



SOUTH YORKSHIRE
PENSIONS AUTHORITY

Subject	Regulatory Update	Status	For Publication
Report to	Authority	Date	13 June 2019
Report of	Head of Pensions Administration		
Equality Impact Assessment	Not Required	Attached	No
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1 Purpose of the Report

- 1.1 To make members aware of current regulatory developments and seek views on a Government consultation impacting the LGPS.
- 1.2 To alert members to the potential impact on the valuation process of an ongoing court case involving public service schemes.

2 Recommendations

2.1 Members are recommended to:

- a. **Approve the proposed response to the consultation on changes to the valuation cycle and management of employer risk.**
- b. **Approve the suggested approach to the valuation process to account for the uncertainties concerning the cost cap.**
- c. **Note the content of the consultations on changes to Fair Deal and the restriction of exit payments in the public sector.**

3 Link to Corporate Objectives

- 3.1 This report links to the delivery of the following corporate objectives:

Listening to our stakeholders

To ensure that stakeholders' views are heard within our decision making processes.

Members of the Authority and employers in the Fund are invited to engage with responding to Government consultations on proposed changes that impact the LGPS.

Investment Returns

To maintain an investment strategy which delivers the best financial return, commensurate with appropriate levels of risk, to ensure that the Fund can meet both its immediate and long term liabilities.

Although not directly linked to investment returns, there are potential impacts on the ability to deliver stable contribution rates for employers which is a key element of the funding strategy.

4 Implications for the Corporate Risk Register

- 4.1 The actions outlined in this report do not have direct implications for the Corporate Risk Register, although should some of the proposals currently being consulted on be implemented, particularly changes arising from the McCloud case and/or the cost cap there are likely to be significant risks around the administrative process as a result of backdating.

5 Background and Options

Consultation: Changes to the Valuation Cycle and Management of Employer Risk

- 5.1 In May 2019, the Government issued a 12 week consultation on a proposal to move to a four yearly valuation cycle from three years with more discretion for funds to carry out interim valuations if appropriate. **Appendix A** sets out more background detail on the reasons for the change and recommendations as to the Fund's response.
- 5.2 As part of the same consultation, the Government are proposing increased flexibilities around the handling of exit payments – these are payments which become due when an employer leaves the scheme (often as a result of the termination of an outsourcing contract). Similarly, **Appendix A** provides further detail and a proposed approach to responding to the consultation.
- 5.3 Finally, the consultation also includes an invitation on views as to whether certain educational bodies (in the further and higher education sector) should have the discretion to decide whether to admit employees in the future. This is primarily an issue for those employers to consider, though they will need to be aware of the potential funding implications in relation to existing contribution rates if they were to support this change.

The Cost Cap and the McCloud case

- 5.4 The Cost Cap is a mechanism written into the 2013 Public Service Pensions Act which was intended to limit the overall cost of the scheme to the taxpayer. This is calculated by the Government Actuary on a theoretical basis (ignoring the impact of investment returns for example) and if there is a deviation from the limit then member's benefits should either be improved or reduced.
- 5.5 At the Government Actuary's last assessment all public sector schemes (including the LGPS) were below the cost cap and therefore benefits were due to be improved, at a cost to the taxpayer. A package of benefit improvements was proposed for implementation from 1 April 2019. National figures indicated a cost of up to 1% on employers' future service contributions.

- 5.6 McCloud is the case lost by the Government in the Court of Appeal where some of the transitional protections within the Judges and Firefighters' CARE schemes were ruled to be discriminatory on age grounds. The Government is appealing the case to the Supreme Court but believes that if it loses changes will be required to the transitional protections in all the public sector schemes.
- 5.7 For the LGPS, these transitional protections have been in place since 1 April 2014. As a result, given the potential cost of changes all of the cost cap measures have been paused. Any changes required as a result of the McCloud case will need to be backdated.
- 5.8 These two issues create a degree of uncertainty and it is highly unlikely that any outcome from the McCloud case will be known before the Fund is required to set future contribution rates following the 31 March 2019 valuation.
- 5.9 One way of dealing with this would be to ignore the potential changes and deal with them when there is certainty by reflecting them in an interim valuation under new rules proposed by the Government (see the reference to the consultation above). This could potentially result in significant variations in contribution rates, which would go against the principle of maintaining stability and create a greater degree of uncertainty.
- 5.10 The alternative approach, and one recently endorsed by advice received from the Scheme Advisory Board, would be to ask the actuary to build some sort of volatility provision into the valuation process. The effect of this would be to anticipate some change in rates at an earlier stage and therefore reduce the impact of backdated changes at a later stage.
- 5.11 Members are asked to support the more prudent approach which allows employers to be aware of and make provision for the potential costs.

Consultation: New Fair Deal in the LGPS

- 5.12 In January 2019, the Government issued a consultation on draft Regulations introducing New Fair Deal into the LGPS. This consultation, following on from an earlier one in May 2016, sets out how pension issues should be addressed when staff are compulsorily transferred from the public sector to contractors providing public services.
- 5.13 The consultation aims to widen and strengthen arrangements for the categories of staff who are covered by pension protections when transferred to contractors and ensure that they continue to be offered access to the LGPS.
- 5.14 It also introduces the concept of a "deemed employer" approach where staff transferring to contractors would continue to be treated for pension purposes only as an employee of the transferring employer. The transferring employer would retain the majority of scheme employer responsibilities (including contributions and funding risk). This is similar to the arrangements for voluntary aided and voluntary controlled maintained schools.
- 5.15 The intention behind this approach, which would be available in addition to the current admission agreement arrangements, would be to give transferring employers (generally local authorities) greater flexibility for negotiations around price and risk sharing when transferring services and functions to external providers.

- 5.16 The consultation was primarily an issue for employers and has now closed. Officers contributed to a technical response to the consultation which, amongst other points, sought to reinforce the importance of statutory guidance to ensure employers fully understood the implications of a “deemed employer” approach and that administering authorities were not inadvertently “dragged in” to negotiations around the nature of the service contracts in so far as they impacted on pension responsibilities.

Consultation: restricting exit payments in the public sector

- 5.17 In April 2019, HM Treasury opened a 12 week consultation on restricting exit payments in the public sector. Under the consultation, the exit payment cap is to be set at £95,000 and applies to the whole of the public sector.
- 5.18 As with the consultation on Fair Deal, this is primarily an issue for employers to consider and employers in the Fund have been made aware. The proposed cap is particularly relevant to the LGPS because the ‘pension strain’ that employers are required to pay to provide an unreduced pension to members in certain circumstances (redundancy or business efficiency for example) counts towards the calculation of the £95k cap in addition to any other exit payments (redundancy payment, pay in lieu of notice, etc.).
- 5.19 Some changes will need to be made to the LGPS to deal with the implications of a potential cap on the pension strain but these changes will need to be subject to a separate consultation that has not yet been issued. The likely implementation date of the introduction of the cap therefore remains uncertain.

6 Implications

- 6.1 The proposals outlined in this report have the following implications:

Financial	None apparent.
Human Resources	None apparent.
ICT	None apparent.
Legal	None apparent.
Procurement	None apparent.

Jason Bailey

Head of Pensions Administration

Background Papers	
Document	Place of Inspection
Consultation: Changes to the Local Valuation Cycle and Management of Employer Risk	https://www.gov.uk/government/consultations/local-government-pension-scheme-changes-to-the-local-valuation-cycle-and-management-of-employer-risk
Consultation: Fair Deal – strengthening pension protection	https://www.gov.uk/government/consultations/local-government-pension-scheme-fair-deal-strengthening-pension-protection
Consultation: Restricting exit payments in the public sector	https://www.gov.uk/government/consultations/restricting-exit-payments-in-the-public-sector