ASSOCIATION OF
aca
CONSULTING ACTUARIES

Warnford Court, 29 Throgmorton Street, London EC2N 2AT
Tel: +44 (0)20 7382 4594 Fax: +44 (0)20 7374 6220 EMail: acahelp@aca.org.uk
Web: www.aca.org.uk

24 September 2007

Nicola Rochester
Communities and Local Government
Zone 2/F7 Ashdown House
123 Victoria Street
London
SW1E 6DE

Dear Nicola

Local Government Pension Scheme
Rule of 85 Protections

I am responding on behalf of the Public Sector Outsourcing Committee ("the PSO Committee") of the Association of Consulting Actuaries (the ACA) to Terry Crossley's letter of 5 July 2007, regarding the proposal to extend the current protections under the Rule of 85, within the Local Government Pension Scheme (LGPS).

Members of the ACA provide advice to thousands of pension schemes, including most of the country's largest schemes. Members of the Association are all qualified actuaries and are subject to the code of professional conduct of the Faculty and the Institute of Actuaries. Advice given to clients is independent and impartial. ACA members include the scheme actuaries to schemes covering the majority of members of defined benefit pension schemes.

The ACA is the representative body for consulting actuaries, whilst the Faculty and Institute of Actuaries are the professional bodies.

The PSO Committee's main concern is that the process for changing the Rule of 85 has not been helpful, in that following initial changes which have been taken on board by contractors, further changes are now being proposed that could result in contractors having to spend more time and expense to ensure their pension schemes comply with these additional terms.

As you may be aware, the Government Actuary's Department (GAD) withdrew all LGPS certificates of broad comparability ("passports") for contractors' schemes in May this year, following the forthcoming changes to the LGPS being finalised in April. Many contractors have invested considerable time and expense in putting in place new arrangements which satisfy GAD's LGPS passport requirements taking into account the changes in their current form. If further changes to the LGPS are agreed following this consultation, contractors will incur further costs, which should have been unnecessary if the new LGPS arrangements had been finalised “once-and-for-all” in April.

A further issue is that there has been a court opinion that the Rule of 85 is age discriminatory and so retention in any form will require objective justification. Whilst this may be possible for local authorities, it is likely to be more difficult for contractors to objectively justify this treatment, since on the whole, their workforces are likely to be subject to different terms and conditions to those of local authorities. Extending the protection for the Rule of 85 within the LGPS will increase the likelihood of members bringing claims of age discrimination and higher potential benefit costs for contractors if these claims are successful.

Finally, we note that the new proposals are expected to be financed within the existing cost basis of the LGPS. This will result in either:

1. All members having to pay higher contributions or receiving lower benefits (outside of the Rule of 85 provisions). Given that the current proposals to change the Rule of 85 will only benefit a specific group of older members, this will leave younger members on worse benefit terms overall, without the benefit of the improved Rule of 85 provisions. At least under the terms currently in place these members do not suffer any reduction in benefit/higher contributions, even though they do not benefit from the extension of the Rule of 85 provisions, or

2. Those members affected by the changes would have to pay for the value of their enhanced benefits. If there is to be “true” cost neutrality, members could provide for these benefits by paying AVCs and so not upset the overall benefit structure.

In conclusion, the PSO Committee believes that to further extend the terms of the Rule of 85 will create unnecessary additional costs on contractors from having to amend their current benefit structures. In addition, this will increase the risk of schemes having to defend claims of age discrimination, and if they lose, incurring higher benefit costs than they had expected from taking on local authority contracts.

Kind regards,

Yours sincerely,

David Keeler
On behalf of the Association of Consulting Actuaries’ Public Sector Outsourcing Committee