

Report of the Director of West Yorkshire Pension Fund to the meeting of West Yorkshire Pension Fund Pension Board to be held on 22 June 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 On 20 March 2020 the LGPS (Amendment) Regulations 2020 came into force. 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.
- 3.4 The LGPS (Amendment) (No.2) Regulations 2020 came into effect from 23 September 2020. These regulations provide for new flexibilities that allow employer contributions to be reviewed between valuations, an exiting employer to enter into a Deferred Debt Agreement and an exit deficit to be paid in instalments. Following a consultation WYPF’s Funding Strategy Statement has been updated to include policies on applying these new flexibilities.
- 3.5 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 MHCLG consultation closed on 8 October 2020.

On 13 May 2021 Luke Hall, the Local Government Minister made a written statement on McCloud and the LGPS. The statement confirms the key changes to scheme regulations that will be made to remove age discrimination from the LGPS. The statement confirms that:

- The age requirement for underpin protection will be removed
- A member will not need to leave with an immediate entitlement to benefits to qualify for underpin protection
- The remedy period will end on 31 March 2022
- The underpin calculation will be based on final pay at the underpin date, even if this is after 31 March 2022
- There will be two stages to the underpin calculation: the first is the date of leaving, or age 65 if earlier, the second when the benefits are paid
- The regulations will be retrospective to 1 April 2014.

MHCLG are expected to issue a full response to the consultation and to publish draft regulations later this year.

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 affect the calculations completed in 2016 or 2020.

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 could 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. SAB has now published its action plan which comprises of:

1. Those matters that would fall to MHCLG to implement, either by amending scheme regulations or producing statutory guidance.
2. Those matters that would fall to the Board and other bodies to implement - subject to the actions in 1 being taken by MHCLG - and
3. Actions to identify and promote existing best practice that the Board can take forward regardless of the outcome of the above.

SAB are now waiting to see how MHCLG responds to its proposals.

.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 Annual Report for the Local Government Pension Scheme

On 28 April 2021 SAB published the Scheme report for year ending 31 March 2020. The key highlights in the report are:

- The total membership of the LGPS grew by 261,000 (4.2%) to 6.1m members in 2020 from 5.9m in 2019.
- The total assets of the LGPS decreased to £276bn (a change of -4.9%). These assets were invested in pooled investment vehicles (68%), public equities (14%), bonds (6%), direct property (3%), as well as other asset classes (9%).
- The Local Authority return on investment over 2019/2020 was -4.8%. This was reflective of the market conditions during the year and set against the UK Return of -28.3%.
- The scheme maintained a positive cash-flow position overall, including investment income.
- Over 1.8m pensioners were paid over the year.

5 Other matters

5.1 Money and Pensions Service - Pensions dashboard update

On 13 May 2021 the Pensions Dashboard Programme released further details on its timeline as part of its third progress report. The breakdown includes information on what will take place over the next six months and the expected timing of key milestones within the programme phases, so data providers can prepare to connect to dashboards.

5.2 **The Pensions Regulator Consultation on a new Code of Practice**

On 17 March 2021 the Pensions Regulator published a consultation a new code of practice. This consultation focuses on the draft content for the first phase of its new code of practice. The new code consists of 51 shorter, topic-based modules and will replace 10 of its existing codes of practice, which mainly deal with the governance and administration of pension schemes.

The consultation also incorporates changes introduced by the Occupational Pension Schemes (Governance) (Amendment) Regulations 2018. These relate to effective systems of governance and the own-risk assessment.

The consultation closed on 26 May 2021.

7 **Recommendation**

It is recommended that the Pension Board note the report.