

# Report of the Director of West Yorkshire Pension Fund to the meeting of West Yorkshire Pension Fund Pension Board to be held on 23 March 2021

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**Subject: Local Government Pension Scheme Regulations update**

## **Summary statement:**

This report updates the 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.

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**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 proposals to address 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 LGPS (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 Regulations 2013 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.
- 3.7 On 2 December 2020, Bob Holloway emailed pensions managers for comment on a draft guide to employer flexibilities. The purpose of the guide is to provide operational and practical assistance to administering authorities and employers when implementing employer flexibilities introduced by the LGPS (Amendment) (No. 2) Regulations 2020. Comments on the draft guidance had to be submitted by 9 January 2021.

3.78 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 closed on 8 October 2020, and we are waiting for MHCLG to publish its response.

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 be re-examining its results from its cost management process.

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 **Revocation of Restriction of Public Sector Exit Payments Regulations 2020**

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'.

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

MHCLG published a consultation on 7 September 2020 outlining the options that will be available to Local Government employees. The consultation closed on 9 November 2020.

As the Restriction of Public Sector Exit Payments Regulations 2020 came into force before the LGPS Regulations had been amended there was a conflict between these regulations and the LGPS regulations if the cap is breached when an LGPS member age 55 or over exits as the LGPS regulations requires member to take payment of an unreduced pension, but the exit cap regulations prevented the employer from paying the full strain cost where the total of all payments exceeded £95,000.

In November a legal challenge was filed against these regulations by representative bodies, Lawyers in Local Government and the Association of Local Authority Chief Executives. This challenge was approved by the High Court with a hearing scheduled for March. The review was to be heard alongside two separate challenges from Unison and from fellow unions Unite and GMB.

However, as a result of the judicial review proceedings being underway, the Government carried out a review of the public sector exit payment cap and on 12 February 2021, it announced that the legislation would be revoked. It stated: "After extensive review of the application of the Cap, the Government has concluded that the Cap may have had unintended consequences and the Regulations should be revoked. HMT Directions have been published that disapply the Cap until the Regulations have been revoked."

On 25 February 2021, the Restriction of Public Sector Exit Payments (Revocation) Regulations 2021 were made and laid before parliament. They will come into force on 19 March 2021.

HM Treasury have confirmed that it intends to bring forward proposals at pace to tackle unjustified exit payments and we are also waiting for further information from MHCLG regarding the affect this will have on its consultation on reforming local government exit pay.

## 4.3 **Scheme Advisory Board's Good Governance Report**

In 2019 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. The phase two report from the Working Groups to SAB was published in November 2019.

When it met on the 8th February 2021 the SAB agreed that the Good Governance – Final Report should be published and for the Chair to submit the Board’s Action Plan to the Local Government Minister for consideration. The report can be viewed at:

[https://www.lgpsboard.org/images/Other/Good\\_Governance\\_Final\\_Report\\_February\\_2021.pdf](https://www.lgpsboard.org/images/Other/Good_Governance_Final_Report_February_2021.pdf)

The report contains the following proposals:

- MHCLG will produce statutory guidance to establish new governance requirements for funds to effectively implement the proposals below. (“the Guidance”).
- Each administering authority must have a single named officer who is responsible for the delivery of all LGPS related activity for that fund. (“the LGPS senior officer”).
- Each administering authority must publish an annual governance compliance statement that sets out how they comply with the governance requirements LGPS funds as set out in the Guidance. This statement must be co-signed by the LGPS senior officer and the S151 officer.
- Each fund must produce and publish a conflicts of interest policy which includes details of how actual, potential and perceived conflicts are addressed within the governance of the fund, with specific reference to key conflicts identified in the Guidance.
- The Guidance should refer all those involved in the management of the LGPS, and in particular those on decision making committees, to the guide on statutory and fiduciary duty which will be produced by the SAB.
- Each fund must produce and publish a policy on the representation of scheme members and non-administering authority employers on its committees, explaining its approach to voting rights for each party.
- Introduce a requirement in the Guidance for key individuals within the LGPS, including LGPS officers and pensions committees, to have the appropriate level of knowledge and understanding to carry out their duties effectively.
- Introduce a requirement in the Guidance for key individuals within the LGPS, including LGPS knowledge and understanding to carry out their duties effectively.
- Introduce a requirement for s151 officers to carry out LGPS relevant training

as part of CPD requirements to ensure good levels of knowledge and understanding.

- Administering authorities must publish a policy setting out their approach to the delivery, assessment and recording of training plans to meet these requirements.
- CIPFA should be asked to produce appropriate guidance and training modules for s151 officers.
- Each administering authority must document key roles and responsibilities relating to the LGPS and publish a roles and responsibilities matrix setting out how key decisions are reached. The matrix should reflect the host authority's scheme of delegation and constitution and be consistent with role descriptions and business processes.
- Each administering authority must publish an administration strategy.
- Each administering authority must report the fund's performance against an agreed set of indicators designed to measure standards of service.
- Each administering authority must ensure their committee is included in the business planning process. Both the committee and LGPS senior officer must be satisfied with the resource and budget allocated to deliver the LGPS service over the next financial year.
- Each administering authority must undergo a biennial Independent Governance Review (IGR) and, if applicable, produce the required improvement plan to address any issues identified. IGR reports to be assessed by a SAB panel of experts.
- LGA to consider establishing a peer review process for LGPS Funds.

#### **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 2021/22 Employee Contribution Bands**

Below are the employee contribution bands, which will be effective from 1 April 2021. They are calculated by increasing the 2020/21 employee contribution bands by the September 2020 CPI figure of 0.5 per cent and then rounding down

the result to the nearest £100.

<b>Band</b>	<b>Actual pensionable pay for an employment</b>	<b>Main section contribution rate for that employment</b>	<b>50/50 section contribution rate for that employment</b>
1	Up to £14,600	5.50%	2.75%
2	£14,601 to £22,900	5.80%	2.90%
3	£22,901 to £37,200	6.50%	3.25%
4	£37,201 to £47,100	6.80%	3.40%
5	£47,101 to £65,900	8.50%	4.25%
6	£65,901 to £93,400	9.90%	4.95%
7	£93,401 to £110,000	10.50%	5.25%
8	£110,001 to £165,000	11.40%	5.70%
9	£165,001 or more	12.50%	6.25%

## 5 Other matters

### 5.1 Pension Schemes Act 2021

Following completion of passage through Parliament of the Pensions Bill, on 11 February 2021 the Pension Schemes Act 2021 became law. However, the majority of provisions are not currently in force and regulations are needed to bring them into force and to provide detail about how they will work. The Act:

- Increases the number of criminal offences that the Pensions Regulator will be able to pursue for breaches of pension legislation.
- Amends the Scheme Specific Funding regime contained in the Pensions Act 2004.
- Amends the statutory transfer regime in a number of ways to address the risk of pension liberation and scams
- Sets out the government's intention to introduce a "qualifying pensions dashboard service"
- Sets out requirements for pension scheme trustees to assess, manage and report on climate related risks in line with the recommendations of the task force on climate related financial disclosures.
- Introduction of legislation allowing new Collective Money Purchase schemes to be set up and providing an authorisation and supervision framework.

### 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 also 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.

On 15 December 2020 the PDP published its data standards usage guide, which provides the basis for data interoperability across the dashboards ecosystem. Following on from this PDP issued a call for input from data providers on digital identities. The call for input closes on 19 March 2021.

### 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.

On 12 February 2021 HM Treasury published an open consultation, which reconfirms the fact that the normal minimum pension age will increase from the age of 55 to 57 by April 2028. The consultation is also requesting views on the proposed protection regime, which will ensure that certain scheme members retain their current rights. This consultation closes on 22 April 2021.

## 7 **Recommendation**

It is recommended that the Pension Board note the report.