 3. Budget head/performance centre: Pension Fund
 4. Total current budget for this head: £34.3m expenditure (pensions, lump sums, etc.), £41.3m income (contributions, investment income, etc.), £526.0m total fund market value at 31st December 2012.
 5. Source of funding: Contributions to Pension Fund.
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Staff

1. Number of staff (current and additional): 3,720 fte's (per 2012/13 budget) which includes 1,510 fte's for delegated budgets to schools.
 2. If from existing staff resources, number of staff hours: N/A
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Legal

1. Legal Requirement: Statutory Requirement : Pensions Act 2008 (as amended)
 2. Call-in: Call-in is not applicable
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): 5,054 current employees in the pension fund, 4,718 pensioners, 4,380 deferred pensioners as at 31st December 2012. These figures represent the whole fund, including LBB staff, scheduled and admitted bodies who are all affected by the proposals.
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments: Council Wide

3. COMMENTARY

Background

- 3.1 Automatic enrolment was one of the key recommendations of the independent Pensions Commission, which reported in October 2004 and November 2005, in response to findings that people are living longer and not saving enough to provide an adequate income in retirement. The Pensions Act 2008 laid the foundations for fundamental change requiring every employer to automatically enrol their eligible jobholders into a qualifying pension scheme and to pay contributions to that scheme. Since the framework was introduced there have been changes to the 2008 Act, several statutory instruments issued, and further draft legislation on implementation proposed.
- 3.2 Automatic enrolment is a statutory duty for employers, both in the private and public sector. The vast majority of the provisions relating to automatic enrolment (as set out in the Pensions Act 2008 and related Statutory Instruments) relate to duties and responsibilities placed on employers, not the Pension Fund administering authority. Robust measures are required to address processes and procedures and this work will be undertaken in partnership with the Council's external provider, Liberata.
- 3.3 The new law takes effect from 1st October 2012 and over a phased period requires all employers, both public and private sector, to:
- provide a qualifying scheme for workers
 - provide information to all workers on workplace pension reform, including rights to opt-in and/or opt-out
 - automatically assess all workers and automatically enrol all eligible jobholders into the scheme and enrol all other jobholders if they ask to join
 - pay employer contributions to the scheme
 - register with the Pensions Regulator and provide details of the scheme(s) and the number of people that have been automatically enrolled
 - keep specified records of optants out, and continually monitor age and pay of employees which may trigger a duty under automatic enrolment
- 3.4 Workers are employees who work under a contract of employment or have a contract to perform work or services personally and are not undertaking the work as part of their own business. An elected member is not classified as a jobholder. Under the rules on automatic enrolment workers fall into three categories:

AUTOMATIC ENROLMENT		
	Criteria	Requirement
Eligible jobholders	Aged 22 - State pension age (SPA) Earning above £8,105*	Must be automatically enrolled to a qualifying pension scheme
Non-eligible jobholders	Aged 16 - 21 or SPA - 74 Earning above £8,105* OR Aged 16 - 74 Earning above £5,564 but below £8,105*	Have a right to join to join a qualifying pension scheme
Entitled workers	Aged 16 - 74 Earning below £5,564*	Have a right to join a pension scheme but this need not be a qualifying pension scheme

* Figures for 2012-2013 tax year; increases to £9,440 from 01/04/13

- 3.5 Under automatic enrolment eligible jobholders may still choose to opt out of the qualifying pension scheme but the new rules make it more difficult for workers to do so. For example, they may only opt out after they have started work and been automatically enrolled or opted in whereas previously they were able to opt out in advance. Eligible jobholders who have opted out will also have to be re-enrolled at least every three years. It became unlawful from 1st July 2012 to encourage employees to opt out of the Scheme, have recruitment practices that benefit job applicants who indicate that they are prepared to opt out, or to treat an employee unfairly or put them at a disadvantage because of automatic enrolment.
- 3.6 The new employer duties are being introduced in stages between October 2012 and 2018. The Pensions Regulator will allocate a 'staging date' to each employer based on the number of people in an employer's PAYE scheme. The Pensions Regulator has notified the Council that its staging date is 1st March 2013. This date also applies to any maintained community, voluntary controlled, community special or maintained nursery school because their staff are employees of the Council even if they run their own payroll in-house or have outsourced their payroll function to an external payroll provider, even if they have a separate PAYE reference from the Council. Employees in foundation, voluntary aided or foundation special schools, academies and further and higher education colleges will have their own staging dates unless they share a PAYE scheme reference with the Council.

Effect on the Council's pension arrangements

- 3.7 Both the Local Government Pension Scheme (LGPS) and the Teachers Pension Scheme (TPS) are qualifying schemes for automatic enrolment purposes. Both schemes already provided for employees' contractual enrolment but have been amended to ensure compliance with the new automatic enrolment legislation.
- 3.8 Amendments to the LGPS came into force on 1st October 2012. The main change that immediately affected the Council and other employers in the Bromley Pension Fund was the provision to allow employees with a contract of employment of less than 3 months, who would not currently be eligible, to have the option to apply for Scheme membership.
- 3.9 Amendments to the Teachers Pension Scheme also came into effect on 1st October 2012, the main changes being the reduction in minimum age for joining to age 16 and the abolition of the minimum salary requirement. Where a teacher cannot be permitted to join the Teachers Scheme because of restrictions in that Scheme, the teacher must be automatically enrolled into the LGPS.
- 3.10 The Pensions Regulator has powers to impose substantial penalties for non-compliance with employer duties, although its approach is intended to educate and enable in the first instance. The fixed penalty notice is currently set at £400, but escalating penalty notices can be as high as £10,000 per day and prohibitive recruitment penalty notices as high as £5,000 per day. The Council will also be responsible for any fines incurred by a school maintained by the Council but would seek, in all cases, to pass the cost of any penalties on to the relevant school. Where a school commissions their HR/Payroll services from the Council we will ensure that the necessary processes are in place to avoid such penalties arising.

3.11 The majority of the new automatic enrolment duties fall on the Council as an employer and there is a considerable administrative burden on employers arising from the operation of the new requirements. In this respect work is already in progress to ensure that, in connection with our staging date of 1 March 2013, we:

- review HR and payroll processes and systems to ensure compliance
- review and update contracts of employment
- communicate directly with all staff, including those already in the scheme
- decide whether or not to apply a 'transitional period' in order to defer to 30th September 2017 automatically enrolling staff who are eligible employees on the Council's staging date and who have previously opted out
- decide the circumstances in which 'postponement' should be used in order to avoid payroll difficulties and to meet automatic enrolment legislation where the LGPS and TPS does not provide for contractual enrolment

3.12 As an LGPS administering authority we will also need to:

- review pension processes, forms and guides
- communicate with other employers in the Bromley Fund

3.13 The automatic enrolment legislation is complex and the Pensions Regulator has provided various guides, information, letter templates and webinars for employers and pension schemes. The Local Government Association has also published a Guide for employers and administering authorities which is updated as the requirements become clearer but which already runs to some 160 pages.

Particular Issues requiring consideration

a) Transitional Period

3.14 For existing workers as at 1st March 2013, the Council has the option to defer the automatic enrolment of eligible jobholders (see para. 3.4 above) who opted out of the LGPS or TPS prior to 1st March 2013 until a fixed date of 30th September 2017. The transitional period can be used for any or all eligible jobholders, and does not need to be the same for teaching and non-teaching staff. Other LGPS employers in the Fund also have this option, and do not have to follow the Council's decision. If the transitional period is used there is no duty to assess or automatically enrol affected staff until 2017, although the employee may choose to join at any time under the relevant pension scheme regulations. On the last day of the transitional period each employee must be assessed and automatically enrolled if they are an eligible jobholder at that time.

3.15 By using the transitional period to delay automatic enrolment the Council will not incur the increased cost of employer contributions to the LGPS or TPS, unless of course the employee decides to exercise their right to opt in before 30th September 2017. Under auto-enrolment eligible jobholders can only opt out of the qualifying pension scheme after they have been automatically enrolled and use of the transitional delay will therefore also save administrative time and cost in setting up pension deductions on the payroll and then refunding them if the employee subsequently opts out within a three month period. If the Council chooses to use the transitional period, each employee must be written to individually to inform them of the Council's decision and to remind them of their right to opt to join by giving written notice.

3.16 The transitional period cannot be used for non-eligible job-holders or entitled workers (see para. 3.4 above). These employees will not be automatically enrolled on 1st March 2013, but must be provided with information telling them about their right to join. If at any date after 1st March 2013 they become an eligible jobholder for the first time (i.e. their earnings are increased to £8,105 or more and they are between age 22 and state pension age) they must be automatically enrolled.

b) Postponement

3.17 Postponement (or waiting period) is an added flexibility that may be used to suspend the duty of assessment and automatic enrolment from 1 day up to 3 months, and can vary by individual. Periods of postponement cannot overlap or be used consecutively. An employee has the right to opt in during postponement and it is only the automatic enrolment process that is suspended. On the last day of the postponement, the employee must be assessed and automatically enrolled if they are an eligible jobholder.

3.18 The Council will need to use postponement in various circumstances, in particular for eligible employees with a contract of employment of less than 3 months and casual staff. This is because the rules do not allow for these employees to be contractually enrolled automatically into the LGPS although they may opt to join if they wish. As they are not contractually enrolled on starting a postponement notice must therefore be issued.

3.19 The Council may also use postponement to aid administrative and payroll processes. These circumstances may include postponing the automatic enrolment duty for a member of staff:

- who triggers automatic enrolment just before ceasing employment, or
- who triggers automatic enrolment because of a rare spike in earnings (eg. backdated pay arrears or pay for working additional hours), or
- where part-period earnings temporarily changes the category in which a member of staff falls.

This list is not exhaustive, and further situations may arise once automatic enrolment is operative.

c) Communication with staff

3.20 The Council is required to provide every member of staff with information about automatic enrolment and how it affects them, irrespective of whether they are already a member of the LGPS or TPS. The information must be given in writing and must be direct to each individual (eg. by letter or email). The letter or email must give specified information and cannot merely signpost an individual to an intranet or internet site or to a poster. Staff were alerted to automatic enrolment in the recent pensions newsletter and will be written to individually within the required timescales of the Council's staging date of 1st March 2013. Contracts of employment have also been amended to provide the necessary detail for newly recruited staff to the Council.

4. POLICY IMPLICATIONS

4.1 The Council's Pension Fund is a defined benefit scheme operated under the provisions of the Local Government Pension Scheme (LGPS) Regulations for the purpose of providing pension benefits for its employees.

5. FINANCIAL IMPLICATIONS

- 5.1 It is not possible to estimate with any degree of accuracy the financial impact of an increase in employer pension contributions arising from the full implementation of auto-enrolment. Work is currently underway to identify those staff who qualify as 'eligible employees' and would therefore need to be automatically enrolled. It is also difficult to estimate the number of employees who will elect to opt-out of the scheme after they have been automatically enrolled.
- 5.2 It is estimated that around 12% - 15% of current 'full-time equivalent' employees are not in the pension scheme (excluding schools and casual staff). As an illustrative example, if 100 'eligible employees' who are not currently in the scheme were automatically enrolled and did not elect to opt-out, additional employer contributions of around £370k per annum would be incurred (based on an average salary of £25k and the current employer contribution rate of 14.7%).
- 5.3 There will also be a financial impact on the Pension Fund should membership significantly increase. The impact of this will be dependent upon a number of factors including the level of employee contributions, period of membership and age profile of scheme members. The impact may not be known for some time and is unlikely to be separately identifiable within the triennial actuarial valuations.
- 5.4 As detailed in the report, there is a considerable administrative burden arising from the implementation and operation of the new requirements. Whilst every effort will be made to accommodate this within existing resources, the vast majority of the additional work required will fall to payroll and, to some degree, pensions. Until processes are more specifically defined, it is not possible to quantify the impact but it is expected that there will be additional cost implications for the contract to meet these additional responsibilities. Any requirement for additional costs that cannot be contained within existing budgets will be subject to a request for funding to the Executive.

6. LEGAL IMPLICATIONS

- 6.1 As is set out in the report, the Pensions Act 2008 (as amended) and subsequent regulations have introduced and set the timetable for the auto-enrolment provisions.

7. PERSONNEL IMPLICATIONS

- 7.1 The Corporate Trade Union and Departmental Representative Group were briefed on automatic enrolment, including the proposal to use the transitional period for existing staff, in November 2012.
- 7.2 All other considerations are as set out in this report.

Non-Applicable Sections:	None
Background Documents: (Access via Contact Officer)	http://www.thepensionsregulator.gov.uk/automatic-enrolment.aspx http://www.lge.gov.uk/lge/core/page.do?pageId=17995528