

Report of the Director of West Yorkshire Pension Fund to the meeting of Joint Advisory Group to be held on 29 July 2021

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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 Members note this report.

Rodney Barton
Director

Portfolio:

[Insert where appropriate]

Report Contact: Tracy Weaver
Phone: (01274) 433571
E-mail: tracy.weaver@wypf.org.uk

Overview & Scrutiny Area:

[Insert where appropriate]

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 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.

4.2 **Cost Control Mechanism**

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 was also announced that there would be a review of the cost management process.

On 15 June 2021 the Government Actuary published his final report on his review of the cost control mechanism. The report splits the review into a two-stage framework. Firstly, what can be done to the mechanism itself, and secondly, how the results can be validated. GAD explores some alternative approaches to the mechanism before suggesting that the cost cap mechanism is still good idea, assuming some improvements are made to it. Among the suggestions is that the corridor used to measure the cost of any changes is increased to +/-3%, apparently to allow for the volatility of the mechanism. For the validation stage, the report proposes that an affordability check is included and an additional layer of qualitative review is incorporated, presumably to act as a further level of insurance against unintended conclusions.

On 24 June 2021 HM Treasury launched consultations on proposed changes to the cost control mechanism and the SCAPE discount methodology.

4.3 **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 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 the application of these regulations.

MHCLG published a consultation on 7 September 2020 outlining the options that would 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. The conflict arises 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 came into force on 19 March 2021.

HM Treasury confirmed that it intends to bring forward proposals at pace to tackle unjustified exit payments. On 27 May 2021 HM Treasury published its Guidance on Public Sector Exit Payments: Use of Special Severance Payments, which sets out a number of requirements for making these payments to ensure fairness and transparency for the tax payer. Following on from this on 2 July 2021 MHCLG published a consultation on New Best Value Guidance: Special Severance Payments. The purpose of this guidance is to:

- Set out the Government's view that Special Severance Payments do not usually represent value for money and should only be considered in truly exceptional circumstances
- Set out the criteria employers should consider in the exceptional circumstances in which it may be appropriate to make a Special Severance Payment
- Give examples of the truly exceptional circumstances in which Special Severance Payments may be appropriate
- Clarify the disclosure and reporting requirements for Special Severance Payments.

4.4 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

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 for 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 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 **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 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 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.

5.3 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.

5.4 Public Service Governance and Administration Survey 2020-21 Research Report

On 1 July 2021 the Pensions Regulator published its report on the results of Public Schemes's Service Governance and Administration Survey 2020-21 Research. Schemes' performances on the key processes show:

- 92% have documented policy to manage board members' conflicts of interest.
- 95% have access to the knowledge, understanding and skills needed to properly run the scheme.
- 92% have a process for resolving contribution payment issues.
- 95% have processes to monitor records for accuracy/completeness.
- 85% have their own documented procedures for assessing and managing risks
- 95% have procedures to identify, assess and report breaches of the law.

6. Recommendation

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