



An Opinion on  
the Sharī'ah  
Compliance of  
Pension Benefits  
for Muslim  
Members of the  
LGPS

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# SHARĪAH FINANCE TECHNOLOGY

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# About The Author



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# GLOSSARY

ﷺ	The Arabic for Ṣallālahu ‘alayhi wasallam (may Allah’s peace and blessings be upon him). A supplication that Muslims make every time they mention or write the blessed name of the final Prophet, Muhammad ﷺ.
AAOIFI Standards	Accounting and Auditing Organization for Islamic Financial Institutions Standards. Global standard-setting body that issues standards for the Islamic finance industry.
AH (After Hijrah)	AH stands for After Hijrah and refers to the Islamic calendar era that begins with Prophet Muhammad's ﷺ Hijrah (emigration) from Mecca to Medina in 622 CE.
Ajīr	Employee
‘Alayhis Salām	Peace be upon him. A supplication made in reverence and respect for all the Prophets of God.
Amānah	Trust, loyalty, honesty and owing a duty of care to others.
Aqd	Contract, agreement, transaction.
Aqd al-Mu’āwadah	A contract of exchange and bilateral transfer of ownership.
Aqd al-Tabarru’	A gratuitous contract with a unilateral transfer of ownership.
‘Āriyah	Borrowing
Classical schools	The four mainstream schools of Islamic law.
Fatwā	An edict issued by a Mufti in relation to a question related to Islamic matters.
Fiqh	Islamic jurisprudence and law.
Gharar	Prohibited ambiguity, uncertainty or deception in contracts. Prevalent in conventional derivatives.
Ḥadīth	Verbal sayings, actions, practices and tacit approvals narrated from the Prophet Muhammad ﷺ.
Ḥalāl	Lawful
Ḥanafī School	The school of thought based on the understanding of Imam Abu Hanifah and his students that was formed in Kufa in the second century after Hijrah.

# GLOSSARY

Hanbali School	The school of thought based on the understanding of Imam Ahmed ibn Hanbal
Hibah	Gift
Huqūq	Rights
Ijārah	An employment agreement
Imam	A title for a leader or learned scholar.
Istiṣnā'	Manufacturing contract
Kitābah	A contract with a servant in earlier times
LGPS	Local Government Pension Scheme
Mālikī School	The school of thought based on the methodology and principles of Imam Malik ibn Anas.
Manfa'ah	Services or usufruct – this is the subject matter of sale in a services agreement or employment agreement.
Milkiyyah	Ownership
Mufti	A qualified Islamic jurist that has been authorised and certified to issue Fatwa.
Muqāyaḍah	Barter exchange
Non-Sharī'ah Compliant	An investment or transaction that does not comply with Islamic rules.
Qabḍ	Possession
Qur'an	The final revelation of God to the final Prophet, Muhammad ﷺ.
Rahn	Collateral

# GLOSSARY

Ribā	Interest payments.
Salam	A sale with advance payment and deferred delivery of sale item which is not in the ownership of the seller at the time of sale.
Ṣarf	An exchange of gold and silver.
Shafi'i School	The school of thought based on the methodology and principles of Imam al-Shafi'i.
Sharīah compliant	An investment or transaction that does comply with Islamic rules and principles.
Sukuk	Sharīah-compliant trust certificates issued in the capital markets as alternative to bonds.
Sunnah	The teachings and practices of the Prophet Muhammad ﷺ.
Takaful	A Sharīah compliant alternative to insurance.
Ujrah	Wage, salary and fees.
Wadi'ah	Safekeeping
Wakālah	Agency
Waṣiyyah	Bequest

This report provides a detailed Sharīah analysis of the pension benefits received by Muslim members of the Local Government Pension Scheme (LGPS). The primary inquiries are:

1. Is it acceptable from a Sharīah standpoint for a Muslim employee of the Local Government to take part and benefit from the pension scheme benefits provided by the LGPS?
2. Does the LGPS conform to Sharīah principles?

The essence of the analysis focuses on the contractual relationship between the employees and their employers instead of the role of administering authorities. In Sharīah terms, the administering authority serves as an agent for the employer; it is the employer who assumes the investment risk. The response to the first query above lies in the contractual relationship between the employer and employee. Thus, the report investigates this relationship, and the obligations of this relationship in great detail.

## **The Findings**

The findings of this report are as follows:

### **1. Overview of the LGPS**

The LGPS is a defined benefit pension scheme tailored for local government employees, benefitting over six million members. It is funded by contributions from employees, employers, and investment income, and is managed by eighty-six local pension funds.



## **2. The nature of the contract between the scheme employer and employee from a Sharīah lens**

The pension members are employees, and the contract from a Sharīah perspective is that of an *Ijārah* contract, where the employee provides a service in return for wages from a scheme employer.

The pension benefits payable to employees/members upon retirement are considered deferred salaries. Once earned, this salary transitions into a debt obligation upon the employer. The deferred pension contribution is essentially a postponed salary, which the employee consents to receive at a later time. Consequently, the employee holds a claim against the employer.

The risk associated with the investment in the LGPS Funds are borne by the scheme's employers. The scheme employers have legal ownership of the monies in the Funds. This arrangement isolates Muslim members from any direct involvement or association with the investment activities carried out within the Funds.

## **3. A Sharīah interpretation of pension contributions**

Key distinctions are made between ownership, possession, and debt as viewed through the lens of Islamic jurisprudence. The report establishes that employees are owed a debt by their employers in the form of salary and pension contributions, but do not technically "own" the specific monies channelled into the Funds. Therefore, they bear no Sharīah responsibility for how these monies are invested by the administering authority on behalf of the scheme employers. Ownership and risk transfer are a requirement before any investment activity can be ascribed to the pension members. These findings have significant implications for the Sharīah compliance of pension benefits.

#### 4. Uncertainty in pay-outs

The report delves into the ambiguity surrounding deferred pension payments in employment (*Ijārah*) contracts and the potential Sharīah implications. Drawing upon key Islamic legal texts and the insights of contemporary Islamic scholars, the report finds that the uncertainty in the total benefits to be received does not invalidate the employment contract from a Sharīah perspective. Such ambiguity is deemed immaterial and unlikely to lead to disputes, given that it is based on standardised calculations and customary practice. The report also highlights that the LGPS provide multiple tools for members to calculate estimated benefits, further reducing any ambiguity.

#### 5. Fund investments

The LGPS Fund assets were screened through a Sharīah lens. The asset classes included Fixed Income and Bonds, Equities, Property, Cash, Private Equity, Infrastructure, and Others.

The Sharīah status of the assets was as follows:

- Fixed Income/Bonds: Not Sharīah compliant as they involve interest payments.
- Equities: These require Sharīah screening. In the absence of such screening and review, they cannot be deemed Sharīah compliant.
- Property: Although property is a valid and Sharīah compliant asset class, the investment contract and investment strategy must be reviewed to ensure Sharīah compliance. In addition, lease contracts and financing must adhere to Sharīah principles.
- Cash: Holding cash in accounts that accrue interest is not Sharīah compliant.

- Private Equity: Requires extensive Sharīah screening, especially of the business model and operations.
- Infrastructure: This is Sharīah compliant if the funding and operations align with Islamic principles.
- Other: Includes a range of non-traditional assets. Sharīah compliance varies widely depending on the specific asset or strategy. Commodities' trading and hedge funds in the financial markets are typically not Sharīah compliant.

## **6. The origin of benefits for retired members**

In the context of LGPS, questions regarding the Sharīah compliance of pension benefits for Muslim retirees have been thoroughly examined. Our opinion, based on Islamic jurisprudence, affirms that pension benefits are acceptable to receive by Muslim retirees. The monies are derived from multiple sources, such as local government funding, private-sector revenue, as well as investment income. The classical Islamic scholars state that Muslims may accept debt repayments from non-Muslims, even if generated from non-compliant sources. However, a cautionary note is sounded for macro-level funding strategies that rely significantly on non-Sharīah compliant industries. While individual acceptance is permissible, such systemic reliance challenges broader Sharīah objectives.

## **7. The LGPS Funds are not Sharīah compliant**

The LGPS is not based on Sharīah principles and does not claim that it is. It contains asset classes and investments that would not be deemed acceptable from a Sharīah perspective. Whilst pension members can receive pension benefits due to the technicalities of obligations from an employment contract, the overall LGPS investments are not Sharīah compliant, and do not align with the values of members in terms of the macro-vision for an economy. Muslim members would feel uncomfortable in the long-term knowing that contributions are being made in investments that do not align with their ethical principles and values.

The Sharīah provides comprehensive guidance for structuring an ethical, equitable and sustainable economic system that balances free markets with moral responsibility. Key principles include sound monetary policy, asset-backed transactions, sustainable development, promoting virtuous industries, equitable wealth distribution, lowering barriers to entry, preventing monopolies, strong governance institutions, and prohibiting exploitative practices like interest (*Ribā*). The overall vision is of an economy that fosters innovation and competition within an ethical framework that serves the interests of the broader community and environment. The Sharīah aims to achieve the dual goals of economic prosperity and social justice.

## **8. Our opinion & recommendations**

In our evaluation of the LGPS in relation to Sharīah compliance, we find a complex landscape. On one hand, Muslim members can technically accept the pension benefits from a Sharīah perspective, since the contractual relationship between them and their employers aligns with the principles of a sound *Ijārah* agreement. This means the employees are not directly involved in the investment of pension contributions, which are managed by the scheme's administering authority. However, at the Fund's level, the LGPS invests in assets that are non-Sharīah compliant, such as conventional bonds and interest-earning cash holdings, rendering the overall fund inconsistent with Sharīah principles.

We recommend a multi-tiered approach to resolving these complexities. In the present, Muslim members may continue their LGPS membership and receipt of benefits. For long-term alignment with Sharīah compliance and broader ethical considerations, we propose that the LGPS diversify its investment portfolio to include sub-funds that are Sharīah-compliant, ESG-focused, or otherwise, aligned with the values of its diverse membership of Muslim, non-Muslim, and other representatives with an interest in different values-based frameworks.

A special Sharīah-compliant fund could be created, making up about 6.5% of the total fund to reflect the Muslim population in the UK. Muslim members can then move across to this fund over the medium-to-long term. This will not only address the concerns of Muslim members but also position the LGPS as an inclusive and responsive scheme. The LGPS has a duty to be reflective of the diverse needs and values of its members as well as to ensure its members' pension monies are supporting investment strategies its members would wish to support. A number of Sharīah compliant fund opportunities exist both in the public and private markets that the LGPS may choose from.

# FOCUS OF THE SHARĪ'AH RESEARCH AND STUDY

1. In this analysis on the Sharī'ah compliance of the pension contributions and pension earnings, the spotlight is on the contractual and relational dynamics between employees and their employers, rather than the administering authority. From a Sharī'ah viewpoint, the administering authority is considered an agent acting on behalf of the scheme employer. The pension benefits for local government employees originates from the contractual agreement between the employer and the employee, making it a critical element in determining its Sharī'ah compliance. Furthermore, the scheme employer carries the investment risk, while the administering authority has a fiduciary duty and assumes the role of managing responsibilities on behalf of others. Thus, the relationship between the scheme employer and the employee, and the obligations and liabilities of the scheme employer are crucial in answering the questions responded to in this opinion paper.

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## OVERVIEW OF THE LOCAL GOVERNMENT PENSION SCHEME

### **What is the LGPS?**

2. The LGPS is one of the largest pension schemes in the UK. It is a defined benefit pension scheme which means that the retirement benefits are defined and based on formulae that reflect the length of membership and other factors. The LGPS provides members with a secure and guaranteed income every year upon retirement. Unlike the other main public service pension schemes which operate on a pay-as-you-go basis (meaning that contributions are paid to the sponsoring government department which meets the costs of pensions in payment) it is funded (meaning that contributions are paid to a fund which is invested and from which benefits are paid at retirement). The pension benefit paid to retirees is not affected by how well the investments perform.
3. The LGPS is administered locally by eighty-six local pension funds in England and Wales. Based on the Scheme's Annual Report 2022, the LGPS has currently just under 6.4 million members across England and Wales with a breakdown as follows:

- 2 million people are currently paying into the LGPS.
- 2 million people are being paid a pension from the LGPS.
- 2.4 million have a pension with the LGPS that they have not taken yet.

Fund administering authority type	Count of funds	Average number of active employers per fund
Metropolitan Districts	6	485
County Councils/Unitaries	38	263
London Boroughs	31	50
Wales	8	46
Other	4	34

4. The total number of Scheme employers with active contributing members was 14,992 based on the Annual Report 2022.
5. The chart shows how the average number of Scheme employers differs between the types of administering authority. County council administered funds typically have more participating employers compared with London boroughs. The 'Other' category comprises the London Pension Fund Authority and the Environment Agency Funds (for the purpose of administration, City of London is included in London Boroughs).

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## The Mechanics of the LGPS

6. Employee contributions are deducted via payroll and must be paid over to the fund by the 19th of the month following deduction. The employer holds the risk and responsibility for deducting and paying over the contributions at this point and the contributions are held in the employer's bank account.
7. The amount the employee pays is determined by their salary. Employees are allocated a contribution band between 5.5% and 12.5% of pay. Employer contributions are determined by an actuarial valuation every three years and for the coming valuation period are expressed as a percentage of the member's pay, where the fund actuary calculates employer contribution rates based on assets and liabilities, using a set of agreed assumptions, and based on the fund's investment return.

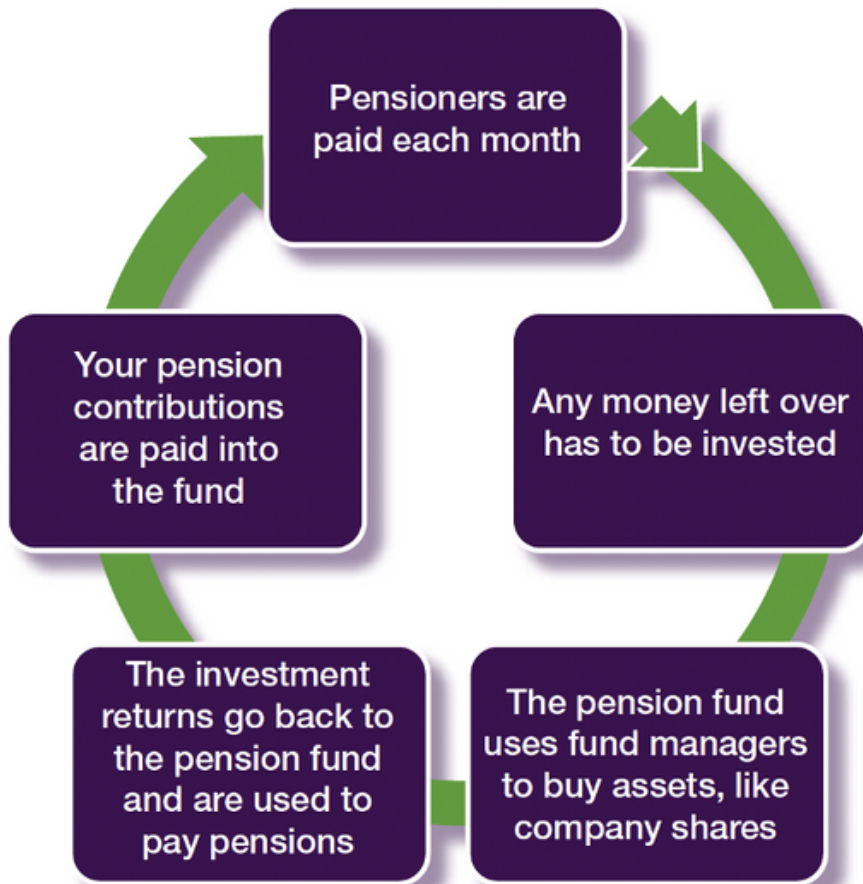
8. Once the fund has received payment of the employee and employer contributions into the bank account, the monies are transferred to the fund. Those monies are then held in an account that is entirely ring-fenced from the rest of the administering authority's resources. They can be used to pay benefits, administer the pension scheme, be invested or reinvested, but only in the members best interests to help pay future benefits.
9. *Regulation 6 of the LGPS Investment Regulations 2016 states:*
- 6.—
- (1) *An authority must hold in a separate account kept by it with a deposit-taker all fund money.*
- (2) *“Deposit-taker” for the purposes of paragraph (1) means—*
- (a) *a person who has permission under Part 4A of the 2000 Act (permission to carry on regulated activities) to carry on the activities specified by article 5 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (accepting deposits)(15);*
- (b) *the Bank of England or the central bank of an EEA state other than the United Kingdom; or*
- (c) *the National Savings Bank.*
- (3) *An authority must secure that the deposit-taker may not exercise a right of set-off in relation to the account referred to in paragraph (1) in respect of any other account held by the authority or any party connected to the authority.*
- Under Regulation 5 of the 2016 Regulations, the administering authority cannot borrow against that pension fund account (except for very short-term loans to manage cashflow).*



10. The fund aims to manage cash flow in the most efficient way possible and so it is likely to use the monies paid in each year to pay the pension liabilities currently due (i.e. to current pensioners, dependents and to pay transfers out) and to cover fund running costs. Cash flow surplus can then be invested over the longer term, to make use of any illiquidity premium. All funds must publish their accounts and custodians in their annual report. Because of this, employee and employer contributions (unlike in a defined contribution scheme) are not directly invested or allocated specifically to the employee or employer when invested – everything is accounted for at fund level, with only notional allocations between scheme employers so that future contributions can be calculated based on the pension liabilities of the employer membership profile. Benefits are built-up and calculated using a set calculation defined by the LGPS and wider regulations.

### The Funds' Cash Flows

11.



## **How does the LGPS work?**

**12.** The LGPS Fund performs various tasks, as follows:

- It administers the pension system.
- Collects contributions.
- Pays pensions.
- Hires investment managers.
- Invests surplus cash and buys assets – the returns on these investments go toward paying pensions.

### **LGPS Rules**

**13.** The Scheme rules can only be changed with the approval of Parliament. Changes to the rules are discussed at a national level by employer and employee representatives.

**14.** The LGPS is a qualifying scheme that meets the Government's standards for automatic enrolment. If an employee has chosen to opt out of the LGPS, the employer is required to bring the employee into the Scheme every three years, depending on their age and earnings.

**15.** If the employee is employed by an LGPS employer, the employee will generally join the LGPS on the first day of employment. If the employee contract is for less than three months, or if the employee has chosen to opt out of LGPS membership, the employer may bring the employee into the scheme under automatic enrolment rules.

**16.** An employee does not need to wait for their employer to automatically enrol them into the LGPS. If the employee is eligible for membership, they can elect to join at any time before age 75.

## **What is automatic enrolment?**

17. Automatic enrolment is a government initiative to help more people save for later life through a pension scheme at work. It requires scheme employers to enrol their eligible workers into a pension scheme automatically and to pay towards their pensions. Automatic enrolment was rolled out in stages between October 2012 and February 2018. All scheme employers have been required to offer a workplace pension to eligible workers since February 2018. For the purpose of automatic enrolment, workers are put into three different categories depending on how much they earn and their age. The categories are eligible jobholders, non-eligible jobholders and entitled workers. Your employer will tell you which category you belong to and what this means for you. Automatic enrolment will mainly affect eligible jobholders.

## **Funding and investment**

18. The rules of the LGPS are set nationally under the Public Service Pensions Act 2013 by the Secretary of State for Levelling-Up, Housing and Communities in the case of LGPS in England and Wales (E&W), and the Scottish Government for LGPS Scotland. In Northern Ireland regulations for LGPS (NI) are made under the Public Service Pensions Act (Northern Ireland) by the Department for Communities. Decisions on the investment of LGPS funds are made locally by administering authorities, in accordance with general legal principles (fiduciary duties and public law principles) and LGPS legislation. [1]
19. Scheme members pay contributions to the LGPS. Scheme employers pay the balance of the cost of providing pension benefits. Employees contribute roughly one third of the scheme's costs and scheme employers pay the rest. Every three years an independent actuary calculates how much scheme employers should pay into the Scheme. The actuary takes investment returns into account when setting how much scheme employers must pay.

[1] <https://commonslibrary.parliament.uk/research-briefings/cbp-7309/>

# INTRODUCTION TO SHARĪ'AH PRINCIPLES

- 20.** Sharī'ah refers to that path which leads to a source of water, typically where water is scarce, such as a desert. Hence, linguistically, Sharī'ah is that path to water which would only sustain life, but will facilitate an onward journey. Without water, one would almost certainly perish. Without this path, one would not have a path to safety, nor the ability to advance successfully ahead.
- 21.** Technically, Sharī'ah refers to the guidance from God - Allah - which He has revealed to mankind. This guidance encompasses all aspects of life, including belief, practice, and character. Hence, the word Sharī'ah encompasses all aspects of Islam: belief, actions, and morals [al-Mawsu'ah al-Fiqhiyyah al-Kuwaitiyyah]. Sharī'ah involves guidance on worship, personal conduct, family relationships, business, economic affairs, justice, medicine and more. It's the code by which Muslims live their lives, covering a wide range of topics like prayers, food, and financial affairs.
- 22.** Ibn al-Qayyim (d.751 AH/1350 CE) said, "Verily, the Sharī'ah is founded upon wisdom and welfare for the people in this life and the afterlife. In its entirety it is justice, mercy, benefit, and wisdom. Every matter which abandons justice for tyranny, mercy for cruelty, benefit for corruption, and wisdom for foolishness is not part of the Sharī'ah, even if it was introduced therein by an interpretation." [I'lām al-Muwaqqi'īn]

- 23.** Islam provides holistic guidance to humanity, and the guidance on financial and economic matters are firmly rooted in the moral and ethical guidelines provided by the Qur'an and the Sunnah. This framework offers an alternative to conventional economic systems, emphasising social justice, wealth distribution, and prohibition of exploitative practices. Let's explore ten foundational Islamic economic principles to gain a clearer understanding of this intricate financial philosophy.
- 24.** The key principles of Sharī'ah in relation to economic and financial matters can be summarised as follows:

### **1. Prohibition of *Ribā* (Usury or Interest)**

- 25.** *Ribā* is an Arabic term that translates to "increase" or "addition." In Islam, it refers to unjustified increment in borrowing or lending money, paid in kind or in money above the original amount. Thus, interest payments are prohibited in Islam.
- 26.** Implications:
- Prohibiting *Ribā* ensures that gain is not merely from money lending, but from actual trade of assets, and business activities.
  - It discourages all exploitative practices and products that involve lending on an interest basis.
  - The prohibition eliminates the potential for wealth accumulation at the expense of the poor.
  - This prohibition ensures that the society is not polarised by the wealthy earning from borrowers who are needy.

### **2. Avoidance of *Gharar* (Excessive Uncertainty)**

- 27.** *Gharar* signifies excessive uncertainty and ambiguity in the terms of a contract or the subject matter of a trade, that lead to a potential dispute and discord due to the uncertainty in the obligations of a contract.

28. Implications:
- Financial instruments where the rights and obligations of the parties are uncertain are avoided, ensuring transparency and fairness in trade.
  - Any activity that has contractual uncertainties has the potential to be non-compliant with Sharīah principles.

### **3. Prohibition of Investments in Prohibited (*Ḥarām*) Sectors, Instruments, and Activities**

29. *Ḥarām* refers to actions forbidden in Islam, such as consuming alcohol, pork, or engaging in gambling. All such matters that Sharīah has deemed harmful for people, society and the economy is prohibited. Harm involves personal, spiritual, mental, societal, economic and physiological harm.

30. Implications:
- Any business or trade involved in *Ḥarām* activities is not permitted.
  - This principle ensures that investments are directed to ethically sound ventures that contribute positively to society.

### **4. Risk-bearing activities**

31. Financial gain can only be permitted and lawful if a person has ownership and bears the risk of the assets they are profiting from.

32. Implications:
- This setup ensures more equitable financial relationships between the involved parties.

### **5. Sanctity of Contracts**

33. Islam emphasises the need to adhere strictly to contractual obligations, ensuring promises and agreements are always honoured.

- 34.** Implications:
- Encourages transparency, mutual consent, and clarity in transactions.
  - It promotes trust in the economic system and discourages fraudulent practices.

## **6. Right to Property and Wealth**

- 35.** Islam acknowledges the right to private ownership and wealth, provided it is acquired ethically and lawfully.

- 36.** Implications:
- Encourages economic activity and entrepreneurship.
  - Also stresses the responsibility of wealth: wealth is seen as a trust from God and should be used for good.
  - This principle ensures individual needs are met, so that individuals can truly fulfil their existential purpose in life.

## **7. Wealth Redistribution and Circulation through Charity and Philanthropy**

- 37.** Islam encourages several activities of charity and philanthropy including Zakat, Waqf and *Ṣadaqah* of various forms.

- 38.** Implications:
- Ensures a form of wealth distribution, helping to bridge the economic disparity.
  - Promotes social welfare and reduces poverty.

## **8. Emphasis on Real Assets and Tangible Transactions**

- 39.** Financial transactions should be rooted in tangible assets and real business activities.

- 40.** Implications:
- Discourages speculative trading and emphasises the real economy.
  - Ensures stability in the economic system, as transactions are backed by actual goods or services.

## **9. Prohibition of Monopolistic Practices**

- 41.** Islam discourages hoarding and monopolistic practices that can harm the public or manipulate market prices.
- 42.** Implications:
- Ensures fair pricing and availability of goods for everyone.
  - Promotes healthy competition and discourages market manipulation.

## **10. Ethical Considerations and Social Responsibility**

- 43.** Businesses and individuals are encouraged to act ethically, ensuring their actions benefit society at large.
- 44.** Implications:
- Promotes business practices that consider externalities, rights of others, and community development.
  - Encourages businesses to think beyond profits and focus positive implications and impact.



# SHARĪ'AH ANALYSIS

45. To determine whether pension benefits are acceptable for members to receive from a Sharī'ah perspective, the following will be addressed:

1. The nature of the contract between the scheme employer and employee from a Sharī'ah lens.
2. An interpretation of pension contributions from Sharī'ah principles.
3. The impact of minor uncertainty in the final pension benefits.
4. The structure and composition of the LGPS funds.
5. A review of the assets in the LGPS from a Sharī'ah-compliance perspective.
6. What constitutes a Sharī'ah-compliant portfolio.
7. The origin of benefits for retired members.

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## **1. The nature of the contract between the scheme employer and employee from a Sharī'ah lens**

46. Contracts are known as *'Aqd* in the Sharī'ah. Islamic jurists have classified contracts based on the presence or absence of consideration into the following types:

- a. Contract of Exchange (*'Aqd al-Mu'āwadah*)
- b. Gratuitous contract (*'Aqd al-Tabarru'*)

47. A contract of exchange involves a bilateral exchange, whilst a gratuitous contract is unilateral. The contract of exchange includes all types of sales and exchanges, like barter (*Muqāyah*), deferred-delivery agreements (*Salam*), money exchange (*Ṣarf*), lease and employment (*Ijarah*), manufacturing (*Istisnā'*) and the like.

48. A gratuitous contract includes gifting (*Hibah*), borrowing for use without compensation (*'Āriyah*), custodial services and safekeeping (*Wadī'ah*), agency (*Wakālah*), guarantee (*Kafālah*), pledge (*Rahn*), bequest (*Waṣīyyah*), and the like.

49. An employment contract is an *Ijārah* contract from a Sharī'ah perspective. The term "*Ijārah*" in Arabic translates to "lease" and "hire." In its essence, the *Ijārah* contract pertains to hiring benefits or services in return for a consideration, typically a monetary payment. This contract revolves around the concept of gaining a specific benefit or service for a predetermined period and price. When it comes to employment, the *Ijārah* contract outlines the relationship wherein the employer (*Mustajir*) acquires the services or skills (*Manfa'ah*) of an employee (*Ajir*) in return for wages or a salary, thereby leasing the services of the employee. Thus, the work done by the employee and the time they commit can be viewed as a service that the employer hires.

50. The above is documented by Imam al-Kāsānī (d.587 AH/1191 CE), who mentions:

"As for the meaning of *Ijārah*, it is the sale of a benefit linguistically. That is why the people of Madinah called it a sale, intending by it the sale of the benefit." [Badā'i al-Ṣanā'i]

51. Alī Ḥaidar (d.1353 AH/1934 CE) expounds on an *Ijārah* agreement in his book, Durar al-Ḥukkām:

"The wisdom behind hiring is to meet a significant need in exchange for a little compensation, similar to how those with less wealth benefit from renting a bathing facility. Ordinary people benefit from this by paying a small amount, while the landlord and owner initially spends a larger sum to obtain the facility.

52. Hiring is established by the Qur'an, Sunnah, and the consensus of the scholars. However, it may seem contrary to analogy since the subject of the lease is the 'benefit' which is intangible. According to legal reasoning (*Qiyās*), leasing might seem impermissible, but it's allowed due to the need. This is because a person may need the benefits of certain items which they cannot afford to buy outright. Not everyone can afford to buy a house they need to live in, a bathing facility they need for washing, or an animal for carrying their burdens, but they can easily rent them and obtain their benefits.

- 53.** The permissibility of leasing is one of the reasons for urban development and the well-being of people. You might find a company spending hundreds of thousands to build railways and ships, making it easier for people to travel between countries and transport their goods and burdens for a fee they charge.
- 54.** Both the employee and the employer need leasing. The employee needs money, while the employer needs services. This establishes the need for hiring, which is a contract based on mutual benefit. If leasing was not permissible, it would create difficulty and hardship for people. The noble Qur'an indicates to leasing as follows, 'I intend to wed one of these my two daughters to you, on condition that you serve me for eight years' [Quran 28:27], spoken by Prophet Shu'ayb ('Alayhis Salām). The law of the nations before us is also applicable to us unless there is something that abrogates it, especially if it is mentioned without any condemnation. The noble Quran also says, 'So give them their due' [Quran 4:24] and 'If you wished, you could have charged him a fee' [Quran 18:77]. These noble verses indicate that leasing is permissible. As for the Sunnah, it has been reported in an authentic Ḥadīth: 'Pay the employee their earnings before their sweat dries' and 'Whoever hires an employee should give him his wages.' Commanding the payment of wages indicates the validity of leasing.
- 55.** As for the consensus of the scholars, it has been established in every era that leasing is valid." [Durar al-Hukkām Fī Sharh Majallat al-Ahkām]
- 56.** Applying this analysis to the subject of this report, it is clear that local government employees are offering their services in lieu of wages. Hence, the contract between the employer and employee is governed by the principles of *Ijārah*.

## 2. An interpretation of pension contributions from Sharīah principles

57. It has been established that the contracts of local government employees fall under the concept of *Ijārah*. It follows that salaries are then governed by the principles of *Ujrah*, which refers to salary in Sharīah.
58. Imam al-Sughdī (d.461 AH/1069 CE) and others have categorised salaries into four types:
1. Immediate salaries (*Mu'ajjalah*) are where the payment is immediate, and the employer does not have right to defer it.
  2. Deferred salaries (*Mu'ajjalah*) are where payment is deferred, and the employee does not have the right to demand it before the stipulated time.
  3. Periodic salaries (*Munajjamah*) are where wages are spread across time and the period of employment, neither party has the right to delay or hasten beyond this stipulation.
  4. Salaries without a reference or measure as to when payment will occur (*Maskūt 'anhā*). There are four types of this:
    - a. Distance-Based Salary: Payment is calculated and due based on the distance travelled during the work period.
    - b. Time-Based Salary: Payment is calculated and due based on the amount of time spent on the job.
    - c. Partial Completion Salary: If the work can yield benefits even when partially completed, payment is calculated and due based on the portion of work completed.
    - d. Completion-Dependent Salary: If the work only yields benefits when fully completed, no payment is due until the entire task is finished. [al-Nutaf Fī al-Fatāwā]

59. The classical schools of Islamic law have debated the moment when a salary becomes binding. The Ḥanafī and Mālikī schools are of the view that a salary does not become binding by merely signing an employment agreement, rather it will only become binding upon executing the employment agreement if an advance payment was stipulated or by delivering the service immediately. In the absence of any such scenario, the salary crystallises and accrues gradually as the service is delivered. [2]
60. The Shāfiī and Ḥanbalī schools are of the view that once the contract is executed, the salary becomes binding. If the *ljārah* is for a task or service, then the salary is due by virtue of the contract. It becomes a debt on the employer merely through the contract. However, the salary does not need to be delivered until the task is completed or delivered, or the duration has passed, especially if the employee is specifically hired for that duration. [3]
61. In the context of local government employees, salaries become due at stipulated times monthly. Hence, employees have a receivable owed to them. From a Sharīah perspective, the employee has a claim and receivable owed to them. This right and claim is against the employer, and not to any specific money or item as such. This means that employees do not own any specified monies in the accounts of the scheme employers; instead the employer is responsible for delivering to them an amount equalling the outstanding debt.

[2] يَبْتِجُهُ الْحَنْفِيُّ وَالْمَالِكِيُّ إِلَى أَنْ الْأَجْرَةَ لَا تُسْتَحَقُّ بِنَفْسِ الْعَقْدِ، وَإِنَّمَا تُسْتَحَقُّ بِاشْتِرَاطِ التَّعْجِيلِ أَوْ اسْتِيفَاءِ الْمُعَقُودِ عَلَيْهِ. وَذَاكَ الْحَنْفِيُّ: التَّعْجِيلُ بِالْفِعْلِ. يَقُولُ الْكَاسَانِيُّ مَا حَاصِلُهُ: إِنَّ الْأَجْرَةَ لَا تُمَلِكُ إِلَّا بِأَحَدٍ مَعَانِ ثَلَاثَةٍ:

أَحَدُهَا: شَرْطُ التَّعْجِيلِ فِي نَفْسِ الْعَقْدِ لِقَوْلِهِ ﷺ: الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ. (١) . .

وَالثَّانِي: التَّعْجِيلُ مِنْ غَيْرِ شَرْطٍ، قِيَاسًا عَلَى الْبَيْعِ فِي جَوَازِ تَعْجِيلِ الثَّمَنِ قَبْلَ تَسْلِيمِ الْمَبِيعِ: لِأَنَّ الْإِجَارَةَ بَيْعٌ كَمَا تَقَدَّمَ.

الثَّلَاثُ: اسْتِيفَاءُ الْمُعَقُودِ عَلَيْهِ؛ لِأَنَّهُ لَمَّا مَلَكَ الْمُعَوِّضُ قَيْمُ الْوَجْرِ الْعَوَاضِ فِي مُقَابَلَتِهِ، تَحْقِيقًا لِلْمُعَاوَضَةِ الْمَطْلُوقَةِ، وَتَسْوِيَةً بَيْنَ الْعَاقِدَيْنِ.

٤٧ - وَالْقَاعِدَةُ عِنْدَ الْمَالِكِيِّ التَّأْجِيلُ (٢)، خِلَافًا لِلْبَيْعِ، فَالْأَصْلُ فِيهِ التَّعْجِيلُ، إِلَّا فِي أَرْبَعَةِ مَسَائِلَ يَجِبُ فِيهَا تَعْجِيلُ الْأَجْرَةِ، وَهِيَ: إِنْ شَرِطَ ذَلِكَ، أَوْ جَرَتْ بِهِ الْعَادَةُ كَمَا فِي كِرَاءِ الدُّورِ وَالذُّوَابِ لِلشَّغْرِ إِلَى الْحَجِّ، أَوْ إِذَا عَيَّنَ الْأَجْرَ، كَأَنْ يَكُونَ ذُوْبًا مُعَيَّنًا، فَإِنَّهُ يَجِبُ التَّعْجِيلُ، فَإِنْ لَمْ يَشْتَرِطِ التَّعْجِيلَ فِي هَذِهِ الْحَالَةِ فَسَدَتْ الْإِجَارَةُ. وَيَجِبُ التَّعْجِيلُ أَيْضًا إِذَا كَانَ الْأَجْرُ لَمْ يُعَيَّنْ وَالْمَنَافِعُ مَضْمُونَةٌ فِي ذِمَّةِ الْمُؤَجَّرِ. فَإِنْ شَرَعَ فِيهَا فَلَا بَأْسَ، وَإِنْ لَمْ يَشْرَعْ لِأَكْثَرِ مِنْ ثَلَاثَةِ أَيَّامٍ فَلَا جُورَ إِلَّا إِذَا عَجَّلَ جَمِيعَ الْأَجْرِ، وَإِلَّا أَتَى إِلَى ابْتِدَاءِ الدَّيْنِ بِالذُّيْنِ. (الموسوعة الفقهية الكويتية)

[3] وَيَبْتِجُهُ الشَّافِعِيُّ وَالْحَنَابِلِيُّ إِلَى أَنْ الْعَقْدَ إِذَا أُطْلِقَ وَجَبَتْ الْأَجْرَةُ بِنَفْسِ الْعَقْدِ. وَيَجِبُ تَسْلِيمُهَا بِتَسْلِيمِ الْعَيْنِ وَالتَّمَكُّينِ مِنَ الْإِنْتِفَاعِ وَإِنْ لَمْ يَنْتَفِعْ فَعَلًا؛ لِأَنَّهُ عَوَاضٌ أُطْلِقَ ذِكْرُهُ فِي عَقْدِ الْمُعَاوَضَةِ فَيُسْتَحَقُّ بِمَطْلَقِ الْعَقْدِ كَالثَّمَنِ وَالْمَهْرِ. فَإِذَا اسْتَوْفَى الْمُنْتَفَعُ اسْتَقْرَبَتِ الْأَجْرَةُ.

وَإِنْ كَانَتْ الْإِجَارَةُ عَلَى عَمَلٍ فَإِنَّ الْأَجْرَ يَمْلِكُ بِالْعَقْدِ أَيْضًا، وَيَبْتِجُ ذِمَّتًا فِي ذِمَّةِ الْمُسْتَأْجِرِ بِمَجْرَدِ الْعَقْدِ، لَكِنْ لَا يَسْتَحَقُّ تَسْلِيمَهُ إِلَّا عِنْدَ تَسْلِيمِهِ الْعَمَلَ أَوْ إِيفَائِهِ أَوْ يُمِضِي الْمُدَّةَ إِنْ كَانَ الْأَجْرُ خَاصًّا. وَإِنَّمَا تَوَقَّفَ اسْتِحْقَاقُهُ عَلَى تَسْلِيمِ الْعَمَلِ لِأَنَّهُ عَوَاضٌ. وَفَارَقَ الْإِجَارَةَ عَلَى الْأَعْيَانِ؛ لِأَنَّ تَسْلِيمَهَا أَجْرِي مَجْرَى تَسْلِيمِ نَفْعِهَا. وَإِذَا اسْتَوْفَى الْمُسْتَأْجِرُ الْمَنَافِعَ، أَوْ مَضَى الْمُدَّةَ وَلَا حَاجَةَ لَهُ عَنِ الْإِنْتِفَاعِ، اسْتَقْرَبَتِ الْأَجْرُ؛ لِأَنَّهُ قَبْضُ الْمُعَقُودِ عَلَيْهِ، فَاسْتَقْرَبَ الْبَدَلَ، أَوْ لِأَنَّ الْمَنَافِعَ تَلَفَّتْ بِأَخْتِيَارِهِ. وَإِذَا تَمَّتِ الْإِجَارَةُ، وَكَانَتْ عَلَى مُدَّةٍ، مَلَكَ الْمُسْتَأْجِرُ الْمَنَافِعَ الْمُعَقُودَ عَلَيْهَا إِلَى تِلْكَ الْمُدَّةِ، وَيَكُونُ حُدُوثُهَا عَلَى مِلْكِهِ؛ لِأَنَّهُ صَارَ مَالِكًا لِلتَّصَرُّفِ فِيهَا، وَهِيَ مُقَدَّرَةٌ الْوُجُودِ. (الموسوعة الفقهية الكويتية)

62. The above is explicitly discussed and stated in Islamic legal works. Imam al-Sarakhsī (d.483 AH/1090 CE) states that wages become a debt obligation on the employer that is payable to an employee [al-Mabsūt]. [4] As such, the employee has a claim and receivable due to him or her. Imam al-Shilbī (d.1021 AH/1612 CE) in his commentary on the famous Tabyīn al-Haqā'iq states that wages become a debt obligation due to the employee if the salary was to be paid at a particular time and the time has passed [Hāshiyah al-Shilbī]. [5]
63. Based on the above principles, the classical Islamic jurists have discussed how employees are not permitted to use or expend salaries that are owed to them but have not been received or delivered. This is because they do not assume the risk associated with that outstanding salary, and do not have actual ownership of the monies with the employer.
64. Ibn Māzah al-Bukhārī (d.616 AH/1219 CE) mentions that service providers and employees are not permitted to use and spend their payment until it comes in their possession [al-Muḥīṭ al-Burhānī]. [6] Imam al-Kāsānī (d.587 AH/1191 CE) highlights that wages, which are owed but not yet received, are governed by the same principles as debts arising from the sale of an item [Badā'i al-Ṣanā'ī]. [7] Thus, just as the payment from the sale item is a debt owed to the seller, and the seller cannot use that amount before delivery and nor does the seller own any specific money with the buyer, the employee is also owed a debt and does not own any specific money that is with the employer and simply has a claim against the employer.

[4] لَأَنَّ الْأَجْرَ دَيْنٌ عَلَى الْمُسْتَأْجِرِ، (المبسوط للسرخسي ج 30 ص 217)

[5] وَأَمَّا إِذَا وَجِبَتْ الْأَجْرَةُ بِمُضِيِّ الْوَقْتِ وَهِيَ دَيْنٌ فَلَا بَأْسَ بِالْبَرَاءَةِ وَالْهَيْبَةِ وَالصَّرْفِ؛ لِأَنَّهُ دَيْنٌ وَاجِبٌ كَسَائِرِ الدُّيُونِ. اهـ (تبيين الحقائق شرح كنز الدقائق وحاشية الشلبي ج 5 ص 108)

[6] لِأَنَّ الْمُؤَجَّرَ يَمْلِكُ الْأَجْرَةَ بِالْقَبْضِ رَقَبَةً وَتَصَرُّفًا، (المحيط البرهاني ج 7 ص 399)

[7] وَحُكْمُ النَّصْرِ فِي الْأَجْرَةِ قَبْلَ الْقَبْضِ إِذَا وَجِبَتْ فِي الدُّمَةِ حُكْمُ النَّصْرِ فِي الثَّمَنِ قَبْلَ الْقَبْضِ إِذَا كَانَ دَيْنًا (بدائع الصنائع ج 4 ص 193)

- 65.** The above establishes that once a salary has been earned, it becomes a debt obligation. In the case of salary that is paid, the debt is settled, and the employee takes possession of the money equalling the outstanding debt in their bank accounts. The banks operate as an agent to take possession of such payments on behalf of the employee. This is straightforward and there are no issues here.
- 66.** In the context of the LGPS, the pension members and employees are owed a debt that has accrued due to their service in their employment contracts. Pension members do not own the monies in employer accounts. They merely have a claim against the employers for the outstanding pension benefits.
- 67.** In regard to pension contributions from pension members and contributions from scheme employers, they are deducted at source from the employee's gross pay, and as such, are actually part of their salary. The deduction and deferral are based on prior agreement as part of the employment agreement. The scheme employer promises to remunerate the employee in the future based on a particular formula. This deferred salary becomes a claim owed to the employee, as the employee has worked and delivered services in lieu of that salary. However, unlike their net pay, employees agree to have this portion of their pay deferred. By this agreement, the employer owes a deferred debt to the employees.
- 68.** From a Sharīah perspective, it is acceptable to have deferred salary. It is also acceptable to have a different amount of salary based on when the salary will be paid, as long as this is agreed and known when executing the employment agreement and pension enrolment.
- 69.** The authors of authoritative Islamic legal texts like *Majma' al-Anhur* and *Tabyīn al-Haqā'iq* write, "It is permissible to stipulate wages in two or three different ways based on work, worker, load, distance, time, and location. The wage must be given according to the condition that actually occurs. For example, if a tailor is told, "If you stitch finely, you will get this much, and if you stitch coarsely, you will get this much," Such a tailor will be paid based on the type of stitching he actually performs.

- 70.** Similarly, if a shop is rented with the condition that if it is used for a pharmacy, the rent will be a certain amount, and if it is used for blacksmithing, the rent will be different, then the rent will be based on the actual use of the shop. The same applies if an animal is rented for carrying wheat or iron; the rent will be based on what it actually carries. It is permissible to stipulate wages in eight different aspects:
1. In work
  2. In the worker
  3. In the load
  4. In the distance
  5. In the location
  6. In the time
  7. In types of agriculture
  8. In the transfer of the load
- 71.** It is permissible to stipulate wages in two or three different ways and to name a different wage for each condition. All of these are considered as fulfilling the need, and since renting is the sale of benefits, it is measured against the sale of goods.
- 72.** It is permissible to stipulate work by agreement because he has the choice between two valid, different contracts, and the wage may become obligatory by the work, and ignorance is lifted when the work is done [Majma' al-Anhur].
- 73.** As for the worker, Imam Abū Ḥanīfah has said it is permissible because he has the choice between two valid, different contracts, and ignorance about the work is lifted when the work is started. [Majma' al-Anhur].



74. Similarly, it is permissible for the employer to say to the tailor, "If you stitch the robe today, you will get fifty, and if you stitch it tomorrow, you will get thirty." The condition is considered valid. So, if he stitches it today, he takes fifty, and if he stitches it tomorrow, he takes thirty [Tabyīn al-Ḥaqā'iq].
75. As for stitching it on the third or fourth day or later, he is entitled to a similar wage, provided that it does not exceed the specified wage. That is, he takes a similar wage if it is thirty or less. If it is more, he is not entitled to more than thirty, because the employer refused to increase it to more than thirty on the second day. It is even more appropriate that he should not increase it for what is delayed beyond that [al-Hindiyyah, al-Durr al-Muntaqā].
76. The above shows that it is acceptable from a Sharī'ah perspective to have a different quantum for a deferred salary.
77. It is crucial to note that the employee is not lending this contribution to the employer, as the employee never takes possession of these monies in the first place. Therefore, any claim that pension benefits are *Ribā* (interest) are erroneous. In the absence of possession, the claim is in lieu of the services, and not in lieu of any money lent to the employer.
78. Possession is not realised for the employee in the pension contributions. It is the absence of possession (*Qabḍ*) that is pivotal to the broader conversation because it essentially separates the employees from the investments of the LGPS. If the employee gains control over their wages and then gives that money back to the employer with the promise of a guaranteed return and extra profit, this would be considered *Ribā*, which is not permitted in Sharī'ah. In simple terms, you can't give your wages in your account back to your employer and say, "Invest this for me and guarantee me a profit and return," as that will be deemed unjustified gain as per Sharī'ah principles. The investor must bear risk and cannot have a guaranteed return whilst the risk of those funds rests with the counterparty.

79. If employees were to take possession of their wages and then invest directly in the LGPS, whilst taking on the risk of that investment, then the employees would be fully responsible on the Sharīah compliance of the LGPS and how those funds are managed.
80. Possession in Sharīah is known as *Qabḍ*. Ownership (*Milkīyyah*) and possession (*Qabḍ*) are two different legal concepts in Sharīah. In his commentary on the renowned Tabyīn al-Haqā'iq, Imam al-Shilbī (d. 1021 AH/1612 CE) pointed out that when services are rendered, an employee gains the right to claim payment; *That is what ownership represents whilst it is a claim*. It is similar to the legal concept to rights in personam. This type of ownership exists before any possession takes place. At this stage, the employee does not own any of the employer's assets, and therefore has no say in how those assets are managed or invested; When the employee does not own any of the assets of the employer, what happens with those assets and how they are invested cannot be ascribed and linked to the employee.
81. When it comes to the issue of wages, we have just expounded upon how the Islamic jurists assert that the rules governing possession are the same as those that apply to payment in sales transactions. Once possession is established from a Sharīah standpoint, the employee becomes both accountable and liable, assuming all the responsibilities, governance requirements, Sharīah requirements, risks and benefits associated with those assets.
82. Imam al-Ḥaddādi al-Zabīdī (d.800 AH/1398 CE) states that liability and risk are realised with possession [al-Jawharah al-Nayyirah]. [8] According to Sharīah principles, mere ownership rights do not lead to risk transfer. Risk isn't transferred until possession is realised. Thus, possession fundamentally involves risk transfer, as well as the ability to use the possessed item without any restriction. Once risk transfer occurs and the beneficiary is able to use the monies unrestrictedly, possession is typically acknowledged. Until an employee does not take possession of the salary, it merely stands as a claim against the employer.

[8] لِأَنَّ الضَّمَانَ يَتَعَلَّقُ بِالْقَبْضِ (الجوهرة النيرة ج 1 ص 237)

- 83.** The monies that are used to make pension contributions are not owned or controlled by the employee, so they do not own the specific monies being used to pay the pension or that are invested in the LGPS. Rather, the risk and ownership of the actual pension contributions reside with the employer. The employee is merely entitled to a sum. The pension contribution amount deducted from one's wage slip is just a promise from the employer, that monies that have not been paid now, and will be paid in the future. Even though a member is making a 'contribution', in reality, the employer is making a deduction, and has retained this amount and will use these monies to invest in the LGPS.
- 84.** According to Sharī'ah principles, possession is of two types:
1. Actual possession: this refers to physically taking possession of something along with its risk and ability to control and use.
  2. Constructive possession: this refers to receiving the risk, benefit, and ability to control an asset without having to physically take hold of it.
- 85.** The AAOIFI Standards state:
- “Actual possession is realised in immovable property through relinquishment and enabling transactions in it.
- 86.** 3/3 Actual possession takes place in movables through physical corporeal delivery. Constructive possession, in ascertained movables as well as in those established as a liability by description, takes place -after their ascertainment by means of one of the methods known for their ascertainment- by relinquishing (releasing) the thing for the person entitled to it enabling him to deliver it without any obstacle even when no transportation or transmission has taken place. This takes place irrespective of the thing being one that is acquired by hand in practice or is one in which delivery (transmission) is stipulated through one of the customary units of measure -cubic measure, weight or linear measure- or it is a commodity to which these measures do not apply due to their inapplicability or with the possibility of their applicability, but the measures are not applied, as in the case of sale by estimate.

87. 3/4 Constructive possession includes the registration of a mortgage of immovables and (hypothecation) of mobile movables like cars, trains, steamers and airplanes through registration that is valid under the law. Registration stands in place of actual possession with respect to its rules and legal effects.
88. 3/5 The possession of documents, like bills of lading and warehouse receipts, issued in the name of the possessor or acknowledging his interest therein is deemed constructive possession of what the documents represent if the ascertainment of commodities, goods and appliances is attained through them along with the ability of the possessor to undertake transactions in them.
89. 3/6 Prior possession of a tangible thing stands in place of subsequent lawful possession due to a cause acknowledged by the Shari'ah irrespective of the possession of the prior possessor being on the basis of the liability to bear loss (Daman) or one of trust (Amanah) and irrespective of the subsequent constructive possession entailing liability for loss or a burden of trust (Amanah)." [Sharī'ah Standard No.18 Possession (Qabd)]
90. The classical jurists have discussed the principles of possession similar to above. Imam al-Kāsānī (d.587 AH/1191 CE) states:
91. "Delivering wealth to a person means handing it over to him. God says, 'Indeed, Allah commands you to render trusts to whom they are due' [Quran 4:58], meaning: hand them over. And He also mentions, narrating about Moses (*'Alayhi al-Salām*), 'Return to me the servants of Allah' [Quran 44:18], meaning: deliver them. Handing over something means making it completely free and clear so that no one contests it. This is achieved through relinquishment (التخليّة). Hence, relinquishing all rights to use, and handing complete control over to another is considered possession in the contract of *Kitābah*, and the same is the case in all other contracts of exchange.

92. There is no need for physical possession in it, just as there is no need for it in the contract of *Kitābah* and in other contracts of exchanges, even though the relinquishing all rights encompasses possession. This is because it signifies the ability to control, which is the interpretation of possession, and not necessarily taking hold of it physically with one’s hands [Badā’i al-Ṣanā’i].” [9]
93. From the above, it follows that the monies invested into the LGPS are not owned by the employees, not from a legal perspective and neither from a Sharīah perspective. Hence, where and how the monies are invested cannot be attributed to the pension members and employees, as the employees never takes control and risk of the deferred salary. Possession of the deferred salary is not realised for the employee. As a consequence, the activities of the funds and the investments are not ascribed to the employees and nor is that considered ‘their money’ technically. The pension members are not accountable from a Sharīah perspective on how and where the LGPS is invested.

[9] أَنَّ أَدَاءَ الْمَالِ إِلَى الْإِنْسَانِ عِبَارَةٌ عَنْ تَسْلِيمِهِ إِلَيْهِ قَالَ اللَّهُ ﴿إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا﴾ [النساء: ٥٨] أَي: تَسَلَّمُوا وَقَالَ خَيْرًا عَنْ نَبِيِّهِ مُوسَى ﴿أَنْ أَدُّوا إِلَيَّ عِبَادَ اللَّهِ﴾ [الدخان: ١٨] أَي سَلَّمُوا وَتَسَلَّمُوا الشَّيْءَ عِبَارَةٌ عَنْ جَعْلِهِ سَالِمًا خَالِصًا لَا يُنَازَعُهُ فِيهِ أَحَدٌ وَهَذَا يُحْضَلُ بِالتَّخْلِيَةِ وَلِهَذَا كَانَتْ التَّخْلِيَةُ تَسْلِيمًا فِي الْكِتَابَةِ وَكَذَا فِي الْمَعَاوَضَاتِ الْمُطْلَقَةِ فَلَا يُحْتَاجُ فِيهِ إِلَى الْقَبْضِ كَمَا لَا يُحْتَاجُ إِلَيْهِ فِي الْكِتَابَةِ وَالْمَعَاوَضَاتِ الْمُطْلَقَةِ مَعَ مَا أَنَّ التَّخْلِيَةَ تَنْتَظِمُ الْقَبْضَ؛ لِأَنَّهَا تَفِيدُ التَّمَكُّنَ مِنَ التَّصَرُّفِ وَهُوَ تَفْسِيرُ الْقَبْضِ لَا الْجَلْبِ الْبَرَّاجِمِ كَمَا فِي سَائِرِ الْمَوَاضِعِ.  
(بدائع الصنائع ج 4 ص 59)

### 3. The impact of minor uncertainty in the final pension benefits

94. From among the conditions for the validity of the *ljārah* contract is that the salary must be known. The Majallat al-Aḥkām al-‘Adaliyyah states:

“[Article 450] It is a requirement for the validity of *ljārah* that the payment is known.”  
[10]

95. A question arises: Does ambiguity in the amount of pension benefits after retirement render the *ljārah* contract voidable?

Mufti Muhammad Taqi Uthmani addresses this query in *Fiqh al-Buyū’* as follows:

“If the deferred pension payments upon retirement are deemed deferred salary, then it is unknown; the employee does not know how much he will gain precisely upon retirement. This can be responded to and answered by the fact that this type of ambiguity does not lead to dispute as this has been calculated and based on calculations. This is now a widespread customary practice and does not cause any dispute. Such ambiguity can be overlooked and is not considered material. This is similar to issue in the books of *Fiqh* relating to paying a fee to use a public bath, where there is ambiguity in the length and amount of water that will be used, yet it is permitted.

96. This can be supported by what Imam al-Bukhārī narrated from Nāfi‘, that Abdullah ibn Umar (may Allah be pleased with them both) informed him that the Prophet ﷺ made a deal regarding Khaybar. He would take half of whatever came out of it in terms of fruits and crops. He used to give his wives 100 *ṣā’* (a unit of measure) which consisted of 80 *ṣā’* of dates, and twenty *ṣā’* of barley. Then Umar (may Allah be pleased with him) divided Khaybar, and he gave the Prophet's ﷺ wives the option to take a share from its water and land or continue with their usual share. Some of them chose the land, and others chose the *ṣā’*.

[10] (المادة ٤٥٠): يُشْتَرَطُ أَنْ تَكُونَ الْأَجْرَةُ مَعْلُومَةً. (مجلة الأحكام العدلية)

ثَالِثًا: إِذَا كَانَتْ الْأَجْرَةُ غَيْرَ مُعَيَّنَةٍ أَيْ دَيْنًا ثَابِتًا فِي الدُّمَّةِ كَالْمُؤْرُونَاتِ الَّتِي تَلَزَمُ بِشَرْطِ التَّعْجِيلِ أَوْ اسْتِيفَاءِ الْمُنْفَعَةِ، فَلَيْسَ لِلْأَجْرِ أَنْ يَبِيعَهُ مِنْ آخَرَ قَبْلَ الْقَبْضِ وَلَهُ أَنْ يَبِيعَهُ مِنَ الْمُسْتَأْجِرِ، وَإِذَا كَانَ الْمَالُ الْمَأْخُودَ مِنَ الْمُسْتَأْجِرِ فِي مَقَابِلِهِ عَيْنًا يَجُوزُ حَسَبَ حُكْمِ الْفَقْرَةِ الْأُولَى مِنْ هَذِهِ الْمَادَّةِ، أَمَا إِذَا لَمْ يَكُنْ عَيْنًا بَلْ كَانَ دَيْنًا فَيَجِبُ الْقَبْضُ فِي الْمَجْلِسِ، فَإِذَا حَصَلَ افْتِرَاقٌ قَبْلَ الْقَبْضِ يَنْقُضُ الْبَيْعَ «الْهَيْدِيَّةُ فِي الْبَابِ الرَّابِعِ». (درر الحکام)

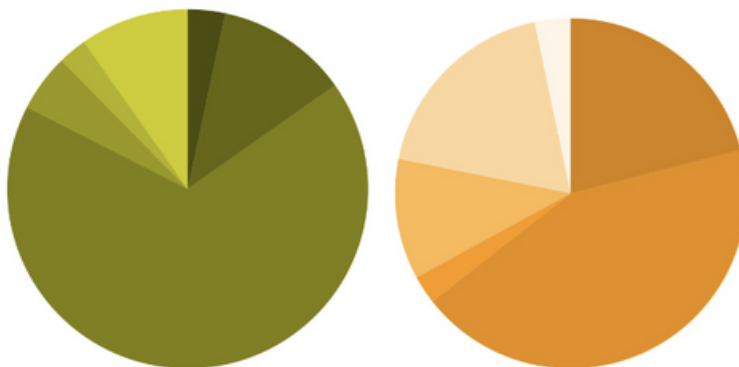
- 97.** The honourable lady Aisha (may Allah be pleased with her) chose the land. The mothers of the believers had a rightful entitlement throughout their lives to the produce of Khaybar after the passing of the noble Prophet ﷺ. Similarly, retirement pensions are a rightful entitlement for employees throughout their lives."
- 98.** Thus, the preciseness of how much one will accumulate in their pension and how much they will eventually receive as deferred salary is immaterial from a Sharīah perspective. This minor ambiguity is inconsequential as it never leads to dispute. Although, in practice, the pension scheme member can calculate their own quotation upon retirement, based on their current pay and estimated pay in the future and using the defined benefit LGPS regulations (1/49th accrual rate for service from 1st April 2014). The scheme member can do this themselves (if they understand the scheme rules correctly), or it is more likely for the member to contact their individual fund for a benefit quotation as it is a more complex calculation if the scheme member has service in the final salary scheme which ceased on 31 March 2014.
- 99.** Individual funds are also required, by the 31 August each year, to provide an annual benefit statement to scheme members giving the current (as of 31 March) and future estimated annual pension and lump sum (if relevant). Most funds also now offer online modellers so members can perform their own benefit calculations for early, normal, and late retirements on a specific date, using the data that funds hold on their records. Any projections are based on estimated future pay, if a members pay goes up or down, this will affect the pension amount quoted. The LGPS member website also has an online modeller, so non-scheme members could undertake a calculation before deciding to join the LGPS. Hence, the ambiguity is further reduced from a Sharīah perspective.

#### 4. The structure and composition of the funds in the LGPS

100. To understand the Sharīah compliance of the underlying funds, it is imperative to analyse the assets of the funds. We looked at the aggregated allocation in all eighty-six funds taken from the Scheme Advisory Board’s (SAB) Annual Report for 21/22, which aggregates information supplied in the eighty-six fund annual reports, as of 31st March 2022.

Asset class	Asset type	£000s	%	£000s	%
Bonds	Bonds	12,329,845	3.4%	12,329,845	3.4%
Equities	Equities	43,588,165	11.9%	43,588,165	11.9%
PIV	PIV	247,569,745	67.3%	247,569,745	67.3%
Property PIV	Property	18,943,222	5.2%	28,441,612	7.7%
Property direct		9,498,390	2.6%		
Other	Other	35,851,433	9.7%	35,851,433	9.7%
<b>Total</b>				<b>367,780,800</b>	<b>100.0%</b>

**Total asset allocation**

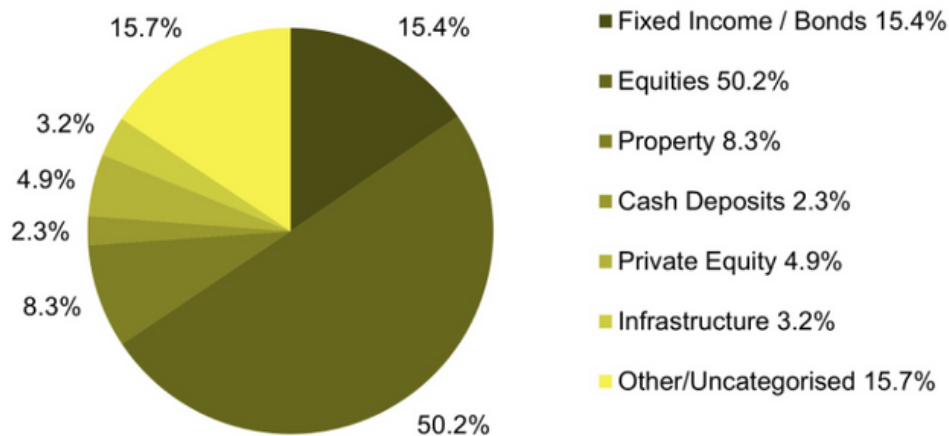


**Other asset allocation**

Asset class	Asset type	£000s	%
Other	Cash Deposits	7,531,419	21.0%
	Private equity	15,565,161	43.4%
	Other balances	938,863	2.6%
	Other (including aggregated private equity/infrastructure/other)	3,992,317	11.1%
	Infrastructure	6,638,581	18.5%
	Derivatives	1,185,092	3.3%
<b>Total</b>		<b>35,851,433</b>	<b>100.0%</b>



2022 Actual Asset Allocation



## 5. A review of the assets in the LGPS from a Sharīah-compliance perspective

- 101.** In a recent survey conducted by Islamic Finance Guru [see Annex 1], the importance of Sharīah compliance for Muslim pension members is clearly visible. From the participants of the survey, 78.1% did not have a pension, and explicitly stated the reason being concerns around Sharīah compliance, whilst the remaining 21.9% believed that they do not need one. Of the 69.6% who did have a pension, 39.5% reported that their employer does not have an Islamic pension option. Islamic Finance Guru’s survey reveals a significant requirement to address the Muslim perception of pensions, given that 30.4% of respondents who are entitled to a pension, do not have one in place. This can be attributed to either a lack in *Halāl* options, or because they had insufficient knowledge to be able to determine whether a pension is Sharīah compliant.
- 102.** Given that Muslim members of pensions are overwhelmingly concerned about Sharīah compliance, the LGPS fund assets are reviewed from a Sharīah-compliance perspective below.

## 1. Fixed Income/Bonds

- 103.** Bonds are issued by governments and corporations when they want to raise money. By buying a bond, an investor is giving the issuer a loan, and the issuer agrees to pay back the face value of the loan on a specific date, and to pay a coupon or a periodic interest payment along the way, usually twice a year. There are several types of bonds and money market securities, which in essence, irrespective of their name, are loans with interest payments. Bonds are part of fixed income securities. UK government issued fixed income securities are known as gilts.
- 104.** According to Sharīah principles, a loan (*Qard*) is considered a gratuitous contract and charitable act; loans cannot be monetised. They are a form of financial support where the lender genuinely assists another for the sake of God with no stipulated tangible or intangible gain in this world. The Qur'an and Sunnah promise rewards to a lender who provides an interest-free loan to a person in need. The Qur'an and the Sunnah have prohibited the lender from receiving any stipulated or customary benefit from the borrower, whether that is tangible or intangible.

## 2. Equities

The AAOIFI Sharīah Standards define shares as follows:

- 105.** “A share represents an undivided share in the capital of a corporation, just as it represents an undivided share in its assets and the rights associated with it upon conversion of the capital into tangible things, benefits, debts and so on. The subject-matter of the contract at the time of trading of shares is this undivided share.”
- 106.** Shares are not simply slices of ownership in assets of a company. From the lens of the law, shareholders are not considered owners of the assets in the company. The Court of Appeal declared in 1948 that “shareholders are not, in the eyes of the law, part owners of the company”. In 2003, the House of Lords reaffirmed that ruling, in unequivocal terms.

- 107.** “Ownership” of shares is not the same as owning your freehold property. Shares do not give legal ownership of the underlying assets of a firm. Instead, shares are a bundle of rights, and the shareholders have a claim on the assets of the company after other senior claims are fulfilled.
- 108.** Although a Sharīah ruling is not entirely premised on legal and accounting classifications, there is certainly an overlap and several parallels in the way these realities are understood. However, each subject works within a framework and operates with set rules. Hence, whilst we take support from legal and accounting principles, Sharīah has its own framework, its own principles, its own processes, and tools to ultimately analyse and conclude on a matter.
- 109.** Shares are a recent phenomenon and an exact parallel or precedent is not found in the classical works of Islamic law. Although some scholars have compared companies limited by shares or limited by guarantee to Islamic structures of Waqf and *Bayt al-Māl* (public treasury), there are still differences between them.
- 110.** Ownership (*Milkīyyah*) in the legal sense and in the Sharīah is not a simple concept; it really refers to a relationship between a person and a thing. Like friendship, ownership has many properties, rights, and manifestations. If a relationship has enough of these properties, we can describe it as ownership. Arguably, shares grant sufficient rights to distinguish shares from other assets, such as debts and derivatives. This allows shares to be classed as equity, albeit different to the equity one owns in their freehold property.
- 111.** Shares are clearly different from debt obligations as there are no obliged repayments, nor is the capital guaranteed, and nor are shareholders ranked *pari-passu* with creditors. Further, shares are treated as equity from an accounting perspective. Thus, shares are different to debt obligations.
- 112.** Shares are different to derivatives as shareholders have more rights than derivative holders and there are actual underlying, recognised assets represented by the shares.

- 113.** Further, shareholders' rights arise in the Companies Act 2006 whilst derivatives enjoy no such position. Shareholders generally have the rights to attend general meetings and vote.
- 114.** Shares also grant the shareholder rights to dividends, however there is no obligation on the directors to pay dividends. Of course, derivatives do not hold such rights.
- 115.** Although shares give their holders no right of possession and no right of use of the underlying assets, it is understandable that these rights are not key nor sought by shareholders. Shares are financial assets and are benefited from financially. If a company was set up to grant rights to possess, or rights of use to hundreds of shareholders, the firm could simply never function as any shareholder at any time would want to benefit from the assets! While shares do not give similar rights to equity in freehold nor the same level of ownership (*Milkīyyah*), they still harness relationships and features sufficient to classify the shares as a type of *Milkīyyah* granting rights (*Huqūq*) in an entity from a Sharīah perspective.
- 116.** In fact, a company is just a legal framework for a group of investors (i.e. the shareholders) to organise their investment. Ultimately, people own things, not companies. All the assets of a company are effectively owed to someone, whether it be employees, suppliers, banks or shareholders. Someone has a claim over each and every one of the assets. Hence, the accounting equation is as follows:
- $$\text{Assets} = \text{Claims}$$
- 117.** As such, shares are essentially a bundle of rights and give shareholders an “interest” in the firm. These rights are sufficient for the shareholder to be considered a *Mālik* (owner) of shares in an entity. Although shares do not have a direct parallel to classical structures and investments and are not symmetrical to traditional understandings of ownership, they are still a valid form of investment and they do grant a novel type of ownership (*Milkīyyah*) and interest to shareholders.

- 118.** From a Sharī'ah compliance perspective, equities must pass Sharī'ah screening filters before they can be deemed Sharī'ah compliant. These filters are composed of reviewing the core business activity of the company and assessing the financials of the company to ensure it falls within the minor thresholds of exposure. The Sharī'ah screening includes:
- 119.** The core business, objective or focus of any investment, whether it is a company, fund or business must not be involved primarily in:
1. Companies in the financial services industry that are involved in interest-based lending and/or distribution of interest-based products. This includes financial intermediaries such as conventional banks, conventional insurance, interest-based lending;
  2. Manufacturing or distribution of alcohol and tobacco;
  3. Companies operating in betting and gambling operations like casinos or manufacturers and providers of slot/gambling machines;
  4. The production, packaging, processing, or any other activity related to pork, non-halal food and beverages;
  5. Bio-technological companies involved in human genetic manipulation, alteration, mutation and cloning, excluding those that are involved in medical research;
  6. Sharī'ah non-compliant content that deals with pornography or any other non-compliant content; and
  7. Weapons and defence.

**120.** If an equity passes the above screen, it will be subject to the following financial screening:

a. Revenue Screening

i) Revenues from non-Sharīah compliant activities must be less than 5% of the company's total revenue.

b. Non-compliant company capital structure:

i) Non-Sharīah compliant receivables must be less than 30% of the company's market capitalisation.

ii) Non-Sharīah compliant borrowings must be less than 30% of the company's market capitalisation.

3. Property

**121.** Investment in property can be direct or indirect. Direct property investment refers to investing in brick and mortar directly. Indirect property investment refers to investment in the equity of companies which own, manage, or develop property. Most of the UK's largest property companies have become what is known as a REIT since they were launched in this country in 2007. To become a REIT, at least 75% of a company's profits must come from property rental, and 75% of its assets must be involved in property rental. REITs also have to pay out 90% of their property rental income to their shareholders as dividends. Property in the investment world generally refers to commercial property, which is property used for business.

**122.** From a Sharīah perspective, property, as an asset class, is Sharīah compliant. However, the contractual terms of the lease must be reviewed to ensure that the contract is Sharīah compliant, and where a REIT is excessively leveraged that too would pose Sharīah compliance issues.

#### 4. Cash

- 124.** Cash funds are held in bank accounts, savings accounts, money market funds, cash ISAs and cash deposits. A typical cash holding would be in a bank account, earning interest. Savings accounts, cash ISAs, money market funds are all non-Sharīah compliant investments. Such holdings accrue interest, and therefore are not Sharīah compliant. That does not preclude Muslims from holding monies in a bank account – they just may not take the interest.

#### 5. Private Equity

- 125.** Private equity pertains to direct investments into private companies, or the buyout of public companies with the intention of taking them private, thereby delisting them from the stock exchange. These investments are usually long-term and aim to secure an influential stake, if not complete ownership, in a company. Private equity funds often target companies with high growth potential, work to enhance their value, and subsequently exit through selling their stake, often through a new public offering, to another business or back to the original owners. Due to its nature, private equity is inherently riskier, but with the potential for higher returns compared to traditional stock market investments.
- 126.** From the perspective of Sharīah compliance, private equity investments must undergo rigorous Sharīah screening. Like equities, the business model and operations of the target company should be evaluated to ensure they don't fall under prohibited sectors like interest-based financial services, alcohol, gambling, non-halal food and beverages, impermissible biotechnology practices, and non-compliant content. The financials of the company should be assessed in a similar manner, ensuring that revenues from non-Sharīah compliant activities are minimal and that the company's capital structure does not heavily rely on non-Sharīah compliant borrowings or receivables. Additional scrutiny might be required for the terms of the private equity investment agreement to ensure it adheres to Sharīah principles.

## 6. Infrastructure

- 127.** Infrastructure investments revolve around assets that are fundamental to the functioning of a community or economy. These include transportation systems like roads, bridges, airports, as well as utilities like water, electricity, and telecommunications systems. Infrastructure investments often come with longer time horizons, providing stable, predictable cash flows due to the essential nature of the services they offer.
- 128.** For an infrastructure investment to be deemed Sharīah compliant, the project's funding and operations must be in line with Sharīah principles. Just as with other asset types, any form of impermissible interest or activities, like those mentioned for equities, must be absent. Moreover, infrastructure projects funded through conventional interest-based loans would not be Sharīah compliant.

## 7. Other

- 129.** The 'Other' asset category encompasses a diverse range of investment vehicles and strategies that do not fit neatly into traditional categories. This can include commodities, collectibles, hedge funds or even innovative financial instruments and strategies. The risk and return profile can vary widely within this category, depending on the specific asset or strategy.
- 130.** The term “commodities” captures any bulk good traded on an exchange. These commodities are usually traded on the futures markets in derivative contracts. Private equity is subject to Sharīah screening tests. The core business activity and financial ratios must be screened to ensure Sharīah compliance.
- 131.** Conventional hedge funds deploy a number of investment strategies such as long-short, distressed debt, direct lending, global macro, merger arbitrage and many others, the majority of which are non-Sharīah compliant.



- 132.** Commodity trading generally takes place via futures contracts. The majority of Sharīah scholars are of the view that conventional futures and forward contracts are not Sharīah compliant. This was the resolution of the International Islamic Fiqh Academy as well as the Islamic Fiqh Academy of Muslim World League. The AAOIFI Standards explicitly state the non-compliance of such contracts. Forwards and Futures are prone to the Sharīah prohibition of trading before possession. As such, these contracts contain *Gharar* (gross uncertainty). Sharīah scholars argue that these contracts contain elements of *Qimār* in that they are zero-sum games. A further non-compliance factor in futures and forwards is the existence of a debt-for-debt trade where parties offset and close their positions before delivery of the underlying assets.

## **6. What constitutes a Sharīah-compliant portfolio?**

- 133.** Since many of the asset classes above are non-Sharīah compliant, a Sharīah-compliant portfolio would include only Sharīah-compliant assets, which are reviewed and certified as compliant by the respective Sharīah boards. These assets include:

1. Sharīah-compliant equity

- 134.** Equity found in Sharīah-compliant portfolios are those which have passed the Sharīah-screening tests. These equities can be public or private, hail from all regions across the world and span a number of sectors. The common sectors include information technology, health care, communications, industrials, energy, and materials.

2. Property

- 135.** Generally, investments in property take place through Sharīah-compliant REITs which are referred to as Islamic REITs (I-REITs). Islamic REITs are collective investment vehicles that pool money from many investors to buy, manage and sell commercial properties.

**136.** The main difference between I-REITs and conventional REITs lies in the fact that I-REITs must only include Sharīah-compliant activities and Sharīah-compliant finance. The other main differences are that an I-REIT has a Sharīah board, the tenants must be delivering Sharīah-compliant services, Takaful is the default form of insurance for such investments when available and the financing of such REITs must be done using Sharīah-compliant products.

### 3. Sukuk

**137.** The AAOIFI Sharīah Standard No.21 describes Sukuk as alternatives to bonds by stating: “The Shari’ah substitute for bonds is investment Sukuk.” The overall risk profile and economic return for a Sukuk investor has some similarities albeit differences to a conventional bond where the bondholder is a debtor of the issuer.

**138.** AAOIFI defines Sukuk as being: “Certificates of equal value representing undivided shares in the ownership of tangible assets, usufructs and services or (in the ownership of) the assets of particular projects or special investment activities.” Unlike a conventional bond (secured or unsecured), which represents the debt obligation of the issuer, a Sukuk technically represents an interest in an underlying funding arrangement structured according to Sharīah, entitling the holder to a proportionate share of the returns generated by such arrangement and, at a defined future date, the return of the capital. Sukuk is a financial instrument that shares characteristics with bond and stock which are issued to finance trade or the production of tangible assets. Similar to a bond, Sukuk has a maturity date and in some of them the holder will receive a regular income over the period and a final payment at the maturity date. While the conventional bonds price is determined only by the creditworthiness of the issuer, Sukuk price is determined by the creditworthiness of the issuer and the value of the asset. Sukuk is also similar to stocks in the sense that it represents ownership and no guarantee of a fixed return but stocks have no maturity date. Sukuk also have to relate to a specific asset, project or service.

**139.** Among the benefits of Sukuk are that most Sukuk are a tradable capital market product providing medium to long-term fixed or variable rates of return. It is assessed and rated by international rating agencies, which investors use as a guideline to assess risk/return parameters of a Sukuk issue. It has regular periodic income streams during the investment period with easy and efficient settlement and a possibility of capital appreciation of the Sukuk. Finally, most Sukuk are liquid instruments and tradable in secondary market.

#### 4. Sharīah-compliant savings accounts

**140.** Cash is held in either non-interest-bearing accounts or held in Sharīah-compliant savings accounts. Such accounts typically use *Wakālah bi al-Istithmār* (investment agency) or *Muḍārabah* structure to invest the funds. Commodity *Murābaḥah* is also used in the money market for liquidity management.

### **7. The origin of benefits for retired members**

**141.** A question can be raised on the lawfulness for Muslim employees to take their pension benefits from the fund if the underlying fund is not Sharīah compliant. The response to this is as follows:

**142.** 1. Pension benefits are not necessarily all paid from investment income, rather the ultimate source of these benefits is either tax allocated to the local government to pay for expenses and overheads, or revenue generated by the private sector employees who are part of the LGPS.

**143.** 2. Secondly, the way in which the LGPS technically works is that the contributions of the current members are used to pay retired members at present. Those funds were earned in a lawful manner given that the services are typically lawful, or paid through taxation.

**144.** 3. Even if the administering authority – on behalf of the scheme employer - used the revenue generated from the fund to pay pension benefits to retired members, it is acceptable for the retired employees to accept this payment from their employers.

- 145.** As previously discussed, the Muslim employee is simply owed their salary from their employer. It is the scheme employer who bears the investment risk of the monies.
- 146.** From a technical and *Fiqh* (Islamic jurisprudence) perspective, the money owed to employees is a debt on the scheme employers. Receiving payments from non-Muslims to fulfil debt obligations is permitted regardless of where they earned the money. Imam al-Qudūrī (d.428 AH/1037 CE) states that if a Muslim sold alcohol, and thereafter settled a debt owed to another with the income earned, it would be severely disliked for that Muslim to accept those funds from that Muslim. However, if the seller was a non-Muslim who owed a debt to a Muslim, and he earned an income selling alcohol, there is no issue for a Muslim to accept the payment despite the source of funds [Sharḥ Mukhtaṣar al-Kharkī]. [11]
- 147.** Imam al-Sarakhsī (d.483 AH/1090 CE) states a similar ruling and elaborates that alcohol is lawful wealth for a non-Muslim and their transaction in that is valid. Since the non-Muslim owed a debt to the Muslim, it makes no difference whether the non-Muslim paid from these funds or other funds. [Sharḥ al-Jāmi' al-Ṣaghīr]
- 148.** Imam Ibn 'Ābidīn (d.1252 AH/1836 CE) also records the above position in his renowned commentary, Ḥāshiyah ibn 'Ābidīn.

[11] وقال في مسلم باع خمرا وأخذ ثمنها، وكان عليه دين: إنه يكره لصاحب الدين أن يقبض دينه من ثمن الخمر [إذا علم أنه من ثمن الخمر]. وإن كان البائع نصرانيا فلا بأس... لأن المسلم لا يحل له بيع الخمر، فإذا أخذ الثمن فقد أخذه بغير حق، فيكره لصاحب الدين أخذه منه.

وأما النصراني إذا باع الخمر، فلا بأس أن يأخذ المسلم ثمنها منه: لما روي عن النبي ﷺ أنه كتب في عهدهم: ((وأن يذروا الربا ولا يظهروا بيع الخمر في أمصار المسلمين))، وهذا يدل على أنهم لا يمنعون من بيعها سرا.

وروي عن عمر أنه قال: ولوهم يبيعها وخذوا العشر من أثمانها، وهذا يدل على جواز عقدهم عليها، وإذا جاز العقد فالثمن مأخوذ بحق، فيجوز للمسلم أن يقبضه. (شرح مختصر الكرخي للقديري)

(وقال في مسلم باع خمرا وأخذ ثمنها وكان عليه دين: فإنه يكره لصاحب الدين أن يقبض منه ثمن الخمر قضاء من دينه إذا علم ذلك)... وهذا لأن العقد على الخمر غير منعقد في حق المسلمين، والثمن المقبوض مستحق الرد على البائع شرعا، فيكون بمنزلة المغصوب في يده. ومن قضى دينه بالدرهم المغصوبة لا يحل للقابض تناول ذلك إذا علم به، فهذا مثله. (وإذا كان البائع نصرانيا فلا بأس به) لأن الخمر مال متقوم في حقه، والبيع صحيح، والثمن مملوك للبائع غير مستحق الرد عليه، وكان قضاء دين المسلم بهذه الدراهم وقضاؤه بدراهم أخرى في يده سواء. (شرح الجامع الصغير للسرخسي)

«(وإذا أخذ دين على كافر من ثمن خمر) لصحة بيعه (بخلاف) دين على (المسلم) لبطلانه إلا إذا وكل ذميا ببيعه فيجوز عنده خلافا لهما

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(قوله من ثمن خمر) بأن باع الكافر خمرا وأخذ ثمنها وقضى به الدين (قوله لصحة بيعه) أي بيع الكافر الخمر، لأنها مال متقوم في حقه فملك الثمن فيحل الأخذ منه بخلاف المسلم لعدم تقومها في حقه فبقي الثمن على ملك المشتري» (حاشية ابن عابدين)

Imam al-Sarakhsī (d.483 AH/1090 CE) states:

149. "There is no dispute that the Sharī'ah rulings pertaining to transactions also applies to non-Muslims because what is required in these transactions has a worldly rationale and benefit, and this is more suitable for them, as they do not believe in the hereafter, so have prioritised this world! And (in Muslim lands) they are obliged to follow the Sharī'ah rulings due to their covenant with the authority (*iltizām*), this covenant binds them to the rulings of Muslims in matters related to transactions. Therefore, the Sharī'ah rulings are applied to them just as they are applied for the Muslims due to the existence of the covenant. However, this commitment and obligation will not be due if there is evidence present that there is no covenant from non-Muslims to adopt Sharī'ah principles." [12]
150. Imam al-Sarakhsī (d.483 AH/1090 CE) indicates to the concept that a non-Muslim in non-Muslim lands has no obligation to adhere to Sharī'ah principles, and that they will not be regulated according to Sharī'ah principles when it comes to transactions. The same idea is strengthened by Imam al-Marghīnānī (d.593 AH/1197 CE) who presents the evidence and argument of Imam Abū Ḥanīfah (d.150 AH/767 CE) at the end of the discussion on whether a non-Muslim's marriage without witnesses is acceptable after the couple revert and accept Islam. Imam Abū Ḥanīfah (d.150 AH/767 CE) reasoned that the couple were not subject to Sharī'ah principles of marriage with witnesses, and therefore the marriage could be accepted if that was the way they married among themselves (without witnesses)[al-Hidāyah]. [13]

[12] "ولا خلاف أن الخطاب بالمعاملات يتناولهم أيضا لأن المطلوب بها معنى دنيوى وذلك بهم أليق، فقد آثروا الدنيا على الآخرة ! ولأنهم ملتزمون لذلك ، فعقد الذمة يقصد به التزام أحكام المسلمين فيما يرجع إلى المعاملات فيثبت حكم الخطاب بها في حقهم كما يثبت في حق المسلمين لوجود الالتزام إلا فيما يعلم لقيام الدليل أنهم غير ملتزمين له" (أصول السرخسي)

[13] وإذا تزوج الكافر بغير شهود أو في عدة كافر وذلك في دينهم جائز ثم أسلما أقرأ عليه " وهذا عند أبي حنيفة وقال زفر رحمه الله النكاح فاسد في الوجهين إلا أنه لا يتعرض لهم قبل الإسلام والمرافعة إلى الحكام وقال أبو يوسف ومحمد رحمهما الله في الوجه الأول كما قال أبو حنيفة رحمه الله و / في الوجه الثاني كما قال زفر رحمه الله له أن الخطابات عامة على ما مر من قبل فلتزومهم وإنما لا يتعرض لهم لذمتهم إعراضا لا تقريرا فإذا تراءفوا أو أسلموا والحرمة قائمة وجب التفريق ولهما أن حرمة نكاح المعتدة مجمع عليها فكانوا ملتزمين لها وحرمة النكاح بغير شهود مختلف فيها ولم يلتزموا أحكامنا بجميع الاختلافات ولأبي حنيفة رحمه الله أن الحرمة لا يمكن إثباتها حقا للشرع لأنهم لا يخاطبون بحقوقه ولا وجه إلى إيجاب العدة حقا للزوج لأنه لا يعتقده بخلاف ما إذا كانت تحت مسلم لأنه يعتقده وإذا صح النكاح فحالة المرافعة والإسلام حالة البقاء والشهادة ليست شرطا فيها وكذا العدة لا تنافيها كالمنكوحة إذا وطئت بشبهة الهداية في شرح بداية المبتدي (1 / 213)

151. Shaykh Zafar Aḥmad al-Uthmānī (d.1394 AH/1974 CE) also issued an edict (Fatwā) on the same principle, that non-Muslims are not governed by the Sharī'ah principles of transactions as there is no covenant or agreement to adopt such Sharī'ah principles by them, therefore, in whichever manner they have earned their income – be it *Ribā* or even unlawful appropriation, it will be acceptable for a Muslim to accept them. [14]

As can be seen, in any instance when a non-Muslim pays off a debt to a Muslim, it will be acceptable for a Muslim to accept that debt repayment without investigating or considering the source of funds in Sharī'ah.

152. However, where a circumstance develops such that, a significant debt owed to the broader Muslim community was being entirely funded from unlawful sources and based on the growth of unlawful industries over several decades and it is organised at a macro-level – which is the LGPS context – then despite the permissibility of accepting the payment at a micro-level, the macro-level cannot simply be overlooked. Such a construct does not sit well with the broader objectives of Sharī'ah and macro-guidance for the markets and economy that Sharī'ah envisions.

[14] امداد الاحکام، مکتبہ دار العلوم کراچی (4/ 386-390):

اشکال کا منشا یہ تھا کہ جب کفار مخاطب بالعقوبات ومعاملت میں تو اگر وہ کوئی معاملہ خلاف شرع کر کے روپیہ حاصل کریں اس کو حلال نہ کہنا چاہیئے بلکہ حرام کہنا چاہیئے۔ جواب کا حاصل یہ ہے کہ کفار مخاطب بالفروع في العقوبات والمعاملات اگر چہ ہیں لیکن حکم بالحرمة والفساد کے لئے خطاب عام کافی نہیں بلکہ التزام بھی شرط ہے۔ اہل حرب نے تو احکام اسلام کا التزام بالکل نہیں کیا، نہ اپنے معتقد کے موافق میں اور نہ مخالف میں لہذا وہ تو جس طرح بھی روپیہ کمائیں خواہ ربا سے خواہ غصب سے خواہ بیوع باطلہ و فاسدہ سے خواہ اپنے مذہب کے موافق خواہ مخالف طریق سے بہر صورت وہ روپیہ وغیرہ ان کی ملک میں داخل ہو جائے گا اور مسلمان کو تنخواہ میں لینا اس کا جائز ہ

فتاویٰ عثمانی، مکتبہ معارف القرآن (3/ 399):

صورت مسئلہ میں مذکورہ کمپنی کے اکاؤنٹ ڈپارٹمنٹ میں ملازمت کی گنجائش معلوم ہوتی ہے، وجہ یہ ہے کہ غیر مذبح گوشت اگر چہ ہمارے نزدیک حلال نہیں اور اس کی خرید و فروخت بھی جائز نہیں، لیکن غیر مسلموں کے نزدیک چونکہ جائز ہے، اس لئے فقہائے کرام نے ان کے درمیان ہونے والی ایسی بیع کو نافذ قرار دیا ہے، اور اس کی مالیت کا اعتبار کیا ہے، لہذا اس خرید و فروخت سے انہیں جو رقم حاصل ہوئی ہے، وہ عقد باطل کے ذریعے نہیں ہوئی۔ البتہ کسی مسلمان کو بذات خود اس خرید و فروخت میں ملوث ہونا جائز نہیں۔ لیکن اکاؤنٹ کی ملازمت میں اگر مسلمان کو خود یہ گوشت بیچنا نہ پڑے بلکہ صرف کمپنی کے حسابات رکھنے پڑیں تو یہ اعانت علی المعصیت میں داخل ہو کر حرام نہ ہوگا، کیونکہ میں اعانت بعیدہ ہے، لہذا حاجت کے وقت اس ملازمت کی گنجائش معلوم ہوتی ہے۔ تاہم پریزیڈ کرنے میں احتیاط ہے۔

## 8. The Sharīah vision for the economy

- 153.** Just as there is guidance in Sharīah in regard to the construct of the contract of members, there is also guidance on how monies ought to be deployed in the LGPS funds. This is all within a larger framework and vision that the Sharīah has for the economic system.
- 154.** The Sharīah is just not a code of compliance, rather it is a way of being, behaving and growing. Imam al-Rāghib (d.502 AH/1108 CE) expounds on Sharīah as the path that leads to benefits for people (*Maṣāliḥ al-'ibād*) and the development of the civilisation (*'Imārat al-Bilād*). Ibn Taymiyyah (d. 728 AH/1327 CE) said: “All elements that are beneficial for people’s welfare are encapsulated within the Sharīah, encompassing both significant and minor matters, all circumstances and actions, and interactions with others. We express our gratitude to Allah, the Lord of all worlds.”
- 155.** Technically, Sharīah refers to the guidance from Allah which He has revealed to mankind. This guidance encompasses belief, practice, and character. Hence, the word Sharīah encompasses all aspects of Islam: belief, actions, and morals [al-Mawsu’ah al-Fiqhiyyah al-Kuwaitiyyah]. Sharīah involves guidance on worship, personal conduct, family relationships, business, economic affairs, justice, medicine and more.
- 156.** Hence, Sharīah is belief, practice, and character. Sharīah incorporates strategy, vision, values, operations, behaviour, culture, morals, conduct and most importantly, an entire way of being and organising. A word which I have coined to reflect this complete end-to-end phenomenon is ‘Sharīah-powered’. Sharīah has guidance for the micro and macro, markets and communities, profit and charity, wealth accumulation and wealth distribution, material and spiritual, short-term and long-term.

**157.** The principles of finance under Sharīah are universally beneficial, transcending religious boundaries. Each Sharīah policy and principle is rooted in rational, intelligible benefits, offering more than just ritualistic or spiritual guidance. These principles provide practical, value-adding frameworks that enhance the operation of economic and financial systems. Every aspect of Sharīah guidance in finance and economics is underpinned by clear, real-world rationale, making it applicable and beneficial for all, not just Muslims. While Sharīah is inherently a faith-based and values-driven framework, its full significance is best appreciated within its intended context and through a lens of faith. Nonetheless, the Sharīah vision for an economy offers insights that are crucial for understanding its broader impact, especially for Muslim members of the LGPS. This vision emphasises the importance of the macro-picture, showcasing how Sharīah's comprehensive guidance can shape a robust and inclusive economic system.

#### A. Sound Monetary Policy

**158.** In a Sharīah-powered economic system, sound monetary policy is of paramount importance. The Islamic-economic model discourages the use of money as a commodity and focuses on its role as a medium of exchange. This means that the creation and supply of money should be carefully regulated to prevent inflation or deflation, both of which can have detrimental effects on an economy. The central bank, in a Sharīah-powered setting, would be responsible for ensuring that the money supply aligns with the real assets and productive capacities of the economy, thereby maintaining its intrinsic value. Money ought to be hard money, something that cannot be created easily and over supplied.

**159.** Ribā as a charge, system and ideal is strictly prohibited in Sharīah, which has implications for monetary policy. Traditional central banking mechanisms often involve interest rate adjustments to control money supply, a practice not permissible in Sharīah. Alternative tools must be developed to manage liquidity in the market that align with Islamic principles. These instruments can serve as the basis for a monetary policy that not only ensures economic stability but also adheres to ethical standards.



**160.** Sound monetary policy in a Sharīah-powered framework also emphasises transparency and accountability. The central bank should operate in a manner that is transparent to the public and accountable to a higher ethical and legal standard. This fosters trust in the financial system and ensures that the monetary policy is implemented for the greater good of society, rather than for the benefit of a select few.

#### B. Asset-Backed and Less Financialisation

**161.** Sharīah advocates for asset-backed transactions, steering clear of the excessive financialisation that characterises many modern economies. In conventional systems, financial derivatives and complex instruments often become so detached from real assets that they contribute to economic instability, as seen in the 2008 financial crisis. In contrast, Sharīah principles insist that every financial transaction must be tied to a tangible asset or a specific service, adding a layer of security and reducing systemic risk.

**162.** The focus on asset-backed transactions also encourages real, productive economic activities. When financial transactions are tied to real assets, it ensures that capital is being used for creating value in the economy, whether it's through goods, services, or employment. This is in stark contrast to speculative activities that may not necessarily add value to the economy but can lead to volatile market conditions. Less financialisation in a Sharīah-powered economic model also means less income inequality. When finance serves real economic activities, the wealth generated is more likely to be distributed across various sectors and communities. This aligns well with the Islamic principles of social justice and equitable distribution of wealth, making the economy more inclusive and resilient.

#### C. Sustainable Development

**163.** The Qur'an and Prophetic narrations emphasise the importance of stewardship of the Earth, making environmental consciousness integral to Islamic economic principles. Businesses and industries are encouraged to adopt sustainable practices, not just to comply with international standards but also to fulfil religious obligations.

- 164.** Muslims are always encouraged to adopt *Ihsān* (excellence) in their affairs, which is a station and rank far greater than merely permissible and *Ḥalāl*. This guidance should push everyone to incorporate the best standards for ethical and sustainable business practices. Companies are encouraged to look beyond short-term profits and consider the long-term impact of their actions on the community and the environment. This could manifest in various ways, from ethical sourcing of materials to responsible waste management, and even to the kind of projects that are deemed worthy of investment.
- 165.** Environmental concern is already embedded within the Sharīah principles. Sharīah can play a pivotal role in promoting sustainable through financial instruments that help mobilise the significant capital needed to invest in renewable energy, sustainable agriculture, and other projects that contribute to environmental sustainability. By aligning financial incentives with sustainable development goals, a Sharīah-powered economic system can be a driving force in solving some of the world's most pressing environmental issues.

#### D. Virtuous Industries

- 166.** In a Sharīah-powered economic system, the focus is not just on profit-making but also on the ethical implications of business activities. A business that harms in any way, shape or form should not operate in the eco-system. Sharīah advocates that only ethical businesses should operate in an economy and be invested in. A business must prioritise ethical practices that are committed to enhancing the well-being of people and the communities they are a part of. This involves steering clear of any actions that could negatively impact them spiritually, financially, mentally, morally, socially, physically, or physiologically. Industries that are considered *Ḥarām* (forbidden) such as gambling, alcohol, and those that exploit human vulnerabilities are all banned in a Sharīah eco-system, as they clearly are harmful to individuals and communities. Instead, the emphasis is on virtuous industries that add value to peoples' lives in this world and the next, as healthcare, education, and social welfare.

- 167.** The concept of "*Maṣlahah*" (public interest) is often invoked to determine the virtue of an industry. Industries that serve the public good and contribute to the well-being of the community are highly valued in a Sharīah-powered economic system. This encourages entrepreneurs and investors to channel their resources into sectors that have a positive social impact, thereby aligning economic incentives with moral and ethical considerations.
- 168.** Moreover, virtuous industries often go hand-in-hand with sustainable practices. For example, an industry focused on renewable energy not only aligns with Islamic principles of stewardship of the Earth but also serves the public interest by addressing climate-related matters. By promoting virtuous industries, a Sharīah-powered economic system can achieve a harmonious balance between economic growth, social welfare, and environmental sustainability.

#### E. No *Ribā*

- 169.** The prohibition of *Ribā* is one of the most distinguishing features of a Sharīah-powered economic system. The Qur'an explicitly forbids transactions that involve interest, as they are considered exploitative and lead to unjust enrichment. In a world where debt cycles and interest payments can trap individuals and nations in poverty, the Islamic model offers an alternative focused on equity, non-tradable and non-compounding debt, and social justice. The absence of interest in Sharīah finance leads to innovative financial products based on risk-bearing and asset-backed transactions. For example, instead of interest-based loans, Islamic financial institutions offer profit-sharing schemes where both the financier and the customer share the risks and rewards. This creates a more equitable financial system where the focus is on mutual benefit rather than exploitation.
- 170.** The prohibition of *Ribā* also has macro-economic benefits. It discourages speculative behaviour and promotes a stable and resilient financial system. When financial transactions are based on real assets, it creates a buffer against economic downturns and financial crises. This makes the Islamic financial system inherently more stable and less prone to the boom-and-bust cycles seen in conventional economies.

## F. Less Barriers to Entry

- 170.** One of the goals of a Sharīah-powered economic system is to make the market accessible to everyone, regardless of their financial status. High entry barriers, whether in the form of hefty fees, complex regulations, or the need for collateral, are discouraged.
- 171.** Lowering barriers also fosters innovation and competition, essential elements for a thriving economy. When more people can participate in the market, it leads to a diversity of products and services, benefiting consumers and driving economic growth. This is particularly important in developing countries where access to financial services can be limited.
- 172.** Moreover, less restrictive entry to the market aligns with the Islamic principles of social justice and equal opportunity. By making it easier for people to start businesses or invest, a Sharīah-powered economic system can be a powerful tool for poverty alleviation and social mobility. It allows for a more inclusive economy where success is not just reserved for those with existing wealth or connections.

## G. Less Monopolisation

- 173.** The Sharīah discourages monopolistic practices and encourages a free and competitive market. Monopolies and oligopolies often lead to unfair pricing and limit consumer choices, which is contrary to the principles of fairness and equity in Islamic law. Regulatory bodies in a Sharīah-powered economic system would be tasked with ensuring that markets remain competitive and that no single entity has disproportionate control over an industry.

**174.** Less monopolisation also means more opportunities for small and medium-sized enterprises (SMEs), which are often the backbone of an economy. When markets are open and competitive, SMEs have a better chance of succeeding, leading to job creation and economic diversification. SMEs can play a significant role in economic development. Furthermore, less monopolisation fosters innovation. When companies have to compete, they are incentivised to innovate and improve their products and services. This not only benefits consumers but also drives economic growth and development. In a Sharīah-powered economic system, the focus is on creating a level playing field where businesses compete based on the quality and value they provide, rather than their ability to dominate the market.

#### H. Distribution of Wealth

- 175.** One of the fundamental objectives of a Sharīah-powered economic system is the equitable distribution of wealth. Islamic principles like *Waqf* (permanent endowments), *Zakāt* (obligatory annual contribution) and *Ṣadaqah* (voluntary charity) are institutionalised forms of wealth redistribution. These are not just individual acts of piety but are integrated into the financial system to ensure that the benefits of economic growth are shared widely.
- 176.** The focus on wealth distribution also extends to business practices. Profit-sharing models like *Muḍārabah* and *Mushārah* ensure that not just the business owners but also the employees and investors get a fair share of the profits. This creates a more balanced and just economic environment where wealth is not concentrated in the hands of a few.
- 177.** Moreover, the equitable distribution of wealth is not just a social good but also has economic benefits. When wealth is distributed more evenly, it leads to higher levels of consumer spending, better access to education, and improved healthcare, all of which contribute to long-term economic stability and growth. A Sharīah-powered economic system aims to create a virtuous cycle where economic prosperity leads to social welfare, and social welfare, in turn, contributes to economic prosperity.

## I. Institutions

- 178.** Institutions play a critical role in shaping the economic landscape in a Sharīah-powered system. These range from regulatory bodies that ensure compliance with Islamic principles to financial institutions that provide various financial services. Further, the role of educational institutions that promote financial literacy and awareness about good governance and best practices are crucial. The aim is to create a robust institutional framework that can support the unique features of a Sharīah-powered economy, such as the prohibition of interest and the focus on asset-backed transactions.
- 179.** Strong institutions also contribute to market confidence and stability. When there is a trusted body ensuring compliance with Sharīah principles, it attracts more participants to the market, both Muslim and non-Muslim. This can be particularly beneficial for attracting foreign investment and integrating the Islamic financial market with the global economy.
- 180.** Moreover, institutions in a Sharīah-powered economic system are not just regulatory bodies but also serve as agents of social change. They are tasked with promoting ethical business practices, sustainable development, and social welfare, aligning the economic system with the broader goals of Islamic social justice. This makes institutions not just enforcers of law but also promoters of ethical and moral values.

## J. Free Markets

- 181.** While Sharīah-powered economics places several ethical and moral constraints on business activities, it is fundamentally supportive of free markets. The idea is to create a market environment where ethical considerations and business activities can co-exist. Free markets encourage competition, innovation, and efficiency, all of which are in line with Islamic principles as long as they are achieved through ethical means.

- 182.** However, the concept of a "free market" in a Sharīah-powered system is not an unregulated one. While businesses are free to compete, there are ethical guidelines that they must adhere to. This creates a unique blend of market freedom with moral responsibility, aiming to achieve the best of both worlds: economic efficiency and social justice.
- 183.** In conclusion, a Sharīah-powered economic system envisions a free market that is not just a space for capital accumulation but also a platform for achieving social good. By balancing economic freedom with ethical constraints, it aims to create a market that serves not just the interests of business owners but also the broader community. This aligns well with the Islamic vision of a just, equitable, and sustainable economic system.

# LITERARY REVIEW

- 184.** Typically, in navigating modern financial affairs, UK Muslims seek and adhere to the counsel provided by Muslim jurists and Islamic scholars. These experts render judgments and insights on financial matters, ensuring alignment with Islamic principles and jurisprudence. The following opinions have been issued in relation to pensions in general, and in some cases, the LGPS in particular. The views of the institutions and scholars that have been documented below would be catering a diverse range of Muslims that are geographically spread out across the UK. Further, the institutions and scholars below have large followings in the tens of thousands, giving us the confidence that these views will be reflected in the Muslim LGPS employees. The Muslim LGPS members may well be reading and practicing upon one of the opinions expressed below.

***Disclaimer: The following websites and links are for informational purposes only. The author of this report has no affiliation with these sites and does not endorse, approve, or assume responsibility for any other content, practices, or materials available from these external resources.***

## **1. Al Qalam Shariah Scholars Panel**

- 185.** Al Qalam Shariah Scholars Panel issued the following ruling in regard to LGPS in 2021:
- “Local government pension schemes tend to be defined benefit schemes and the details you have provided indicate that this scheme is also a defined benefit scheme. The pension holder does not own the investment in a defined benefit scheme but rather agrees with the employer to receive a pension according to a certain calculation that represents a portion of the salary or an average thereof. The pension fund itself tends to be used to pay off current liabilities to existing pensioners. Defined benefit pension schemes are permitted provided the job role itself is permitted.” [15]

[15] <http://alqalam.org.uk/is-it-permissible-to-join-a-local-government-pension-scheme/>



## **2. White Thread Institute**

- 186.** Another institution, White Thread Institute, based in London, issued the following opinion in regard to the NHS pension,

“The NHS pension scheme is a defined benefit scheme. It is permissible for you to enter into the pension scheme.” [16]

## **3. Darul Uloom Azaadville**

- 187.** As part of our literature review, we came across an opinion specifically about the LGPS expressed by an institution in South Africa. The question and answer was as follows:

“Question:

- 188.** I work for the local council, and have been enrolled onto the Local Government Pension Scheme. I have tried to find out how the fund is invested, to find if none shariah compliant transactions are involved. Although it is not clear, given how most transactions are based nowadays, it is highly likely interest may be involved. I found the following passage under the Investment Income on the annual report:

“Interest income

- 189.** Interest income is recognised in the fund account as it accrues, using the effective interest rate of the financial instrument as at the date of acquisition or origination. Income includes the amortisation of any discount or premium, transaction costs or other differences between the initial carrying amount of the instrument and its amount at maturity calculated on an effective interest rate basis”.

[16] <https://fatwacentre.org/business-trade/nhs-pension-scheme/>

**190.** Please can you advise the permissibility of the pension scheme? Also, if it is permissible, would you recommend on staying with a pension scheme or opting out, (i.e. is there a chance that it could have an impact on tawakkul later on in life, or am I indirectly hoarding wealth / preparing to live a long life)?

Answer:

**191.** It is not permissible to participate in the pension scheme, due to the high possibility of the funds being invested in Haraam (sic) avenues.

**192.** If one is compelled by company regulations to participate in the pension scheme and contributions to that fund is directly from the employer before your wage can reach you, you will be regarded to have no connection with the fund. Rather it will be between the employer and the insurance company. Hence, the profits as well as all the other benefits accrued from the pension scheme will be permissible and considered as a gift from the side of the company/employer.

**193.** However, if one is not compelled by the company to participate in the pension scheme, then it will not be permissible to participate. This is because, you will be actively participating in investing by making the employer your agent to invest part of your wages on your behalf.” [17]

#### **4. IslamQA**

**194.** The Saudi Arabian-based organisation, IslamQA issued an opinion regarding pensions in England, that participation in pension plans, aside from those organised by the government, is likened to gambling due to the uncertain nature of returns. This uncertainty may result in either gaining more money than contributed or losing money over time. The handling of pension money is also critical, as investing in forbidden entities like alcohol production or interest-based loans is not permissible.

[17] <https://www.iftadua.co.za/pension-scheme/8496/>

- 195.** However, the permissibility changes if participation in the pension plan is compulsory rather than voluntary. In compulsory cases, individuals are not considered sinful. Yet, they, along with their heirs, should only claim the amount equivalent to what was contributed, leaving any excess or donating it to charitable causes.
- 196.** Regarding government pension plans, they are viewed differently as the government or treasury is tasked with public welfare, potentially altering the ruling on such pension schemes. [18]

#### 5. Ask Imam

- 197.** The late Mufti Ebrahim Desai of South Africa also issued a ruling in relation to pensions, that in the matter of pension fund subscription, two scenarios are presented:
1. Voluntary subscription to the pension fund with premiums paid from a personal account.
  2. Forced subscription to the pension fund with premiums automatically deducted from salary without personal possession.
- 198.** Regarding the pay-out, it is segmented into the principal amount (actual premiums paid) and the surplus amount (the pension fund pay-out).
1. In the case of voluntary subscription:
    - The principal amount contributed will form part of the estate.
    - The surplus money, distinct from the principal amount, should be given away in *Ṣadaqah* due to contamination with interest. However, if the heirs or family are in need, the surplus will be distributed among them without the intention of reward.

[18] <https://islamqa.info/en/answers/42567/are-pensions-halal>

**199.** Regarding forced subscription:

- Employees are in principle entitled to their entire salary. When a company mandates participation in a pension fund and deducts a portion from the salary, the employee doesn't receive the full salary, which is seen as a debt upon the employer.
- The principal amount contributed will form part of the estate.
- The surplus is regarded as a gift to the named beneficiary, regardless if the beneficiary is a heir. [19]

6. Darul Iftaa – Institute of Islamic Jurisprudence

**200.** The Darul Iftaa institute based in Leicester, UK issued an opinion on pensions in general. The opinion states that such schemes are permissible as the benefits received are essentially the return of one's own money and the employer's contribution, regarded as a gift. It further states that such schemes do not resemble insurance, which relies on external events, nor does it involve gambling or interest, provided the returns are solely from the employer's gift and investment profits. The opinion raises a concern in how investments are managed, especially if investments are made in impermissible sectors and businesses, such as alcohol companies. The opinion concludes that in order to remain compliant, it's essential that the investments are in permissible businesses. If ensuring halal investments isn't possible, individuals are advised to only claim the sum of their own contributions and the employer's, avoiding any extra amount generated from unlawful investments. [20]

[19] Read more at [https://www.askimam.org/public/question\\_detail/47276](https://www.askimam.org/public/question_detail/47276)

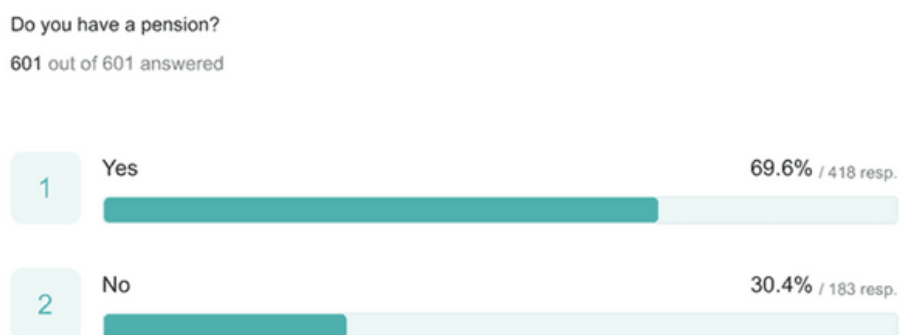
[20] <https://daruliftaa.com/business-trade/are-pensions-lawful/>

## 7. Darul Iftaa Birmingham

- 201.** This institution in Birmingham, issued a ruling regarding local government pension schemes, as follows:
- 202.** “In essence, as long as your pension scheme does not invest, or is involved in haram industries (alcohol, interest-based banking, pornography etc.) it would be a valid scheme. We would advise you to find a shariah complaint pension investment program with consultation from your local scholars.” [21]

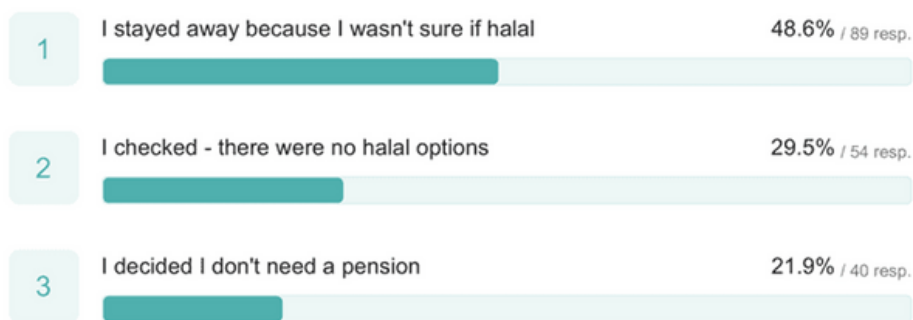
### The IFG Survey regarding Pensions

- 203.** Islamic Finance Guru conducted a survey in to ascertain how many Muslims held a pension and the reasons preventing those without from putting one in place. The survey was answered by 600 members of the Islamicfinanceguru subscriber list in 2021. This indicates that the respondents were likely to be the most digitally-savvy, financially literate, engaged and interested people in the Muslim community. The respondents were much more likely to be employed and in reality, the results of the survey are likely to be even worse as many of the Muslim community are not digitally-savvy and financially literate, and some are not in employment either.



[21] <http://daruliftabirmingham.co.uk/ruling-of-pension-schemes/>

- 204.** The survey revealed that 30.4% of the respondents did not have a pension. At the time, the Muslim population stood at around 3.4m in the UK, with 20% of that in work. So 680,000 Muslims were working and 30% of this group did not have a pension.
- 205.** The average UK pension pot after a lifetime of savings was £61,897, which works out at around £12,000 per annum [22]. Based on this data - 206,720 Muslims did not have a pension and if they did, they would collectively hold £12.8 billion.



- 206.** 78.1% of the people without a pension said that this was explicitly because of Shari'ah-compliance concerns, whilst the remaining 21.9% believed that they do not need one.
- 207.** Of the 69.6% who did have a pension, 39.5% reported that their employer does not have an Islamic pension option.
- 208.** So in total, ~40% of the Muslims with a pension did so in a structure which went against their beliefs because there was no alternative.

[22] <https://slothmove.com/how-much-should-you-have-in-your-pension/>  
<https://www.fca.org.uk/data/retirement-income-market-data-2019-20>  
<https://investingreviews.co.uk/pensions/how-big-does-my-pension-pot-need-to-be/>

- 209.** Islamic Finance Guru’s survey reveals a significant requirement to address the Muslim perception of pensions, given that 30.4% of respondents who are entitled to a pension, do not have one in place. This can be attributed to either a lack in *Halāl* options, or because they had insufficient knowledge to be able to determine whether a pension is Sharīah compliant.
- 210.** The data underscores a need for increased education and awareness of this topic among Muslims and employers. It also coheres with government-commissioned Ipsos Mori findings in a study they did in 2011 which holds that Muslims, if given the option, would go for Sharīah-compliant funds. As such, there is an evident need for pension providers to list an Islamic pension option to prevent individuals from being segregated within a system which goes against their beliefs.

**A summary of the potential range of views that we could expect among Muslim employees of LGPS employers:**

- 211.** The diverse opinions from various Islamic scholarly panels and institutions as presented in the data suggest a complex landscape of views among Muslim employees of LGPS employers. The empirical data from Islamic Finance Guru further supplements the anecdotal evidence. The complexity arises from the interplay of religious, ethical, and practical considerations concerning financial planning and adherence to Islamic principles. If we consider the above anecdotal evidence, the potential range of views that may exist among Muslim employees of LGPS employers, extrapolated from the provided data, could be influenced by many factors, and views can include:

1. Acceptance of Defined Benefit Schemes

- 212.** A segment of Muslim employees may find comfort and acceptance in the LGPS due to its nature as a defined benefit scheme, as affirmed by the Al Qalam Shariah Scholars Panel and White Thread Institute.

**213.** The defined benefit structure, which assures a specific pay-out based on a predetermined formula, might provide a sense of financial security and adherence to permissible job roles. This acceptance could be underpinned by a trust in the established religious rulings affirming the permissibility of such schemes.

## 2. Concerns Over Sharī'ah Compliance

**214.** On the contrary, concerns over Sharī'ah compliance, particularly regarding the investment strategies of LGPS, may lead to apprehension or outright rejection among another segment of Muslim employees. The concerns raised by Darul Uloom Azaadville and IslamQA regarding the possible involvement in interest (*Ribā*) or other forbidden (*Ḥarām*) avenues reflect a fundamental worry over the alignment of LGPS investments with Islamic financial principles.

## 3. Compulsory Versus Voluntary Participation

**215.** The nature of participation—whether compulsory or voluntary—may significantly influence the range of views. As noted by several institutions, compulsory participation, where the employer deducts contributions before wage distribution, might be seen as more permissible since the employee has no choice in the matter. This compulsory nature could potentially alleviate concerns over active participation in a scheme that might have non-compliant investments.

## 4. Investment in *Ḥalāl* Ventures

**216.** The emphasis on *Ḥalāl* (permissible) investment avenues by Darul Iftaa – Institute of Islamic Jurisprudence and Darul Iftaa Birmingham underscores a proactive approach to ensuring Sharī'ah compliance. This view represents a pragmatic approach where Muslim employees might seek to engage with employers or pension scheme administrators to ensure or advocate for *Ḥalāl* investment strategies.



## 5. Handling of Principal and Surplus Amounts

- 217.** The delineation between the principal and surplus amounts by Askimam reflects a nuanced view that may resonate with some Muslim employees. The ethical handling of surplus amounts, especially in the context of voluntary subscription, reflects a concern over the purity of earnings and adherence to Islamic financial ethics.

## 6. Consultation with Local Scholars

- 218.** The advice to consult with local scholars, as suggested by Darul Iftaa Birmingham, underscores the importance of contextual and localised religious guidance. This view might lead to a culture of seeking local scholarly advice to navigate the complexities of modern financial systems like LGPS, aligning personal financial decisions with religious principles.

## 7. Impact on Trusting in God and Wealth Hoarding

- 219.** The deeper spiritual concerns over trusting in God and wealth hoarding, as articulated in the query to Darul Uloom Azaadville, reflect a level of introspection and ethical deliberation that might resonate with some Muslim employees. These concerns extend beyond the technicalities of the pension scheme to explore the broader spiritual and ethical implications of financial planning and dependency.

## 8. Diversity of Cultural and Individual Circumstances

- 220.** The diversity in scholarly opinions also hints at the potential diversity among Muslim employees themselves, arising from different cultural backgrounds, levels of religious observance, personal circumstances, and experiences. The multicultural and multi-ethnic composition of the Muslim community could lead to a broad spectrum of views and interpretations regarding LGPS.

## 9. Engagement and Advocacy

- 221.** The range of views might also reflect varying levels of engagement and advocacy among Muslim employees. Some might choose to engage proactively with employers or pension scheme administrators to advocate for Sharīah-compliant investment strategies, while others might opt for a more cautious or conservative approach, perhaps choosing to opt-out if possible or seeking alternative financial planning solutions.

## 10. Community Discussions and Collective Views

- 222.** Community discussions within Muslim employee groups or broader community forums might foster collective views or consensus on certain aspects of LGPS. These collective deliberations could play a vital role in shaping the range of views and potentially influencing employer policies or scheme administration in favour of Sharīah compliance.
- 223.** It is evident that a significant portion of Muslim employees would harbour concerns regarding the Sharīah compliance of existing pension schemes like the LGPS. The diverse scholarly opinions underscore a complex landscape where varying interpretations of Islamic finance principles impact the acceptance of these pension schemes. The empirical data from the Islamic Finance Guru survey further accentuates this dilemma, showing a substantial number of Muslims abstaining from or uneasily participating in current pension schemes due to Sharīah-compliance concerns.
- 224.** The introduction of a Sharīah-compliant pension scheme, coupled with educational initiatives, could potentially bridge this gap, fostering higher participation rates and addressing the religious concerns of Muslim employees. Moreover, the exploration of alternative Sharīah-compliant pensions in the UK reveals a growing acceptance and demand for such financial products.

- 225.** The synergy of a well-structured Sharīah-compliant pension scheme, robust engagement with Muslim employees, and continuous education could pave the way for a more inclusive and religiously accommodating pension landscape for Muslim employees within LGPS employers.
- 226.** In conclusion, given the anecdotal and empirical evidence above, the potential range of views among Muslim employees of LGPS employers on this issue is likely to be vast and multifaceted. The interplay of religious rulings, personal ethics, practical considerations, and communal discussions creates a complex tableau of opinions. Understanding this range requires a nuanced appreciation of the religious, ethical, and practical dimensions that influence Muslim employees' perspectives on LGPS.

**An explanation of what alternative pension schemes exist that are Sharīah-compliant and their features, benefit structures if one assumes that contribution levels remain as provided in the LGPS:**

The alternative Sharīah-compliant pension schemes in the UK include:

- 227.** 1. Nest Pensions Sharīah Fund: Adheres to Islamic financial principles by avoiding investments in companies dealing with alcohol, pornography, pork products, or any form of interest. The investments are screened by Islamic scholars to ensure Sharīah compliance.
- 228.** The fund invests entirely in the HSBC Life Amanah Pension Fund. HSBC Life Amanah Pension Fund is a pooled fund that offers investors exposure to the largest 100 companies engaged in Sharīah-compliant activities globally. The fund tracks the Dow Jones Islamic Market Titans Index, which comprises Sharīah-compliant companies endorsed by the HSBC Amanah Sharīah Supervisory Committee. It has been launched in conjunction with HSBC Amanah.

- 229.** The investments in this fund are screened by Islamic scholars to make sure they meet Sharīah principles. For example, it doesn't invest in companies that make money out of alcohol, pornography or pork products. It also avoids types of investments that pay or receive interest, such as company or government loans. This approach means it's invested in just one type of market, unlike the rest of our funds, and therefore carries higher investment risk. That means there's more uncertainty about how much you'll have in your pot at the end of the day. As with all investments, there's a chance that you could get more or less than you put in.
- 230.** 2. The People's Pension Sharīah Fund: Similar to the Nest Sharīah Fund, this pension fund tracks the Dow Jones Islamic Market Titans Index, which comprises Sharīah-compliant companies endorsed by the HSBC Amanah Sharīah Supervisory Committee. This fund invests in company shares from around the world and is compliant with Sharīah principles.
- 231.** 3. Islamic Pension Trust: A fully Sharīah-compliant auto-enrolment Pension Scheme developed by Carey Pensions UK with guidance from al Rayan Bank. The Islamic Pension Trust is a UK registered Master Trust Occupational Defined Contribution Scheme. The Islamic Pension Trust provides investors access to a UK equity portfolio based on shares that have been or are expected to be included in the FTSE 350 index, offered by Praemium UK Ltd and managed by Criteria Management & Research Ltd. The equity portfolio is blended with cash accounts provided by Al Rayan Bank plc. The blend is in accordance with the lifestyle strategies. The fund does not invest in interest bearing certificates or accounts, deposits at non-Islamic banks, products from non-Islamic insurance companies business lines that deal in alcohol, pork related substances, tobacco companies, arms, gambling, pornography manufacturers, retailers and distributors.
- 232.** 4. Sharīah SIPP Option: In 2020, Options UK joined forces with worldwide Halal investment specialists Wahed Invest, launching a Sharīah-compliant SIPP designed to satisfy burgeoning demand from British Muslims, allowing them to invest without compromising on their beliefs.

- 233.** This SIPP platform offers a broad range of Sharīah-compliant funds, each selected for their adherence to Muslim values. Advised by its Sharīah board, Wahed Invest ensures that all returns from these funds, which include investments in Sukuk funds, are *Ḥalāl*.
- 234.** 5. Oasis Crescent Funds – Oasis offers several funds composed of different asset classes and strategies. For instance, the Oasis Crescent Global Medium Equity Fund, can be held in an Investment Individual Savings Account (ISA), Self-Invested Personal Pension (SIPP), and Investment Accounts.

**The extent of consensus among Muslim employees of LGPS employers on the Sharīah compliance of the alternative schemes:**

- 235.** Given the diverse opinions from various Islamic scholarly panels and institutions, reaching a consensus among Muslim employees of LGPS employers on the Sharīah compliance of alternative schemes may be challenging. The acceptability of these alternative schemes might significantly depend on different analyses of Islamic financial principles, the level of awareness and understanding of the alternative schemes, and the endorsements from respected Islamic scholars or institutions. Furthermore, the extent of engagement and advocacy among Muslim employees, as well as the provision of localised religious guidance and community discussions, could also influence the level of consensus. Lastly, the structural features, benefit structures, and the transparency in investment strategies of the alternative Sharīah-compliant schemes would play a crucial role in forming a consensus.
- 236.** Achieving a consensus among Muslim employees of LGPS employers on the Sharīah-compliance of alternative pension schemes necessitates a robust engagement strategy coupled with the establishment of a genuinely Sharīah-compliant pension scheme. Central to this endeavour is the formation of a dedicated Sharīah board comprised of esteemed Islamic scholars well-versed in both Islamic jurisprudence and contemporary financial systems. This board would play a pivotal role in ensuring that the pension scheme operates within the bounds of Islamic financial principles at every juncture.

This would very likely resolve most issues and grant the assurance that the fund is truly operating in a Sharīah-compliant manner.

- 237.** The implementation of stringent governance mechanisms is crucial to ensure the continual adherence to Islamic financial laws and principles. A robust Sharīah-governance framework would encompass regular audits and reviews by the Sharīah board, ensuring that both the investment strategies and operational practices of the pension scheme remain compliant with Sharīah principles.
- 238.** Fostering an environment of open dialogue and engagement with Muslim employees is imperative to understand their concerns and expectations better. Engaging with employees will not only provide valuable insights but also help in building trust and a sense of ownership among the Muslim employee base. This engagement could take the form of informational sessions, workshops, or forums where employees have the opportunity to voice their concerns, seek clarifications, and obtain a deeper understanding of the Sharīah-compliant pension scheme. The same can be conducted with other stakeholders and those from other backgrounds who wish to see more representation and a sense of equality in investment opportunities and access.
- 239.** Transparency is a critical factor in building consensus. Ensuring that the investment strategies, fund management practices, and the performance of the Sharīah-compliant pension scheme are transparently shared with the employees will contribute to building trust and acceptance. Providing clear, accessible, and regular updates on how the pension scheme is aligning with Sharīah principles will go a long way in fostering a sense of trust and assurance among employees.
- 240.** Education and awareness campaigns aimed at elucidating the intricacies of Sharīah-compliant financial practices and how they are embodied in the pension scheme will be beneficial. These campaigns can demystify Islamic financial principles, bridge knowledge gaps, and help employees make informed decisions regarding their participation in the pension scheme.

- 241.** Engaging with external Islamic financial institutions and seeking guidance and endorsement from recognised Islamic scholars and institutions can also contribute to building consensus. Such engagements can lend credibility and assurance to the employees regarding the Sharīah compliance of the pension scheme.
- 242.** Feedback loops should be established to continually gauge the level of acceptance and any concerns among employees. This feedback will be instrumental in making necessary adjustments to the pension scheme, ensuring it remains responsive to the needs and concerns of employees.
- 243.** In conclusion, a multi-faceted approach encompassing the establishment of a Sharīah board, robust Sharīah-governance mechanisms, active engagement with Muslim employees, transparency, education, and collaborations with external Islamic financial entities is crucial to developing a truly Sharīah-compliant pension scheme and achieving consensus among Muslim employees of LGPS employers.

**The overall impact on Muslim employees of offering Muslim employees who opt out of the LGPS an alternative pension scheme:**

- 244.** Offering a Sharīah-compliant alternative pension scheme could potentially see a higher opt-out rate from LGPS among Muslim employees. The alternative might align better with their ethics and values, thus being more appealing. The split between LGPS and the alternative scheme might hinge on various factors including the level of Sharīah compliance, financial security, and benefits offered by the alternative scheme. However, a precise split is speculative and would require further analysis or empirical data. The alternative's success in attracting opt-outs could also depend on awareness campaigns and ensuring the Muslim employees are well-informed about the benefits and compliance of the alternative scheme.

- 245.** The traditional reluctance towards engaging in conventional pension schemes, as noted by the Institute for Islamic Banking [23], hinges on a preference for Shari'ah-compliant financial practices. However, the changing economic circumstances, notably the risks associated with cash holdings and property investments, are driving a re-evaluation of these traditional stances.
- 246.** The fluctuation in profit rates could further exacerbate the financial challenges faced by individuals who prefer to keep their savings in non-interest-bearing bank accounts. This unfavourable banking environment, coupled with the diminishing allure of the property market due to pandemic-induced rent losses and proposed Capital Gains Tax reforms, is creating a financial conundrum for British Muslims. These evolving dynamics are catalysing a search for alternative investment avenues that not only preserve, but potentially grow their wealth in a manner consistent with Islamic principles.
- 247.** Furthermore, the broadening spectrum of Shari'ah-compliant investments, accompanied by generous tax advantages, is gradually unveiling the potential benefits of engaging in pension schemes. The modest level of Muslim investment in pensions, may be on the cusp of expansion as awareness grows regarding the availability and benefits of Shari'ah-compliant pension schemes.
- 248.** The burgeoning appetite for Islamic investment funds, underscores a pivotal shift in financial attitudes within the British Muslim community. This shift, driven by a blend of economic pragmatism and religious adherence, is likely to have a profound impact on the perceptions and decisions of Muslim employees regarding pension schemes.
- 249.** The financial landscape is increasingly becoming more diverse, catering to different beliefs, values, and lifestyles. A trend worth noting is the growing popularity of Shari'ah-compliant pension schemes, particularly in the United Kingdom. Not only does this highlight the rising demand for ethical financial products that align with Islamic principles, but it also underscores the flexibility and responsiveness of the financial industry to meet consumer demands.

[23]<https://www.optionspensions.co.uk/sipp-platform-confirms-british-muslims'-appetite-islamic-investment>



- 250.** Over the last decade or two, we've seen an impressive surge in the supply of Sharīah-compliant pension schemes in the UK, each catering to a different set of needs but maintaining the core tenets of Islamic finance. Some notable examples include Nest's Sharīah Fund, The People's Pension Sharīah Fund, Islamic Pension Trust, Sharīah SIPP Option and Oasis Crescent Funds, to name a few.
- 251.** The existence and proliferation of these options signify more than just variety; they represent the growing demand for such financial products. Muslims are actively looking for pension schemes that align with their beliefs without compromising financial growth. The more the demand rises, the more we can expect the financial market to evolve and adapt by introducing even more Sharīah-compliant options. This holds especially true as Islamic finance continues to mainstream into global markets.
- 252.** Now, extrapolating this information to the context of LGPS and its Muslim members, the potential offering of a Sharīah-compliant alternative pension scheme could serve as a significant incentive for Muslim employees to reconsider their participation in the LGPS. The juxtaposition of LGPS against a Sharīah-compliant alternative illuminates a choice that resonates deeply with the financial ethics and religious beliefs of Muslim employees.
- 253.** Should an alternative Sharīah-compliant pension scheme be introduced, it might likely see a notable opt-out rate from the LGPS among Muslim employees who seek to align their financial planning with their religious beliefs. The extent to which this shift occurs would significantly depend on the level of awareness, education, and assurance provided regarding the Sharīah compliance and financial robustness of the alternative scheme.
- 254.** The rising demand for Sharīah-compliant pensions may also have implications for existing systems like the LGPS. As options for Sharīah-compliant pensions increase, there could be a greater tendency among Muslims to opt out of the LGPS in favour of financial vehicles that align better with their ethical and religious values.

- 255.** This would mean that conventional pension schemes might need to innovate or adapt to retain a diverse participant base, particularly among Muslim consumers.
- 256.** The split between LGPS and the alternative scheme, should the latter be offered, would encapsulate a complex interplay of individual financial circumstances, religious beliefs, and the perceived benefits and security associated with each scheme. The endeavour to strike a balance between religious adherence and financial security would be at the heart of the decision-making process for Muslim employees.

# OUR OPINION

01

## MICRO LEVEL

**257.** At a micro level, the pension benefits are acceptable to receive from a Sharīah perspective. This is based on the fact that members do not own the underlying investment in the funds and are simply being paid what they are owed by their employers as deferred salary. The contractual relationship between the employer and employee is that of an *Ijārah* agreement, whereby the employee provides services in exchange for wages, some of which are deferred. This deferred element is invested by the scheme employers in the LGPS and managed by the administering authority. The employee does not directly own or invest the monies, rather the scheme employer undertakes the investment via the agency of the administering authority and it is the scheme employer that bears the risks. Hence, the pension benefits can be accepted by retired Muslim members as they do not have direct involvement with the investments.

02

## FUND LEVEL

**258.** At Fund level, the LGPS is not Sharīah compliant. There are several non-Sharīah compliant assets in the funds. Based on the analysis conducted on the dates recorded in this report, the Local Government Pension Scheme invests significantly in non-Sharīah compliant assets such as conventional bonds, cash holdings earning interest, and other instruments like commodity futures contracts. This makes the investment funds non-compliant from a Sharīah perspective.

# OUR OPINION

03

## MACRO LEVEL

- 259.** At a broader strategic level, the current approach of funding pension obligations through investments that conflict with ethical values is inconsistent with Sharīah principles and the broader economic vision it promotes. The investment strategy does not reflect Sharīah’s objective of fostering overall economic welfare that benefits all community members, regardless of their religious background. While Muslim members may technically receive pension benefits in the short term without breaching Sharīah compliance, the long-term investment strategy of the contributions diverges from the values of the Muslim community. This highlights a need for a more aligned investment approach that respects the ethical guidelines of all community members.

# OUR RECOMMENDATIONS

01

## MUSLIMS MAY CONTINUE BEING MEMBERS

- 260.** At present, Muslim members may continue being members of the LGPS, and retired Muslim members may continue to receive pension benefits.

02

## HOLISTIC INVESTMENT STRATEGY

- 261.** The LGPS is encouraged to embrace a holistic investment strategy that considers different investment strategies that represent their members' values and interests. There's an increasing global recognition of the need for diversified investment portfolios that align with individual values and principles. The current LGPS reflects a narrow investment focus, especially given its significant investments in non-Sharīah compliant assets such as conventional bonds, cash holdings earning interest, and instruments like commodity futures contracts. By expanding to include specialised sub-funds like Sharīah-compliant, ESG, SRI, Impact, and other alternative investment strategies, LGPS not only enhances its inclusive appeal but also ensures it caters to the unique values and beliefs of various members of the pension community. Such a holistic approach ensures that the LGPS remains relevant and responsive to a broader spectrum of stakeholders, fostering trust and alignment with the diverse needs of its members. This will, of course, increase assets under management and increase membership.

# OUR RECOMMENDATIONS

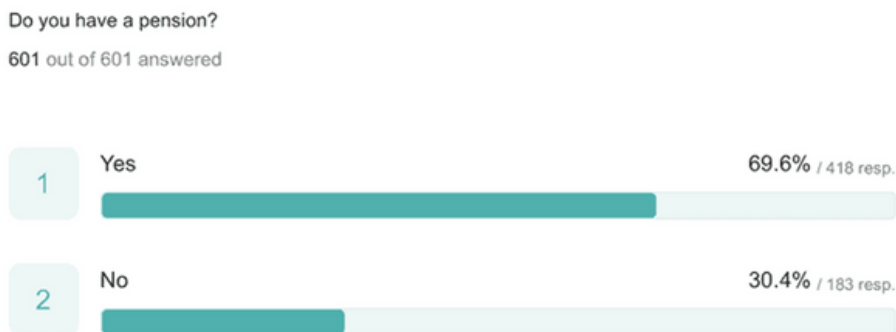
## 03

### SHARĪAH-COMPLIANT FUND

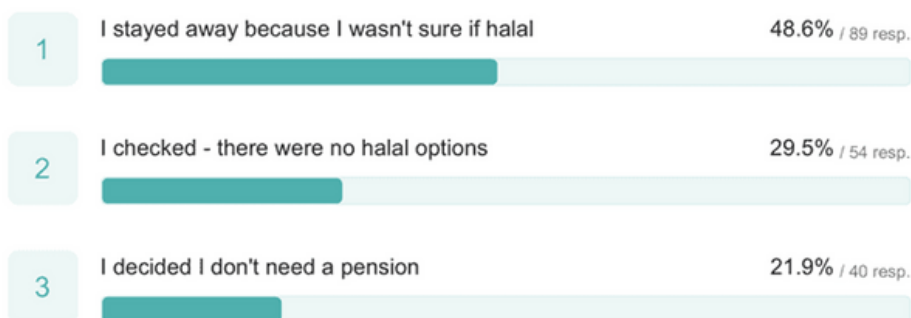
- 262.** The LGPS is encouraged to develop a Sharīah-compliant fund or segregated asset allocation in the funds. A suggested portfolio allocation can be 6.5% of the total fund, aligning up with the Muslim population in the UK. This would address the reservation many Muslim employees likely have regarding current pension fund investments. This fund would invest exclusively in Sharīah-compliant instruments like Sukuk (Islamic bonds), *Halāl* equities, Islamic REITs, commodities structured in a Sharīah-compliant manner, and cash holdings in non-interest bearing Sharīah-compliant bank accounts. The fund would need to establish a Sharīah board to provide oversight and regular audit reviews. This would assure Muslim employees that their deferred wages are being administered and invested in a manner compliant with Islamic principles.

## ANNEX 1: SURVEY: MUSLIM PERCEPTIONS OF PENSIONS

- 263.** Islamic Finance Guru conducted a survey in to ascertain how many Muslims held a pension and the reasons preventing those without from putting one in place. The survey was answered by 600 members of the Islamicfinanceguru subscriber list in 2021. This indicates that the respondents were likely to be the most digitally-savvy, financially literate, engaged and interested people in the Muslim community. The respondents were much more likely to be employed and in reality, the results of the survey are likely to be even worse as many of the Muslim community are not digitally-savvy and financially literate, and some are not in employment either.



- 264.** The survey revealed that 30.4% of the respondents did not have a pension. At the time, the Muslim population stood at around 3.4m in the UK, with 20% of that in work. So 680,000 Muslims were working and 30% of this group did not have a pension.
- 265.** The average UK pension pot after a lifetime of savings was £61,897, which works out at around £12,000 per annum. Based on this data - 206,720 Muslims did not have a pension and if they did, they would collectively hold £12.8 billion.



- 266.** 78.1% of the people without a pension said that this was explicitly because of Sharīah-compliance concerns, whilst the remaining 21.9% believed that they do not need one.
- 267.** Of the 69.6% who did have a pension, 39.5% reported that their employer does not have an Islamic pension option. So in total, ~40% of the Muslims with a pension did so in a structure which went against their beliefs because there was no alternative.
- 268.** Islamic Finance Guru’s survey reveals a significant requirement to address the Muslim perception of pensions, given that 30.4% of respondents who are entitled to a pension, do not have one in place. This can be attributed to either a lack in halal options, or because they had insufficient knowledge to be able to determine whether a pension is Sharīah-compliant.
- 269.** The data underscores a need for increased education and awareness of this topic among Muslims and employers. It also coheres with government-commissioned Ipsos Mori findings in a study they did in 2011 which holds that Muslims, if given the option, would go for Sharīah-compliant funds. As such, there is an evident need for pension providers to list an Islamic pension option to prevent individuals from being segregated within a system which goes against their beliefs.



## ANNEX 2: TRANSLATIONS OF ARABIC TEXTS

Footnote 2, Page 26:

- 270.** The Ḥanafī and Mālikī schools of Islamic jurisprudence argue that wages are not inherently guaranteed by the contract itself. Instead, wages are earned either through explicit agreement for early payment or when the work stipulated in the contract is completed. The Ḥanafī school goes a step further by emphasising that early payment should be actively agreed upon.
- 271.** Imam al-Kāsānī explains that wages can be earned through one of three ways:
1. Explicitly agreeing in the contract for early payment, as the Prophet Muhammad ﷺ has said, "Muslims are bound by their conditions."
  2. Implicit agreement for early payment, drawing an analogy to buying and selling. In a purchase, it's permissible to agree on a price before the item is delivered, and the same principle applies here.
  3. Completing the agreed-upon work. Once the work is done, both parties gain ownership of what they have exchanged, thus fulfilling the purpose of the contract.
- 272.** According to the Mālikī school, the default rule is to delay the payment. However, there are four exceptions where immediate payment is mandatory:
1. If it's explicitly stated in the contract.
  2. If it's customary practice, like in the case of renting houses or animals for travel to the Hajj pilgrimage.
  3. If a specific item is agreed upon as payment, such as a particular garment.
  4. If the benefits are guaranteed but the wage hasn't been specified. In such cases, you can either make an immediate full payment or initiate a debt agreement.”
- [Kuwaiti Jurisprudential Encyclopedia]

Footnote 3, Page 26:

- 273.** "The Shāfiī and Ḥanbalī schools of thought lean towards the view that once a contract is established, the wage becomes obligatory at the very initiation of the contract. The wage must be delivered upon the delivery of the work and the enabling of benefit, even if actual benefit is not utilised. This is because the wage is mentioned as compensation in the contract and becomes due upon the mere initiation of the contract, like the price in a sales contract or the dowry in a marriage contract. Once the benefit is realised, the wage becomes fixed.

If the contract is for labour, then ownership of the wage is established also by the contract, and it becomes a debt on the employer immediately upon signing the contract. However, it only becomes due for payment upon the completion of the work, or its delivery, or the expiration of the period if the employee is specialised. The due payment is contingent upon the completion of work because it is considered compensation. This differs from the renting of physical items, where the delivery of the wage follows the delivery of the benefit. When the employer receives the benefits, or the period expires and there are no barriers to benefiting, the wage becomes fixed. This is because what was agreed upon in the contract has been delivered, thus stabilising the substitute payment, or because the benefits have been wasted at his discretion.

When the rental contract is complete and is for a specified period, the employer owns the benefits agreed upon for that period. Their occurrence falls under his ownership because he has become the owner, capable of transacting with them, and they are considered to exist." (Kuwaiti Encyclopedia of Jurisprudence)

Footnote 4, Page 27:

- 274.** "Because the wage is a debt on the one who hires (the employer)." (al-Mabsūt by al-Sarakhsī, Vol 30, page 217)

Footnote 5, Page 27:

- 275.** "When the wage becomes obligatory due to the passing of time and it is a debt, then there is no harm in transferring it, gifting it, or converting it; because it is an obligatory debt like other debts." (Tabyīn al-Haqā'iq, Explanation of Kanz al-Daqā'iq and the gloss by al-Shilbī, Vol 5, page 108)

Footnote 6, Page 27:

- 276.** "The lessor gains ownership of the wage through control and transactional authority." (al-Muḥīṭ al-Burhānī, Vol 7, page 399)

Footnote 7, Page 27:

- 277.** "The ruling concerning dealing with the wage before its collection, once it becomes obligatory, is the same as the ruling for dealing with the price before its collection when it is a debt." (Bada'i' al-Ṣanā'i', Vol 4, page 193)

Footnote 8, Page 31:

- 278.** "Because the guarantee is related to the collection (of the wage)." (al-Jawharah al-Nayyirah, Vol 1, page 237)

Footnote 9, Page 34:

- 279.** "Indeed, the payment of money to a person is to hand it over to him. Allah said, 'Indeed, Allah commands you to render trusts to whom they are due,' [An-Nisa:58] meaning, you should hand them over. And He said, in a statement about His Prophet Moses, 'Return the servants of Allah to me,' [al-Dukhan:18] meaning, deliver them. And handing something over means to make it secure and free, not shared by anyone. This happens through relinquishment (Takhliyah). Therefore, relinquishment is considered delivery in writing as well as in absolute exchanges.

- 280.** It doesn't require possession as is not needed in writing and absolute exchanges even though relinquishment includes possession; because it indicates the ability to dispose, which is the explanation of possession, not making it unclaimed like in other places." (Bada'i' al-Şanā'i' Vol 4, Page 59)

Footnote 10, Page 35:

- 281.** (Article 450): It is required that the wage be known. (Majallah)
- Thirdly, if the wage is not specified, i.e., a fixed debt in liability like measured items that are required immediately or upon benefit realisation, the employer has no right to sell it to another before taking possession, but he can sell it to the renter. And if the money taken from the renter in exchange is specific, it is permitted according to the first section of this article; but if it's not specific and is a debt, possession in the session is necessary. If a separation occurs before possession, the sale is void. As narrated in Hindiyya in the Fourth Chapter [Durar al-Ḥukkām].

Footnote 11, Page 49:

- 282.** In regard to a Muslim who sells wine and takes its price, and he has a debt: "It is detestable for the creditor to collect his debt from the funds of the wine [if he knows that it is the price of the wine], and if the seller is a non-Muslim, then there is no harm. Because it is not permissible for a Muslim to sell wine, if he takes its price, he takes it wrongfully. Therefore, it is disliked for the creditor to take it from him."
- 283.** As for the non-Muslim who sells wine, a Muslim may take their due payment from the non-Muslim from the sale of wine. This is because it is narrated from the Prophet ﷺ that he instructed in their covenant: "Leave usury and do not openly sell wine in Muslim lands," which implies that they are not forbidden from selling it among themselves.
- 284.** And it is narrated from Umar that he said: "Even if they sell it and take a tenth from its price," this implies that their contract on it is permissible. So if the contract is permissible, the price is rightfully taken; thus, it is permissible for the Muslim to collect it [Sharḥ Mukhtaşar al-Karkhī by al-Qudūrī].

- 285.** (In regard to a Muslim who sells wine and takes its price, and he has a debt: it is detestable for the creditor to collect the debt from him from the price of the wine if he knows that)... This is because the contract on wine is invalid for Muslims, and the collected price must be returned to the seller, making it in the position of something wrongfully taken. Therefore, it is not permissible for the creditor to take it if he knows about it. (And if the seller is a non-Muslim, then there is no harm) because the wine is valid property in his right, the sale is valid, and the price is his property and not required to be returned to him. Therefore, settling a Muslim's debt with these dirhams is the same as settling it with other dirhams he owns." [Sharh al-Jami' al-Saghir for al-Sarakhsi]
- 286.** "(It is permissible to take a debt from a non-Muslim from the price of wine) because his sale is valid (unlike) a debt from (a Muslim) because it is invalid, except if a Non-Muslim is delegated to sell it, then it is permissible according to Imam Abu Hanifah, contrary to his two students."
- 287.** "(His statement from the price of wine) means that the non-believer sells wine and takes its price and settles the debt with it (his statement because the sale is valid) i.e., the non-believer's sale of wine, because it is valid property in his right so he owns the price, unlike a Muslim because it is not valid property in his right so the price remains the property of the buyer." [Ḥāshiyah Ibn 'Ābidīn]

Footnote 12, page 50:

- 288.** "There is no disagreement that they are also addressed by the directives related to transactions because what is required here is of a worldly nature, and that is more appropriate for them, as they have prioritised worldly benefit over the Hereafter. Because they are obligated for that, the contract of obligation is intended to mean adherence to the rules of Muslims in relation to transactions. Thus, the directive is established for them in this regard just as it is for Muslims, due to the presence of the obligation, except in what is known for having evidence that they are not obligated for it." [Uṣūl al-Sarakhsī]

Footnote 13, page 50:

- 289.** The prohibition of marriage without witnesses is disputed, and they do not commit to our rulings in all the differences. For Abū Ḥanīfah, may Allah have mercy on him, the prohibition cannot be truly established by the Sharī'ah because they are not addressed by its rights, and there is no basis for obliging the *'iddah* on the husband because he does not believe in it, unlike if he was under a Muslim, because he would believe in it. And if the marriage is valid, then the state of legal dispute and Islam is a state of continuity, and testimony is not a condition in it, nor does the *'iddah* contradict it, like the married woman if she is consummated under doubt." [al-Hidāyah]

Footnote 14, page 51:

- 290.** "The issue was whether, when non-Muslims are addressed by Islamic laws and regulations, if they earn money in a manner contrary to Islamic law, it should be considered Ḥarām (forbidden). The essence of the answer is that although non-Muslims are subject to branches of Islamic principles and transactions, the general address of Sharī'ah is not sufficient for declaring something as Ḥarām or void; an obligation is also a condition. The non-Muslims have not accepted the rules of Islam. Therefore, however they earn money, whether through lawful or unlawful means according to their religious views, it will be considered their property. And it will be permissible for a Muslim to take it as a salary."



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