

Pensions Committee

30 March 2022

Report title	Regulatory Update Report	
Originating service	Pension Services	
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Recommendations for noting:

The Pensions Committee is asked to note

1. The forthcoming regulatory changes across the Local Government Pension Scheme environment and the Fund's response to them.

1.0 Purpose

- 1.1 To provide Committee with an update on the regulatory environment in which the Fund is operating and the work being done to stay informed and prepared for change.

2.0 McCloud

- 2.1 As previously reported, in 2014 LGPS regulations were amended, and the scheme transitioned from a final salary scheme to career average revalued earnings (CARE). The new regulations contained provisions to protect older members closer to their retirement age (within 10 years of normal pension age) from a reduction in benefit, this protection is known as the final salary underpin.
- 2.2 However, in 2018 legal challenges (in relation to McCloud and Sargeant) from the Judges and Firefighters schemes were successful at the court of appeal, ruling that the protections put in place were age discriminatory. In 2019 the Government stated that it would make amendments to all Public Sector Pension Schemes to remove the discrimination, a consultation on the proposed changes was issued in July 2020.
- 2.3 In May 2021 the Government issued a statement with regards to the LGPS and McCloud ruling confirming that changes to the key elements of protection as outlined in the consultation would be made in due course, it is envisaged that these changes to LGPS regulations will come into force following a period of consultation with LGPS Funds noting the work needed to develop administration processes and systems. Amendments to the Public Sector Pensions Act 2013 are being made through the Public Service Pensions and Judicial Offices (PSPJO) Bill (discussed in more detail later in this paper), with changes to LGPS Regulations expected to be published by the Department (DLUHC) and consulted on once the Act is passed and currently not expected to be effective until April 2023.
- 2.4 The proposed remedy for the LGPS (in line with the PSPJO Bill) involves the removal of the age-related criteria for the underpin and would apply to members in service on or before 31 March 2021 who also have service after 31 March 2012. Implementation requires a significant data collection, with request for employers who were not required to provide certain data following the introduction of CARE in 2014, now required to supply historic pay and working hours data to enable the LGPS underpin to be recalculated.
- 2.5 The Fund has recruited a project team who are responsible for the management and implementation of the McCloud remedy. Collection of additional data began in October 2021 and will be completed in stages with a dedicated team in place to analyse data and rectify errors. At the time of reporting, approximately 66% of employers had submitted data relating to 22% members. A programme of support for employers has been developed and is being rolled out. In addition, engagement with the Fund's pension administration system provider is underway to understand and develop the system changes required to implement the remedy as efficiently as possible.

3.0 Pensions Dashboards

- 3.1 The Government's consultation on the draft regulations detailing how pension dashboards will come into effect closed on 13 March 2022, the Fund having submitted a response. It is envisaged that public service pension schemes will onboard onto dashboards by April 2024, with concerns raised across the industry and sector and the tight timescales for implementation in context of unknown requirements and material challenges to address including, data protection, security and liability. The introduction of pension dashboards will mean that all members that are not in receipt of benefits (i.e. non pensioner members) will be able to access information about their retirement savings and benefits across pensions schemes in one place, in order to support improved retirement planning and engagement.
- 3.2 Whilst not all of the requirements for pension dashboard are known at this time with work ongoing to build the data specification, significant work will be required by the Fund for the preparation and introduction of dashboards. Preparatory work is already underway to support the Fund's interaction with pension dashboards which includes, data cleansing, member tracing and engagement with key stakeholders. The cost of pension dashboards will be met by the Pensions Industry itself; it is also anticipated that their introduction will increase demand on pension funds' customer service teams and contact centres as members will be encouraged and enabled to more easily make contact with schemes with whom they hold retirement benefits and with whom they may have lost contact due to the passage of time.
- 3.3 Dashboard delivery will require significant cross-industry and provider co-ordination, with an extensive programme of work underway. The Fund continues to engage through industry forum and with its own peers, advisers and providers to aid implementation and positive outcomes for pension members.

4.0 Pension Regulator Code of Practice

- 4.1 The Pensions Regulator consulted on the implementation of their single code of practice during March 2021, the consultation proposed combining their 15 existing codes into one single online code covering the following five areas;
- Administration
 - Communication and Disclosure
 - Reporting to TPR
 - Funding and Investment
 - The Governing Body
- 4.2 The proposed single code will cover all pension funds, however, not all areas would be directly applicable to the LGPS (but may provide examples of good practice). An interim response to the consultation was published in August 2021 and it is currently envisaged

that the final version of the code will be published during summer 2022. Whilst the code is not a fundamental change from the regulator's current public service pension scheme code, it does include a number of new areas where additional work will be required to meet requirements.

- 4.3 The Fund have undertaken a gap analysis of all 51 modules to current working practises and RAG rated compliance to identify areas that will require improvements. Whilst the Fund's overall level of compliance is high, ongoing development will be required to demonstrate compliance in all areas and maintain strong governance at the Fund.

5.0 Public Service Pensions and Judicial Offices Bill (PSPJO Bill)

- 5.1 The Public Service Pensions and Judicial Offices Bill aims to bring together a number of legislative changes which seeks to ensure consistency and reform in the application of pension legislation following cases such as McCloud and the Supreme Court Judgment on LGPS investment Guidance. Whilst originally focused on amendments to address implications of the rulings on age discrimination across the Public Sector Pension Schemes (noted earlier in this paper), the proposed changes in relation to LGPS investment matters have come into the Bill through amendments tabled through the Commons in February 2022.
- 5.2 In April 2020 the Supreme Court ruled that Local Government Pension Schemes could not be guided in setting their investment strategy where that guidance sought to specifically exclude certain types of investments. Currently, Law Commission guidance states that LGPS Funds may take into account Environment, Social and Governance factors when determining investment decisions, provided they have good reason to believe their scheme members share the same concern and there is no material risk of financial detriment.
- 5.3 On 23 February 2022 a proposed amendment to the wording in the Bill was tabled which would enable the Secretary of State to issue *guidance* to LGPS Funds that they "*may not make investment decisions that conflict with the UK's foreign and defence policy*". This followed an announcement in the Queen's speech in May 2021 that the government's legislative programme would include a Boycotts, Divestment and Sanctions (BDS) Bill to prevent public bodies from imposing their own approach and views on international relations against foreign countries. The LGPS amendment was debated and accepted by the Lords on 9 March, with a wider BDS Bill still expected to develop at a later stage.
- 5.4 Prior to the Lord's debate representations were made by both the Scheme Advisory Board for the LGPS and the industry body the Pensions Lifetime Savings Association (PLSA). During the debate it was noted that regulations and guidance are already in place to require pensions schemes to consider environmental, social and governance (ESG) risks; pension funds have fiduciary responsibilities; and that there are many employers and members participating in the Local Government Pension Scheme that are not part of Local Government. It was noted that the amendment would place no immediate duty on scheme managers to take investment or divestment decisions and

that any guidance subsequently issued by the responsible authority (DLUHC) would be subject to formal 12-week consultation. Reference was also made to the established Law Commission's test for investment decision in relation to non-financial considerations, with an expectation that guidance would be aimed at decisions which appeared not to meet this test. Further information including initial Q&A and the letter issued to Pension Committee Chairs by the Secretary of State on 9 March can be found on the Scheme Advisory Board website, referenced in the background papers to this report.

- 5.5 The PSPJO Bill is expected to gain Royal Assent this month, with (as noted above) any guidance expected to be subject to a period of consultation with the LGPS.

6.0 Levelling up white paper

- 6.1 On 2 February 2022 the Department (DLUHC) published its Levelling Up for the UK whitepaper. This set out the Government's vision for ending geographical inequality in the UK, focusing on six key drivers of capital and noting that monies held by the LGPS was a potentially underutilised source of capital. This included ambition for the LGPS to invest 5% of assets into projects supporting local areas. We currently await further information to understand how the Government will work with LGPS Funds to develop these plans. In the meantime, the Scheme Advisory Board has noted on its website that it understands "local area" to refer to "UK" rather than local to the LGPS Fund. We await further clarification with further details expected to emerge over the summer, alongside the long-awaited guidance on climate risk reporting and regulations and pooling within the LGPS.

7.0 Financial implications

- 7.1 Failure by the Fund to meet statutory requirements of effective governance and administration could result in fines imposed by Regulators

8.0 Legal implications

- 8.1 Failure by the Fund to comply with legislation and/or statutory guidance can result in enforcement action and fine from both tPR and the Courts via judicial review.

9.0 Equalities implications

- 9.1 There are no direct equalities implications.

10.0 Other Potential implications

- 10.1 There are no other potential implications.

11.0 Schedule of background papers

- 11.1 [LGPS Scheme Advisory Board - BDS \(lgpsboard.org\)](https://lgpsboard.org)

11.2 [SoS_DLUHC to Committee Chairs9Mar22.pdf \(lgpsboard.org\)](#)

12.0 Appendices

12.1 None