Business Services Association
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BSA March Budget Supplement – Pensions

1. Introduction

This document is a supplement to the BSA's budget later dated 27th January 2020. BSA members deliver a broad range of pension schemes, our comments below reflect their views on the issues most affecting them.

The Business Services Association – the BSA - brings together those who are interested in delivering efficient, flexible and cost-effective service and infrastructure projects across the private and public sectors. A list of our members is attached as an Annex. They include large and small businesses, charities and social enterprises.

The sector includes ICT, facilities management, construction and infrastructure provision and other project delivery. 70 per cent of services are provided business-to-business and 30 per cent for the public sector. The sector employs 3.3 million people across the UK, accounting for around 1 in 10 jobs. As such it is an important driver of inclusive economic growth across every region and community.

We are particularly interested in the government's response to MHCLG's consultation: *Local Government Pension Scheme: Fair Deal – Strengthening pension protection*. Clarity on funding arrangements is required for contracting and administering authorities, it remains unclear how risk sharing of costs will be split between contractors and administering authorities. This consultation was published in January 2019 yet an explanation has not been provided as to why it has been delayed as recommended under Cabinet Office guidance.

2. Fair Deal in the Local Government Pension Scheme

The BSA is broadly supportive of the previous government's proposal to apply Fair Deal to the Local Government Pension Scheme (LGPS) as a replacement for the current statutory provisions.

Our overriding priority for business services remains bringing broad alignment between central and local government through the consistent application of Fair Deal. We outlined our priorities in our submission to MCHLG's consultation on strengthening Fair Deal protection in LGPS pensions scheme in July 2019.

Nevertheless, our submission outlined some concerns our members had with the current proposals:

- Independent providers will no longer have the option of providing transferred staff with access to a broadly comparable scheme instead, employees will be required to have continued access to the LGPS. This goes further than HM Treasury Guidance on Fair Deal issued in October 2013 which does permit access to a broadly comparable scheme in certain circumstances.
- The introduction of a direct obligation on the employer of a protected transferee to provide access to the Scheme to protected transferees. This means Fair Deal employers are obliged by the regulations to provide pension protection and accept the full risk including funding

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risk and contributions risk over which they have no influence or control. This will particularly impact SMEs who may not be aware of these risks.

- The introduction of a “deemed employer” route for Fair Deal employers to use is beneficial but it is not clear to what extent this would be permitted.
- Further, it remains unclear whether there would still be bond requirements where the ‘deemed employer’ approach is taken, but the service provider takes on some of the funding liability.
- New provisions are included to allow for a new employer to step into the shoes of an existing Admission Body without an exit liability calculation when a new contractor takes over by way of acquisition or merger. While we welcome this flexibility, we advise that this be "de-coupled" from the Fair Deal consultation as there are more specific risks involved in this exercise that need further and more detailed consideration.
- Obligations for Fair Deal employers and service providers to determine when an employee is no longer a “protected transferee” is unclear.

3. Net Pay Relief

We welcome that the Government has committed to changing this anomaly which impacts on non-taxpaying workers who do not benefit from the tax relief that is available to other workers.

However, we caution against making changes to the wider taxation position around pensions or adopting an approach which simply shifts the unfairness from, say, non-tax paying workers to higher rate tax paying workers.

Any changes should be fair and equitable to ensure that all workers are incentivised to save for their retirement.

4. Tapered annual allowance

In August 2019, HM Treasury announced it would review how the tapered annual allowance supports the delivery of public services such as the NHS. The BSA believes the new government should commit to carry out this review and we welcome the commitment to assist affected health service workers.

We set out our priorities in our submission to DHSC’s consultation on NHS Pension Scheme flexibilities in November 2019. The BSA called for the government to remove the annual allowance taper charge or introduce flexibilities across the NHS workforce.

We would also like to see this approach broadly taken across both the public and private sector more widely. The tapered annual allowance is a complex and penal regime which hits people who have long service in defined benefit pension schemes and those who do not have the flexibility to vary their annual pension contributions. Lower and moderately paid staff may welcome the opportunity to build up savings for their future retirement. It may also help to maintain good relations across the entire workforce.

Nevertheless, increased flexibilities will not be able to account for the increased monitoring of individuals pensions and some level of professional assistance which was not required before the

taper was introduced. This approach could be seen as a “tax” on higher earners and prevent lower paid staff from taking professional advice.

Proposals to gradually include large pay increases in pensionable income for high earning staff may disincentivise staff whose performance deserves reward.

Under the original tax regime, this proportion of earnings would have been paid tax free into the Scheme – under the proposals, the Exchequer will take up to 45% of those earnings.

Although we welcome the proposal to increase the threshold for the taper being applied from £110,000 of earnings to £150,000 of earnings, this does not rectify the problem and is, at best, a sticking plaster on a gaping wound.

Similarly, the issue has been considered in the context of senior clinicians in the NHS where in actual fact the problem is much more widespread in the public and private sector with reports recently that air traffic controllers are considering their working patterns because of this penal tax.

The only realistic solution to rectify the problems currently being faced by many essential and non-essential workers will only be rectified by the removal of the tapered annual allowance.

5. **Non-tapered annual allowance**

The drastic reductions in the more general annual allowance over the last four or five years are also having consequences which we believe that the Government did not intend.

Many ill-health pensions are based not on service until the day the individual falls ill and qualifies for his or her benefits being brought in to payment but on prospective service based on the pensionable service the individual could have accrued up to his or her normal retirement date had he or she not suffered a significant impairment to his or her health.

These schemes are set up with the best of intentions – where an individual cannot work, he or she is not penalised for an illness or infirmity which is unlikely to be his or her fault.

Where an ill-health pension on this basis is brought in to payment, most schemes will monitor the pensioner and will have a “policing power” to reduce any ill-health pension in payment should the pensioner take up remunerated work.

BSA member organisations have been required to provide retirement and ill-health benefits which are “broadly comparable” to those common in the public sector schemes and these generally include the generous ill-health terms and the “abatement” ability to reduce pensions in payment where the pensioner is earning elsewhere.

However, where a pension based on prospective service is brought in to payment, this can lead to a benefit in the first year significantly exceeding a member’s annual allowance amount and end up with a person who is trying to come to terms with a material detriment to his or her health and significantly changed personal circumstances being also faced with a large tax liability.

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We do not believe that this was the intention of Government when the annual allowance was introduced nor when it was reduced and we encourage the Government to consider some form of easement from the annual allowance charge for people in these circumstances.

6. **Employer contribution increases in unfunded pension schemes**

Safeguards need to be in place for employers to prevent knee-jerk actions by authorities imposing on those employer's unreasonable contribution requirements.

We acknowledge that safeguards are in place for public sector employers and quasi-public sector employers but a "two-tier" system by which independent providers who are required by Fair Deal to participate in the public service schemes do not have the protection given to public sector employers in the same scheme is both iniquitous and inequitable.

7. **Funding under the Local Government Pension Scheme and consultation on the valuation timing**

The LGPS is currently undergoing its March 2019 valuation outcome and the view is broadly that employer contributions will rise for employers who participate in the LGPS, in some cases to unsustainable levels particularly for charity, not-for-profit and SME employers who are required to participate under the Local Government Act 2003 and the Best Value Authorities Staff Transfer (Pensions) Direction 2007.

As we set out in our reply to the consultation on the valuation cycles for the LGPS, there are concerns that some administering authorities will take a more conservative approach to funding as, in a four year valuation cycle, the risk falls over a longer period of time and the monitoring and cost consequences which can lead to additional costs and expense for Scheme employers (particularly tier 4 scheme employers).

Risks remain around quadrennial valuation cycles which makes the mark-to-market approaches less prudent. Taking a "snapshot" of the market value of investments on one day in a four-year cycle prospectively increases volatility and makes risk a higher factor than over, say a three or a two-year period. Alternatives to mark-to-market have been put forward by members of the actuarial profession and may be more appropriate for the longer valuation cycles proposed.

For tier four employers, when an admission agreement comes to an end, many of the staff are transferred to a new supplier and will continue in the Scheme on an ongoing basis. To seek to levy an exit contribution amount on an outgoing employer – whether through deferred employer provisions or otherwise – for these continuing active members is both unfair and uneconomic. The members will continue to be active members funded by an ongoing employer; they should not be treated in the same way as deferred members with no ongoing supporting employer.

On a related basis, we note that certain administering authorities are now proposing to issue admission agreements with passthrough provisions contained in the tri-partite admission agreement so binding the contracting authority, the admission body and the administering authority. This is a departure from the previous policy where any passthrough provisions were only contained in the

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commercial contract between the contractor and the contracting authority and the administering authority was not a party to this agreement.

The BSA welcomes the new approach as it will provide clarity and consequent value for money for all parties.

However, we do sound a note of caution in that if this policy is to be adopted, it should be adopted by all LGPS Funds and applied in a consistent manner. As a consequence, we recommend that MHCLG issue binding guidance on all administering authorities to ensure that:

- The approach taken to passthrough is consistent across all administering authorities; and
- The approach to passthrough is consistent between any admission agreement and the terms of any commercial contract.