

Pension Fund Committee

14 March 2019

Cost Management in the LGPS

Ordinary Decision



Report of John Hewitt, Corporate Director of Resources

Purpose of the Report

- 1 This report is intended to update Committee Members on the Cost Management mechanisms in the LGPS, and the current pause on the process.

Executive summary

- 2 The process to manage costs in public sector pension schemes, known as the cost cap mechanism, commenced for the first time in 2019. It appears that the cost cap floor has been breached across public sector schemes, including the LGPS. To return schemes to the target cost, the design of the schemes must be changed.
- 3 Before the cost cap mechanisms could be completed, however, the Government lost a Court of Appeal case relating to transitional protections for older scheme members in other public sector on the grounds of age discrimination. Because of the wider implications of the case, cost management processes across public service pensions have been paused.

Recommendation(s)

- 4 Members are asked to note the information contained in this report.

Background

- 5 In 2011 Lord Hutton concluded a fundamental review into public sector pension provision, with a stated aim to “ensure affordable and sustainable public sector pensions”. The report set out a number of recommendations that formed the basis for consultation with public sector workers, unions and others.
- 6 Following consultation, the Government legislated in the Public Service Pensions Act a framework for new public service pension schemes, which were introduced into local government in 2014 and the rest of the public sector in 2015.
- 7 In line with one of Lord Hutton’s recommendations, the Act provided for an employer cost cap with an objective of providing backstop protection for the taxpayer against unforeseen changes in scheme costs.
- 8 The provision in the Act requires public sector schemes to remain within a 2% margin either side of the employer cost cap, creating both a cost ceiling and floor. Where the cost of a public sector scheme goes beyond either of these margins, the legislation requires action to be taken to bring the scheme back to the target cost.
- 9 In the LGPS, there are two mechanisms to ensure that the scheme remains within the specified margins between the cost ceiling and floor. First, the LGPS Scheme Advisory Board (SAB) carries out a non-statutory assessment of the scheme intended to give an early warning of any cost changes. Following the SAB assessment, Her Majesty’s Treasury (HMT) will conduct a statutory evaluation of the cost cap.
- 10 This dual mechanism approach is unique to the funded LGPS. In the unfunded public sector schemes, Teachers, NHS, Police, Fire etc., there is no SAB process, with HMT’s statutory cost cap evaluation the only process to run.
- 11 The results from the HMT process for the unfunded schemes suggest that the cost cap floor has been breached across these schemes, which would result in the requirement for benefit improvements to return to the target cost.
- 12 Initial SAB assessment indicates that the LGPS has also breached the cost cap floor. A sub group of the Board, consisting of the Chair, Vice Chair and an employer representative agreed to consider a package of benefit improvements sufficient to return the scheme back to the cost target.
- 13 Before any proposed package of LGPS changes could be progressed, however, provisions relating to transitional protections for older scheme

members in other public sector schemes were found by the Court of Appeal to be unlawful on the grounds of age discrimination, and could not be justified (McCloud and Others v Ministry of Justice).

- 14 Although the case relates to Judges' and Firefighters' pension schemes, it is anticipated that the principles of the outcome could be accepted as applying to all public service schemes. Should the finding of the Court of Appeal stand, then significant changes to all public sector schemes may be required to remedy the age discrimination.
- 15 Because of this ruling, and subsequent changes to public service pensions that may be required, the cost cap process in the LGPS (and across the public sector) has been paused. A Q&A prepared by SAB is included in Appendix 1.
- 16 The Government has applied to the Supreme Court for permission to appeal the decision. Normally a decision on whether to grant permission is received within 3 months of the application, so by mid-April 2019 it should be clear whether the case will go through the Supreme Court, or whether the decision of the Court of Appeal stands.
- 17 Officers will continue to monitor the position, and update the Committee on the outcome of the legal case and the implications for Cost Management in the LGPS

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Appendix 1: The McCloud case Q&A for administering authorities
