City of BRADFORD
METROPOLITAN DISTRICT COUNCIL

Report of the Director of West Yorkshire Pension Fund to the meeting of West Yorkshire Pension Fund Pension Board to be held on 15 December 2020

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Subject: Local Government Pension Scheme Regulations update

Summary statement:

This report updates the West Yorkshire Pension Fund Pension Board on changes to the Local Government Pension Scheme (LGPS) 2014 and provides information on associated matters.

Recommendation:

It is recommended that Members 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 Ministry of Housing, Communities and Local Government (MHCLG) issued a consultation on Fair Deal – Strengthening pension protection.

2.2 The consultation closed on 4 April 2019, and we are still waiting for MHCLG to publish its response.

3 Consultation: Local valuation cycle and the management of employer risk

3.1 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'.

3.2 The consultation closed on 31 July 2019.

3.3 Included in this consultation were issues that had arisen following changes made to the LGPS Regulations to allow a surplus to be refunded to an exiting employer. To address these issues the Local Government Pension Scheme (Amendment) Regulations 2020 were laid before Parliament on 27 February 2020 and came into force on 20 March 2020 but have effect from 14 May 2018.

3.4 These regulations provide administering authorities with a discretion to determine the amount of exit credit which should be payable to an employer leaving the LGPS with a surplus.

3.5 On 26 August 2020 a second partial response was published. The response confirms that the LGPS 2013 Regulations would be amended to allow greater flexibility on employer exit payments and the ability to review employer contributions between valuations.

3.6 The LGPS (Amendment) (No.2) Regulations 2020 provide for the changes and were laid in Parliament on 27 August 2020 and came into effect from 23 September 2020. Both MHCLG and the SAB are currently preparing guidance to assist Administering Authorities in making their policies on employer flexibilities.

3.7 MHCLG has yet to publish its response to the other matters contained in the consultation, which included changes to the LGPS Local Valuation Cycle, and employers required to offer LGPS membership.

4 Other LGPS matters

4.1 McCloud and valuation guidance

It was reported on 21 December 2018 that the Court of Appeal determined the 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 (SAB) confirmed it had no option but to pause its own cost management process pending the outcome of McCloud.

On 27 June 2019 the Supreme Court denied the Government's request for an appeal in the McCloud case in respect of age discrimination and pension protection.

The SAB set up two working groups to work with MHCLG in developing and implementing the LGPS McCloud remedy.

On 16 July 2020 both HMT and MHCLG published consultations on the McCloud remedy. The consultations can be viewed at:

https://www.gov.uk/government/consultations/public-service-pension-schemes-consultation-changes-to-the-transitional-arrangements-to-the-2015-schemes

and

https://www.gov.uk/government/consultations/local-government-pension-scheme-amendments-to-the-statutory-underpin

The MHCLG consultation proposes that a two-part revised underpin will apply to all members who meet the criteria for protection regardless of their age in 2012. The revised underpin will also apply to early leavers and will take account of early/late retirement adjustments. Membership up to the earlier of leaving, 2008 NPA or 31 March 2022 will be included in the calculation of the revised underpin.

The consultation closes on 8 October 2020, and our response is attached (Appendix 1)

Alongside publication of the McCloud consultation, HMT announced that the pause of the cost control mechanism will be lifted and the process will be completed "next year". The SAB will also re-examine its results from cost management process next year.

It has also been announced that there will be a review of the cost management process, however this will not effect the calculations completed in 2016 or 2020.

4.2 Consultation on restricting exit payments

On 10 April 2019 HM Treasury (HMT) 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 (see 2019 drop down menu). The consultation closed on 3 July 2019.

On 21 July 2020 the Government published its response to this consultation, in which it confirmed its intention to proceed with this.

The Restriction of Public Sector Exit Payments Regulations 2020 were made on 14 October 2020 and came into force on 4 November 2020.

On 29 October 2020 HM Treasury published guidance on these regulations which can be found at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/930246/Restriction_of_Public_Sector_Exit_Payments_Guidance_Document.pdf

MHCLG published a consultation on 7 September 2020 outlinining the options that will be available to Local Government employees. The consultation can be viewed at:

https://www.gov.uk/government/consultations/reforming-local-government-exit-pay

In relation to LGPS members MHCLG are proposing that:

- Employers will be able to pay some of the early retirement strain cost by reducing any discretionary redundancy payment.
- Members will be able to take an actuarially reduced pension (using standard early retirement factors).
- Members will be able to elect for deferred benefits
- A Standard approach will be needed to calculate early retirement strain cost calculations.

The consultation closed on 9 November 2020 and our response can be found at Appendix 2.

As the Restriction of Public Sector Exit Payments Regulations 2020 have come into force before the LGPS Regulations have been amended there is a conflict between these regulations and the LGPS regulations if the cap is breached when an LGPS member age 55 or over exits. The LGPS regulations still require the member to take payment of an unreduced pension, but the exit cap regulations prevent the employer from paying the full strain cost. The Scheme Advisory Board's opinion that the course of action presenting the least risk to both LGPS administering authorities and scheme employers is for:

- LGPS administering authority to offer the member the opportunity to take a deferred benefit under LGPS regulation 6 or a fully actuarially reduced pension under LGPS regulation 30(5)
- Scheme employer to delay the payment of a cash alternative under regulation 8 of the Exit Cap Regulations.

4.3 Scheme Advisory Board's Good Governance Report

Last year SAB 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 the LGPS going forward.

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

The phase two report from the Working Groups to SAB was published in November 2019, which can be viewed at http://www.lgpsboard.org/images/PDF/HymansRobertson_GoodgovernanceintheLGPS_Phase-II_November2019.pdf

Phase three of this project will determine:

- The outcome measures it will use
- The format of this work, and
- A timetable for implementation.

The final report is expected to be presented to SAB by the end of February 2021.

4.4 Third Tier employers

In June 2018 Aon presented members of SAB with a summary of the final draft of its report to review the current issues in relation to third tier employers participating in the LGPS.

The report did not make any recommendations, instead it outlined a range of issues raised by stakeholders and how they envisage these concerns being resolved. A working group has been set up by SAB but work has been put on hold due to competing priorities, in particular, work on the Board's cost cap arrangement.

4.5 SF3 data published

On 4 November 2020, MHCLG published Local government pension scheme statistics (SF3 statistics) for England and Wales: 2019 to 2020.

Highlights include:

- total expenditure of £13.4 billion, an increase of 5.6% on 2018/19
- total income of £16.0 billion, an increase of 2.6% on 2018/19
- employer contributions increased by 7.7% on 2018/19, to £7.7 billion
- employee contributions of £2.3 billion
- the market value of LGPS funds in England and Wales on 31 March 2020 was £272.4 billion, a decrease of 5.1%
- 6.1 million scheme members at 31 March 2020, 2.0 million active members, 1.8 million pensioners and 2.2 million deferred members
- 88,232 retirements in 2019/20, an increase of 5.7% from 2018/19.

5 Other matters

5.1 Pensions Schemes Bill reintroduced

In the Queen's Speech on 19 December 2019 it was announced that the Government would reintroduce the Pension Schemes Bill. The Bill will strengthen the Pension Regulator's powers, create a legislative framework to support the pension dashboards, and introduce regulations covering the right to a transfer.

The Bill was introduced in the House of Lords and the second reading was on 28 January 2020 and was then moved to committee stage. Line by line examination of the Bill took place during the final day of committee stage on 4 March 2020. The report stage was completed on 30 June 2020 and the Bill completed its House of Lords stages on 15 July 2020.

The Bill was presented to the House of Commons on 16 July 2020 and the second reading was held on 7 October 2020. The Public Bill Committee have completed considering written evidence submissions and the Bill had its third reading in the House of Commons. The Bill will now go back to the House of Lords for its consideration of the amendments made by the House of Commons.

5.2 Money and Pensions Service - Pensions dashboard update

On 8 April 2020, the Money and Pensions Service (MaPS) published Pensions Dashboard Programme (PDP) – Progress Update Report. The MaPS intends to release a progress report every six months. The first report sets out:

- the pensions dashboard's goals and some of the challenges associated with delivery
- that Primary legislation will provide certainty about the requirements placed on schemes and the timescales for compliance
- the importance of secure and accurate identity verification
- the challenge of specifying a consistent set of data standards so that information from different schemes can be displayed consistently
- the need to identify when, in the staged on-boarding process, the dashboards should be made available to the public
- the focus of the Pensions Dashboards Programme over the coming months.

The MaPs published two further papers in April 2020, the Pensions Dashboards Data Definitions - Working Paper and the Pensions Dashboards Data Scope - Working Paper.

On 6 July 2020 a call for input was published on data standards required for pension dashboards.

On 28 October 2020 the PDP published its second progress report which sets out a time line for the development of dashboards. The next stage of the process is to build technology which will enable the public to view all their pensions via their chosen dashboard. It is expected that the first version of the data standard will be available in December 2020.

5.3 Government confirms intention to increase minimum pension age

In an answer to a parliamentary question on 3 September 2020, the Government confirmed that it still plans to increase the minimum pension age from 55 to 57 in 2028 and will legislate in due course.

6. Recommendation

It is recommended that the Local Pension Board note the report.

Appendix 1

Local Government Finance Stewardship
Ministry of Housing, Communities and Local Government
2nd Floor, Fry Building
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London
SW1P 4DF

My Ref: TSM/TW

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8 October 2020

Dear Sir

Local Government Pension Scheme: Amendments to the Statutory Underpin

I refer to the policy consultation opened on 16 July 2020 seeking comments on changes to the Local Government Pension Scheme (LGPS).

West Yorkshire Pension Fund (WYPF) welcomes the proposed changes, but have concerns whether would be in a position to carry out all remedies required in the proposed timescales. On behalf of WYPF I wish to make the following comments:

- **Question 1 – Do you agree with our proposal to remove the discrimination found in the McCloud and Sargeant cases by extending the underpin to younger scheme members?**

  WYPF agree that the extension of the Underpin should remove the discrimination found in the McCloud and Sargeant cases.

- **Question 2 – Do you agree that the underpin period should end in March 2022?**

  WYPF are pleased to have a cut off and feel that end of March 2022 is the appropriate date as this is 10 years from when members were made aware of the proposed changes to the LGPS.

- **Question 3 – Do you agree that the revised regulations should apply retrospectively to 1st April 2014?**

  WYPF agree that the amendments to the underpin should be retrospective, as otherwise this will introduce un-equal treatment between different categories of members. However, rectifying cases in a timely manner could prove challenging and would expect guidance to be provided on which groups of members should be given priority.

- **Question 7 – Do you agree that members should not need to have an immediate entitlement to a pension at the date they leave the scheme for underpin protection to apply?**

WYPF agree that members should not need to have an immediate entitlement to a pension to qualify for an underpin, as this would mean that you are treating members differently, which could be challenged at a future later date.

- **Question 9 – Do you agree that members should meet the underpin qualifying criteria in a single scheme membership for underpin protection to apply?**

  WYPF agree that members should meet the underpin qualifying criteria in a single scheme membership as this is how things currently stand and having to consider other Public Service Schemes rules would cause administration difficulties.

- **Question 10 – Do you agree with our proposal that certain active and deferred members should have an additional 12 month period to decide to aggregate previous LGPS benefits as a consequence of the proposed changes?**

  WYPF feel that allowing members a further 12 months to aggregate previous periods of membership would be impossible to meet within this timeframe due to the potential numbers affected. Additionally, it would be a challenge to explain to a member how the underpin may ultimately affect their final pension benefits paid.

- **Question 13 – Do you agree with the two-stage underpin process proposed?**

  WYPF agree with the two-stage underpin proposed, as until benefits become payable a member will not ultimately know what affect it will have to their pension benefits.

- **Question 16 – Do you agree that annual benefit statements should include information about a qualifying member's underpin protection?**

  The main concern WYPF have with the proposal to provide underpin on an active member's Annual Benefit Statement is that they already contain a lot of information and also providing additional information may confuse some members, especially, as in some years an underpin may apply but not in other years.

- **Question 18 – Do you have any comments on the potential issue identified in paragraph 110?**

  WYPF feel that this is a real issue and is similar to what can currently arise where members have reduction in pay protection. However, all that be done to mitigate is ensure this potential issue is to clearly communicate this to members and give members the choice of having the underpin uplift or not.

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

Local Government Workforce and Pay Team
Ministry of Housing, Communities and Local Government
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SW1P 4DF

My Ref: TSM/TW

E-mail: pensions@wypf.org.uk

8 November 2020

Dear Sir

Reforming Local Government Exit Pay

I refer to the consultation opened on 7 September 2020 seeking comments on the reform of exit payments in local government

West Yorkshire Pension Fund (WYPF) have some concerns with the proposed reforms as these appear to be going further than the introduction of the £95,000 exit payment cap, which I am not aware of is happening in the other public service sectors. On behalf of WYPF I wish to make the following comments:

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Question 1
Are there any groups of local government employees that would be more adversely affected than others by our proposed action on employer funded early access to pension?

WYPF view is that more female members will be affected by the proposed reforms because they make up a greater proportion of the workforce affected by the changes. The proposals will also impact on those aged 55 or over and therefore will adversely affect older workers.

The proposal around the statutory redundancy pay being either deducted from the pension strain cost resulting in a lower pension for life, or paid to the employee and then paid into the pension fund in order to part-pay the strain on fund cost, even where the payments would not otherwise breach the £95,000 cap, will have a greater impact on lower paid workers, who are most in need of a cushion when made redundant. A greater proportion of those will be women and/or part-time workers. This is because their statutory
redundancy pay entitlement will be closer to their actual pay than it will for higher paid workers whose weekly pay exceeds the cap on a week's pay for the purposes of calculating statutory redundancy pay. Therefore, the employer's strain on fund payment will, under this proposal, be reduced by a disproportionately greater percentage for lower paid workers than for higher paid workers. The option of forgoing the pension enhancement to instead receive an actuarially reduced pension and a discretionary redundancy payment under the employer's compensation arrangements will not in most cases mitigate that disproportionate impact. This is because in the great majority of cases, local authorities' discretionary compensation payments will not exceed the employer's strain on fund payment and statutory redundancy pay

Question 2
What is the most appropriate mechanism or index when considering how the maximum salary might be reviewed on an annual basis?

The most appropriate mechanism would be to link it to Consumer Price Index or the average increase in employees' earnings

Question 3
Are there any groups of local government employees that would be more adversely affected than others by our proposed ceiling of 15 months or 66 weeks as the maximum number of months' or weeks' salary that can be paid as a redundancy pay

The proposed ceiling itself would not impact on most employees, but would be inconsistence with the calculation of statutory redundancy payment.

Question 4
Are there any groups of local government employees that would be more adversely affected than others by our proposal to put in place a maximum salary of £80,000 on which an exit payment can be based?

As £80,000 is a significant salary in local government so this will affect the most senior positions. Considerable experience and skills will be required for such posts and so this will be more likely to affect older workers, and more of them who are likely to be male..

Question 5
Do you agree with these proposals? If not, how else can the Government's policy objectives on exit pay be delivered for local government workers?

The original policy objective was to curb excessive exit payments in the public sector. The additional reform was about fairness and consistency across the public sector workforce, the other parts of which have, as yet, seen no changes. These new proposals will impact on all local government employees, before there has been any wider public sector reform and regardless of salary level.

The result will be a reduced pension going forward and only statutory redundancy pay to support them during a time in which older workers may find it increasingly difficult to find alternative employment. In particular, the provisions around statutory redundancy pay being either deducted from the pension strain cost resulting in a lower pension for life, or paid to the employee and then paid into the pension fund in order to part-pay the strain on fund cost will hurt the poorest paid who most need a cushion when made redundant.

Question 6
Do you agree that the further option identified at paragraph 4.8 should be offered?

The option of deferring pension benefits and receiving a discretionary redundancy payment under the employer's discretionary severance scheme, rather than taking a reduced pension with statutory redundancy pay only, will be a flexibility that could assist some employees depending on their financial situation and it seems sensible that it should remain as an option.

Question 7
Are there any groups of local government employees that would be more adversely affected than others by our proposals?

The proposals will adversely affect all employees over the age of 55 in the LGPS. Those with long service will be particularly affected because of the interrelationship between strain on pension fund payments and other
discretionary and statutory redundancy payments. Purely, considering financial terms it may have a significant impact on higher earners and on lower paid workers who may have greater need for a financial cushion.

Question 8
From a local government perspective, are there any impacts not covered at Section 5 (Impact Analysis), which you would highlight in relation to the proposals and/or process above?

There is concern that a full impact assessment does not identify the greater proportionate impact that statutory redundancy pay being either deducted from the pension strain cost, resulting in a lower pension for life, or paid to the employee and then paid into the pension fund in order to part-pay the strain on fund cost, will have on lower paid and part-time workers.

Question 9
Are these transparency arrangements suitably robust? If not, how could the current arrangements be improved?

The transparency requirements in local government are established and would seem adequate

Question 10
Would any transitional arrangements be useful in helping to smooth the introduction of these arrangements?

As these reform proposals will have a dramatic effect on some employees who will be currently considering severance arrangements into their long-term planning we, therefore, feel transitional provisions would be appropriate.

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

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