City of
BRADFORD
METROPOLITAN DISTRICT COUNCIL

Report of the Director, West Yorkshire Pension Fund, to the meeting of West Yorkshire Pension Fund Pension Board to be held on 13 August 2019

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Subject: Local Government Pension Scheme Regulations update

Summary statement:

This report updates the Joint Advisory Group on changes to the Local Government Pension Scheme (LGPS) 2014 and provides information on associated matters.

Recommendation

It is recommended that the Local Pension Board note this report

Rodney Barton
Director

Portfolio

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Overview & Scrutiny Area

1. **Background**

1.1 The career average Local Government Pension Scheme (LGPS) was introduced on 1 April 2014.

1.2 Since the introduction of the new LGPS there have been a number of consultations on proposed changes to the LGPS, following which amendment regulations have been issued.

2 **Consultation on Fair Deal – Strengthening pension protection**

2.1 On 10 January 2019 MHCLG issued a consultation on Fair Deal – Strengthening pension protection.

2.2 This consultation sought views on proposals to amend the rules of the LGPS that would require service providers to offer LGPS membership to individuals who have been compulsorily transferred from an LGPS employer. The proposals include a new approach to achieve this, the 'deemed employer', as an alternative to obtaining admission body status. The consultation also includes proposals that would automatically transfer assets and liabilities when employers in the Scheme are involved in a merger or takeover. The proposals are broadly welcomed.

2.3 The consultation closed on 4 April 2019 and a copy of WYPF's response is attached at Appendix 1.

3 **Consultation on Revised Late Retirement Factors**

3.1 MHCLG issued a technical consultation on the implementation of new late retirement factors proposed from 1 May 2019. MHCLG does not normally consult on actuarial guidance but have done so in this instance due to the significant change to the methodology being proposed. The consultation closed on 17 April 2019 and a copy of WYPF's response is at Appendix 2.

3.2 On 1 July 2019 MHCLG issued revised guidance on late retirement factors. This guidance will come into force on 1 September 2019.

4 **Consultation: Local valuation cycle and the management of employer risk**

4.1 On 8 May 2019 MHCLG issued a 12 week policy consultation called 'LGPS: Changes to the local valuation cycle and the management of employer risk'. The consultation documents are available on the scheme consultations page of www.lgpsregs.org

4.2 The consultation closed on 31 July 2019 and covers the following areas:

- amendments to the local fund valuations from the current 3 year (triennial) to a 4-year (quadrennial) cycle
- a number of measures aimed at mitigating the risks of moving from a triennial to a quadrennial cycle
- proposals for flexibility on exit payments
- proposals for further policy changes to exit credits

- proposals for changes to the employers required to offer local government pension scheme membership

4.3 Regarding the change to exit credit payments, given that the consultation proposes backdating the change, LGA are of the view that it would be legitimate to delay payment of an exit credit (where a side agreement was in place) pending the consultation outcome.

4.4 A copy of WYPF's response is attached at Appendix 3.

5 Other LGPS matters

5.1 Post 2014 Deferred Refund, member left more than five years ago

The LGPS Regulations 2013 require that a member who left the scheme after 31/03/2014 and who are only entitled to a preserved refund have a 5 year deadline for claiming the payment.

The National Technical Group has contacted the Scheme Advisory Board (SAB) to request a change in the LGPS Regulations 2013 to remove the requirement for a refund to be paid within five years. Unless and until such a change is made, the rules apply as they stand.

5.2 Scheme Advisory Board (SAB) 2018 annual report

The 2018 annual report has recently been published by the Scheme Advisory Board.

The aim of the annual report is to provide a single source of information about the status of the LGPS for its members, employers, and other stakeholders. It aggregates information supplied in the 89 fund annual reports, as at 31 March 2018.

Key highlights:

- The total membership of the LGPS grew by 197,000 (3.4%) to 5.8m members in 2018 from 5.6m in 2017
- The total assets of the LGPS increased to £275bn (a change of 5%). These assets were invested in pooled investment vehicles (54%), public equities (29%), bonds (7%), direct property (3%), as well as other asset classes (7%)
- The local authority return on investment over 2017/2018 was 4.4%. This was reflective of the market conditions during the year and set against the UK Return of 0.2%
- The Scheme maintained a positive cash-flow position overall. Scheme income was higher than total scheme outgoings by £500m; this is including investment income
- Over 1.7m pensioners were paid over the year.

The full report can be viewed on the Scheme Advisory Board website at http://www.lgpsboard.org/index.php/schemedata/scheme-annual-report.

5.3 **Actuarial Factors**

(MHCLG) has issued revised Government Actuary's Department Guidance and factors for:

- Purchase of additional pension;
- Lifetime allowance;
- Annual allowance scheme pays;
- Pension credit to the former spouse or civil partner of a member;
- Inverse commutation;
- Conversion of AVCs to transfer credits;
- Conversion of accumulated AVCs for added pension (pre 2014); and
- Conversion of accumulated AVCs for added pension (post 2014).

5.4 **Revised Club memorandum published – effective from 1 April 2019**

In March 2019 a revised version of the Club Memorandum, including new Club transfer factors, was published. The new Club Memorandum is effective from 1 April 2019.

MHCLG have updated the actuarial factor spreadsheet for England and Wales to include the new Club factors. The update will also include a revision to the CRA factors.

5.5 **McCloud and valuation guidance**

It was reported on 21 December 2018 that the Court of Appeal held that transitional protections that protected older judges and firefighters from the public sector pension scheme changes in 2015, were unlawfully discriminatory. This case is known as the 'McCloud case'. Following the judgment, on 30 January 2019 the Government published a written statement that paused the HMT cost management process for public service pension schemes, pending the outcome of the application to appeal the McCloud case to the Supreme Court. On 8 February 2019, LGPS England & Wales Scheme Advisory Board (E&W SAB) confirmed it had no option but to pause its own cost management process pending the outcome of McCloud.

As a results administering authorities were asked to inform SAB about their preference concerning the approach to the 2019 valuation. Specifically, whether they would prefer to receive guidance from SAB on how McCloud and cost management should be taken account in the 2019 valuation, or if they would prefer to determine their own approach taking advice from their actuarial adviser.

The majority of funds expressed a preference to receive central guidance which was issued on 14 May 2019.

CIPFA have also provided a separate note on accounting for McCloud and cost management.

The SAB advice note sets out their proposed approach in five key points and administering authorities are been encouraged to discuss this approach, together with the CIPFA guidance note, with their actuaries.

Earlier than expected, the Supreme Court, on 27 June 2019, denied the Government's request for an appeal in the McCloud case in respect of age discrimination and pension protection. Further news will follow once we can confirm the next steps in the process.

5.6 Consultation on restricting exit payments

On 10 April 2019 HM Treasury opened a 12 week consultation called 'Restricting exit payments in the public sector: consultation on implementation of regulations'. The consultation documents can viewed on the non-scheme consultation page of www.lgpsregs.org. The consultation closed on 3 July 2019.

5.7 Scheme Advisory Board's Good Governance Report

Earlier in the year the Scheme Advisory Board commissioned Hymans Robertson to prepare a report on the effectiveness of current LGPS governance models and to consider alternatives or enhancements to existing governance models which can strengthen LGPS going forward.

On 31 July 2019 the Scheme Advisory Board published this report, which can be viewed at http://lgpsboard.org/images/PDF/GGreport.pdf.

6 Other Pension Matters

6.1 The Money and Pensions Service

The Government provided free financial guidance and debt advice through three services, Pensions Wise, The Pensions Advisory Service (TPAS), and the Money Advice Service (MAS). On 1 April 2019 these were replaced by one new single financial guidance body (SFGB). On 6 April 2019 the SFGB was re- named the Money and Pensions Service.

The Money and Pensions Service has published its Business Plan, in which it confirms that for the initial 'transition' year, customers will still be able to access services through Pension Wise, The Pensions Advisory Service (TPAS) and Money Advice Service (MAS).

6.2 Pension Dashboards

The DWP consultation on the introduction of pension dashboards closed on 28 January 2019. The government published its response to the consultation on 4 April 2019. You can find the consultation documents, the Local Government Association (LGA) response and the government response to the consultation on:

- The non-scheme consultations page of www.lgpsregs.org
- The non-scheme consultations page of www.scotlgpsregs.org

Key details of the government's plans include:

- Legislation to compel pension providers to make consumers' data available on the dashboard
- Staged onboarding of schemes with the majority of schemes participating within 3 to 4 years
- The inclusion of state pension data
- A commitment to multiple dashboards, with a non-commercial dashboard being overseen by the Money and Pensions Service.

7 Recommendation

It is recommended that the Joint Advisory Group note the report.

Appendices

Appendix 1 – WYPF response to MHCLG consultation on Fair Deal

Appendix 2 – WYPF response to MHCLG consultation on revised late retirement factors

Appendix 3 – WYPF response to MHCLG consultation on Local valuation cycle and the management of employer risk

Appendix 1

Dear Sir

Local Government Pension Scheme: Fair Deal – Strengthening pension protection

I refer to the consultation opened on 10 January 2019 seeking comments on changes to the Local Government Pension Scheme (LGPS) to incorporate Fair Deal provisions.

West Yorkshire Pension Fund (WYPF) welcomes the proposed changes and below are WYPF's comments on the questions asked in the consultation:

Chapter 2 – Fair Deal

Q1 - Do you agree with this definition? (points 7 to 18)

In principle WYPF agree with the definition and agree that LGPS employers must ensure protected transferees are given access to membership of the LGPS for so long as they have an entitlement to membership of the LGPS.

I can confirm WYPF are happy with the proposal in paragraph 17 to not allow membership of the LGPS where membership is allowed in another public sector pension scheme.

Q2 – Do you agree with this definition of a Fair Deal employer? (points 19 to 23)

WYPF agree with the definition of a Fair Deal employer and welcome the proposal that non-Fair Deal employers which undertake an outsourcing could still allow continued access to LGPS via the admission body route.

Q3 – Do you agree with these transitional measures? (points 24 to 26)

WYPF agrees with the transitional measures proposed in the consultation.

Q4 – Do you agree with our proposals regarding the calculation of inward transfer values? (point 26)

WYPF are happy with the proposed calculation of inward transfers. However, we feel those members who have had a five year break or more, since their TUPE to an employer with a broadly comparable pension scheme, and have not transferred their deferred benefits to the broadly comparable pension scheme should still be allowed the final salary link for this membership on linking it to their new period of membership. WYPF feel it is unfair to limit those members to CARE benefits when the break was outside their control.

Q5 – Do you agree with our proposals on deemed employer status? (points 27 to 39)

In principle WYPF supports the proposal on deemed employer route, however, there could be a number of practical issues and it is therefore imperative that the accompanying guidance provides clear information on the responsibilities of all parties involved in the process. As an example, where, a school, on converting to an academy enters in an agreement with the Local Authority for employees providing cleaning/catering services to remain with the Local Authority, but the academy subsequently awards the contract to another provider it needs to be made clear that these employees will be protected transferees, and the Fair Deal employer will be the academy. We are not convinced that the draft regulations provide for this scenario.

In regards to points 32 and 37 WYPF feel that Funds should have the option of having a legal agreement setting out the responsibilities of the service provider. However, the main contract must still detail how the two parties deal with pensions and risk sharing. To this end it would be useful for the guidance to contain draft wording and/or template agreements/pension appendices for contracts.

WYPF feel that the service provider should be able to make its own decisions, however, where this involves a cost there must be a requirement to obtain approval from the Fair Deal employer. The deemed employer must also be required to adopt the discretionary policies of the Fair Deal employer.

Q6 – What should advice from the scheme advisory board contain to ensure that deemed employer status works effectively? (points 27 to 39)

WYPF feel that the guidance needs to make clear who has responsibility for any pension matter. Below are some specific issues that WYPF feel must be covered in the guidance:

- That all employees transferring, and not just members of LGPS are protected employees and must outline the actions required by the deemed employer i.e. all transferring employees should be brought into LGPS with the option to opt out.
- How the deemed employer route would work for accounting purposes.
- Provide a definition of wholly or mainly employed on the delivery of the service or function transferred.

WYPF also feels that the guidance must be to all parties involved in the process, not just administering authorities, and must contain details of the implications of not following the guidance.

Q7 – Should the LGPS Regulations 2013 specify other costs and responsibilities for the service provider where deemed employer status is used? (points 40 to 41)

WYPF feel that by having to have all pension decisions, which could have a cost implication, made by the service provider approved by the Fair Deal employer and with a sufficiently robust contract in place between the Fair Deal employer and service provider no other costs and responsibilities need to be specified.

Q8 – Is this the right approach? (points 42 to 43)

WYPF feel the deemed employer route will be the most appropriate for the majority of outsourcing, but are content that the admission body route will be an option, because this may be more appropriate where the outsourcing is in respect of a large number of members and is expected to be in place for several years.

WYPF feel that it must be made clear that for administrative purposes the Fair Deal employer ultimately retains the full responsibility for any failures, under the regulations, by a service provider or admission body.

Q9 – What further steps can be taken to encourage pension issues to be given and timely consideration by Fair Deal employers when services or functions are outsourced?

WYPF fully support the need to get all parties engaged with dealing with pension matters on outsourcing in a timely manner, however from experience I feel that this is unlikely to happen in all cases. I would hope having guidance, that is readily available to all parties, would improve the engagement of all employers.

Funds should also be encouraged to ensure that they have a Pensions Administration Strategy which clearly sets out responsibilities on outsourcing and implications where they are not complied with e.g. fines or reporting to the Pensions Regulator.

Q10 – Are you aware of any other equalities impacts or of any particular groups with protected characteristics who would be disadvantaged by our Fair Deal proposals?

WYPF feel that all Fair Deal employers must have the same rules applied to them. If certain Fair Deal employers were able to have differing rules their staff could, potentially, have less protection that could impact on their work force, which could be predominately female and lower paid.

Chapter 3 – Transferring pension assets and liabilities

Q11 – Is this the right approach? (points 48 to 53)

WYPF feel this is the right approach.

The regulations or guidance should make it clear that any costs, e.g legal and actuarial, incurred will be rechargeable to the employer.

Q12 – Do the draft regulations effectively achieve our aims?

WYPF feel the draft regulations broadly achieve this aim

Q13 – What should guidance issued by the Secretary of State state regarding the terms of assets and liability transfers?

WYPF feel it is important that the guidance includes a draft asset transfer note that in the majority of circumstances would provide an asset transfer which is fair on both the transferring Fund and new the Fund. For this purpose it may be appropriate to ask for input from the actuarial firms advising Funds.

I trust you will find these comments useful. If you require any further information please do not hesitate to contact me.

Yours faithfully

Tracy Weaver
Technical Services Manager
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Appendix 2

Dear Thahira,

West Yorkshire Pension fund’s view is that the formula is overly complex for such a small increase in benefits and will pose a challenge in communicating the additional benefit a member will gain if they remain in the scheme post NPA. Clearly, this additional complexity will place an additional burden on fund resources, particularly if the system software is not updated in readiness for the effective date, forcing administrators to manually calculate and implement the revised formula.

As the new factors in the main have been increased, it is questionable whether there is a need to implement the proposed complicated approach given there is no “cliff edge” to consider, unlike the previous factor change in 2017. Furthermore, the suggested complicated approach results in the value of member pensions being less as opposed to simply implementing the new factors.

The Fund does not support the use of short–term assumptions within the derivation of factors as this will inevitably lead to frequent revision . This will add to the already onerous administration burden, along with the undermining of member understanding and confidence in the scheme

It would be helpful if the implementation date could be arranged to ensure software providers have had enough time to deliver software updates to avoid the necessity of manual calculations.

Kind regards

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Dear Sir

Local Government Pension Scheme: Changes to the Local Valuation Cycle and the Management of Employer Risk

I refer to the consultation opened on 8 May 2019 seeking comments on changes to the Local Government Pension Scheme (LGPS) on changes to the local valuation cycle and the management of employer risk.

West Yorkshire Pension Fund (WYPF) welcomes the proposed changes and below are WYPF's comments on the questions asked in the consultation:

- **Changes to the LGPS valuation cycle**
  Question 1 – As the Government has brought the LGPS scheme valuation onto the same quadrennial cycle as the other public service schemes, do you agree that LGPS fund valuations should also move from a triennial to a quadrennial valuation cycle?

  WYPF agree that LGPS fund valuations should also move from a triennial to a quadrennial valuation.

  Question 2 - Are there any other risks or matters you think need to be considered, in addition to those identified above, before moving funds to a quadrennial cycle?

  WYPF feel the main risk in moving to a quadrennial valuation cycle is in relation to short term employers, e.g. 1(d) admission bodies, should there be a significant change in market conditions. However, the proposed provisions for interim valuations and being able to issue revised rates and adjustments certificates between valuations should address this risk.

  Question 3 - Do you agree the local fund valuation should be carried out at the same date as the scheme valuation?

  WYPF agree that fund valuations should be carried out at the same date as the Scheme valuation, as not to do so would involve extra work and associated costs.

  Question 4 - Do you agree with our preferred approach to transition to a new LGPS valuation cycle?

  Given WYPF's current funding position and that the LGPS is a long term arrangement, our preference would be for option a, as if necessary, say due to significant change in market conditions, an interim valuation could be carried out.

- **Dealing with changes in circumstances between valuations**
  Question 5 - Do you agree that funds should have the power to carry out an interim valuation in addition to the normal valuation cycle?

  WYPF agree that funds should have the power to carry out interim valuations in specific circumstances.

Question 6 - Do you agree with the safeguards proposed?

WYPF feel that the proposed safeguards seem appropriate and reasonable.

Question 7 – Do you agree with the proposed changes to allow a more flexible review of employer contributions between valuations?

WYPF agree with the proposed changes to allow a more flexible review of employer contributions between valuations, however, consider that funds should also be allowed to review employer contributions between valuations in other circumstances, such as the extension of a 1(d) admission body's contract.

Question 8 – Do you agree that Scheme Advisory Board guidance would be helpful and appropriate to provide some consistency of treatment for scheme employers between funds in using these new tools?

WYPF agree that Scheme Advisory Board guidance would be a helpful, and assist funds in using the proposed new tools.

Question 9 – Are there other or additional areas on which guidance would be needed? Who do you think is best placed to offer that guidance?

At the current time WYPF do not feel that there are any other or additional areas where guidance is necessary. However, WYPF would expect any guidance to be kept under review and updated as necessary.

- **Flexibility on Exit Payments**
  Question 10 – Do you agree that funds should have the flexibility to spread repayments made on a full buy-out basis and do you consider that further protections are required?

WYPF agree that funds should have the flexibility to spread repayment of an exit payment and feel that a period of up to 5 years would be an appropriate timeframe. However, to protect funds, WYPF believe that the regulations should contain provisions that require the payment to be guaranteed by a bond, or an indemnity from the relevant scheduled employer, to protect other employers within the fund.

Question 11 – Do you agree with the introduction of deferred employer status into LGPS?

WYPF agree with the introduction of deferred employer status, but feel that this option should only be open to an employer with significant assets and liabilities in a fund. Giving small employers this options would increase administration, by way of monitoring and the cost of valuations.

Question 12 – Do you agree with the approach to deferred employer debt arrangements set out above? Are there ways in which it could be improved for the LGPS?

WYPF are happy with the proposed approach to employer debt arrangements and do not feel there are ways in which they can be improved.

Question 13 – Do you agree with the above approach to what matters are most appropriate for regulation, which for statutory guidance and which for fund discretion?

WYPF feel that the regulations are the best place to contain the basic principles and definitions for the proposed approaches with the regulations being backed up by statutory guidance containing guidance to funds on issues they needs to consider and decide on and with those decisions being contained in the fund's Funding Strategy Statement.

Question 14 – Do you agree options 2 and 3 should be available as an alternative to current rules on exit payments?

I can confirm that WYPF agree that options 2 and 3 should be available, in certain circumstances, as an alternative to the current rules on exit payments. However, the ultimate decision whether or not allow either of the proposed new options should rest with funds.

Question 15 – Do you consider that statutory or Scheme Advisory Board guidance will be needed and which type of guidance would be appropriate for which aspects of these proposals?

WYPF feel that statutory or Scheme Advisory Board guidance would be appropriate. For any issue that would impose compulsion on funds must be covered by regulation and statutory guidance. Any other issues may be covered in Scheme Advisory Board guidance.

- **Exit credits under the LGPS Regulations**
  Question 16 – Do you agree that we should amend the LGPS Regulations 2013 to provide that administering authorities must take into account a scheme employer's exposure to risk in calculating the value of an exit credit?

  WYPF notes that the consultation refers to an exit credit that may be payable if an actuarial assessment shows that the employer is in surplus on a full buy-out basis at the time of their exit. However, there is no reference to full buy-out basis in regulation 64 and, and this is inconsistent with WYPF's approach to exit valuations, whereby if another WYPF Scheme employer has agreed to subsume the assets and liabilities of the exiting employer the exit valuation would be done on an ongoing basis. Therefore, whilst the proposal may be useful to address exit valuation in relation to 1(d) admission bodies, WYPF feels that it may not be an appropriate basis for the exit valuation for other exiting employers.

  Question 17 – Are there other factors that should be taken into account in considering a solution?

  WYPF feel that when considering a solution the role of the Scheme employer letting the contracts plays in the process should be taken in to consideration. For the majority of 1(d) admissions funds will not have seen any contractual agreements and WYPF feel that it is not within their remit to determine what is meant by full pass-through arrangements.

  Given that an exiting employer may have other obligations to the Scheme employer WYPF would therefore prefer that if a refund of exit credit is to be allowed that the regulations are amended to allow the refund of exit credit to be made to the Scheme employer, and for them to determine whether it should be returned in full or part to the exiting employer.

- **Employers required to offer LGPS membership**
  Question 18 – Do you agree with our proposed approach?

  I can confirm that WYPF agrees to the proposals and it particularly welcomes that members will be protected whilst in continuous employment or following a compulsory transfer to a successor body.

- **Public sector equality duty**
  Question 19 – Are you aware of any other equalities impacts or of any particular groups with protected characteristics who would be disadvantaged by the proposals contained in this consultation?

  WYPF is not aware of any other equalities impacts.

I trust you will find these comments useful. If you require any further information please do not hesitate to contact me.

Yours sincerely

Tracy Weaver

Technical Services Manager

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