

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 25 January 2024

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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 investment reforms

- 3.1 On 11 July 2023, DLUHC launched a consultation on LGPS investment reforms. The consultation was announced by the Chancellor in his Mansion House Speech.
- 3.2 The consultation seeks views on proposals in five areas and closed on 2 October 2023.
- 3.3 On 22 November 2023, as part of the Chancellor's Autumn Statement, a response to this consultation was published stating the Government will:

- set out in revised investment strategy statement guidance that funds should transfer all assets to their pool by 31 March 2025, and set out in their ISS assets which are pooled, under pool management and not pooled and the rationale, value for money and date for review if not pooled.
- revise pooling guidance to set out a preferred model of pooling including delegation of manager selection and strategy implementation.
- implement a requirement in guidance for administering authorities to set a training policy for pensions committee members and to report against the policy.
- revise guidance on annual reports to include a standard asset allocation, proportion of assets pooled, a comparison between actual and strategic asset allocation, net savings from pooling and net returns for each asset class against their chosen benchmark.
- make changes to LGPS official statistics to include a standard asset allocation and the proportion of assets pooled and the net savings of pooling.
- amend regulations to require funds to set a plan to invest up to 5% of assets in levelling up the UK, and to report annually on progress against the plan.
- revise ISS guidance to require funds to consider investments to meet the government's ambition of a 10% allocation to private equity.

3.4 The Government will also amend regulations to require funds to set objectives for investment consultants and correct the definition of investment in the 2016 investment regulations and it intends to monitor progress over the current valuation period to 31 March 2025.

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 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 came 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 allowed 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.

On 8 September 2023 the outcome of the consultation was published and also the LGPS Amendment (No 3) Regulations 2023 were laid in Parliament and came into force on 1 October 2023. The regulations implement the McCloud remedy and amend the underpin rules to make sure they work correctly.

We will need to consider a range of McCloud-affected cases and to encourage a broadly consistent approach, DLUHC has provided its initial policy on how authorities should prioritise this work.

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 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.

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 Gender pensions gap report

The LGPS Gender Pensions Gap report produced in January 2023 which identified a substantial difference between the average level of pension benefits built up by male and female scheme members. The difference is 34.7 percent for benefits in the CARE scheme and 46.4 percent for benefits in the final salary scheme. For benefits in payment, the difference is even greater at 49 percent.

While this indicates some progress towards equality, the SAB asked the Government Actuary's Department (GAD) to explore these gender gaps in more depth. The SAB asked them to focus on

- career patterns, in particular evidence of recent and past part-time working
- differences relating to employers or categories of employer
- comparing our analysis with the LGA's 2019 gender pay gap report.

In June 2023, GAD provided their findings. They concluded that there is no simple answer. There seems to be a complex interaction between the types of work that women do, their career patterns (including part-time working and career breaks) and their ability to progress their careers after taking on childcare or other caring responsibilities.

The report shows that:

- Part-time working patterns are closely related to gender pension (and pay) gaps for members. However, the observed differences between men and women in terms of both their current and historic part-time working patterns are not sufficient to account fully for these gender gaps.
- Pay and pension gender gaps can be seen for staff working with the same employer. The size of the gap at scheme-level is also due to the difference in the proportion of males and females working at higher paying employers, as well as between different categories of employers.

There is no settled approach to data and methodological issues that would allow detailed comparisons to be drawn between gender gaps in different public sector pension schemes. The Board has proposed that GAD puts in place a common reporting framework for all the public sector schemes. Potentially this could be worked into the quadrennial scheme valuation process. SAB believes that the relationship between gender pay and pension gaps reporting needs to be addressed to allow for greater transparency and understanding. SAB has decided to set up a small working group to consider next steps.

4.5 **LGPS statistics for 2022/23 published**

On 25 October 2023, DLUHC published the LGPS statistics for England and Wales: 2022 to 2023.

Highlights include:

- total expenditure was £15.2 billion, an increase of 5.1 per cent on 2021/22
- total income was £17.3 billion, an increase of 8.5 per cent on 2021/22
- employers' contributions amounted to £8.4 billion, an increase of 7.8 per cent on 2021/22
- employee contributions were £2.8 billion, an increase of 9.5 per cent on 2021/22
- the market value of the LGPS funds at the end of March 2023 was £357.2 billion, a decrease of 1.9 per cent
- there were 6.2 million scheme members on 31 March 2023: 2 million active members, 1.9 million pensioners and 2.3 million deferred members
- there were 87,129 retirements, a decrease of 8 per cent compared with 2021/22.

4.6 **SAB statement on surpluses**

On 20 December 2023 SAB issued a [Statement on Surpluses](#). The key points of the statement are:

- Funding levels across the scheme increased at the 2022 valuation and subsequent market movements have led to some funds experiencing further improvements
- LGPS regulations emphasise the desirability of stability in primary contributions for employers
- Funds should carefully consider their approach to employer-specific investment and funding strategies and take professional advice as needed
- Clear communication with employers about the impact (or lack of impact) of funding improvements is key – as well as the potential longevity of those improvements
- Funds should have a clear rationale and be able to explain their approach to setting secondary contributions and how employers' covenant positions have been recognised
- Employer flexibilities regulations, statutory guidance and SAB are clear on the circumstances in which mid-cycle reviews of employer contributions are appropriate

5 Other matters

5.1 Money and Pensions Service - Pensions dashboard update

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.

The DWP laid the Pensions Dashboards (Amendment) Regulations 2023 in Parliament on 19 July 2023. A revised staging timetable will be set out in guidance and all schemes in scope will need to connect by 31 October 2026. The staging

timetable will indicate when schemes are scheduled to connect, based on their size and type.

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.

On 10 January 2024, TPR published its General Code of Practice, previously known as the Single Code of Practice, which is expected to come into force on 27 March 2024.

5.3 September 2023 CPI rate announced

On 18 October 2023, the Office for National Statistics announced the Consumer Prices Index (CPI) rate of inflation for September 2023 as 6.7 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. We await confirmation from Government that the revaluation and pensions increase that will apply to LGPS active pension accounts, deferred pensions and pensions in payment in April 2024 will be 6.7 per cent.

5.4 Consultation on second set of rectification regulations

On 22 May 2023, HMRC 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.

On 17 August 2023 the Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) (No.2) Regulations 2023 were laid before Parliament and these come into force on 14 September 2023.

5.5 Lifetime Allowance

The Government is legislating through the Finance Bill 2023/24 to fully abolish the lifetime allowance from 6 April 2024 and put in place new rules to determine the tax treatment of pension lump sums.

In December HMRC published the [Lifetime allowance guidance newsletter — December 2023](#). This newsletter gives information to support pension schemes to understand the changes. It covers:

- the changes to certain lump sums
- the impact on lifetime allowance protections
- changes to reporting and disclosure
- the transitional arrangements.

OTHER CONSIDERATIONS

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 TACKLING THE CLIMATE EMERGENCY IMPLICATIONS

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

14. BACKGROUND DOCUMENTS

None