

Report of the Managing Director of West Yorkshire Pension Fund to the meeting of West Yorkshire Pension the Joint Advisory Group to be held on 26 January 2023

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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.

EQUALITY & DIVERSITY:

Not Applicable

Euan Miller
Managing Director

Portfolio:

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

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 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. On 8 September 2022 DLUHC published its response to this consultation, which said it was reconsidering its approach to Fair Deal in the context of the LGPS.

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 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 HM 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.

On 10 March 2022, the Public Service Pensions and Judicial Offices Act 2022 received Royal Assent. The main purpose of the Act is to give the relevant government departments the regulatory powers to resolve the discrimination identified in the McCloud judgment.

On 24 November 2022, HMRC launched a consultation on how pension tax will apply to members protected by the McCloud remedy. HMRC was seeking views on draft legislation: The Public Services Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023. The legislation is planned to take effect from 6 April 2023. Some provisions will have retrospective effect. The consultation documents also include an explanatory memorandum and guidance for administrators on the draft regulations. This consultation closed on 6 January 2023.

On 14 December 2022, HM Treasury (HMT) made the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022. They come into force on 19 December 2022 and apply to England, Northern Ireland, Scotland and Wales. The Directions set out how certain powers in the Public Service Pensions and Judicial Offices Act 2022 must be exercised. The Act gives relevant government departments powers to rectify McCloud discrimination.

The making of the Directions now allows relevant departments to start consulting on regulations exercising these powers.

4.2 Cost Control Mechanism

Alongside publication of the McCloud consultation, HMT announced that the pause of the cost control mechanism would be lifted. The Scheme Advisory Board (SAB) also said it would 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.

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.

SAB published the outcome of its cost management process for the 2016 valuation on 15 October 2021. SAB agreed to spread McCloud costs over a 10 year period (rather than the 4 used by HMT) resulting in an outcome of 19.4% against a target cost of 19.5%. Despite the slight shortfall in cost SAB agreed not to recommend any scheme changes.

GAD has now published cost cap valuation reports for all 20 public service pension schemes and it has confirmed that no changes to member benefits or contributions are required as a result of these reports.

However, on 4 July 2022, the Fire Brigades Union and the British Medical Association were given permission to judicially review the UK Government's decision to include the McCloud remedy costs in the 2016 cost control valuations. The cases will be heard together. Though the case will look at the firefighters' and NHS pension schemes, the outcome may have an impact on the LGPS. This is because the first cost control valuations in the LGPS also included the McCloud remedy costs.

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. SAB has now published its action plan and SAB are now waiting to see how DLUHC responds to its proposals.

4.4 LGPS statistics for 2021/22

On 26 October 2022, DLUHC published the Local Government Pension Scheme statistics for England and Wales: 2021 to 2022. Highlights include:

- total expenditure of £14.4 billion, an increase of 6.6 per cent on 2020/21
- total income of £15.9 billion, a decrease of 8.1 per cent on 2020/21
- employer contributions decreased by 24.3 per cent on 2020/21 to £7.8 billion

- employee contributions of £2.6 billion, an increase of 4.8 per cent
- the market value of LGPS funds on 31 March 2022 was £364 billion, an increase of 8 per cent
- there were 6.3 million scheme members on 31 March 2022: 2.0 million active members, 1.9 million pensioners and 2.3 million deferred members
- there were 94,724 retirements in 2021/22, an increase of 14.2 per cent compared with 2020/21

4.5 Government's Academy Guarantee

In 2013, the Government introduced the academy guarantee. The guarantee provides that, in the event of an academy closing, any outstanding liabilities will not revert to other employers in that LGPS fund.

After a reassessment, the Government confirmed on 21 July 2022 in a written ministerial statement that it will continue to provide the academy guarantee. The annual ceiling will also increase to £20 million.

Although there is no end date to the guarantee, the Government is committed to regularly reassessing it to determine whether it remains affordable and is fully recognised by administering authorities

4.6 Further Education reclassification

Following a review into the classification of the Further Education sector, the Office for National Statistics has reclassified FE colleges and their subsidiaries in England into the central government sector. The Department for Education is considering offering additional covenant assurances for colleges and will use the data supplied by LGPS Funds when making their decision.

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 call for input closed on 9 July 2021. PDP received just over 60 responses to the call for input from a variety of stakeholders, which will be used to feed into further policy development of pension dashboards.

On 7 December 2021, the Pensions Administration Standards Association published initial guidance on the choice of data matching convention schemes must make ahead of their compliance with the upcoming pensions dashboards legislation.

On 15 December 2021, PDP announced that it has selected three potential dashboard providers to take part in initial development of the dashboards

ecosystem: Aviva, Bud and Moneyhub. In addition to the Money and Pensions Service's non-commercial dashboard, the PDP will work with these companies to support the early work on design standards and technology.

On 16 December 2021, the Pensions and Lifetime Savings Association published an A to Z industry guide containing decisions that are required to make the initial pensions dashboards a success.

On 31 January 2022 DWP published a consultation on the draft Pensions Dashboards Regulations 2022. The purpose of the consultation is to seek views on a range of policy questions relating to the creation of pensions Dashboards. The consultation closed on 13 March 2022.

The DWP launched a further consultation on pension dashboards on 28 June 2022. The further consultation sets out two proposals. The first proposal provides clarity on the 'Dashboard Available Point' (DAP). The second proposal allows the Money and Pensions Service and the Pensions Regulator to share information about dashboards with each other. The consultation closed on 19 July 2022.

On 4 July 2022, the Pensions Administration Standards Association published the Dashboard Accuracy Data Guidance. The guidance highlights the importance of regularly testing data for accuracy. This is particularly important for data that pension schemes will use when matching requests from the dashboards. The guidance provides information on how schemes could test their data and what data sources they could use

On 14 July 2022, DWP responded to the consultation on the draft Pensions Dashboards Regulations. DWP has also published a summary of the key policies. The summary reflects the response to the consultation.

The key area of the response that affects LGPS administering authorities is the staging deadline for the LGPS and all other public service pension schemes, which will be deferred from 30 April 2024 to 30 September 2024.

On 19 July 2022, the PDP launched a consultation on dashboard standards and guidance, and a call for input on the design standards. Both the consultation and the call for input closed on 30 August 2022. Following this call for input, a consultation on the final design standards ran for six weeks.

On 17 October 2022, the Department for Work and Pensions (DWP) published draft guidance on applying to defer the staging deadline. DWP also published a template application form. The draft Pensions Dashboards Regulations 2022 propose allowing trustees / managers of a pension scheme to apply to DWP to defer their staging deadline. They set out the time limits in which to apply and the circumstances where DWP may accept applications. DWP may only agree to defer the staging deadline once for each scheme and for a period of up to 12 months

Also On 17 October 2022 the draft Pensions Dashboards Regulations 2022 were laid by Parliament, alongside the publication of the Government's response to the

further consultation on pensions dashboards. On 21 November 2022, the Department for Work and Pensions made The Pensions Dashboards Regulations 2022 – the Regulations. They come into force on 12 December 2022.

On 16 November 2022, the PDP published its revised standards for connecting to the dashboards ecosystem. They cover the technical and operational detail that underpins dashboards legislation. The revised standards incorporate feedback from the consultation published in July 2022

On 24 November 2022, the Pensions Regulator (TPR) launched a consultation on its draft dashboards compliance and enforcement policy. TPR is responsible for ensuring that occupational pension schemes comply with their dashboard duties. The draft policy sets out how it intends to do so. The policy covers:

- the key risk areas it will focus on
- what it expects schemes to do when complying with their dashboard duties
- how it will monitor compliance
- how it will approach non-compliance

PDP recently published its approach to the governance of the standards. This sets out how PDP developed the standards, outlines their scope and describes how they will go about setting and managing any future changes.

On 1 December 2022, the Financial Conduct Authority (FCA) published a consultation on the regulatory framework for dashboard operators. Under these proposals, operators will be able to offer savers additional services that have the potential to improve pension outcomes. These could include investment advice (including robo-advice) or guidance, modellers, calculators and other similar tools. Before doing so, operators will need to meet rigorous conduct standards. The consultation closes on 16 February 2023.

On 12 December 2022, the Department for Work and Pensions (DWP) published guidance on how to defer connection to pensions dashboards. LGPS administering authorities must connect to the dashboards ecosystem within a connection window of 1 September 2024 to 30 September 2024. Authorities can apply to DWP to defer this in limited circumstances.

5.2 The Pensions Regulator Consultation on a new Code of Practice

On 17 March 2021 the Pensions Regulator (TPR) published a consultation on 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.

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 into the new code.

TPR does not have a firm publication date for the new code.

5.3 Second Review of State Pension Age

DWP launched the second review of the State Pension Age on 14 December 2021. The review will consider if the State Pension Age (SPA) rules are still appropriate based on the latest life expectancy data and other evidence. Two independent reports will be commissioned as part of the review:

- the Government Actuary will provide a report assessing the appropriateness of SPA considering the latest life expectancy projections
- Baroness Neville-Rolfe will provide a report on other relevant factors including recent trends in life expectancy and other metrics.

On 7 January 2022, DWP published the terms of reference for the independent report to be led by Baroness Neville-Rolfe.

Between 9 February 2022 and 25 April 2022 DWP consulted on a call for evidence, which sought views on what metrics should be considered when setting the State Pension Age.

DWP is due to publish the outcome of the review in May 2023.

5.4 Call for evidence - helping savers understand their pension choices

On 14 June 2022, the Department for Work and Pensions (DWP) launched a Call for Evidence entitled: 'Helping savers understand their pension choices'.

The call for evidence explores what support pension scheme members need to help them make informed decisions about how to use their savings.

The consultation closed on 25 July 2022 and responses are currently being analysed.

5.5 Joint Statement on transfer regulations

On 5 July 2022, TPR and the DWP issued a joint statement on the Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021.

The statement responds to concerns expressed about how the regulations are being applied. In particular, where overseas investments or small-scale incentives feature in the transfer. The concern is that the regulations are causing low-risk transfers to be blocked or delayed. The statement reminds pension schemes that it was not intended for the regulations to capture transfers that previously caused no concern.

The DWP will consider the concerns when it next reviews the regulations. Also to address the concerns, TPR has updated its guidance on the regulations.

5.6 September 2022 CPI rate announced

On 19 October 2022, the Office for National Statistics announced the Consumer Prices Index (CPI) rate of inflation for September 2022 as 10.1 per cent. Government policy in recent years has been to base increases under the Pensions (Increase) Act 1971 and revaluation of pension accounts under section 9 of the Public Service Pensions Act 2013 on the rate of CPI in September of the previous year. At a meeting of the Public Services Pensioners Council on 23 November 2022, it was confirmed that the 10.1% CPI figure will be applied to Public Sector Pensions in accordance with the legislation and process of previous years'.

5.8 Regulators issue scam warning to pension schemes and savers

The Pensions Regulator (TPR) joined forces with the Financial Conduct Authority and the Money and Pensions Service to issue a scam warning to pension schemes and savers on 11 November 2022. The statement warns of an increased risk from scammers because of the current economic uncertainty.

OTHER CONSIDERATIONS

None

6. FINANCIAL & RESOURCE APPRAISAL

None

7. RISK MANAGEMENT AND GOVERNANCE ISSUES

None

8. LEGAL APPRAISAL

None

9. OTHER IMPLICATIONS

9.1 SUSTAINABILITY IMPLICATIONS

None

9.2 GREENHOUSE GAS EMISSIONS IMPACTS

None

9.3 COMMUNITY SAFETY IMPLICATIONS

None

9.4 HUMAN RIGHTS ACT

None

9.5 TRADE UNION

None

9.6 WARD IMPLICATIONS

None

**9.7 AREA COMMITTEE ACTION PLAN IMPLICATIONS
(for reports to Area Committees only)**

None

9.8 IMPLICATIONS FOR CORPORATE PARENTING

None

9.9 ISSUES ARISING FROM PRIVACY IMPACT ASSESMENT

None

10. NOT FOR PUBLICATION DOCUMENTS

None

11. OPTIONS

None

12. RECOMMENDATION

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

13. APPENDICES

None