



Response to the CLG consultation on the sustainability of the LGPS in England and Wales

Sustaining the Local Government Pensions Scheme in England and Wales

This evidence is submitted by Unite the Union. Unite is the UK's largest trade union with 2 million members across the private and public sectors. The union's members work in a range of industries including manufacturing, financial services, print, media, energy generation, construction, transport and local government, agriculture, education, health and not for profit sectors.

Unite welcomes the chance to submit evidence and would be willing to make further written and verbal submissions about any of the issues raised.

Unite is being asked to consider its response as to the long term sustainability of the Local Government Pension Scheme, the LGPS.

In doing so Unite makes the following points.

- The LGPS should be seen as a unique and distinct entity not particularly analogous by comparison to other public sector pension schemes.
- 'Sustainability' should be a long term issue of 50+ years, not just a question of getting through the next 2 or 3 tri-annual valuations.
- Unite rejects as unworkable the proposals being put forward in the consultation document by the CLG and GAD that there should be a 'notional fund' for actuarial purposes.
- Any cost sharing should be seen as a 'whole cost' exercise rather than concentration at any one time on a specific cost such as 'longevity'.
- Any cost sharing process should not be on a formulaic or mechanistic basis but should be by a process of debate, consultation and negotiation, leading to necessary changes.
- Any cost sharing process must take into account the need for more open and transparent and credible actuarial and financial data.
- Unite is opposed to the introduction of any concept of there being a cap on employer costs.
- Any introduction of a cost share arrangement must take full account of the need for a reform of the governance structures of the LGPS to allow for greater control by scheme members over the investment of their retirement monies.

Introduction

1. The CLG must recognise the fact that the LGPS is fundamentally different from the other main public sector pension's schemes. Not only does the 'new look' 2008 scheme offer a different way forward to say the Nuvos scheme for Civil Servants but the LGPS is a funded scheme consisting of 89 funds and numerous employers, including for example the Environment Agency and many 'admitted body authorities'.

2. It would be wrong in principle to start from a basis that all public sector pension schemes should operate in the same way in respect of 'sustainability'. There are fundamental differences such as the nature of the scheme e.g. The Civil Service Nuvos scheme is a CARE option which was the preferred solution for a 'new look' Civil Service Pension Scheme. There are also important differences between public sector schemes such as differing current levels of employee contributions between public sector schemes.
3. No uniformity of approach can then be put forward and it is better that the LGPS is looked at on its own merits with its own long term costs rather than trying to read across schemes. If a comparison were to be made then this would be best made with the LGPS Scotland but even there whilst the Scottish LGPS is in many respects broadly similar they do for example have different solutions to the abolition of the rule of '85'.

The Regulations to Date

4. Unite does not favour a formalistic approach to the question of sustainability. It is accepted that there is no regulatory requirement for this approach. Regulation 40 of the LGPS Benefit Regulations means that the Secretary of State as the schemes regulator must issue guidance on the manner in which scheme costs will operate in the future. The approach however does not need to be the kind of formalistic approach we have seen set out in the Teachers Pension Scheme or the NHS scheme. Rather Unite's position is that the matter, should so far as possible, be dealt with by future negotiations, perhaps with some form of trigger mechanism. As opposed to the somewhat arbitrary mechanisms as suggested here by the CLG.
5. It is important to emphasise right from the start that where Unite is considering any form of cost sharing mechanism that this is to be applied strictly and only to the LGPS 2008 scheme. In past tripartite negotiations it was made clear that there can be no question of carrying any 'past service deficit' into a future cost sharing mechanism. The old scheme was a

traditional 'balance of cost scheme' and as such it is totally the responsibility of the employer to meet those costs. The statutory authority for a cost sharing mechanism is contained in Regulation 40 SI2007 1166 as amended and it is clear that here reference to the 'scheme' clearly means the Local Government Pensions Scheme 2008 as clearly defined by regulation 1. There is an entirely separate and distinct reference made in the regulations to the 1997 scheme being the scheme as "constituted by the 1997 Regulations [Regulation 1 SI 2007 1166 as amended]". Any scheme guidance as to cost sharing and the need to issue such guidance as to a 'suitable mechanism' must therefore only apply to the new 2008 LGPS pension scheme and to the rights accrued under those regulations going forward as of the 1st of April 2008.

How to assess current costs.

6. The CLG and ministers have initiated a debate about 'sustainability' and have put forward the suggestion of an employer cap on costs to which Unite is opposed but before any discussion can realistically take place about future sustainability it is imperative that there be some commonality about existing costs. For there to be any successful strategy to deal with sustainability there needs to be a thorough and detailed examination as to current costs from the outset. There must be a degree of certainty and agreement about the valuation of the scheme and its assets.
7. There needs to be a much greater degree of transparency and a much greater objectivity in how data is gathered and assessed than has hitherto been the case.
8. Unite is not in favour of the GAD model being suggested for a cost analysis and the idea of a separate 'notional fund' does not appeal to Unite. Rather it is felt that any such approach would quickly lead to a deviation between the model and real life experience. Additionally the concept of such a model does not easily help lay members understanding of the pension scheme.

9. The data as it currently exists is not in Unite's view comprehensive enough or accurate enough for the purposes outlined and whilst it is appreciated that many of the disparate employers have difficulty in gathering reliable data, this in itself should not preclude more accurate monitoring in future. The list of data put forward by the CLG at para 20 of the consultation document is not exhaustive and Unite's view is that if the CLG are insistent in proceeding with a division of scheme items or a selective notional fund then it is of vital importance that this be independently monitored and assessed.

10. One only has to look at item 5 of para 20, 'ill health retirement rates', and the current highly unsatisfactory position in regards to the uncertain data and the unsatisfactory implementation of the new regulations on the third tier of ill health to see how inadequate the current data can be.

Sustainability Generally

11. Unite would wish to see any maintenance of a final salary scheme seen as being something of value to all. Sustainability therein has to be sustainability going forward for 50 years or more. In order to achieve that it is not just a question of maintaining costs within limits but also of encouraging the influx of new members to replace those who are retiring. A key part of Unite's strategy during the negotiations on the current scheme was its wish to see the implementation of new restructured and tiered set of employee contributions. This was to encourage women, part time and low paid workers into the scheme take-up in greater numbers

12. Since the start of negotiations with Unite and sister unions that led to the creation of the 'new look' 2008 scheme, take up was seen as a vital matter. Unite views this as still the case and there needs to be much more accurate data on take up. There should be detailed monitoring and accurate figures should be maintained and published as to participation rates amongst differing groups of employees. This should be broken down in a meaningful way to show how differing ethnic groups, women and differing age groups are or are not being attracted into the LGPS. This is

one of the main ways in which, from Unites point of view, a significant aspect of 'sustainability' can be demonstrated.

Comment on Para 18 of the document: Objectives for new arrangements

13. Paragraph 18 Point 2 does not make it clear that 'satisfactory control of the cost risks' can only be the costs of the new scheme going forward. Additionally many of the costs referred in paragraph 18 are not solely within the remit of the pension scheme alone. Some of them will be the subject of the use of employer's discretions such as compulsory retirements.
14. Any cost sharing strategy needs to address the needs of both the employee and the employer. Changing liabilities are only part of the issue. It is not certain as to what is meant by the CLG in referring to a 'rigorous framework within which to manage specific changes to contribution levels or benefits.
15. What Unite would wish to see is not a formalistic approach such as in the NHS where all shared costs once the employer cap is reached fall 100% on the members but rather there needs to be an informed and relevant strategy for ensuring scheme sustainability that takes into account the need for an overall strategy of change by way of representation and negotiations.
16. It is because of the value placed by members on their final salary pension scheme and the need for a negotiated settlement that this union and its members took industrial action two years ago. It was not just to defend their pension rights but also to move change forward from a position where matters were in theory only 'consulted' on to one where real change was effected by actual negotiations. That is why thousands of Unite's members took effective days of industrial action two years ago.

17. Para 18 also gives an undue emphasis to a one sided approach that cost sharing is all about managing employers costs. Unite is not sure either to what extent 'scheme providers' are part of any fostering of 'mutuality of responsibility' and what that might mean in practice. For the avoidance of doubt Unite has always viewed pensions within the LGPS as our member's money both for the purposes of pensions in payment and investments being made.

What Unite would wish to see?

18. Unite does not see that the approach put forward by GAD as the best way forward. Unite does not believe that a theoretical model of how LGPS funds will behave is a realistic or viable alternative to actual experience within the 89 funds. Scheme sustainability should reflect in practice a flexible and whole costs approach based on what actually happens in practice. Unite's view is that the best way forward would be to devise a system that would withstand the longer term rather than the short term approach of just getting through the next couple of valuations. A realistic view would require that because of its funded nature specific reference is made to how the actual scheme funds are doing as well a taking into account all liabilities accrued to date. Unite is aware that should there be a real major change in any of the factors of assets or liabilities then whatever mechanisms are in theory in place in reality such changes would inevitably lead to a review or a renegotiation of the scheme.

Review Procedures – Employer Cap

19. Unite is not opposed to the idea of regular scheme reviews. Regular reviews are a much better way forward for a strategy of sustainability than a fixed formula linked to the member's contribution rate or a cap on the employer's contribution rate. Unite is opposed to the suggestion that there should be a simplistic employer cap on contributions. What is more appropriate is, in Unite's view, a formula for a 'trigger mechanism' that would then call together the schemes key stakeholders for a tripartite negotiation.

20. A cap on the employer's contribution rate will not give rise to any confidence within the schemes' members or the general public that costs are being borne proportionately or that the employers are handling their fair share of any increase in costs. It also moves away from the reasonable expectation that costs should be borne in a proportion of 2:1 employer/employee.
21. Likewise it is inappropriate to seek the introduction of any 'notional fund' as proposed by GAD. The evidence of the Policy Review Group is that the model as proposed would not be easily understood by local authorities, employers or members of the public. Also the past experience of dealing with the scheme in negotiations has led Unite to believe that there is no clear evidence as to what is actually happening within the LGPS such as to be obvious to stakeholders. There is no clear evidence about such as would enable a notional scheme to be developed in a workable or reliable way such as would give any indication on which to base assumptions as to future activity.
22. Unite is of the view that rather than have a 'notional scheme' it is the actual scheme experience that should be used. Neither is it appropriate to use small selection of schemes as a 'representative sample of funds' on which to base a discussion about possible future scheme reforms. No such selection of funds can be appropriate given the wide variety of employer discretions exercised between funds and also given the widely differing demographics between all 89 funds.

A Sustainability Review should only be Triggered by a Notable or Significant Change.

23. The scheme should not be reviewed unnecessarily as any review is likely to be a costly and lengthy exercise. There should be a considerable window within which any changes in costs of a small or temporary nature should not give rise to a review. A review is by its very nature a time consuming process. Neither should it be assumed that there should be a review following on from every triannual valuation.

24. In Unite's view if there is a change of +/-2% from an agreed starting point then it may be appropriate to undertake a review. It should also be made clear by the Secretary of State that any review is not an automatic way forward for a change in contribution rates. The way a review should be conducted, in Unite's view, is that any sustainability review should be by way of a discussion between the parties on an informed basis taking into account the views of the key stakeholders. That discussion should note the due process for a consultation in industrial relations terms i.e. it should be 'with a view to seeking an agreement'.
25. The constitution of any review panel or committee is open for discussion but it should abide by the principle of member and employer equity. It should be noted that this principle will need to be taken further forward in the area of scheme governance as well. The model given in the Civil Service (where negotiation rights on pensions have been long standing) which is for a five employer, five employee mix with an independent chair could be a useful consideration and much can be learned from consultative committees of a tripartite nature in the private sector.

The Questionnaire 1-14

Consultees may wish to consider and comment on how best the range of relevant views on governance could be involved as part of this exercise, and how these might be factored into the exercise, and at what particular stages?

26. Governance and Governance issues have been at the heart of an ongoing discussion at tripartite level within the LGPS. Unite's view is that the monies in the LGPS are there for the benefit of our members and the stewardship of them should be an open and democratic process in which our members are fully involved. Whilst Unite recognises that the legislative framework is not that of a trust based fund it would like to see the introduction of quasi trustee membership representation. The LGPS must meet its obligations under European Directives and EC legislation to have a clearly delineated distinction between LGPS and Employer funds. Funds

must be managed in the best interest of the beneficiaries and where there is any conflict of interest between the two - e.g. on employer's loans from funds - then the interests of the beneficiaries must prevail.

27. Under current UK law there is a lack of transparency about how LGPS funds have been managed in the past and how decisions have been taken made by employers and funds, particularly with respect to the exercise of discretions. In order for members to be fully aware of and participative in the long term sustainability of their pension scheme there needs to be greater transparency of data, greater scrutiny of decision making and a greater engagement on governance issues than has been the case. A move for all funds have to have a written statement on the issue of governance has gone some way to resolving this but has not entirely dealt with the issues. The failure of any real kind of active engagement on these issues in the past has led to much mistrust amongst members and their representatives.

28. As well as the need for greater transparency and separation of funds generally there is a need for a total reform of scheme governance. Councillors do not have the same fiduciary duties to the scheme members as trustees would have in a trust based fund. Ultimately their call is to the taxpayer which is not the same of that of trustees whose duty it would be to secure the best interests of the scheme members. At times then, inevitably councillors alone are going to find themselves with virtually irresolvable issues of conflict of interest or potential conflict. It is not only in these circumstances that independent lay member representation can help with good governance. Lay member representation will bring to governance a true degree of independence. If there is to be any fundamental reform as there does need to be on this issue then member representation must be at the centre of and integral to the running of the scheme as a whole rather than bolted on as an afterthought.

As the cost-share mechanism is already a 'statutory requirement of the new LGPS, from April 2008, Consultees' views on how most

effectively to take the process and the delivery of the whole exercise forward would be welcomed.

29. There is no reason why the issuing of a guidance note by the Secretary of State by the 31st of March 2009 cannot be met, provided that any mechanism adopted is simple and straightforward and takes into account the views of those consulted. It would be useful if that guidance reflected that it was the overall whole costs of the scheme that were under scrutiny rather than any one cost aspect. Then clear guidance in line with Regulation 40 could be issued.

It may be that some of the actual content of each of the above stages (and others) could be set in the regulatory framework, for example in a dedicated schedule to a statutory instrument or, alternatively, in statutory (or non-statutory) guidance prepared by the CLG. Consulter's views would be welcomed on this aspect.

30. Unite's view is that a statutory instrument setting out the sustainability process would be the most effective way of ensuring that the statutory obligation to have a cost sharing mechanism that works is met.. Provided that there is a proper consultation exercise on the content of that statutory instrument this can be done within the timeframe currently laid out in the legislation.

Do consulates envisage any problems in providing detail as set out in paragraph 20(types of cost risk)?

31. Unite recognises that there has been a paucity of transparent and decent data on the scheme. Unite sees the list as set out in paragraph 20 as the minimum amount of data needed. If there is to be a true debate as to the sustainability of the scheme then the data on the scheme needs to be very much improved over what we have at present. More money and resources have to be put into the question of gaining useful and accurate data.

Consulter's views on approaches to maintaining longer term sustainability are invited.

32. The aim should be to ensure sustainability over the long term i.e. the foreseeable future rather than just over a few cycles of actuarial valuations. In order to achieve that there needs to be a whole cost approach based on long term experience rather than an ad hoc process concentrating on one aspect at a time, e.g. mortality. The approach suggested in the current consultation is much too fragmented.

Consultees views are invited on the three columns content (see pages 7-9 inclusive) and further suggestions and commentary will be welcomed.

33. Unite does not see that the approach set out in these columns as a workable solution. The approach is too short-termist and does not set out an appropriate model for consideration for longer term sustainability.

It is suggested to Consultees that surpluses or deficits which exist in the local funds at the commencement date of the model scheme would be excluded from the notional fund and should not form part of any cost sharing envelope, as these are related to experience which occurred prior to the implementation date, Views on such an approach are therefore sought.

34. Unite does not view the idea of a 'model scheme' as appropriate. Unite takes issue with GAD as to this being a viable way forward. As soon as actual experience differs from the model, the model would be thrown out of the window. The way forward is to consider the total costs of the LGPS on an actual basis and on the LGPS scheme 2008 alone for which surpluses and deficits are not in place. As mentioned earlier all existing surpluses and deficits within the LGPS 2007 are a different matter and should play no part in the current deliberations. Past service costs must remain the responsibility of the employer.

The current 2007 actuarial valuation average amortisation period could, at the outset, be adopted in the notional fund. Views are

sought on whether this approach – or some other approach would provide stability (see paragraph 32).

35. Unite does not view a notional fund as appropriate. However it does not see that a restricted amortisation period offers any benefits either. In the private sector an amortisation period of ten years is common but that reflects the position in view of the Pension Regulator's needs to protect the Pension Protection Fund from unnecessary and avoidable calls on its resources. An amortisation period of twenty years has been a common approach within the LGPS and other public sector schemes and there is no obvious need to depart from this norm at the present time. The LGPS scheme has the backing of statute in making it secure.

Consultees are asked to consider if inter – valuation experience impacts on cost sharing calculations?

36. Pensions are for the long term and it is unlikely that all but the most drastic of events would make it at all necessary for there to be any kind of interim valuation. There will be factors between valuations that may well have an impact on the cost of the scheme such as a downturn in the investment market but there seems no good reason as to why these could not be fed through into the next valuation in the normal way and the matter be looked at then. The intention should always be to look at the scheme on a longer term basis and any short circuiting of this by seeking to take into account a short cut review process should be avoided. In any event what happens between valuations will ultimately be reflected in the longer term valuation anyway.

Consultees views on ill health and related experience issues are sought (see paragraph 3*).

37. Unite has clearly stated on many previous occasions that ill health experience with the new scheme needs to be carefully monitored. At present there is little real information about the cost of ill health provision within the LGPS or the extent within which ill health experience differs from one fund to another. This lack of real information will have a major impact on the experience of the new scheme and its new three tiered

arrangements. Unite is totally dissatisfied with the introduction of the third tier ill health provision which has been introduced without any proper consultation or any real analysis of the necessary data. Unite will be making separate responses on the issue of ill health within the 2008 scheme in due course. However, for the present purposes of a discussion on sustainability of the 2008 scheme going forward then ill health is a 'cost' to the scheme and, in line with our arguments for a 'whole costs' analysis, it should be considered as part of the sustainability review. No proper costing has been done to date on the likely take up of the two tiers of ill health and the third tier has been introduced in a hasty and ill prepared manner. Greater detail will then have to be given as to the actual costs of ill health to the scheme as well as to the separate issue as to whether the ill health tiers themselves are working in the way envisaged. It will be difficult to predict what savings to the scheme there will be until there is accurate data to go on.

Consultees views on how best to achieve inter-generational balance are invited (see paragraph 39).

38. Unite is of the view that the introduction of a tiered contribution level has gone somewhat toward ensuring that the scheme is fit for all range of ages and it does not see that there should be any form of cross subsidy between the ages. Actuarial practice and the appropriate amortisation period should ensure that short term effects are not carried forward and if a whole cost approach is adopted then a proper balance should be achieved.

The share need not necessarily be 50:50: Consultees may wish to consider the range of possible alternatives and to justify alternative ratios as part of this informal consultation exercise.

39. Unite is of the view that moves should be made to get back to a traditional ratio of 2:1 with which the present ratio of 12.2% employer and 6.3% employee is already out of kilter. No rationale is given by the CLG for moving away from the kind of split more traditionally seen in a defined benefit scheme and Unite cannot see any justification for this.

Consultees views are invited on the principle of a notional cap within the cost share framework, and on its initial level going forward from April 2009.

40. Unite is opposed entirely to the suggestion that there should be an employer cap on contributions, A notional cap within the cost sharing mechanism is inappropriate and distorts actual experience. As the gap between actual experience and any notional cap grows then so it becomes even more inappropriate. Any pain of increased costs must be borne on the basis of rational argument and discussion based on actual experience and on a whole cost basis. It also puts the cart before the horse in determining who should bear what part of any potential increased burden.

Consultee's views on the most appropriate and beneficial timetable position are invited, given the objectives set out in paragraph 18. Consultees may also wish to comment on the timetable and process needed to establish the cost share arrangements, given the 31st March 2009 regulatory timetable and the earliest date from which the results of the first cost share (should one be needed) is implemented

41. The cost share mechanism must only be used as of need and, just because circumstances have given rise to a review at any one time, does not mean to say that there should be an implementation of any cost sharing mechanism. It is helpful therefore that CLG say in their consultation 'should one be needed' as it is certainly hoped that there will be no need for further cost sharing in the immediate post 2008 period. In Unite's view a timetable for cost sharing should not in any circumstances be less than the intervals between normal triannual valuations.

42. It should be clear that any arrangements to deal with cost sharing must be applied as argued for earlier only to the 2008 new look scheme.

43. In looking at the objective set out in paragraph 18 Unite is of the view that the aim should be to address the needs of all the stakeholders which includes the employers and the employees and will include not only

scheme fund experience but the use of employer discretions. Unite is unsure as to what is meant by a 'rigorous framework' to manage contribution levels and benefits. There needs to be as much emphasis on maintaining a value for money level of scheme benefits and attracting new entrants to the scheme as to seeking to manage costs alone.

44. Unite believes that its members and local government employees generally are now becoming much more aware of the value and hence the need to maintain the sustainability of the LGPS. That is a result of the widespread support for the industrial action taken by our members some two years ago. The idea of a 'rigorous framework to manage contribution levels' seems to us a somewhat one-sided reference to seeking to keep down employer costs for whatever reason and does not sit well with our overall objectives of seeking a fair and informed way forward.

45. The question of scheme sustainability must be looked at from the perspective of a value for money pension. A fair strategy can be achieved without a formulistic and rigid approach. Unites view is that the best way forward is to continue with an informed dialogue based on accurate, clear and transparent data that leads to open discussion and effective consultation.

46. Unite is not sure what is meant by the concept of 'mutuality of responsibility' as a core objective or who 'scheme providers' are. Mutuality of responsibility seems uncannily similar to the concept of mutuality of obligation which is an employment law concept that has led to much erroneous difficulty for some of Unite's members who have been categorised as casual workers in the past.

47. For the avoidance of doubt Unite's primary concerns is with its members contributions, its members benefits, its members long term security within the scheme, scheme take up and the proper and effective and moral investment of its members funds.

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