Report of the Director of West Yorkshire Pension Fund to the meeting of West Yorkshire Pension Fund Pension Board to be held on 14 December 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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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.

1.3 On 19 September 2021, the Government announced that the Ministry of Housing, Communities and Local Government (MHCLG) became the Department for Levelling Up, Housing and Communities (DLUHC).

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 The consultation closed on 4 April 2019, and we are still waiting for DLUHC 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 DLUHC 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.

On 19 July 2021, H M Treasury formally introduced to Parliament the Public Service Pensions and Judicial Offices Bill, which makes provision to rectify the unlawful age discrimination identified by the McCloud judgment.

For the LGPS, Chapter 3 of Part 1 confirms which members will be in scope and what service is 'remediable'. Enabling legislation will allow for scheme regulations to be changed to implement the McCloud remedy.

The Bill received its second reading in the House of Lords on 7 September 2021 and is now at the report stage, with a sitting due to be held on 29 November 2021.

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.

On 15 June 2021 the Government Actuary published his final report on his review of the cost control mechanism.

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

On 4 October 2021, HMT published its response to the Public Service Pensions: cost control mechanism consultation. The Government's response confirms it will proceed with all three proposed reforms:

- moving to a reformed scheme only design so that the mechanism only considers past and future service in the reformed schemes. Costs related to legacy schemes are excluded
- the cost corridor will be widened from two per cent to three per cent of pensionable pay
- introducing an economic check so that a breach of the mechanism will only be implemented if it still would have occurred had the long-term economic assumptions been considered.

The Government is aiming to implement all three proposals in time for the 2022 valuations. It will work with the DLUHC and LGPS stakeholders to consider:

- the most appropriate way to implement the reformed scheme only design in the LGPS (including how to treat the underpin)
- whether it is desirable for the SAB process to be adapted in line with the principles of the economic check.

On 7 October 2021, HMT published the Public Service Pensions (Valuation and Employer Cost Cap) (Amendment) Directions 2021.

4.2 Publication of SAB's cost management results for the 2016 valuation

On 15 October 2021, SAB published the result of its cost management process for the 2016 scheme valuation. Although SAB reached agreement on how to include McCloud costs in the process in the summer, it was not able to publish the outcome until HMT published the Cost Cap Directions 2021.
SAB agreed to spread McCloud costs over a 10 year period (rather than the four years used in the HMT process), resulting in an outcome of 19.4 per cent against a target cost of 19.5 per cent. Despite the slight shortfall in cost SAB will not be recommending any scheme changes.

Going forward, SAB will revisit tier three ill health and contributions for the lowest paid members. SAB intends to make recommendations in these areas separate from the cost management process.

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 and SAB are now waiting to see how DLUHC 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.

4.5 Publication of SF3 data for 2020 to 2021

On 27 October 2021, DLUHC published Local government pension scheme statistics (SF3 statistics) for England and Wales: 2020 to 2021. Highlights include:

- total expenditure of £13.4 billion
- total income of £17.2 billion, an increase of 7.5 per cent on 2019/20
- employer contributions increased by 32.46 per cent on 2019/20 to £10.2 billion
- employee contributions of £2.4 billion
- the market value of LGPS funds in England and Wales on 31 March 2021 was £332.7 billion, an increase of 22.14 per cent
- there were 6.1 million scheme members on 31 March 2021, 2.0 million active members, 1.8 million pensioners and 2.2 million deferred members
- there were 82,567 retirements in 2020/21, a decrease of 6.4 per cent compared with 2019/20.

5 Other matters

5.1 Money and Pensions Service - Pensions dashboard update

On 27 May 2021, the Pensions Dashboard Programme (PDP) launched a call for input on staging. The purpose of the call for input is to gather feedback and insight from pension schemes that will inform Government policy on staging. The PDP is recommending that all public service pension schemes should be onboarded in the initial wave – a two-year period starting from April 2023. The call for input closed on 9 July 2021.

The PDP received just over 60 responses to the call for input from a variety of stakeholders. These will be used to feed into further policy development of pension dashboards. It has published a summary of the key themes drawn from the responses:

- the provision of estimated retirement income projections could impact the policy objectives and staging principles
- the need for greater clarity around data and the digital architecture's technical requirements before accurate estimates about staging times can be provided
- where staging times were estimated, around three-quarters suggested that 12 months or more (up to 24 months) would be required
- just over half of all respondents agreed with the recommendation that the largest defined benefit schemes should stage from Autumn 2023 and all defined benefit schemes with 1,000+ members should stage within the first wave (half of those that agreed were either defined benefit schemes or public service schemes).
- the majority of the concerns from public service pension schemes centred around McCloud and the associated administrative issues as a reason for not staging within the first wave
- consumer testing will be an important part of how dashboards are executed, highlighting the need for additional tools, system messaging and an education and awareness campaign to promote the benefits of dashboards
- concerns about limiting the scope of dashboards to exclude pensions in payment
- general uncertainties on the following:

  − data – specifically what view data, especially early retirement income, will have to be returned

  − data protection and liability

  − connection requirements

- response times
- identity verification and assurance process
- matching protocols
- Integrated Service Provider (I S P) market dependency
- McCloud for public service schemes
- competing priorities – Guaranteed Minimum Pension equalisation, simpler annual benefit statements, small pots, transformation programmes.

Chris Curry, Principal of the P D P, announced in October 2021 that draft regulations on pensions dashboards are expected to be published before the end of 2021 or early in 2022. This follows on from the enactment earlier this year of the Pension Schemes Act 2021. The draft regulations will provide more information about the data standards, what data will have to be supplied and how pension providers will need to provide it.

On 26 October 2021, P D P published its latest progress report. The report strongly emphasises the need for schemes to act now before legislation compels schemes to do so.

5.2 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.

On 14 May 2021, the DWP launched a consultation on pension scams: empowering trustees and protecting members. The consultation proposed new requirements on trustees and scheme managers before a pension transfer can be completed.

On 8 November 2021, the Government published its response to 'Pension scams: empowering trustees and protecting members' consultation. It also laid the regulations, which take effect from 30 November 2021 and apply to the LGPS in England, Wales and Scotland.

These regulations introduce further legal restrictions to the member's statutory right to transfer. The regulations give administering authorities tools to act where suspicions about the circumstances that have prompted the transfer request are identified. It will no longer be a case that the member can insist on statutory transfer taking place in such circumstances. There are two key new measures, decision making and disclosure.

Other than transfers to public service schemes, master trusts and collective money purchase schemes, the administering authority must decide if there are any red flags present and whether there are any amber flags present. If there are red flags present a transfer must not be paid. If there are any amber flags present the transfer must be paused until the member can provide evidence that they have received pension scams guidance from MoneyHelper.

On the same day the Pensions Regulator published guidance to help administering authorities understand their new powers to halt suspicious transfers.

5.3 The Pensions Regulator (TPR) new code of practice consultation

On 17 March 2021, TPR launched its New Code of Practice consultation. The draft new code consolidates (with updates and amendments) most of the existing codes of practice (including the public service code of practice 14) into a new online code providing a single up-to-date and consistent source of information. The other codes will be consolidated into the single code at a later date, subject to further consultation.

TPR has published an interim response to the new code of practice consultation. Responses to the consultation included around 10,000 individual answers. TPR has issued the interim response to allow time to consider these responses and to incorporate code content arising from the Pension Schemes Act 2021 in the new code.

TPR does not have a firm publication date for the new code, but it is unlikely to become effective before summer 2022.

6 Recommendation

It is recommended that the Pension Board note the report.