

Report of the Managing Director of West Yorkshire Pension Fund to the meeting of West Yorkshire Pension Fund Pension Board to be held on 21 March 2023

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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.

EQUALITY & DIVERSITY:

Not Applicable

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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 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 DLUHC to publish its response.
- 2.3 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. **Consultation on changes to the SAB's cost management process (CMP)**

4.1 On 30 January 2023, DLUHC launched a consultation on changes to the Scheme Advisory Board's (SAB) CMP. The consultation follows the report from the Government Actuary's Department into changes to the HM Treasury CMP, and the resulting policy and legislative changes set out in H M Treasury's response to that report. It acknowledges the differences between these two processes but proposes measures suggested by SAB in its consultation response to better integrate the SAB process within the statutory H M Treasury mechanism.

4.2 The consultation closes on 24 March 2023 and we are currently considering whether to respond.

5 **Consultation on the annual revaluation date change**

5.1 On 10 February 2023, DLUHC published a consultation and draft regulations on changing the annual revaluation date in the LGPS. If laid, the regulations will take effect from 31 March 2023.

5.2 The proposals seek to remove the impact of inflation on the annual allowance. It does so by changing the annual revaluation from the 1 to 6 April 2023, and thereafter on each 6th of April, for all members. It is intended there is no change in the outcome for:

- all members whose benefits in payment would increase on 1 April
- death grants for deferred and pensioner members who die in the period 1 to 5 April.

5.2 The consultation closed on 24 February 2023 and our response said that we supported the changes, however we expressed concerns about the timing of the change and the impact this may have on us and Civica with development work for the McCloud remedy and Pensions Dashboards.

6 **Other LGPS matters**

6.1 **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.

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.

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. Therefore, we expect DLUHC to issue further consultations to make the necessary changes to the LGPS Regulations 2013 in the near future.

On 3 March 2023 SAB published guidance to assist administering authorities with McCloud data issues. The guidance sets out what options administering authorities may consider if they are unable to collect the data needed to implement the McCloud remedy. It covers both missing data and data the authority is not confident is accurate.

6.2 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. The High Court Hearing began on 31 January 2023.

6.3 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.

6.4 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

6.5 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.

7 Other matters

7.1 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 on 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 affect LGPS administering authorities is the staging deadline for the LGPS and all other public service pension schemes 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 will close on 30 August 2022. Following this call for input, a consultation on the final design standards will run for six weeks.

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. The draft regulations were approved by Parliament on 17 November 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, 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.

On 2 March 2023 The Department for Work and Pensions (DWP) announced plans for a "reset" of the Pensions Dashboards Programme with a further update on the plan for the delivery of pensions dashboards expected before summer recess.

The framework for dashboards will remain unchanged, although DWP will legislate to provide new connection deadlines and further information on the revised timeline will be made available following an agreement on PDP's delivery plan.

7.2 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.

The new code of practice to be published in the near future.

7.3 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.

7.4 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'.

7.5 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

8. FINANCIAL & RESOURCE APPRAISAL

None

9. RISK MANAGEMENT AND GOVERNANCE ISSUES

None

10. LEGAL APPRAISAL

None

11. OTHER IMPLICATIONS

11.1 SUSTAINABILITY IMPLICATIONS

None

11.2 GREENHOUSE GAS EMISSIONS IMPACTS

None

11.3 COMMUNITY SAFETY IMPLICATIONS

None

11.4 HUMAN RIGHTS ACT

None

11.5 TRADE UNION

None

11.6 WARD IMPLICATIONS

None

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

None

11.8 IMPLICATIONS FOR CORPORATE PARENTING

None

11.9 ISSUES ARISING FROM PRIVACY IMPACT ASSESMENT

None

12. NOT FOR PUBLICATION DOCUMENTS

None

13. OPTIONS

None

14. RECOMMENDATION

It is recommended that the Pension Board note the report.

15. APPENDICES

None