

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 27 July 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

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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: Local valuation cycle and the management of employer risk

- 2.1 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'.
- 2.2 The consultation closed on 31 July 2019.
- 2.3 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.
- 2.4 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.
- 2.5 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.

3. Consultation on changes to the SAB's cost management process (CMP)

- 3.1 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.
- 3.2 The consultation closed on 24 March 2023.

3.3 These changes were made by the LGPS (Amendment) (No 2) Regulations 2023 which were laid before Parliament on 9 May 2023 and came into force on 1 June 2023.

4 Consultation on the annual revaluation date change

4.1 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.

4.2 The proposals seek to remove the impact of inflation on the annual allowance. It does so by changing the annual revaluation date from the 1st to the 6th of April 2023, and thereafter on each 6th of April, for all members.

4.3 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.

4.4 This change was made by the LGPS (Amendment) Regulations 2023 which were laid before Parliament on 9 March 2023 and came into force on 31 March 2023.

5 Other LGPS matters

5.1 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 6 April 2023, DLUHC published their response to this consultation.

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. On 30 May 2023 DLUHC published the [‘McCloud’ remedy in the LGPS consultation](#) to make the necessary changes to the LGPS Regulations 2013. This consultation closed on 30 June 2023. Attached at Appendix 1 is a copy of our response to this consultation.

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.

5.2 **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 years 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 and on 10 March 2023, it ruled that HM Treasury's decision to include the McCloud remedy in the cost cap mechanism was not unlawful. On 2 June 2023 the Court of Appeal granted unions permission to appeal against the High Court judgement.

5.3 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.

5.4 Scheme Annual Report 2022

On 26 June 2023, the SAB published its tenth Annual Report.

The report provides a single source of information about the status of the LGPS for its members, employers and other stakeholders. Key highlights for 2022 are:

- total membership of the LGPS increased slightly, growing by 161,871 (2.6 per cent) to 6.39 million members in 2022 from 6.23 million in 2021
- total assets of the LGPS increased to £369 billion (a change of 7.8 per cent),
- local authority return on investment over 2021/22 was 8.1 per cent. This compares to UK CPI year on year inflation of 8.8 per cent
- the Scheme maintained a positive cash-flow position overall, including investment income,
- over 1.95 million pensioners were paid over the year,
- life expectancy rebounded to pre-covid levels with an increase of 0.8 years for males and 0.6 years for females (2021 figures versus 2022).

- total management charges increased by £385 million (22.5 per cent) from £1,711 million. This was primarily driven by a £381 million (25.6 per cent) rise in investment management charges, while administration and oversight and governance costs remained broadly stable.

6 Other matters

6.1 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 came 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.

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 closed 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.

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.

On 8 June 2023 the Pensions Minister issued an updated statement setting out further details of the delay. Details are set out below.

- Legislation will be updated to set an overall connection deadline for all schemes, which will be 31 October 2026.
- The individual connection deadlines for schemes will be set out in guidance, and will be before the final deadline of 31 October 2026. DWP is planning to collaborate with the industry this year before publishing this guidance.
- The date that Dashboards will go live to the public (Dashboards Available Point) has not been announced yet, but the Minister today said that this could be earlier than 31 October 2026. This indicates that Public Sector Schemes will have an earlier staging date than 31 October 2026.

Also, on 8 June 2023, the Pensions Administration Standards Association published value data guidance. The guidance provides pension schemes with 'good practice' approaches to providing value data to dashboards.

6.2 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 is expected to be published in the near future.

6.3 Second Review of State Pension Age

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

- the Government Actuary provided a report assessing the appropriateness of SPA considering the latest life expectancy projections
- Baroness Neville-Rolfe provided 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 published the outcome of the second review of state pension age on 30 March 2023. The outcome of the review confirmed that the increase to State Pension Age from 66 to 67 is appropriate, meaning this rise will therefore take place between 2026-2028. That the Government plan to have a further review within two years of the next Parliament to consider the increase in State Pension Age to age 68.

6.4 **Spring budget 2023**

On 15 March 2023, the Chancellor of the Exchequer delivered his Spring budget following which the Finance (No.2) Bill 2022/23 was published on 23 March 2023. With effect from 6 April 2023, the Bill proposes to enact some of the changes announced at the Spring budget. In particular:

- increasing the annual allowance (AA) from £40,000 to £60,000
- increasing the money purchase AA from £4,000 to £10,000
- increasing the adjusted income level for the tapered AA from £240,000 to £260,000
- increasing the minimum tapered AA from £4,000 to £10,000
- abolishing lifetime allowance (LTA) charges arising in relation to benefit crystallisation events (BCE) occurring on or after 6 April 2023
- allowing members to accrue new pension benefits, join new arrangements or transfer, without losing enhanced protection or fixed protection where the protection was applied for before 15 March 2023
- changing the taxation of the LTA excess lump sum, so that it is taxed as pension income (ie taxable at marginal rate rather than 55 per cent)

- ensuring that payments of (or any part of) serious ill-health lump sums defined benefit lump sum death benefits or an uncrystallised funds lump sum death benefits that would have incurred an LTA charge remain taxable payments, with the excess taxed as pension income (ie taxable at marginal rate rather than 55 per cent).

The LTA will be abolished completely from the 2024/2025 tax year. This will be done through a future Finance Bill

6.5 **SCAPE Discount Rate Methodology**

On 30 March 2023 GAD published a technical note, following the publication of Government's response to the consultation on the discount rate methodology for public service pensions. The response confirmed that:

- the current methodology for setting the discount rate, based on the Office for Budget Responsibility's (OBR) forecast of long-term GDP growth, has been retained
- in future, the government will aim to review the level of the discount rate once in every 4 year valuation cycle, rather than the current 5 year timetable.

A Written Ministerial Statement also confirmed that the new SCAPE discount rate is 1.7% a year above the annual rate of the Consumer Prices Index of inflation.

As the reduced SCAPE discount rate is effective from 30 March 2023. DLUHC has confirmed some calculations had to be suspended immediately until new factors are issued. The suspension of calculations has now been lifted following DLUHC providing updated GAD factors on 1 June 2023 and 3 July 2023.

6.6 **Consultation on second set of rectification regulations**

On 22 May 2023, H M R C launched a consultation on The Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) (No.2) Regulations 2023.

The draft regulations supplement The Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023 ('first set of regulations'), which came into force on 6 April 2023.

The first set of regulations modifies various tax legislation, so the correct tax treatment is applied when public service schemes implement the McCloud remedy. The draft regulations propose further modifications.

This consultation closed on 19 June 2023.

6.7 Report on pension scam regulations

On 21 June 2023, DWP published a review of the Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021. DWP agreed to publish the review within 18 months of the regulations being operational. The review considered the following questions:

- are the regulations effective? • are there any unintended consequences?
- what does the pension fraud landscape look like following the regulations?
- are the red and amber flags still appropriate?

The report concludes that the original policy intent remains appropriate. However, there is concern about applying the regulations, in particular regarding the incentive red flag and overseas investment amber flag. DWP will work with industry and TPR to consider if changes could be made to the regulations to improve the transfer experience, without undermining the policy intent.

OTHER CONSIDERATIONS

7. FINANCIAL & RESOURCE APPRAISAL

None

8. RISK MANAGEMENT AND GOVERNANCE ISSUES

None

9. LEGAL APPRAISAL

None

10. OTHER IMPLICATIONS

10.1 SUSTAINABILITY IMPLICATIONS

None

10.2 GREENHOUSE GAS EMISSIONS IMPACTS

None

10.3 COMMUNITY SAFETY IMPLICATIONS

None

10.4 HUMAN RIGHTS ACT

None

10.5 TRADE UNION

None

10.6 WARD IMPLICATIONS

None

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

None

10.8 IMPLICATIONS FOR CORPORATE PARENTING

None

10.9 ISSUES ARISING FROM PRIVACY IMPACT ASSESMENT

None

11. NOT FOR PUBLICATION DOCUMENTS

None

12. OPTIONS

None

13. RECOMMENDATION

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

14. APPENDICES

1. 'McCloud' remedy in the LGPS consultation response