# Local Pension Board

**Date** **Thursday 8 December 2022**
**Time** **2.00 pm**
**Venue** **Committee Room 2, County Hall, Durham**

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## Business

## Part A

## Items which are open to the Public and Press.

1. Apologies for Absence
2. Declarations of Interest, if any
3. The Minutes of the meeting held on 16 June 2022 (Pages 21 - 24)
4. Observations from Pension Fund Committee meetings held on 16 June 2022 and 8 December 2022
5. Annual Report and Accounts
6. Regulatory Update (Pages 25 - 46)
7. Pension Administration Report (Pages 47 - 84)
8. Pensions Dashboard (Pages 85 - 90)
9. Procedure for Reporting Breaches (Pages 91 - 134)
10. Pension Fund Responsible Investment and Voting Policy (Pages 135 - 174)
11. Satisfaction Survey
12. Date of Next Meeting - 16 March 2023
13. Any Other Business

**Helen Lynch**
Head of Legal and Democratic Services

County Hall
Durham
30 November 2022

To: **The Members of the Local Pension Board**

**Scheme Employer Representatives:**
Councillors A Hopgood and D Stoker

**Scheme Member Representatives:**
N Hancock, L Oliver and W Pattison (Chair)

**Contact: Martin Tindle** **Tel: 03000 269 713**

**Pension Fund Committee**

**Abbreviations**

## List of commonly used abbreviations

| | |
|---|---|
| **AB** | Alliance Bernstein, the Fund's Bonds manager |
| **ACS** | Authorised Contractual Scheme, the collective investment scheme used by BCPP for asset pooling |
| **AUM** | Assets Under Management |
| **BCPP** | Border to Coast Pensions Partnership, the Fund's asset pool |
| **CBRE** | Coldwell Banker Richard Ellis, the Fund's Real Estate manager |
| **CEO** | Chief Executive Officer |
| **CIO** | Chief Investment Officer |
| **CIPFA** | The Chartered Institute of Public Finance and Accountancy |
| **CLG** | Communities and Local Government (former name of MHCLG) |
| **COO** | Chief Operating Officer |
| **COP** | Conference of Parties, a UN conference on climate change |
| **CPI** | Consumer Price Index |
| **CSR** | Corporate Social Responsibility, a term under which companies report their social, environmental and ethical performance |
| **DAA** | Dynamic Asset Allocation |
| **DGF** | Diversified Growth Fund |

| | |
|---|---|
| **EM** | Emerging Markets |
| **EMEA** | Europe, Middle East & Africa |
| **ESG** | Environmental, Social, and Governance – factors in assessing an investment's sustainability |
| **FCA** | Financial Conduct Authority |
| **FRC** | Financial Reporting Council |
| **FSS** | Funding Strategy Statement |
| **FTA** | FTSE Actuaries UK Gilts Index Series |
| **FTSE** | Financial Times Stock Exchange |
| **GEM** | Global Emerging Markets |
| **GRESB** | Global ESG Benchmark for Real Assets |
| **HMT** | Her Majesty's Treasury |
| **Infra** | Infrastructure |
| **IRR** | Internal Rate of Return |
| **ISS** | Investment Strategy Statement |
| **JC** | Joint Committee |
| **LGA** | Local Government Association |
| **LGPS** | Local Government Pension Scheme |
| **LAPFF** | Local Authority Pension Fund Forum |
| **LIBOR** | London Inter Bank Offered Rate, a benchmark interest rate at which global banks lend to one another |
| **LPB** | Local Pension Board |
| **MAC** | Multi Asset Credit |
| **MHCLG** | Ministry of Housing, Communities and Local Government |
| **MSCI** | formerly Morgan Stanley Capital International, publisher of global indexes |

| | |
|---|---|
| **NED** | Non-Executive Director |
| **NT** | Northern Trust, the Fund's Custodian |
| **OECD** | Organisation for Economic Co-operation and Development |
| **PF** | Pension Fund |
| **PFC** | Pension Fund Committee |
| **PLSA** | Pensions and Lifetime Savings Association |
| **PRI** | The UN-supported Principles for RI |
| **RI** | Responsible Investment |
| **RPI** | Retail Price Index |
| **S&P** | Standard & Poor's, ratings agency and provider of equity indices |
| **S151** | An officer with responsibilities under s151 of the Local Government Act 1972 |
| **SAB** | Scheme Advisory Board |
| **SDG** | the UN's Sustainable Development Goals |
| **SILB** | Sterling Index Linked Bonds |
| **SONIA** | Sterling Over Night Index Average, the overnight interest rate paid by banks |
| **TCFD** | Taskforce on Climate Related Financial Disclosures |
| **TER** | Total Expense Ratio |
| **TPR** | The Pensions Regulator |

## Author(s)

Paul Cooper Tel: 03000 269798

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## Glossary of commonly used terms

### A

**Active Management**

Appointing investment professionals to track the performance of the Fund's mandates, making buy, hold and sell decisions about the assets with a view to outperforming the market.

**Active Member**

A current employee who is contributing to the pension scheme.

**Actuary**

An independent professional who advises the Council in its capacity as Administering Authority on the financial position of the Fund.

**Actuarial Valuation**

The Fund's actuary carries out a valuation every three years and recommends an appropriate rate of contributions for each of the Fund's participating employers for the following three years. The valuation measures the Fund's assets and liabilities, with contribution rates set according to the Fund's deficit or surplus.

## Additional Voluntary Contributions (AVCs)

An option available to active members to build up a pot of money which is then used to provide additional pension benefits. The money is invested separately with one of the Fund's external AVC providers.

## Administering Authority

The LGPS is run by local Administering Authorities. An Administering Authority is responsible for maintaining and investing its own Fund for the LGPS.

## Admission/Admitted Body

An organisation whose employees can become members of the Fund by virtue of an admission agreement made between the council in its capacity as Administering Authority and the organisation. It enables contractors who take on council services to offer staff transferred to the organisation continued membership of the LGPS.

## Asset Allocation

The apportionment of the Fund's assets between different types of investment (or asset classes). The long-term strategic asset allocation of the Fund will reflect the Fund's investment objectives and is set out in the Investment Strategy Statement.

## Authorised Contractual Scheme (ACS)

A collective investment scheme used by BCPP. An ACS is a form of investment fund that enables a number of investors to 'pool' their assets and invest in a professionally managed portfolio of investments, typically gilts, bonds, and quoted equities. Regulated by the Financial Conduct Authority, it is "tax transparent"; making it particularly useful for pooling pension assets.

## B

### Benchmark

A measure against which the investment policy or performance of an investment manager can be compared.

### Border to Coast Pension Partnership (BCPP)

The Fund's chosen asset pool. BCPP has 11 Partner Funds who collectively have around £45bn of assets. The Partner Funds have appointed a Board of Directors, chaired by Chris Hitchen, which is responsible for ensuring that Border to Coast is run effectively and in line with the guiding principles set by the shareholders. The Chief Executive Officer, Rachel Elwell, is responsible for the day to day running of Border to Coast along with her team.

### Border to Coast Joint Committee

As part of their oversight, BCPP Partner Funds formed a Joint Committee which consists of the Chairs of each of the Partner Fund Pension Committees together with other non-voting representatives.

## C

### CARE (Career Average Revalued Earnings)

From 1 April, 2014, the LGPS changed from a final salary scheme to a Career Average (CARE) scheme. The LGPS remains a defined benefit scheme but benefits built up from 2014 are now worked out using a member's pay each scheme year rather than the final salary at leaving.

### Cash Equivalent Value (CEV)

This is the cash value of a member's pensions rights for the purposes of divorce or dissolution of a civil partnership.

**Consumer Price Index (CPI)**

A method of measuring the changes in the cost of living, similar to the Retail Price Index. Since April 2011 LGPS pensions are increased annually in line with movement in the Consumer Price Index during the 12 months to the previous September.

**Commutation**

A scheme member may give up part or all of the pension payable from retirement in exchange for an immediate lump sum.

**Convertible Shares**

Shares that include an option for holders to convert into a predetermined number of ordinary shares, usually after a set date.

**Custodian**

A financial institution that holds customers' securities for safekeeping to minimise the risk of theft or loss. Most custodians also offer account administration, transaction settlements, collection of dividends and interest payments, tax support and foreign exchange. Custody is currently provided to the Fund by Northern Trust.

**D**

**Death Grant**

A lump sum paid by the Fund to the dependents or nominated representatives of a member who dies.

**Deferred Member/Pensioner**

A scheme member who has left employment or otherwise ceased to be an active member of the scheme who retains an entitlement to a pension from the Fund.

## Defined Benefit Scheme

A pension scheme like the LGPS where the benefits that will ultimately be paid to the employee are fixed in advance and not impacted by investment returns. It is the responsibility of the sponsoring organisation to ensure that sufficient assets are set aside to meet the future pension promise.

## Denomination

The face value of a bank note, coin or postage stamp, as well as bonds and other fixed-income investments. Denomination can also be the base currency in a transaction or the currency a financial asset is quoted in.

## Designating Body

Organisations that can designate employees for access to the LGPS. Employees of town and parish councils, voluntary schools, foundation schools, foundation special schools, among others, can be designated for membership of the scheme.

## Discretion

The power given by the LGPS to enable a participating employer or Administering Authority to choose how they will apply the scheme in respect of several its provisions. For some of these discretions it is mandatory to pass resolutions to form a policy as to how the provision will apply. For the remaining discretionary provisions, a policy is advised.

## Direct Property

Direct investment in property is buying all or part of a physical property. Property owners can receive rent directly from tenants and realise gains or losses from the sale of the property.

## Diversified Growth Funds (DGF)

An alternative way of investing in shares, bonds, property and other asset classes; DGFs are funds that invest in a wide variety of asset classes in

order to deliver a real return over the medium to long-term. The Fund's DGF is managed by BlackRock.

## E

### Employer Contribution Rates

The percentage of an employee's salary participating employers pay as a contribution towards that employee's LGPS pension.

### Employer Covenant

The covenant is an employer's legal obligation and financial ability to support their defined benefit (DB) obligation now and in the future.

### Equities

Ordinary shares in UK and overseas companies traded on a stock exchange. Shareholders have an interest in the profits of the company and are entitled to vote at shareholders' meetings.

### ESG

ESG is the consideration of environmental, social and governance factors alongside financial ones in the investment decision-making process. E, S, and G are the three key factors in assessing an investment's sustainability

## F

### Fiduciary Duty

Fiduciary duties exist to ensure that those who manage other people's money act in beneficiaries' interests rather than their own.

**Financial Instruments**

Tradable assets of any kind, which can be cash, evidence of an ownership interest in an entity or a contractual right to receive or deliver cash or another financial instrument.

**Fixed Interest Securities**

Investments, mainly in Government stocks, which guarantee a fixed rate of interest. The securities represent loans which are repayable at a future date that can be traded on a recognised stock exchange in the meantime.

**Fund of Funds (FoF)**

A fund that holds a portfolio of other investment funds.

**G**

**Guaranteed Minimum Pension (GMP)**

The LGPS guarantees to pay a pension that is at least as high as a member would have earned had they not been contracted out of the State Earning Related Pension Scheme (SERPS) at any time between 6 April 1978 and 5 April 1997. This is called the guaranteed minimum pension (GMP).

**I**

**Index**

A calculation of the average price of shares, bonds or other assets in a specified market to provide an indication of the average performance and general trends in the market.

**Internal Rates of Return (IRR)**

The internal rate of return (IRR) is a metric used to estimate the profitability of potential investments. Generally, the higher an IRR, the more desirable an investment is to undertake.

**L**

**Local Government Pension Scheme (LGPS)**

The LGPS is collectively the largest public sector pension scheme in the UK, which provides DB benefits to employees of local government employers and other organisations that have chosen to participate.

**Local Pension Board (LBP)**

Since April 2015, each Administering Authority is required to establish and operate a Local Pension Board. The Pension Board is responsible for assisting the Administering Authority in securing compliance with the LGPS regulations, overriding legislation and guidance from the Pensions Regulator. The Board is made up of equal representation from employer and scheme member representatives.

**M**

**Myners Principles**

A set of principles based on Paul Myners' 2001 report, Institutional Investment in the United Kingdom. The Myners' principles for defined benefit schemes cover:

Effective decision-making

Clear objectives

Risk liabilities

Performance assessment

Responsible ownership

Transparency and reporting.

## O

### Ordinary Shares

An ordinary share represents equity ownership in a company and entitles the owner to vote at the general meetings of that company and receive dividends on those shares if a dividend is payable.

## P

### Partner Funds

The Fund’s chosen asset pool, BCPP, has 11 Partner Funds - Bedfordshire, Cumbria, Durham, East Riding, Lincolnshire, North Yorkshire, South Yorkshire, Surrey, Teesside, Tyne & Wear, Warwickshire.

### Pension Liberation Fraud

Members with deferred benefits may be approached by companies offering to release funds early from these benefits. The Pensions Regulator has advised pension funds to make members aware of the potential warning signs of pension liberation fraud.

### Pensions Online

The Fund’s online portal where scheme members may view their pensions records, complete retirement calculations, and update personal details.

### Pensions Regulator

The Pensions Regulator (TPR) s the UK regulator of workplace pension schemes. TPR make sure that employers put their staff into a pension

scheme and pay money into it. TPR also make sure that workplace pension schemes are run properly so that people can save safely for their later years.

### Pooled Funds

Funds which manage the investments of more than one investor on a collective basis. Each investor is allocated units which are revalued at regular intervals. Income from these investments is normally returned to the pooled fund and increases the value of the units.

### Pooling in the LGPS

Central government requires local authorities to pool their pension assets, to achieve four principles:

1. Cost savings through economies of scale
2. Improved governance
3. Improved approach to responsible investment
4. Improved ability to invest in infrastructure

### Proxy Voting

Proxy voting allows shareholders to exercise their right to vote without needing to attend AGMs. This can involve shareholders with voting rights delegating their votes to others who vote on their behalf.

## Q

### Quantitative Easing

Quantitative easing (QE) is when a central bank creates new money electronically to buy financial assets like Government bonds with the aim of directly increasing private sector spending in the economy and returning inflation to target.

## R

### Related Party Transactions

This is an arrangement between two parties joined by a special relationship before a deal, like a business transaction between a major shareholder and a corporation.

### Responsible Investment (RI)

Responsible investment involves incorporating environmental, social and governance (ESG) considerations into investment decision-making while practising active ownership. RI can help deliver sustainable, long-term returns for investors.

### Retail Price Index

A method of measuring the changes in the cost of living. It reflects the movement of prices covering goods and services over time. Until April 2011, the amount by which LGPS pensions were increased annually was based on movement in the Retail Price Index during the 12 months to the previous September. From April 2011, the Government changed the amount by which pensions increase from Retail Price Index to Consumer Price Index (CPI).

### Return

The total gain from holding an investment over a given period, including income and increase or decrease in market value.

### Rule of 85

Under previous LGPS regulations, when a member elected to retire before age 65, the Rule of 85 test was used to find out whether the member retired on full or reduced pension benefits. If the sum of the member's age and the number of whole years of their scheme membership was 85 or more, benefits were paid in full. If the total was less than 85, the benefits were reduced. The Rule of 85 was abolished on 1 October, 2006 - however, members contributing to the LGPS prior to this date will have some or all of their pension benefits protected under this rule.

## S

### Scheduled Body

An organisation that has the right to become a member of the LGPS under the scheme regulations. Such an organisation does not need to be admitted as its right to membership is automatic.

### Spot Rate

The price quoted for immediate settlement on a commodity, security or currency. It is based on the value of an asset at the moment of the quote, which in turn is based on how much buyers are willing to pay and how much sellers are willing to accept depending on factors such as current market value and expected future market value.

### State Pension Age (SPA)

The earliest age at which State Pension can be paid, which different to the earliest age LGPS may be claimed. Under the current law, the State Pension age is due to increase to 68.

### Stock Lending

This is loaning a stock, derivative or other security to an investor or firm. It requires the borrower to put up collateral (cash, security or a letter of credit). When stock is loaned, the title and the ownership is transferred to the borrower and title is returned at the end of the loan period.

## T

### TCFD

The Taskforce on Climate Related Financial Disclosures was set up to develop voluntary, consistent, climate related financial risk disclosures to guide companies in providing information to investors, lenders, insurers and other stakeholders. It is expected that MHCLG will consult on mandatory TCFD disclosures in the LPGS by the end of 2021.

### The Pension Advisory Service (TPAS)

The Pensions Advisory Service (TPAS) gives information and guidance to members of the public on state, company and personal pensions. It helps any member of the public who has a problem with their occupational or private pension arrangement. TPAS is an executive non-departmental public body, sponsored by the Department for Work and Pensions.

### Transfer Value

A transfer value is a cash sum representing the value of a member's pension rights.

### Transferred Service

Any pension that members have transferred into the LGPS from a previous pension arrangement that now counts towards their LGPS membership.

## U

### UK Stewardship Code

A code first published by the FRC in 2010 to enhance the quality of engagement between asset managers and companies in the UK. Its principal aim is to make asset managers more active and engaged in corporate governance matters in the interests of their beneficiaries. The Code was revised in 2020.

### Unrealised gains/losses

The increase or decrease in the market value of investments held by the fund since the date of their purchase.

## Author(s)

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**DURHAM COUNTY COUNCIL**

At a Meeting of **Local Pension Board** held in the **Council Chamber, County Hall, Durham** on **Thursday 16 June 2022** at **2.00 pm**

**Present:**

**Members of the Committee:**
Councillors D Stoker

**Scheme Member Representatives:**
Mr L Oliver and Mrs W Pattison

## 1 Election of Chair

Nominations were sought for a Chair from the Scheme Member Representatives on the Board.

**RESOLVED:**

That Mrs W Pattison be elected as Chair.

**Mrs W Pattison (in the Chair)**

## 2 Apologies for Absence

Apologies for absence were received from N Hancock and Councillor A Hopgood.

## 3 Declarations of Interest

There were no Declarations of Interest.

## 4 The Minutes of the Meeting held on 14 March 2022

The Minutes of the meeting held on 14 March 2022 were agreed as a correct record and were signed by the Chair.

## 5 Observations from Pension Fund Committee held on 16 June 2022

The Head of Pensions (LGPS), Paul Cooper, informed the Board of the standard items considered by the meeting of the Pension Fund Committee (PFC) in June, including the value and performance of the fund. He noted that the Committee had received reports relating to accounting policies, regulation and a review of Committee terms of reference and training needs. He added the Committee had also received reports relating to investment strategy, though no investment decisions were taken. He explained that the non-Councillor representatives had their term extended for a further four years, retaining their knowledge and experience. He added there had been a report relating to cybersecurity and there had been discussions as regards: the implications of the conflict in Ukraine, including exposure to Russia and the value of those assets being effectively zero; inflation; exposure to China; and the long-term nature of the Pension Fund's investment strategy.

L Oliver asked as regards the size of the investments in Russia that were effectively worth zero, the Head of Pensions noted it depended upon when it was measured, however, it was in the single millions.

**RESOLVED:**

That the information given be noted.

## 6 Regulatory Update

The Board considered a report from the Corporate Director of Resources which provided details on developments in matters that were both Local Government Pension Scheme (LGPS) specific, as well as providing an update on non-LGPS specific matters of interest (for copy see file of Minutes).

The Head of Pensions noted Guaranteed Minimum Pension (GMP) was no longer managed by HMRC and therefore all Pension Funds were having to undertake a reconciliation exercise. He noted that had now been completed, with the next stage being rectification of the GMP, adding this was a complex process and the PFC and Local Pension Board (LPB) would be kept up to date as regards progress.

The Chair asked how the GMP was funded, the Head of Pensions noted from the Pension Fund, with pre-1988 and post-1988 elements. L Oliver asked if those elements were treated separately, the Head of Pensions confirmed that was the case.

The Head of Pensions noted other areas referred to included: the Levelling Up White Paper; Good Governance in the LGPS, with a session to follow for Members of the PFC and LPB following receipt of statutory guidance from the Ministry; McCloud; Public Sector Exit Payments Caps; Taskforce on Climate-related Financial Disclosures (TCFD); and boycotts, namely ensuring that Pension Fund decisions were not contrary to UK foreign policy, for example boycotting of Israel. He noted that there was also information relating to 'stronger nudge' and management of direct contributions. He explained that this referred to additional voluntary contributions (AVCs) and the advice given to scheme members.

The Chair asked as regards changes to the protection element, with the Head of Pensions noting that the national minimum pension age would increase to 57 by 2028. L Oliver asked if many people chose to retire at 55, the Head of Pensions noted that for the majority leaving at 55 would result in a hefty reduction in their pension. The Chair asked if the report could reflect changes, the Head of Pensions agreed to consider whether this may be reflected in the report or an appendix reflecting the main changes.

**RESOLVED:**

That the report be noted.

## 7 Pension Administration Report

The Board considered a report from the Corporate Director of Resources regarding the Fund's pension administration and service provision to members, as well as providing an update on Key Performance information (for copy see file of Minutes).

The Head of Pensions advised of the performance in the final quarter of 2021/22 with 175 retirement cases, 371 early leavers, 1,504 telephone calls to the Fund's Helpline and 15,995 members had registered for the Fund's Pensions Online portal. He noted that Appendix 2 to the report included information relating to a AVC provider and underperformance. He added that the 2022 Annual Benefit Statement would be shared with the Board.

**RESOLVED:**

That the report be noted.

## 8 Training

The Head of Pensions noted a verbal update at PFC in relation to training need analysis and suggested a similar process for the LPB and that a Training Needs Assessment document would be circulated to Board Members.

**RESOLVED:**

That the update be noted.

## 9 Satisfaction Survey

The Head of Pensions noted that the Board's previous suggestion of a Satisfaction Survey and confirmed that there was no standard document or suggested approach from the LGA, though he noted it was felt it was an area the LGA could take forward in future. He added there were two possible ways in the interim, to include a survey within the Annual Benefit Statement documentation that was circulated on 31 August to all members, or via an ongoing process, with documentation included at retirement asking for a return.

The Chair suggested there could be benefits in both approaches, with the Head of Pensions noting that he felt it could be preferable to start with inclusion in the Benefit Statement first, then look to returns and receiving feedback on the approach.

Councillor D Stoker asked as regards having the process online, with the Head of Pensions noting that Annual Benefit Statement was available online. L Oliver noted not all members would access information online, the Head of Pensions noting there were a small number of members still receiving paper statements.

**RESOLVED:**

That the satisfaction survey be included within Annual Benefit Statement documentation.

## 10 Date of Next Meeting

The next meeting would be held on 15 September 2022 at 2.00 p.m.

**Local Pension Board**

**8 December 2022**

**Regulatory Update**

**Report of Paul Darby, Corporate Director of Resources**

## Purpose of the Report

1 This report briefs the Board on developments in matters that are both Local Government Pension Scheme (LGPS) specific, as well as providing an update on non-LGPS specific matters which are of interest.

## Executive summary

2 There are a number of developments that will potentially impact the requirements placed upon the Fund, both specific to the LGPS and more generally. This report seeks to keep the Board updated with those developments

## Recommendation(s)

3 The Local Pension Board is asked to note the report.

## Background

4 This report provides an update to the Board on important pensions administration and governance matters that are currently relevant. The report is split into 2 main sections:

(a) LGPS specific matters, and;

(b) Non-LGPS specific matters that are of interest to the Committee.

## LGPS Specific Matters

### DLUHC Consultation – LGPS: Fair Deal – Strengthening Pension Protection

5 In January 2019, The Department for Levelling Up Housing and Communities (DLUHC), formerly MHCLG, launched a consultation that would strengthen the pensions protections that apply when an employee of an LGPS employer is compulsorily transferred to the employment of a service provider. If the proposed amendments are introduced, the option for staff to be granted access to a Government Actuary's Department (GAD) certified broadly comparable scheme will be removed.

6 DLUHC are currently considering the responses received, with a consultation response expected in due course. The Chair of the LGPS Scheme Advisory Board (SAB), has written to DLUHC to request an update on the Fair Deal policy. The Ministry was asked whether the policy was under active consideration and how the SAB could contribute to the process. Officers will continue to monitor the position.

### DLUHC consultation – LGPS: Changes to the Local Valuation Cycle and the Management of Employer Risk

7 In May 2019 DLUHC consulted on a number of changes to the LGPS, encompassing the following areas:

- amendments to the local fund valuations from the current 3-year (triennial) to a 4-year (quadrennial) cycle
- a number of measures aimed at mitigating the risks of moving from a triennial to a quadrennial cycle
- proposals for flexibility on exit payments
- proposals for further policy changes to exit credits

- proposals for changes to the employers required to offer local government pension scheme membership

8 On 27 February DLUHC published a partial response to the consultation, covering proposals on exit credits only. DLUHC confirmed their intention to amend the Regulations providing greater discretion to Administering Authorities over the amount of any exit credit. The Local Government Pension Scheme (Amendment) Regulations 2020 were subsequently laid before parliament, coming into force on 20 March 2020 with backdated effect to 18 May 2018. The Fund has published its policy in relation to Exit Credits, which will be reviewed in light of a recent High Court judgement that provided further direction to LGPS Funds.

9 DLUHC has also published a partial response in respect of employer contributions and flexibility on exit payments. The Fund has finalised its policy approach to Employer Flexibilities following consultation with participating employers.

**Ongoing Consultation – Guaranteed Minimum Pensions (GMP)**

10 In February 2017 the Treasury consulted on options for how the Guaranteed Minimum Pension (GMP) element of pensions paid to those members who will reach state pension age on or after 6th December 2018 should be indexed.

11 In January 2018 the Treasury published its response to this consultation, acknowledging that it is a complex area with more time required to identify a long-term solution. As a result, the existing interim solution was extended, covering those members of public service schemes reaching state pension age between 6th April 2016 and 5th December 2018 to those that reach state pension age on or before 5th April 2021.

12 On 23 March 2021 Her Majesty's Treasury (HMT) discounted conversion (of GMP into main scheme benefits) as their long-term policy solution and instead will make full GMP indexation the permanent solution for public service pension schemes. Currently members covered by the interim solution have their GMP pensions fully uprated by their scheme in line with CPI. The new policy will extend this to members whose State Pension Age (SPA) is on or after 6 April 2021.

13 The full impact of from a funding perspective will become more clear during the conclusion of the 2022 Valuation process. Additionally, the Fund has gone through a significant exercise to reconcile the GMP data it holds. Individual GMP values can often misalign with the values held by HMRC with discrepancies occurring both in terms of

membership periods for which GMP accrued, and the GMP value itself. Following the conclusion of the reconciliation exercise, the Fund is finalising its strategy for the rectification process. Both the Committee and Local Pension Board will be consulted on the Fund's rectification strategy.

**Levelling Up White Paper – LGPS Local Investment Plans**

14 In February 2022 the government published its Levelling Up whitepaper which includes references to LGPS funds having plans for up to 5% of assets to be allocated to projects which support local areas. The whitepaper indicates government intention to "work with Local Government Pension Funds to publish plans for increasing local investment, including setting an ambition of up to 5% of assets invested in projects which support local areas".

15 The Fund does not presently have a specific strategic allocation to local investment but has recently finalised an impact investment in the North-East which will support SME finance in the region. Additionally, as part of their strategic plan BCPP will consider development of impact investing capabilities which will consider opportunities to support local investment decisions.

16 The LGPS Scheme Advisory Board (SAB) have indicated that in the context of 'local' the whitepaper refers to UK rather than local to a particular LGPS fund. The SAB have also advised that their understanding is that there will be no mandatory requirement beyond the requirement to have a plan. Further details will emerge over the period up to an expected consultation which is expected to also include statutory pooling guidance.

**LGPS Scheme Advisory Board (SAB)**

**SAB Review – Academies**

17 In 2017 SAB instigated a review of the participation of existing academies and commissioned Price Waterhouse Coopers to investigate issues of academy participation in the LGPS and prepare a report for the Board. The report made no recommendations but set out three broad types of approach or mechanisms to try and resolve these issues. These are:

- non-regulatory measures within the LGPS
- regulatory measures within the scheme, and
- measures outside of the LGPS, including through primary legislation.

18 The SAB review had been split between a funding working group and an administration working group. Work on the administration working group was put on hold due to competing work pressures and the project is no longer part of SAB's current projects.

19 Separately, the DfE guarantee for Academy participation in the LGPS has been increased to £20m. A copy of the Secretary of State's statement has previously been shared with the Committee.

20 Government has previously indicated plans for every school to be in, or in the process of joining, an academy trust. This has potential impact on the make-up of scheme membership, and admissions to the Fund. Officers will continue to monitor the position and keep the Board informed.

**SAB Review – Tier 3 Employers**

21 In addition to the review of Academy participation, above, SAB also commissioned work in respect of 'Tier 3' employers participating in the LGPS. Broadly, Tier 3 employers are those employers which:

(i) have no tax raising powers,

(ii) are not backed by an employer with tax raising powers;

(iii) are not an academy.

22 Examples of Tier 3 employers include universities, further education colleges, housing associations and charities.

23 SAB had established a small working group to review concerns expressed by Tier 3 employers and the ways in which they may be resolved. The working group had been tasked with reporting back to the SAB with a set of recommendations for further consideration.

24 Whilst the third Tier Employer review is no longer part of SAB's current projects, an Office for National Statistics (ONS) review of the Further Education sector may change the classification of Colleges within the LGPS.

25 It is proposed that Colleges are reclassified as 'public sector', with the possibility of tighter restrictions on debt / borrowing. Additionally, the Department for Education (DfE) is considering putting in place a guarantee, similar to the one already provided for academies which would provide greater protection to LGPS Funds.

26 The DfE is collating relevant data directly from LGPS actuaries to better understand Colleges' funding requirements and consider the merits of providing the additional covenant assurances. Officers will

continue to monitor the position, to ensure that the correct level of prudence is taken when assessing Colleges for the Fund's triennial valuation.

## SAB Review – Good Governance in the LGPS

27 SAB is currently examining the effectiveness of current LGPS governance models with a focus on standards, consistency, representation, conflict management, clarity of roles and cost. SAB's work will likely result in new statutory guidance on Governance Compliance, with consideration in particular likely to be given to:

(a) changes to the scheme's regulatory provisions on Governance Compliance Statements,

(b) revised statutory guidance on Governance Compliance Statements,

(c) independent assessment of Governance Compliance Statements, and;

(d) establishing a set of Key Performance Indicators (KPIs)

28 SAB have completed their report on Good Governance and submitted an Action Plan to DLUHC to take the recommendations of the project forward. It is expected that the next stage is for DLUHC to take the recommendations forward for implementation through legislation and / or Statutory Guidance. A more detailed update to both the Committee and Local Pension Board, and overview of the recommendations proposed to DLUHC will be provided in due course.

## SAB Review – Responsible Investment Guidance

29 In November 2019, SAB drafted guidance for Responsible Investment in the LGPS, to clarify the parameters within which investment decisions can be made with regard to the integration of ESG factors. Following feedback, SAB has decided to take stock until more is known about the government's position on the proposed climate change provisions in the Pension Schemes Bill and the implications of the Supreme Court's judgement involving the Palestine Solidarity Campaign. Committee will be updated as the matter progresses.

30 Notwithstanding this decision, SAB have progressed with further work in respect of Responsible Investment (RI), including the production of

an RI A-Z Guide. It is intended that the A-Z Guide will provide LGPS stakeholders a “one stop shop for information, links and case studies in this fast growing and complex arena”. The guide will evolve over time, as new entries are added. The A-Z Guide can be found online at the following link https://ri.lgpsboard.org/items.

31 The Board has also established an RI Advisory Group (RIAG). The main role of the group will be to advise SAB on all matters relating to RI. It will also be responsible for assisting the Board in maintaining the online A-Z Guide. The Group will also assist SAB in developing recommendations to DLUHC on how the Taskforce on Climate-Related Financial Disclosures (TCFD) reporting should be applied to the LGPS.

**Mandatory TCFD Reporting**

32 The Committee have previously been informed that, using powers granted under the Pension Schemes Bill, the Department for Works and Pensions (DWP) consulted on draft regulations requiring occupational pension schemes to meet climate governance requirements, publish a Taskforce on Climate-related Financial Disclosures (TCFD) report and include a link to the report in their annual report and accounts.

33 Whilst the regulations will not apply to the LGPS it was always expected that DLUHC would bring forward similar proposals requiring TCFD disclosures in the LGPS.

34 The Fund’s pooling partner, Border to Coast Pensions Partnership (BCPP) are supporters of the Task Force on Climate-related Financial Disclosures (TCFD) and have just published their second TCFD report aligned with the recommendations. This covers the approach to climate change across the four thematic areas of Governance, Strategy, Risk Management, and Metrics and Targets. The report demonstrates the improvements and developments made across the four key areas. The report can be found online at the following link https://www.bordertocoast.org.uk/sustainability/.

35 BCPP will support Partner Funds ahead of any mandatory reporting requirements through the Officers Operation Group RI workshops, delivering training, and by providing reporting. BCPP have held discussions to understand all Partner Funds’ requirements on carbon reporting on assets, including those that are currently not held in the pool.

36 A BCPP procurement for carbon data, including forward-looking metrics (scenario analysis), will take into account the reporting requirements of Partner Funds for equity and fixed income portfolios.

Obtaining carbon data for Private Markets is more challenging and BCPP are looking into solutions for these portfolios held in the pool. Additionally, Officers are working with the Fund actuary to consider how to reflect climate scenario analysis in 2022 valuation reporting.

37 On 1 September DLUHC launched its consultation regarding governance and reporting of climate change risks. The consultation seeks views on proposals to require LGPS administering authorities in England and Wales to assess, manage and report on climate-related risks, in line with the recommendations of the Taskforce on Climate-related Financial Disclosures (TCFD).

38 The consultation proposes that LGPS administering authorities would calculate the 'carbon footprint' of their assets and assess how the value of each fund's assets or liabilities would be affected by different temperature rise scenarios, including the ambition to limit the global average temperature rise to below 2 degrees set out in the Paris Agreement. The consultation closed on 24 November 2022. As discussed with the Pension Fund Committee previously, Officers prepared a response in consultation with the Chair and Vice Chair of the Committee. A copy of the response is included in Appendix 2.

39 An overview of TCFD was included in training for members of the Committee last year. A more detailed report, and further training will be provided to the Board on the details of the TCFD expectations, as well as the availability of data through BCPP, and scenario analysis commissioned through the Fund actuary.

**Cost Control Mechanism & Review**

40 The Committee has been informed previously of the Cost Control Mechanism in the LGPS and other public sector schemes which sets both a cost 'ceiling' and 'floor' in respect of the ongoing affordability of public sector pensions. This creates a "cost corridor" designed to keep schemes within 2% of target costs.

41 Before the impact of McCloud, provisional cost management assessments indicated floor breaches in most public sector schemes, that may have resulted in an improvement to benefits or reduction in member contributions. At the request of HMT, GAD carried out a review of the Cost Control Mechanism across the public sector.

42 Members were informed previously that it had not previously been possible to assess the value of the public service pensions arrangements with any certainty due to the anticipated implications of the Court of Appeal judgements in McCloud and Sargeant.

43 The Fund's own position on McCloud has also been discussed previously, with the Actuary outlining in detail how the issue was to be reflected in the 2019 Valuation. The approach taken added an additional 0.9% to the employer contribution rate for all employers at the 2019 valuation.

44 In July 2021 however, it was confirmed that the impact of McCloud would be classed as "member costs" for the purpose of the 2016 cost control review, with the pause on the review lifted. This was confirmed by HMT Directions in October 2021. Subsequently, SAB found that the LGPS showed only a slight reduction in costs. Despite this slight reduction, SAB confirmed that they are no longer recommending any LGPS benefit structure changes. SAB has however reaffirmed its commitment to revisiting both Tier 3 ill health and contribution rates for the lowest paid members.

45 Whilst it appears that the 2016 Cost Review is coming to a conclusion, it should be noted that the Fire Brigade Union is considering a judicial review of the decision to include the McCloud remedy as a "member cost". If successful, the 2016 review may be reopened.

46 When the Cost Cap Mechanism was first introduced in 2016 across the public sector it was anticipated that the mechanism would be triggered only by "extraordinary" event. As noted above however, the initial assessment of public sector schemes showed cost floor breaches leading to HMT's request for a review of the mechanism.

47 Following a review by GAD, the government have taken forward three main principles to adjust the mechanism for the 2020 review, so that the new Cost Control Mechanism will:

(a) Be based on the reformed scheme only, ie. in the LGPS the mechanism will assess post 2014 costs only

(b) Adjust the cost floor and ceiling from +/-2% to +/- 3%

(c) Introduce an economic check linked to GDP

**McCloud**

48 The Committee has been kept up to date with the impact and issues surrounding the McCloud judgement itself. To recap briefly, when the Government reformed public service pension schemes in 2014 and 2015 they introduced protections for older members. In December 2018, the Court of Appeal ruled that younger members of the Judges' and Firefighters' Pension schemes have been discriminated against because the protections do not apply to them. The Government has

confirmed that there will be changes to all main public sector schemes, including the LGPS, to remove this age discrimination.

49 In July 2021, the Public Service Pensions and Judicial Offices Bill was laid before Parliament. This Bill seeks to amend the Public Service Pensions Act 2013 by making provision to rectify the unlawful discrimination by the 2014 Scheme. Now made law, the Bill established the overarching framework for the retrospective changes required for the McCloud. Additionally, however, LGPS Amendment Regulations are required to make the necessary changes to the Scheme Regulations.

50 It is expected that later this year DLUHC will set out its decisions on its intended approach to McCloud for the LGPS and re-establish a SAB McCloud-implementation group. Draft Regulations are expected to follow later 2022 to come into force in October 2023. The Regulations will be supplemented by Statutory Guidance, following a period of consultation.

51 The estimated cost across the whole of the LGPS is £1.8bn. As noted above, the Fund made an estimated provision for the impact at local level at the last Valuation. In terms of scheme member impact, HMRC have recently announced a range of measures intended to protect members from annual and lifetime allowance impacts.

52 Whilst it is anticipated that the necessary LGPS Regulations will not come into force until 2023, Officers of the Fund are actively working with Participating Employers to ensure all of the necessary data is collected to be able to properly implement the anticipated remedy.

53 Additionally, Officers continue to work with the Fund's software suppliers to ensure solutions are as effective as possible. Note that, DLUHC are also working directly with the LGPS software suppliers to discuss the implementation of the McCloud remedy. The LGA's Communications Working Group is beginning work on member communications, and the Fund's software supplier have established a McCloud Project Board – the Durham Fund is represented on both groups.

54 Finally, as part of the McCloud remedy for the Teachers' Pensions Scheme (TPS), Chapter 1 Part 1 of the Public Service Pensions and Judicial Offices Act 2022 means that some teachers may be retrospectively eligible for the LGPS for the period from 1 April 2015 to 31 March 2022. This exercise will be administratively challenging for both the TPS and individual LGPS Funds. The LGA is currently working with DfE to identify how to identify affected members.

## Non- LGPS Specific Matters

### Public Sector Exit Payments Caps

55 The Small Business, Enterprise and Employment Act 2015 introduced the concept of a ‘public sector exit payments cap’. The legislation provides that exit payments to be paid to a person are not to exceed £95,000. The 2015 Act provided the overarching principles of how the exit cap was to operate, but the detail was to be prescribed in regulations that were expected to soon follow.

56 After a period of delay the Treasury launched a new consultation on this matter in April 2019. Included in the consultation were draft regulations called ‘The Restriction of Public Sector Exit Payment Regulations 2019’ which provided detail on how the exit cap should operate from an employer’s perspective.

57 Under the Regulations, the cap was to remain at £95,000 and include:

- redundancy payment(s);
- any payment to offset an actuarial reduction to a pension arising by virtue of early retirement (know as ‘strain on the fund’ or ‘early release’ cost);
- any payment made pursuant to an award of compensation under the ACAS arbitration scheme or a settlement or conciliation agreement;
- any severance payment or ex gratia payment;
- any payment in the form of shares or share options;
- any payment on voluntary exit;
- any payment in lieu of notice due under a contract of employment;
- any payment made to extinguish any liability under a fixed term contract;
- any other payment made, whether under a contract of employment or otherwise, in consequence of termination of employment of loss of office.

58 Most significantly for the LGPS, was the inclusion of the ‘strain on the fund’ costs being included towards the cap. These costs of allowing

unreduced access to pension benefits for members over 55 can exceed £95,000 for scheme members with long periods of membership.

59 Separately to the Exit Payment Regulations, DLUHC consulted on further reforms to the LGPS Regulations that would accommodate the Exit Cap within the Scheme. As DLUHC's proposed changes were not implemented concurrently with the Exit Payment Regulations, there was legal uncertainty for both LGPS Administering Authorities and participating employers due to the conflicting legislation.

60 On 12 February however the Exit Cap was unexpectedly disapplied, after the Treasury issued the 'Exit Payment Cap Directions 2021'. The Treasury will bring forward at pace revised proposals in respect of public sector exits. The Board will be updated as further details emerge.

**UK Stewardship Code 2020**

61 The UK Stewardship Code aims to enhance the quality of engagement between investors and companies to help improve long-term risk-adjusted returns to shareholders. The Fund has previously signed up the Code, and BCPP also publish a UK Stewardship Code compliance statement.

62 Due to the significant changes in the Investment Market since the introduction of the first Code, The UK Stewardship Code 2020 is now being introduced. This new Code expands on the previous requirements and compromises a set of 12 Principles which require reporting and disclosure on an 'apply and explain' basis.

63 The LGPS (Management and Investment of Funds) 2016 Regulations state that the responsibility for stewardship, which includes shareholder voting, remains with the Partner Funds. Stewardship, day-to-day administration and implementation have been delegated to Border to Coast by the Partner Funds, on assets managed by Border to Coast, with appropriate monitoring and challenge to ensure this continues to be in line with Partner Fund requirements. To leverage scale and for operational purposes, Border to Coast has, in conjunction with Partner Funds, developed a Responsible Investment Policy and accompanying Corporate Governance & Voting Guidelines to ensure clarity of approach on behalf of Partner Funds.

64 Together with peers at BCPP Partner Funds, Officers are working to consider the new Code and how to ensure compliance. A more detailed report will be provided to the Pension Fund Committee in due course, with the Board kept updated.

## Increasing the UK Minimum Pension Age

65 The Committee have previously been informed of the intention to raise the Normal Minimum Pension Age (NMPA) in the UK and members will recall that a consultation entitled 'Increasing the normal minimum pension age: consultation on implementation' was launched on 11th February and ran until 22nd April 2021.

66 The consultation proposed that, due to increases in longevity and changing expectations of how long individuals will remain in work and in retirement, the minimum pension age would increase from 55 to 57 in 2028. When the policy was first announced, it was intended that the NMPA would be 10 years earlier that the State Pension Age. The minimum age a scheme member can currently retire voluntarily in the LGPS is 55.

67 The Finance Act gained Royal Assent on 24 February, which will increase the minimum retirement age in the UK from 55 to 57 from April 2028. The Act provides for protected pension ages for members who meet entitlement conditions. The government will need to change the LGPS rules to align with the NMPA at some point on or before 6 April 2028. It will also need to consider whether LGPS members who qualify for protection will be allowed to receive payment before 57.

68 The LGA have advised that the change is not material, such that scheme members must be immediately informed of the change. Nonetheless, the Fund informed its active and deferred members of the proposed change within this year's Annual Benefit Statements.

## TPR Code of Practice

69 The Pensions Regulator (TPR) has consulted on a single Code of Practice to cover all regulated schemes. Presently, the Regulator has a specific Code for Public Service Pensions. Whilst the new Code does not extend TPR's powers in the LGPS beyond its existing remit on governance and administration, there are some concerns over how the provisions of the Code fit with the LGPS. SAB have responded on behalf of the LGPS.

70 The Regulator plans to carry out a full review of the comments received through the consultation which it will consider carefully. TPR do not currently have a firm final publication date for the new code. The Local Pension Board's existing Workplan addressing the existing 'Public Service Pension Code of Practice' has been rolled forward until the revised Code emerges.

## Boycotts, Divestment and Sanctions

71 The government's legislative programme was laid out in May 2021. The programme included a Boycotts, Divestment and Sanctions (BDS) Bill the purpose of which was to be to stop public bodies from taking a different approach to UK Government sanctions and foreign relations covering purchasing, procurement, and investment decisions.

72 In advance of the BDS Bill an amendment to the Public Services Pensions Bill passed, which proposed conferring powers to the Secretary of State to make guidance in respect of BDS. The clause would enable the Secretary of State to issue guidance to LGPS administering authorities that they may not make investment decisions that conflict with the UK's foreign and defence policy.

73 The Public Services Pensions Bill gained royal assent, but this does not place any immediate duty on Funds. For the position to change for the LGPS, a full 12-week consultation would be required. SAB Guidance on the matter was previously shared with the Board.

## Pension Scams and new Restrictions on Transfers

74 From 30 November 2021 new regulations ('the Occupational and Personal Pension Schemes Conditions for Transfers Regulations 2021') place greater restrictions on transferring out of the Pension Fund. The new Regulations require the Fund to carry out greater due diligence to protect scheme members from falling foul of Pension Scams.

75 The Fund will be required to notify members seeking to transfer out, that the transfer can only proceed if there are no due diligence red flags, or, if the transfer is to a public service scheme, master trust or collective money purchase scheme.

The Fund already provides warnings to its scheme members of the risks of pension scams through the Pensions Regulator's 'Scams warning' – a copy of which has previously been provided to the Local Pension Board. The Fund has also worked with the Regulator to provide a bespoke warning through the Online Portal. In light of the new Regulations however, Officers have amended the Fund's transfer process to reflect the new requirements. Scheme Members were again warned against scams in 2022 Annual Benefit Statements.

**Stronger Nudge**

76 The government has introduced legislation to ensure that individuals are made aware of ‘Pension Wise’ guidance as part of the process for taking or transferring Defined Contribution (DC) pension savings. Whilst the LGPS is not a DC Scheme, the legislation is applicable to the Scheme’s AVC provision.

77 The ‘Stronger Nudge’ requirement is introduced by the Occupational and Personal Pension Schemes (Disclosure of Information) (Requirements to Refer Members to Guidance etc) (Amendment) Regulations 2022 (SI 2022/30). These ‘Nudge’ Regulations require the Fund to refer scheme members who are seeking to take or transfer their AVCs to the Pension Wise service.

78 The requirement applies to all applications received on or after 1 June 2022 in respect of retirees taking payment of their AVCs, and those aged over 50 seeking to transfer their AVCs to another DC Scheme. The Fund has amended its processes and paperwork to ensure compliance with the Nudge Regulations. The Fund will offer to book a Pension Wise appointment at a date and time suitable for the scheme member where required. It should be noted that scheme members retain the right to opt out of receiving Pension Wise guidance. Further detail of the Fund’s compliance has been provided to the Board.

## Author(s)

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## Appendix 1 – Summary of Key Changes

| Paragraph | Notes |
|---|---|
| 6 – LGPS Fair Deal | SAB have written to DLUHC for requesting an update on the Fair Deal Policy. |
| 19 – Academy Participation | £20m DfE guarantee for Academy LGPS participation |
| 26 – Tier 3 Employers | DfE considering implication of reclassification of Colleges |
| 39 – TCFD Reporting | Response to consultation |
| 54 – McCloud | McCloud scope re teachers |

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24 November 2022

Dear Sir or Madam

**Local Government Pension Scheme (LGPS) Consultation: Governance and reporting of climate change risks**

Durham County Council welcomes the opportunity to comment on strengthening Fair Deal protection in the LGPS. This response is on behalf of the council, acting in its capacity as Administering Authority for the Durham County Council Pension Fund. The Fund has around 60,000 current, deferred and retired members from over 100 organisations.

Generally, the Fund welcomes the principle of clear and consistent reporting for the LGPS, to demonstrate how the Scheme is managing both the risks and investment opportunities of climate change.

The Fund would however, like to highlight concern about the potential unintended consequences of pushing too far and too quickly towards a whole of scheme reporting regime. The Fund believes that amalgamating metrics calculated on different methodologies and using different data sets may lead in the short-term to unreliable information that is hard to explain and not sufficiently robust or credible on which to make decisions. Given the level of scrutiny that such figures will likely receive, we would ask that consideration is given to the potential impact and calls for action that will likely follow. The Fund would therefore also echo comments from the Scheme Advisory Board (SAB) that further guidance and clarity on the fiduciary duty is required - in particular, on the extent to which the pursuit of carbon or temperature reduction targets may justify investment choices that entail some element of financial detriment.

The Fund also has concerns about the proposed timeframes for implementation. Given the challenge to lay and implement regulations following the conclusion of this consultation, The Fund would ask that the Department consider 2023-24 a pilot year, with the regulations enforced in the following year and the first reports published by

the end of 2025. As the proposals currently stand, it is likely that data will need to start to be collated before the regulations have been finalised (i.e. from 1 April 2023).

I set out below specific responses to the questions raised in the consultation:

**Question 1: Do you agree with our proposed requirements in relation to governance?** The Fund welcomes the intention for LGPS Funds to establish consistent oversight of climate risk and opportunities. The proposals require that LGPS Funds appoint properly qualified advisors – it may be consistent with the Investment Regulations to require that administering authorities to "take proper advice". Alternatively, the relevant qualification expected should be outlined.

The Fund would welcome the implementation of the recommendations of the Good Governance Project led by the Scheme Advisory Board, which would be an opportunity to formalise the knowledge and skills requirements in relation to climate risk for both members and officers.

**Question 2: Do you agree with our proposed requirements in relation to strategy?** The Fund welcomes the focus on both risk and opportunity, having already committed £70m to a Climate Opportunities Fund managed by our pool operator, Border to Coast Pensions Partnership (BCPP).

**Question 3: Do you agree with our suggested requirements in relation to scenario analysis?** The Fund welcomes the recognition of the limitations of available data and hopes that the intended regulations reflect the challenges around the use of climate scenarios, assumptions, and methodologies; and that these limitations are made clear in how conclusions are presented.

The Fund also agrees with the intention to align the analysis to the LGPS valuation cycle. The proposed regulations should clarify whether scenario analysis is expected in 2023/24 given this is mid-valuation. The Fund would also welcome any measures that limit cost and duplicate effort, with particular reference to GAD's existing expectation to quantify the risk of climate change in valuation reports.

Whilst allowing for a range of scenarios across the LGPS will support a more broad exploration of the implications of a low carbon transition and climate-related physical risks; a more prescriptive approach may better enable the LGPS Pools to effectively support their underlying LGPS funds.

**Question 4: Do you agree with our proposed requirements in relation to risk management?** The Fund agree with the broad principles set out around risk management and look forward to seeing the detail in the statutory guidance. However, the Fund supports the view that the statutory guidance should set out what a best practice approach in this area could look like.

**Question 5: Do you agree with our proposed requirements in relation to metrics?** The Fund agrees that considering more than one metric will provide a more balanced view of climate risk exposure. In respect of *Absolute Emissions* metric proposed, the Fund is concerned however, that whole of fund reporting that relies significantly on assumptions may lead to misleading comparisons between LGPS Funds and misinform investment decisions. Additionally, the Fund

understands that some managers within the industry are already reporting on Scope 1 and 2 in aggregate and Scope 3 separately. As noted in the proposals, Scope 3 emissions are less widely reported and are often approximated – the Fund would welcome these limitations being reflected in the Statutory Guidance.

In respect of *Emissions Intensity*, the Fund understands that WACI is more readily available, particularly in fixed income due to limitations on the availability of Enterprise Value (including cash), which is required to calculate the Carbon Footprint but not WACI. As such, it may be preferable to utilise WACI as the measure of intensity. For either approach, the Fund would welcome clarity in the Statutory Guidance on the calculation and formula to achieve consistency.

Whilst the Fund recognises the rationale for the inclusion of the *Data Quality* metric in order to utilise the LGPS scale to drive improvements in data quality; the Fund understands that it will be difficult to report data as 'verified' as this is not currently standard with third-party data providers. As such, Funds would need to report on a best endeavours basis, and it would therefore be welcomed if this difficulty was recognised in the Statutory Guidance.

The Fund agrees that the binary *Paris Alignment* metric will be useful in providing a simple to understand metric for stakeholders. To mitigate the risk of greenwashing, the Fund would welcome the Statutory Guidance mandating an approach to determining alignment such as the Paris Aligned Investment Initiative (PAII) criteria, as this is already enshrined in Net Zero guidance so easier to ensure mass adoption.
.

**Question 6: Do you agree with our proposed requirements in relation to targets?** The Fund welcomes the intention to provide Statutory Guidance to support LGPS Funds and the reiteration that targets should not be set that would require them to divest or invest in a prescribed way. Significantly, the Fund would welcome clarification in the proposed Guidance that specifically addresses the issue of fiduciary duty and in particular how LGPS Funds can reconcile the primacy of return requirement with Net Zero (or other) targets.

Finally, it would be useful to make clear in the Guidance how soon a target must be set – the Fund would understand that this would be after giving due consideration to the first year's analysis (ie. post-2023/24) and that the first year's report will not therefore include any analysis against targets.

**Question 7: Do you agree with our approach to reporting?** The Fund is fully supportive of the public disclosure of the Climate Risk Report and agree that the report should be suitable for both specialist and non-specialist stakeholders including scheme members, members of the public and other parties. However, implementing these reporting requirements from April 2023 and the production of first reports by December 2024 will pose a significant challenge for LGPS Funds. It will also pose a challenge to procure the necessary expertise given the timescales of the consultation and the proposed implementation.

**Question 8: Do you agree with our proposals on the Scheme Climate Risk Report?** The Fund notes the intention to produce a whole of Scheme annual Climate Risk Report via the SAB, who will develop a template for the aggregation of data. The Fund would welcome the opportunity for stakeholders (in particular LGPS pools)

to have an input on the development of the template.

Whilst the Fund recognises the potential usefulness of a Scheme-wide report for its members and stakeholders, the Fund would caution against any move towards 'league tables' given the given the different funding levels and investment strategies pursued by the respective LGPS Funds.

Additionally, given the lack of available data, the quality of data and the limitations of metrics, as well as use of modelling and estimation, all noted in the proposals the Fund has concerns over the interpretation of the aggregated data and potentially misinformed comparison between LGPS Funds. The variations and uncertainties may risk stakeholders drawing erroneous conclusions around the respective performance of LGPS Funds in addressing climate change risk and could lead to misinformed pressures to divest.

**Question 9: Do you have any comments on the role of the LGPS asset pools in delivering the requirements?** The proposals reference the benefits of scale brought by the LGPS Pools and the development of significant capabilities in relation to climate risks and responsible investment more broadly. The Fund recognises these benefits and has to date pooled 80% of its assets; with a clear plan for the transition of the remaining 20% of assets (aside from cash, and a small local impact investment aligned to the LGPS Levelling Up proposals). Where desired strategies are not available through the pools however (now or in future), LGPS Funds should retain the flexibility to set and implement strategies outside of the pools.

As noted, in response to Question 3, allowing for a range of approaches across the LGPS will support a more broad exploration of the implications of a low carbon transition and climate-related physical risks; but a more prescriptive approach may better enable the LGPS Pools to effectively support their underlying LGPS funds. Finally, the Fund would welcome progression with the consultation on the future of the pooling framework as soon as practical in order to provide greater clarity on the overlapping challenges of pooling, climate risk and reporting, and governance.

**Question 10: Do you agree with our proposed approach to guidance?** The Fund welcomes the overall principles of the consultation but remains cautious about the about the timeline for implementation.

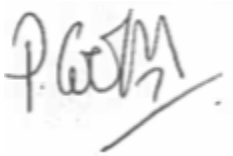
**Question 11: Do you agree with our proposed approach to knowledge, skills and advice?** The proposals set out in this consultation rare likely to increase the demand for external consultant support and it should be noted that the proposals are likely to drive up LGPS costs.

Additionally, the Fund would welcome progression of the SAB's Good Governance proposals which will assist in addressing issues around ensuring participants in LGPS Governance have the appropriate knowledge, skills and advice. It may also be useful to LGPS Funds for the SAB to consider setting a list of priority climate-related topics that it expects LGPS Funds to consider as part of their investment and funding strategies, which could inform respective training plans.

**Question 12: Do you have any comments on the impact of our proposals on protected groups and on how any negative impacts may be mitigated?** No.

Please do not hesitate to contact me if you wish to discuss this response.

Yours faithfully



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**Local Pension Board**

**December 2022**

**Pension Administration Report**

**Report of Paul Darby, Corporate Director of Resources**

## Purpose of the Report

1 This report briefs the Board on the Fund's pension administration and service provision to members, as well as providing an update on key performance information.

## Executive summary

2 Pension administration services have been provided to members uninterrupted since lockdown and working from home guidance. Communication with members has continued through the provision of the Fund's Telephone and Online Services. During the period following lockdown, the Fund paid benefits to 1,774 retirees.

3 In the second quarter of 22/23, 253 retirement cases were processed with 98.02% of those retirees receiving a statement within 10 days of the team receiving the necessary information. This report seeks to provide the Board an overview of pension administration performance.

## Recommendation(s)

4 The Board is asked to note the report.

## Background

5 This report provides an update to the Board on pensions administration performance, its key communications with members, and any issues impacting the service provided to scheme members.

## Key Performance Indicators (KPIs)

6 Included in Appendix 1 are a number of Performance Indicators, with the aim of making the Board aware of administration performance in key areas. Reporting is included for the second quarter of 2022/23, ie. up to 30 September 2022. The data covers services to members in respect of retirement, deferment (leaving scheme before pension payable), Helpline support, and Online services.

7 Additionally, as the Fund develops enhancements to its KPI reporting to the Local Pension Board, data is now included for both Transfers and Estimates. These KPIs reflect how quickly a scheme member receives details of their cash-equivalent transfer value and projection of estimated retirement benefits respectively.

8 In the second quarter, the administration team processed 253 retirement cases. Measured in line with the Disclosure requirement of providing scheme members a statement containing retirement information within one months of retirement, the Fund met this target in 82.61% of the 253 cases. The majority of failures were as a result of late information from Fund employers. In respect of performance within the administration team's control, the Fund provided a statement containing retirement benefit information within 10 days of receiving all required information in 98.02% of cases in the quarter.

9 In respect of deferment cases, in line with Disclosure requirements the Fund provided 487 early leavers information as to their rights and options available. Of the 487 deferment cases, 93.43% of these cases were within one month of the Fund being notified of an early leaver.

10 The Fund received 32 requests for transfer-out information during quarter two. Of these requests, 96.88% of scheme members were provided information as to the transfer rights and options available to them within one month. Furthermore, the administration team provided a quotation of the cash-equivalent transfer value to which a member is entitled in respect of 100% requests within three months.

11 In respect of Estimates, the Fund received 3,386 requests for a statement of estimate pension entitlement in the quarter. It should be noted that the vast majority of these requests are transacted through

the Fund's online Portal. Of 3,386 requests in the quarter, 100% were provided within two months of the initial request.

12 During the second quarter, the pension administration team received 1,549 telephone calls to the Fund's Helpline. Of these calls, the team answered 98.90% of scheme members' calls first time. In respect of Online services for members, 17,933 members have registered for the Fund's Pensions Online portal, where 26,254 online calculations have been completed, 13,097 changes have been transacted and 2,383 secure messages have been sent.

13 Recognising the key role played by the Fund's participating employers in delivering services to members, the Fund has commissioned training tailored for those employers. Additionally, the Fund held its Annual Meeting on 9 November. The Annual Meeting provides an opportunity for the Fund to pass on relevant information and to enable participating employers to ask or raise any issues about the Fund. The Annual Meeting is designed to enhance the stewardship and reporting of the Fund's activities.

## Services to members during Lockdown

14 From the beginning of the covid-19 crisis and UK lockdown, the pension administration team worked from home. During that time, the Fund's Telephone Helpline, Pensions Online Portal and email inbox were available to members uninterrupted. Since commencing working from home, the team processed 1,774 retirements (lump sums paid, new pensioner payroll records created), benefits were paid to 1,282 bereaved families, and 392 transfers were paid in or out.

15 From mid-September 2021 the Team returned to the office on a hybrid basis but in line with work from home guidance, the Team returned to home-based working in mid-December 2021. The Fund's teams have again returned to the office on a hybrid basis and continue to deliver services on a business-as-usual basis.

## Prudential

16 Members of the LGPS are able to increase their benefits through an Additional Voluntary Contribution (AVC) facility. As such, each Administering Authority is required to have arrangements with an AVC provider (often an insurance company or building society). Durham County Council Pension Fund offers its members two providers: Prudential and Standard Life.

17 It was reported to the Board previously, that one of those providers, Prudential, has recently introduced a new ICT system across its business. The implementation has resulted in delays for members

who have invested through Prudential. In particular, claims for cash at retirement, and the processing of contributions had been delayed. Board Members were previously provided with a copy of communications received from Prudential.

18 The Fund is cautiously optimistic of improvement in the service received. Whilst issues remain with scheme members reporting extensive waiting times to their calls to Prudential., performance overall has improved with scheme members' contributions being allocated more quickly and remaining up to date. Disinvestment timescales have also improved and are currently within the 30-day SLA. Although the Fund received delayed accounting information for 20-21, the accounting information for 21-22 has been received on time.

19 Both the Pensions Regulator (nationally) and External Auditor (locally) have been made aware of the issues. Prudential have recently written to the Local Government Association (LGA) with an update on the national position – a copy of which was previously shared with the Local Pension Board. Officers continue to monitor the situation and will continue to feedback to the Board.

## Scheme Member Annual Communications

20 All Annual Benefit Statements for both Active and Deferred members of the Scheme were made available ahead of the statutory deadline of 31 August 2022. Unless a member has opted out of the service, the Statements were be made available through the Fund's Pensions Online portal. A paper copy was provided to the small number of members who have opt-ed out.

21 At the request of the Local Pension Board, a customer satisfaction survey was included in the Annual Benefit Statements sent to both active and deferred members. The outcome of the survey will be shared with Board members in due course. A copy of the Annual Benefit Statement is included in Appendix 2.

22 In April the Fund wrote to all of its c21,000 pensioners to notify those members of the annual increase. The letters were made available through the Fund's Pensions Online portal, and like Annual Benefit Statements, paper copies were posted to those who have opt-ed out of the online service. In addition to the rate of increase, important information for LGPS pensioners and topical relevant information was included. A copy of the Pensions Increase letter was previously shared with the Board.

## Author(s)

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## Appendix 1: Performance Indicators

Performance to 30 September 2022

| Category | Performance Indicator | Cases in Quarter | Performance in Quarter | Total Cases in 2022-2023 | Performance in 2022-2023 | Performance in 2021-2022 |
|---|---|---|---|---|---|---|
| Retirements – Disclosure | Within two months of retirement provide a statement containing retirement benefit information. | 253 | 82.61% | 471 | 84.42% | 86.65% |
| Retirements – in Fund's control | Within 10 days of receiving all required information provide a statement containing retirement benefit information. | 253 | 98.02% | 471 | 98.32% | 98.99% |
| Deferments - Disclosure | Within one month of being notified of a leaver, provide that member information as | 487 | 96.88% | 843 | 98.02% | 86.70% |

| | | | | | | |
|---|---|---|---|---|---|---|
| | to the rights and options available. | | | | | |
| Transfers Out – Disclosure | Within one month of a request, provide that member information as to the transfer rights and options available. | 32 | 96.88% | 71 | 98.44% | - |
| Transfers Out – Quotation | Within three months of a request, provide a quotation of the cash equivalent transfer value to which a member is entitled. | 32 | 100% | 71 | 100% | - |
| Estimates | Within two months of a request, provide a statement of estimated pension entitlement online or in writing. | 3,386 | 100% | 2,785 | 100% | - |
| Telephone Helpline | Calls from Scheme Members answered first time | 1,549 | 98.90% | 3,107 | 99.15% | 98.47% |

| Category | Performance Indicator | Total Registrations to date | Total Online Calculations Completed by Scheme Members | Total Changes Transacted Online by Scheme Members | Secure messages sent by Scheme Members Online |
|---|---|---|---|---|---|
| Online Portal | Total Registrations, and Activity through Pensions Online portal (https://pensionsonline.durham.gov.uk/) | 17,933 | 26,254 | 13,097 | 2,383 |

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The Pensions Regulator

# Reporting breaches of the law

REGULATORY
Code of practice
01

REGULATORY
# Code of practice 01

# Contents

# Introduction

1. This code of practice is issued by the Pensions Regulator, the body that regulates work-based pension arrangements (occupational pension schemes, stakeholder pension schemes and certain aspects of personal pension schemes which have direct payment arrangements, whereby the employer pays contributions on behalf of the employee).

2. The Pensions Regulator's objectives are to protect the benefits of pension scheme members, to reduce the risk of calls on the Pension Protection Fund (PPF), and to promote the good administration of work-based pension schemes.

3. The Pensions Regulator has a number of regulatory tools, including issuing codes of practice, to enable it to meet its statutory objectives. The Pensions Regulator will target its resources on those areas where members' benefits are at greatest risk.

4. Codes of practice provide practical guidelines on the requirements of pensions legislation and set out the standards of conduct and practice expected of those who must meet these requirements. The intention is that the standards set out in the code are consistent with how a well-run pension scheme would choose to meet its legal requirements.

### The status of codes of practice

5. Codes of practice are not statements of the law and there is no penalty for failing to comply with them. It is not necessary for all the provisions of a code of practice to be followed in every circumstance. Any alternative approach to that appearing in the code of practice will nevertheless need to meet the underlying legal requirements, and a penalty may be imposed if these requirements are not met. When determining whether the legal requirements have been met, a court or tribunal must take any relevant codes of practice into account.

### Other regulatory requirements

6. Pensions legislation also imposes duties to report to the regulator in some specific circumstances, for example changes in registrable information, a failure to pay contributions due[1] and certain failures in relation to the funding of defined benefit schemes.[2]

7. Additionally, there are requirements placed on trustees and employers to notify the Pensions Regulator about certain events that may affect the pension scheme and the sponsoring employer.[3]

**In this code of practice, references to the law that applies in Great Britain should be taken to include corresponding legislation in Northern Ireland; an annex lists the corresponding references.**

1 See s228(2) of the Pensions Act 2004.
2 See Part 3 of the Pensions Act 2004.
3 See for example s69 and s120 of the Pensions Act 2004. This code of practice does not cover these more specific requirements; if they arise, reference should be made to the relevant legislative provisions and any associated codes of practice.

# At a glance

**The requirement to report breaches**

- Breaches of the law which affect pension schemes should be considered for reporting to the Pensions Regulator.
- The decision whether to report requires two key judgements:
  (i) is there reasonable cause to believe there has been a breach of the law;
  (ii) if so, is the breach likely to be of material significance to the Pensions Regulator?
- Not every breach needs to be reported.

**Who does the requirement to report apply to?**

- There is a wide range of reporters:
  - trustees and their advisers and service providers (including those carrying out tasks such as administration or fund management);
  - managers of schemes not set up under trust; and
  - employers sponsoring or participating in work-based pension schemes.

**Which pension schemes does the requirement to report apply to?**

- The requirement applies to occupational and personal pension schemes (including stakeholder schemes).

**Reporting arrangements**

- All reporters should have effective arrangements in place to meet their duty to report breaches of the law.
- Reliance cannot be placed on waiting for others to report.
- Breaches should be reported as soon as reasonably practicable.
- Failure to report when required to do so if a civil offence.

# The Code of Practice

## 'Whistleblowing' – the requirement to report breaches of the law

1. The requirement to report is a vital part of the regulatory framework. Whistleblowing reports will be a key source of information used by the Pensions Regulator in fulfilling its regulatory responsibilities for work-based pensions. (The relevant legislation is at Appendix A.)

2. To enable the Pensions Regulator to fulfil its responsibilities and achieve its objectives, the categories of those required to report breaches of the law was expanded from April 2005.[4]

3. The duty applies to those involved in running occupational and personal pension schemes, including stakeholder schemes, and covers breaches in certain circumstances of any legislation or rule of law concerning the administration of pension schemes. There is no requirement to report every breach.

4. In this code the term 'reporter' is used to describe any person who may have a duty to report.

5. There are other requirements placed on firms and organisations to report to other bodies; these are outside the scope of this code.[5] Where the duty to report to another body arises, and a reporter also concludes that there is a separate duty to report to the Pensions Regulator, it would assist if the report to the Pensions Regulator referred to the other report.

6. The Pensions Regulator's expectation is that all those who may have this duty to report will have an understanding of the requirements of the law and this code of practice and, in particular, of how 'reasonable cause to believe', 'material significance' and 'as soon as reasonably practicable' should be interpreted.

7. This code and supporting guidance material issued by the Pensions Regulator will inform these judgements. Whilst it cannot cover every circumstance, it provides principles and benchmarks against which reporters can consider breaches they come across.

8. If you are concerned about whether or not to report a breach you should refer to the legislation, this code of practice, any other code of practice that may apply and any relevant supporting guidance. If you require further assistance, you can contact the Pensions Regulator for help and advice.[6]

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4 In particular it extends, compared with the Pensions Act 1995, the categories of those required to report.
5 For example, in relation to money laundering under chapter 29 of the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2003 (SI 2003/3075), certain persons are required to make suspicious activity reports to the National Criminal Intelligence Service.
6 Contact details will be available on the Pensions Regulator's website: www.thepensionsregulator.gov.uk.

## 'Whistleblowing' – the requirement to report breaches of the law

### Who has a duty to report?

**A legal duty falls on:**

**Trustees of trust-based schemes**

9. The duty to report applies to each individually appointed trustee. If the trustee is a corporate body, and the individuals concerned are trustee directors, the requirement to report falls on the trustee company.

**Managers of schemes not established under trust**

10. The requirement is placed on managers of personal pension schemes, including stakeholder schemes. Only breaches in relation to stakeholder schemes, or other personal pension schemes where a direct payment arrangement exists, will be of material significance to the Pensions Regulator.

**Persons otherwise involved in the administration of a scheme**

11. This category covers all those who provide services for the trustees or managers that relate to the administration and management of occupational and personal pension schemes, including stakeholder schemes. It includes:
- insurance companies and third party administrators who carry out administrative tasks relating to a scheme;
- a participating employer who provides staff to carry out administration tasks in-house (this includes performing payroll and similar functions as well as carrying out or helping with direct administration of the pension scheme); and
- independent financial advisers and consultants who provide services to trustees relating to administration such as record-keeping or acting as an intermediary receiving and forwarding scheme documents and other materials.

Any employer participating in an occupational pension scheme

12. The duty to report applies to employers participating in an occupational pension scheme. In the case of a multi-employer scheme, this includes any participating employer who becomes aware of a breach regardless of whether the breach relates to, or affects, members who are its employees or those of other employers.

**Professional advisers**

13. The duty to report applies to specific groups of professionals appointed by the trustees to provide them with advice or services in relation to their occupational pension scheme. This category comprises scheme actuaries, scheme auditors, legal advisers, fund managers and custodians of scheme assets.[7]

14. Often a firm, rather than an individual, is appointed to provide the relevant services; in these circumstances the duty to report applies to the firm. The firm must put in place suitable systems and train its staff to ensure that the firm meets this duty.

15. Where an individual is appointed to provide the service, as is the case with the scheme actuary, the duty to report applies to the individual.

**Persons otherwise involved in advising a trustee (or manager of a scheme not established under trust) in relation to the scheme**

16. The duty to report applies to other firms (or individuals where the appointments are personal) providing advice to the trustees or managers of occupational and personal pension schemes, including stakeholder schemes. Included within this category are:

- independent financial advisers, pensions consultants and investment consultants;
- actuaries and auditors providing advice to the managers of personal pension schemes;
- actuaries and auditors engaged to provide advice to the trustees of occupational pension schemes other than would cause them to be classed as professional advisers;
- reporting accountants appointed to stakeholder schemes; and
- anyone acting as custodian of the assets of a personal pension scheme.

**Reporters with more than one role**

17. In most cases it will be clear into which category a reporter falls. However, sometimes a reporter may have more than one role in relation to the scheme. Where this is the case, the Pensions Regulator expects reporters to apply their wider knowledge of the scheme in judging whether a matter is likely to be of material significance to the regulator. Where appropriate, they are expected to report irrespective of the function they were performing when the breach was identified.

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7 Professional advisers are defined in section 47(4) of the Pensions Act 1995.

## 'Whistleblowing' – the requirement to report breaches of the law

### Who has a duty to report?

**Systems and training**

18. The Pensions Regulator expects firms to ensure that their staff are adequately trained to a level commensurate with their roles. In particular, the staff of a firm appointed to provide advice or a service to trustees or managers, and which carries a reporting duty, should be trained to recognise potentially reportable situations. Firms should put adequate systems in place to ensure that staff are aware of their responsibilities and that they are familiar with reporting procedures.

**Whistleblowing protection and confidentiality**

19. The Pensions Act 2004 makes clear that the duty to report overrides any other duties a reporter may have such as confidentiality, and that any such duty is not breached by making a report. The Pensions Regulator understands the potential impact of a report on the relationship between a reporter and their client or, in the case of an employee, their employer.

20. The duty to report does not, however, override 'legal privilege'.[8] What this means is that communications (oral and written) between a professional legal adviser and their client, or a person representing that client, whilst obtaining legal advice, do not have to be disclosed. Where appropriate a legal adviser will be able to provide further information on this.

21. The Employment Rights Act 1996 (ERA) provides protection for employees making a whistleblowing disclosure to the Pensions Regulator. Consequently, where individuals employed by firms having a duty to report disagree with a decision not to report to the Pensions Regulator, they may have protection under the ERA if they make an individual report in good faith. The Pensions Regulator expects such individual reports to be rare and confined to the most serious cases.

22. The Pensions Regulator will, if requested, seek to protect the identity of reporters. However, this cannot be guaranteed. Even if the Pensions Regulator does not explicitly reveal the name of the reporter, their identity may become apparent in the course of an investigation.

23. In all cases, the Pensions Regulator expects reporters to act conscientiously and honestly, and to take account of expert or professional advice where appropriate.

8 See s311 of the Pensions Act 2004.

## The duty to report

24. The requirement to report breaches of the law arises when a duty which is:
- imposed by or by virtue of an enactment or rule of law; and
- relevant to the administration of a scheme

has not been or is not being complied with.

25. Not every breach has to be reported. The judgements required in order to reach a decision to report are outlined below.

**'Imposed by or by virtue of an enactment or rule of law'**

26. 'Enactment' covers Acts of Parliament and regulations or statutory instruments. For example, the Pensions Act 2004 is an enactment as are regulations made under that Act. Breaches of criminal law, such as an offence of dishonesty under the Theft Act, would also come within the term enactment.

27. 'Rule of law' covers law laid down by decisions of the courts. It would, for example, include trust law and common law.

28. When considering breaches of trust law, reporters should bear in mind the basic principle that trustees are holding property on behalf of others. Trustees should act in good faith and within the terms of their trust deed and rules for the benefit of all of the beneficiaries of the scheme. If they fail to do so, they are in breach of trust law. A very basic rule of thumb in considering whether an action or failure to act is, or may be, a breach of trust is this: if the trustees have acted in a way which would appear unfair or wrong to a reasonable and objective person, then a breach of trust may have taken place.

**'Relevant to the administration of the scheme'**

29. In view of its statutory objectives, the Pensions Regulator interprets 'administration' widely in the context of the need to report breaches. It is much wider than just those tasks normally associated with the administrative function such as keeping records, dealing with membership movements, calculating benefits and preparing accounts, though all these are included within it. The Pensions Regulator interprets administration to include such matters as the consideration of funding in defined benefit schemes, investment policy and investment management, as well as the custody of invested assets; indeed anything which could potentially affect members' benefits or the ability of members and others to access information to which they are entitled.

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## The decision to report

30. There are two key judgements required:
    - First, does the reporter have reasonable cause to believe there has been a breach of the law?
    - If so, then, secondly, does the reporter believe the breach is likely to be of material significance to the Pensions Regulator?

**'Reasonable cause to believe'**

31. Having a reasonable cause to believe that a breach has occurred means more than merely having a suspicion that cannot be substantiated.

32. Where the reporter does not know the facts or events around the suspected breach, it will usually be appropriate to check with the trustees or manager, or with others who are in a position to confirm what has happened. However, it would not be appropriate to check with the trustees or the manager or others in cases of theft, or if the reporter is concerned that a fraud or other serious offence might have been committed and discussion with those persons might alert those implicated or impede the actions of the police or a regulatory authority.

33. If the reporter is unclear about the relevant legal provision, they should clarify their understanding of the law to the extent necessary to form a view.

34. In establishing that there is reasonable cause to believe that a breach has occurred, it is not necessary for a reporter to gather all the evidence which the Pensions Regulator would require before taking legal action.

**'Likely to be of material significance to the Pensions Regulator'**

35. The legal requirement is that breaches likely to be of material significance to the Pensions Regulator in carrying out any of its functions[9] must be reported. What makes the breach of material significance depends on:

(i) The cause of the breach.
(ii) The effect of the breach.
(iii) The reaction to the breach.
(iv) The wider implications of the breach.

When reaching a decision whether to report, the reporter should consider these points together. Each of these aspects is considered in more detail below.

**(i) The cause of the breach**

36. Where the breach was caused by:

- dishonesty;
- poor governance, inadequate controls resulting in deficient administration, or slow or inappropriate decision-making practices;
- incomplete or inaccurate advice; or
- acting (or failing to act) in deliberate contravention of the law

the breach is likely to be of material significance to the Pensions Regulator.

37. In forming a view on whether the breach is of material significance, reporters should consider other reported and unreported breaches of which they are aware. Reporters should use historical information with care, however, particularly if changes have been made to address previously identified problems.

38. On the other hand, the Pensions Regulator will not regard as materially significant a breach arising from an isolated incident, for example resulting from teething problems with a new system or procedure, or from an unusual or unpredictable combination of circumstances. But in such a situation, it is also important to consider other aspects of the breach such as the effect it has had.

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9 To further assist reporters in reaching a judgement on material significance, examples of breaches are set out in separate guidance. The guidance is illustrative and does not form part of this code of practice.

## The decision to report continued

### (ii) The effect of the breach

39. The Pensions Regulator's objectives are to protect the benefits of pension scheme members, to reduce the risk of calls on the Pension Protection Fund, and to promote the good administration of work-based pension schemes.

40. In the light of these objectives, the Pensions Regulator considers the following to be particularly important elements which are likely to be of material significance to the regulator.

In relation to protecting members' benefits:

- substantially the right money is paid into the scheme at the right time;
- assets are appropriately safeguarded;
- payments out of the scheme are legitimate and timely;
- defined benefit schemes are complying with the legal requirements on scheme funding;
- trustees of occupational pension schemes are properly considering their investment policy, and investing in accordance with it;
- contributions in respect of money purchase members are correctly allocated and invested.

In relation to reducing the risk of compensation being payable from the PPF:

- the Pensions Regulator is informed of notifiable events;[10]
- trustees comply with PPF requirements during an assessment period. This is the period starting with an insolvency event and during which the scheme's eligibility for entry into the PPF is assessed and certain restrictions apply. Reports should continue to be made to the Pensions Regulator during the assessment period.

In relation to promoting good administration:

- schemes are administered properly and appropriate records maintained;
- members receive accurate, clear and impartial information without delay.

10 See section 69 of the Pensions Act 2004.

**(iii) The reaction to the breach**

41. The Pensions Regulator does not normally regard a breach as materially significant where the trustees or managers (or their advisers and service providers) take prompt and effective action to investigate and correct the breach and its causes, and, where appropriate, to notify any members whose benefits have been affected.

42. However, where, after a breach is identified, the trustees and their advisers or service providers involved:

- do not take prompt and effective action to remedy the breach and identify and tackle its cause in order to minimise risk of recurrence;
- are not pursuing corrective action to a proper conclusion; or
- fail to notify members whose benefits have been affected by the breach where it would have been appropriate to do so;

this is of concern to the Pensions Regulator, and the breach is likely to be of material significance.

43. For example, even where only a few members are not receiving benefits due to them, the breach is likely to be materially significant unless prompt and robust action is being taken to remedy the situation.

**(iv) The wider implications of the breach**

44. The wider implications of a breach should be taken into account when assessing which breaches are likely to be materially significant to the exercise of the Pensions Regulator's functions. For example, a breach is likely to be of material significance where:

- the fact that the breach has occurred makes it appear more likely that other breaches will emerge in the future because the trustees (or the manager) lack the appropriate knowledge and understanding to fulfil their responsibilities; or
- other schemes may be affected, for example schemes administered by the same organisation where a system failure is to blame.

45. In forming a judgement on whether a particular breach may have wider implications, the reporter should take into account such general risk factors as the level of funding (in a defined benefit scheme) or how well run the scheme appears to be. Some breaches which arise in respect of a poorly funded, poorly administered scheme will be more significant to the Pensions Regulator than the same breaches would be in a well funded, well administered scheme. Such an approach is consistent with the risk-focused approach to regulation adopted by the Pensions Regulator.

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## The decision to report continued

### 'As soon as reasonably practicable'

46. If a judgement has been reached that there is reasonable cause to believe that a breach has occurred, and that it is of material significance to the Pensions Regulator, it must be reported as soon as reasonably practicable. It is important that procedures are in place to allow reporters to make a judgement within an appropriate timescale as to whether a breach must be reported.

47. What is reasonably practicable depends on the circumstances. In any event the time taken to reach the judgements on reasonable cause to believe and on material significance should be consistent with the speed implied by 'as soon as reasonably practicable'. In particular, the time taken should reflect the seriousness of the suspected breach. In cases of immediate risk to scheme assets, the payment of members' benefits, or where there is any indication of dishonesty, the Pensions Regulator does not expect reporters to seek an explanation or to assess the effectiveness of proposed remedies but only to make such immediate checks as are necessary. The more serious the potential breach and its consequences, the more urgently these necessary checks should be made. In cases of potential dishonesty, the reporter should avoid, where possible, checks which might alert those implicated. In serious cases reporters should consider contacting the Pensions Regulator by the quickest means possible to alert the regulator to the breach.

### Identification of breaches

48. There is no requirement or expectation that reporters should search for breaches.

49. Reporters should nevertheless be alert to breaches relevant to the service or services which they are providing in relation to the scheme. For example, administrators and insurers are expected to be in a position to identify breaches relating to member disclosure, transfer value quotations and payments, payment of benefits and receipt of contributions.

50. There are some breaches that all reporters should be alert to, in particular any dishonest behaviour.

## Reporting arrangements

51. All reporters should have effective arrangements in place to identify breaches that occur in areas relating to their functions. These arrangements should enable them to evaluate and if appropriate report any breaches they become aware of in the course of their work.

52. If possible breaches are identified that do not relate to their functions, reporters should still follow the usual steps and consider reporting. If in doubt about whether a breach has in fact occurred, reporters should seek input from others having the necessary expertise.

53. All reporters should establish a procedure for evaluating matters to determine whether a breach has occurred and, if it has, whether it is likely to be of material significance to the Pensions Regulator. The nature of the arrangements is a matter for the reporter and should be conducive both to staff raising concerns and to the objective consideration of those concerns.

A satisfactory procedure is likely to include the following features:

- obtaining clarification of the law where it is not clear to the reporter;
- clarifying the facts around the suspected breach where these are not known;
- consideration of the material significance of the breach taking into account its cause, effect, the reaction to it, and its wider implications, including where appropriate dialogue with the trustees or managers;
- a clear process for referral to the appropriate level of seniority at which decisions can be made on whether to report to the Pensions Regulator;
- an established procedure for dealing with difficult cases such as a 'Regulator Committee' of experienced persons within the reporter's firm;
- a timeframe for the procedure to take place that is appropriate to the breach and allows the report to be made as soon as reasonably practicable;
- a system to record breaches even if they are not reported to the Pensions Regulator (the principal reason for this is that the record of past breaches may be relevant in deciding whether to report future breaches); and
- a process for identifying promptly any breaches that are so serious they must always be reported.

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## Reporting arrangements continued

### Collective reporting

54. The Pensions Regulator accepts that often trustees, together with one or more of their advisers or other groups, will wish to make a collective report.

55. If that is the approach taken, the procedure put in place must allow for the evaluation of each breach as described in this code of practice and for a report to be made as soon as reasonably practicable.

56. Where the trustee is not a corporate body, the duty to report falls on the individual trustees rather than on the board of trustees. If a consensus cannot be reached, or if there is insufficient time to agree a collective approach, the Pensions Regulator will expect the individuals to report.

### Duplicate reporting

57. The requirement to report applies to all those subject to the reporting duty who become aware of a breach that is likely to be of material significance to the Pensions Regulator; it is not automatically discharged by another party reporting the breach.

58. This gives rise to the possibility of duplicate reporting by those involved in a scheme. Duplicate reports carry a cost, which will ultimately be borne by the scheme members or the employer. Moreover, duplicate reports do not benefit the Pensions Regulator. Once aware of a particular breach, the Pensions Regulator does not regard that breach as being of material significance for the purpose of making further reports under the requirement to report breaches of the law. An exception is where another reporter has additional or different information about that breach or the circumstances relating to it.

59. The reporter coming across the breach should make the report to the Pensions Regulator. The regulator will send an acknowledgement to the reporter. The report (if not previously sent) and the acknowledgement should be sent by the reporter to the trustees or manager. The trustees or manager will be able to copy the original report and its acknowledgement to those other reporters who they consider may also be likely to come across the breach.

60. This arrangement is not intended to replace dialogue between trustees or managers and their advisers or service providers. When notified of a breach, trustees or managers may want to discuss matters with these groups. They will want to determine the best way to get things put right and may also want to discuss whether or not a report is needed. Indeed, trustees or managers should require their advisers to alert them when things appear to be going wrong and should ensure they are kept informed about matters affecting their scheme.

61. An exception to the arrangement above, and to the need for dialogue between trustees or managers and advisers or service providers, will apply in cases where there is a suspicion of dishonesty or other serious wrongdoing by the trustees or managers.

**Making a report**

62. Reports must be submitted in writing. Reporters should wherever practicable use the standard format available on the website at www.thepensionsregulator.gov.uk.

63. The report should be dated and should include as a minimum:
- name of the scheme;
- description of the breach or breaches;
- any relevant dates;
- name of the employer (in the case of an occupational scheme) or scheme manager (in the case of a personal pension scheme, including stakeholder schemes);
- name, position and contact details of the reporter; and
- role of the reporter in relation to the scheme.

The information that we would expect to see in addition is:
- reason the breach is thought to be of material significance to the Pensions Regulator;
- address of the scheme;
- type of scheme – whether occupational (defined benefit, defined contribution or hybrid) or personal;
- name and contact details of the trustees or scheme manager (if different to the scheme address);
- pension schemes registry number; and
- address of employer.

Reports can be sent by post or electronically, including by email or by fax.[11]

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11 Contact details are available on the Pensions Regulator's website: www.thepensionsregulator.gov.uk.

## Reporting arrangements continued

64. Urgent reports should be marked as such, and attention should be drawn to matters considered particularly serious by the reporter. A written report can be preceded by a telephone call if appropriate.

65. A reporter should ensure they receive an acknowledgement in respect of any report they send to the Pensions Regulator. Only when an acknowledgement of receipt is received by the reporter can they be confident that the Pensions Regulator has received their report.

**Follow up**

66. The regulator will acknowledge all reports within five working days of receipt.

67. The Pensions Regulator will not generally keep a reporter informed of the steps it takes in response to a report of a breach. There are restrictions on the information it can disclose. Further information or reports of further breaches should, however, be provided by the reporter, if this may assist the Pensions Regulator in exercising its functions. The regulator may in any case make contact to request further information.

## Failure to report

68. Failure to comply with the obligation imposed by the requirement to report breaches of the law without 'reasonable excuse' is a civil offence. To decide whether the reporter has a reasonable excuse for not reporting as required, or for reporting a breach later than the regulator would have expected, the regulator will look at:
- the legislation, case law, this code of practice and any guidance issued by the Pensions Regulator;
- the role of the reporter in relation to the scheme;
- the training provided to the individual or staff, and the level of knowledge it would be reasonable to expect that individual or those staff to have;
- the procedures put in place to identify and evaluate breaches and whether these procedures had been followed;
- the seriousness of the breach and therefore how important it was to report this to the Pensions Regulator without delay;
- any reasons for the delay in reporting;
- any other relevant considerations relating to the case in question.

69. If the Pensions Regulator is considering imposing a civil penalty, or exercising one of its functions, directly affected parties will receive a warning notice identifying the alleged breach and specifying the relevant function. Further details can be found in the regulator's guidance on determination procedures.

70. The Pensions Regulator may, in addition, where it considers it appropriate to do so, make a complaint to the reporter's professional or other governing body.

continued over...

## The Pensions Regulator's response to a report of a breach in the law

71. When the Pensions Regulator receives a report of a breach it has discretion over whether to take action and, if so, what action to take. The decision will depend on the breach and its circumstances and other information about the scheme notified to, or known by, the regulator.

72. The Pensions Regulator has a range of measures it can take, including:
- assisting or instructing trustees and others to achieve compliance;
- providing education or guidance;
- appointing trustees to help run the scheme;
- removing trustees from office;
- freezing the scheme;
- imposing special measures where the scheme funding requirements of the Pensions Act 2004 are not complied with;
- ordering that the scheme's funding position be restored to the level before a breach or other detrimental event occurred; and
- imposing fines where appropriate.

# Appendix A

## Section 70 of the Pensions Act 2004 is reproduced under the terms of Crown Copyright Policy Guidance issued by HMSO

**70** **Duty to report breaches of the law**

(1) Subsection (2) imposes a reporting requirement on the following persons –

(a) a trustee or manager of an occupational or personal pension scheme;

(b) a person who is otherwise involved in the administration of such a scheme;

(c) the employer in relation to an occupational pension scheme;

(d) a professional adviser in relation to such a scheme;

(e) a person who is otherwise involved in advising the trustees or managers of an occupational or personal pension scheme in relation to the scheme.

(2) Where the person has reasonable cause to believe that –

(a) a duty which is relevant to the administration of the scheme in question, and is imposed by or by virtue of an enactment or rule of law, has not been or is not being complied with, and

(b) the failure to comply is likely to be of material significance to the Regulator in the exercise of any of its functions, he must give a written report of the matter to the Regulator as soon as reasonably practicable.

(3) No duty to which a person is subject is to be regarded as contravened merely because of any information or opinion contained in a written report under this section.

This is subject to section 311 (protected items).

(4) Section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to any person who, without reasonable excuse, fails to comply with an obligation imposed on him by this section.

## Article 65 of the Pensions (Northern Ireland) Order 2005 is reproduced under the terms of Crown Copyright Policy Guidance issued by HMSO

65 Duty to report breaches of the law

(1) Paragraph (2) imposes a reporting requirement on the following persons –

(a) a trustee or manager of an occupational or personal pension scheme;

(b) a person who is otherwise involved in the administration of such a scheme;

(c) the employer in relation to an occupational pension scheme;

(d) a professional adviser in relation to such a scheme;

(e) a person who is otherwise involved in advising the trustees or managers of an occupational or personal pension scheme in relation to the scheme.

(2) Where the person has reasonable cause to believe that –

(a) a duty which is relevant to the administration of the scheme in question, and is imposed by or by virtue of a statutory provision or rule of law, has not been or is not being complied with, and

(b) the failure to comply is likely to be of material significance to the Regulator in the exercise of any of its functions, he must give a written report of the matter to the Regulator as soon as reasonably practicable.

(3) Subject to Article 283 (protected items), no duty to which a person is subject is to be regarded as contravened merely because of any information or opinion contained in a written report under this Article.

(4) Article 10 of the 1995 Order (civil penalties) applies to any person who, without reasonable excuse, fails to comply with an obligation imposed on him by this Article.

# Annex

| GB Legislation | NI Legislation |
|---|---|
| Section 70 of the Pensions Act 2004 | Article 65 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)) |
| Section 228(2) of the Pensions Act 2004 | Article 207(2) of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)) |
| Part 3 of the Pensions Act 2004 | Part IV of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)) |
| Section 69 and section 120 of the Pensions Act 2004 | Article 64 and Article 104 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)) |
| Pensions Act 1995 | Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)) |
| Section 47(4) of the Pensions Act 1995 | Article 47(4) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)) |
| The Employment Rights Act 1996 | The Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16)) |
| Section 311 | Article 283 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)) |

## How to get in touch with us

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COP1.A4.APR05

# Pensions dashboards: initial guidance



## Overview

Watch our dashboards webinar on YouTube
Get dashboards ready with this recorded webinar hosted by The Pensions Regulator and the Pensions Dashboard Programme

Published: 22 June 2022

Last updated: 20 July 2022

+ See all updates

As a pension trustee or scheme manager, you will need to connect with and supply pensions information to savers through dashboards.

There will be significant work involved in successfully connecting to pensions dashboards. Regardless of your connection deadline, we strongly advise you to start preparing as soon as possible.

This initial guidance is based on **draft regulations consulted on by the Department for Work and Pensions** and the subsequent consultation response published in July 2022. We will publish updated guidance later in the year, which will reflect the final regulations and the standards being developed by the Money and Pensions Service (MaPS). Our guidance will also evolve in light of industry's experience with dashboards.

Dashboards duties will apply to the trustees or scheme managers of registrable occupational pension schemes with 100 or more active and / or deferred members and non-registrable public service pension schemes, unless the scheme's main administration is outside Great Britain. It is anticipated that equivalent regulations will be made for Northern Ireland in due course.

The Financial Conduct Authority (FCA) will make corresponding rules for FCA-regulated pension providers in respect of personal and stakeholder pension schemes.

It is expected that pension schemes, starting with master trusts, will be required to connect to dashboards from August 2023.

## Pensions dashboards

Pensions dashboards are digital services — apps, websites or other tools — which savers will be able to use to see their pension information in one place. This includes information on their State Pension. Pensions dashboards will not show pensions that are already being paid.

A saver will use dashboards to search the records of all pension schemes to confirm whether or not they are a member. They will be able to see information themselves or can authorise a qualified third party ('delegate') to see it. For simplicity in this guidance we use 'member' to refer to all dashboards users.

Dashboards aim to help members plan for retirement by:

- finding their various pensions and reconnecting them with any lost pension pots
- understanding the value of their pensions in terms of an estimated retirement income

MaPS will develop and host its own pensions dashboard on the MoneyHelper website. Other organisations will also be able to develop and host their own dashboards, subject to approval and regulation by the FCA.

For pensions dashboards to work, MaPS is building a system which will connect pensions dashboards to pension schemes. You can find out more about the dashboards system on the MaPS website.

## Your role and legal duties

Under current proposals, you will be required to:

- register your scheme with MaPS and connect to dashboards by a specific deadline
- receive personal information on members, and search and match members to their pensions ('find requests')
- provide members with information about their pension through the dashboard of their choosing upon request ('view requests')
- co-operate with MaPS when preparing to connect, maintain records and report certain information to us and MaPS

You will need to do all of the above in compliance with standards published by MaPS and having regard to guidance issued by MaPS and / or TPR.

Many of the processes and practicalities of dashboards are still in development and we will update our guidance over time. Find out more about how to stay up to date with developments.

## Working with advisers and providers

You will need to work with several organisations to get connected to dashboards. Typically, it will involve your administrator, software providers, actuary and legal advisers. It could also include employers (to improve the availability and quality of personal data) and external data suppliers (for example additional voluntary contribution (AVC) providers if you do not hold full details of the AVC entitlement with the main scheme information).

Talk to them as soon as you can about their dashboards plans and how they can support you. Early engagement will help them plan their workload and improve their ability to support you.

You may need to procure new services or update your supplier contracts. This will take time and may hold up your preparations if you do not address this early.

The dashboards duties apply to trustees and scheme managers. While you can use third parties to help you meet your duties, you will ultimately remain accountable for ensuring that your scheme is connected to dashboards on time and that you are (and remain) compliant with the requirements. You will need to be available to make any decisions required for your suppliers to progress their work and you should put in place robust ways to monitor this progress. Where they are supporting other clients with similar connection deadlines, make sure they have enough capacity to deliver.

For more information, see our guidance on **the selection, appointment, management and replacement of any suppliers**.

**Next** ›
When your scheme needs to connect with dashboards

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**Local Pension Board**

**8 December 2022**

**Procedure for Reporting Breaches**

**Report of Paul Darby, Corporate Director of Resources**

## Purpose of the Report

1 This report provides the Board with a copy of the Fund's Procedure for Reporting Breaches in relation to the Durham County Council Pension Fund and provides an overview of its operation.

## Executive summary

2 Individuals with a role in the LGPS have a duty to report breaches of law when they reasonably believe that a relevant legal duty is not being complied with and that failure is likely to be of material significance to the Pensions Regulator.

3 As such, the Pension Fund has developed a procedure for dealing with breaches, including a record to log both material and non-material breaches. Periodic reporting to the Local Pension Board will be provided to ensure oversight of the Fund's breach management.

## Recommendation(s)

4 The Local Pension Board is asked to note the report, including the attached Reporting Breaches Procedure, and provide any comments on the approach outlined; and

5 Agree to receive periodic reporting on Pension Fund breaches.

## Background

6 There is a requirement for those with a role in administering or overseeing the Local Government Pension Scheme (LGPS) – including Committee members, Local Pension Board members and Officers – to report breaches of the law to the Pensions Regulator when they have reasonable cause to believe a breach of 'material significance' has occurred.

7 The Fund has set out a procedure (enclosed in Appendix 1) which explains how and when breaches, or suspected breaches, should be reported and recorded. The procedure takes into account the guidance on the subject provided by the Pensions Regulator. Pensions Regulator guidance is included in Appendix 2.

## Procedure for Reporting Breaches

8 All individuals with a role in the LGPS have a duty to report breaches of law when they have reasonable cause to believe that:

(a) A legal duty relevant to the administration of the scheme has not been, or is not being, complied with; and

(b) The failure to comply is likely to be of material significance to the Pensions Regulator.

9 Breaches can potentially take place in relation to a wide variety of tasks associated with the administering a pension scheme such as record keeping, internal controls and benefit calculation, as well as making decisions relating to investments.

10 In line with guidance issued by the Pensions Regulator, the Fund has developed a policy and procedure for ensuring those responsible for reporting can identify, assess and report (or record, if not reported) a breach of law relating to the Pension Fund.

11 The procedure includes examples of potential breaches and a flowchart showing the process to following in determining whether to report or merely record a suspected breach. The procedure also includes an example breaches record. The Local Pension Board will be provided with periodic reporting of breaches – material breaches will also be reported to the Pension Fund Committee.

12 A review of the Fund's effectiveness of the Fund's management of breaches will be carried out by the Council's Internal Audit.

## Author(s)

Paul Cooper Tel: 03000 269798

# Durham County Council Pension Fund

# Reporting Breaches Procedure

## 1. Introduction

1.1 This document sets out the procedure to be followed by certain persons involved with the Durham County Council Pension Fund ('the Pension Fund'), the Local Government Pension Scheme managed and administered by Durham County Council ('the Council') in relation to reporting breaches of the law to the Pensions Regulator.

1.2 Breaches can occur in relation to a range of tasks associated with the administrative function of a pension scheme such as keeping records, internal controls, calculating benefits and making investment or investment-related decisions.

1.3 This procedure applies to:

- The scheme manager (the Council in its capacity as administering authority to the Pension Fund)
- all members of the Council's Local Pension Board;
- all members of the Council's Pension Fund Committee
- all Council officers involved in the administration or management of the Pension Fund;
- any professional advisers including auditors, actuaries, legal advisers and fund managers;
- officers of employers participating Pension Fund who are responsible for pension matters; and
- any person otherwise involved in advising the Council in relation to the Pension Fund.

## 2. Requirements

2.1 This section clarifies the full extent of the legal requirements and to whom they apply.

### 2.2 Pensions Act 2004

Section 70 of the Pensions Act 2004 (the Act) imposes a requirement on the following persons:

- a trustee or manager of an occupational or personal pension scheme;
- a person who is otherwise involved in the administration of such a scheme;
- the employer in relation to an occupational pension scheme;
- a professional adviser in relation to such a scheme;
- a person who is otherwise involved in advising the trustees or managers of an occupational or personal pension scheme in relation to the scheme

to report a matter to The Pensions Regulator as soon as reasonably practicable where that person has reason to believe that:

a) a legal duty relating to the administration of the scheme has not been or is not being complied with, and
b) the failure to comply is likely to be of material significance to The Pensions Regulator.

The Act states that a person can be subject to a civil penalty if he or she fails to comply with this requirement without a reasonable excuse. The duty to report breaches under the Act overrides any other duties the individuals listed above may have. However, the duty to report does not override 'legal privilege'. This means that, generally, communications between a professional legal adviser and their client, or a person representing their client, in connection with legal advice being given to the client, do not have to be disclosed.

### 2.3 The Pension Regulator's Code of Practice

Practical guidance in relation to this legal requirement is included in The Pension Regulator's Code of Practice including in the following areas:

- implementing adequate procedures.
- judging whether a breach must be reported.
- submitting a report to The Pensions Regulator.
- whistleblowing protection and confidentiality.

## 3 Reporting Breaches Procedure

The following procedure details how individuals responsible for reporting and whistleblowing can identify, assess and report (or record if not reported) a breach of law relating to the Pension Fund. It aims to ensure individuals responsible are able to meet their legal obligations, avoid placing any reliance on others to report. The procedure will also assist in providing an early warning of possible malpractice and reduce risk.

### 3.1 Clarification of the law

Individuals may need to refer to regulations and guidance when considering whether or not to report a possible breach. Some of the key provisions are shown below:

- Section 70(1) and 70(2) of the Pensions Act 2004:
- http://www.legislation.gov.uk/ukpga/2004/35/section/70
- Employment Rights Act 1996: www.legislation.gov.uk/ukpga/1996/18/contents
- Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (Disclosure Regulations): www.legislation.gov.uk/uksi/2013/2734/contents/made
- Public Service Pension Schemes Act 2013:

www.legislation.gov.uk/ukpga/2013/25/contents

- Local Government Pension Scheme Regulations (various): http://www.lgpsregs.org/timelineregs/Default.html (pre 2014 schemes) http://www.lgpsregs.org/index.php/regs-legislation (2014 scheme)
- The Data Protection Act 2018, the UK's implementation of the General Data Protection Regulation (GDPR): https://www.gov.uk/data-protection
- The Pensions Regulator's Code of Practice: http://www.thepensionsregulator.gov.uk/codes/code-governance-administration-public-service-pension-schemes.aspx
  In particular, individuals should refer to the section on 'Reporting breaches of the law', and for information about reporting late payments of employee or employer contributions, the section of the code on 'Maintaining contributions'.

Further guidance and assistance can be provided by the Council's Head of Pensions provided that requesting this assistance will not result in alerting those responsible for any serious offence (where the breach is in relation to such an offence).

### 3.2 Clarification when a breach is suspected

Individuals need to have reasonable cause to believe that a breach has occurred, not just a suspicion. Where a breach is suspected the individual should carry out further checks to confirm the breach has occurred. Where the individual does not know the facts or events, it will usually be appropriate to check with the Council's Corporate Director of Resources or Head of Pensions, a member of the Pension Fund Committee or Local Pension Board or others who are able to explain what has happened. However there are some instances where it would not be appropriate to make further checks, for example, if the individual has become aware of theft, suspected fraud or another serious offence and they are also aware that by making further checks there is a risk of either alerting those involved or hampering the actions of the police or a regulatory authority. In these cases The Pensions Regulator should be contacted without delay.

If the suspected breach relates to potential fraud within an organisation, individuals should also be aware of any procedures relating to fraud that they should follow within their organisation and consider whether the breach should also be reported under those procedures. If the suspected breach relates to a possible data breach within an organisation, individuals should consider whether they also need to follow the data breach policy within their organisation.

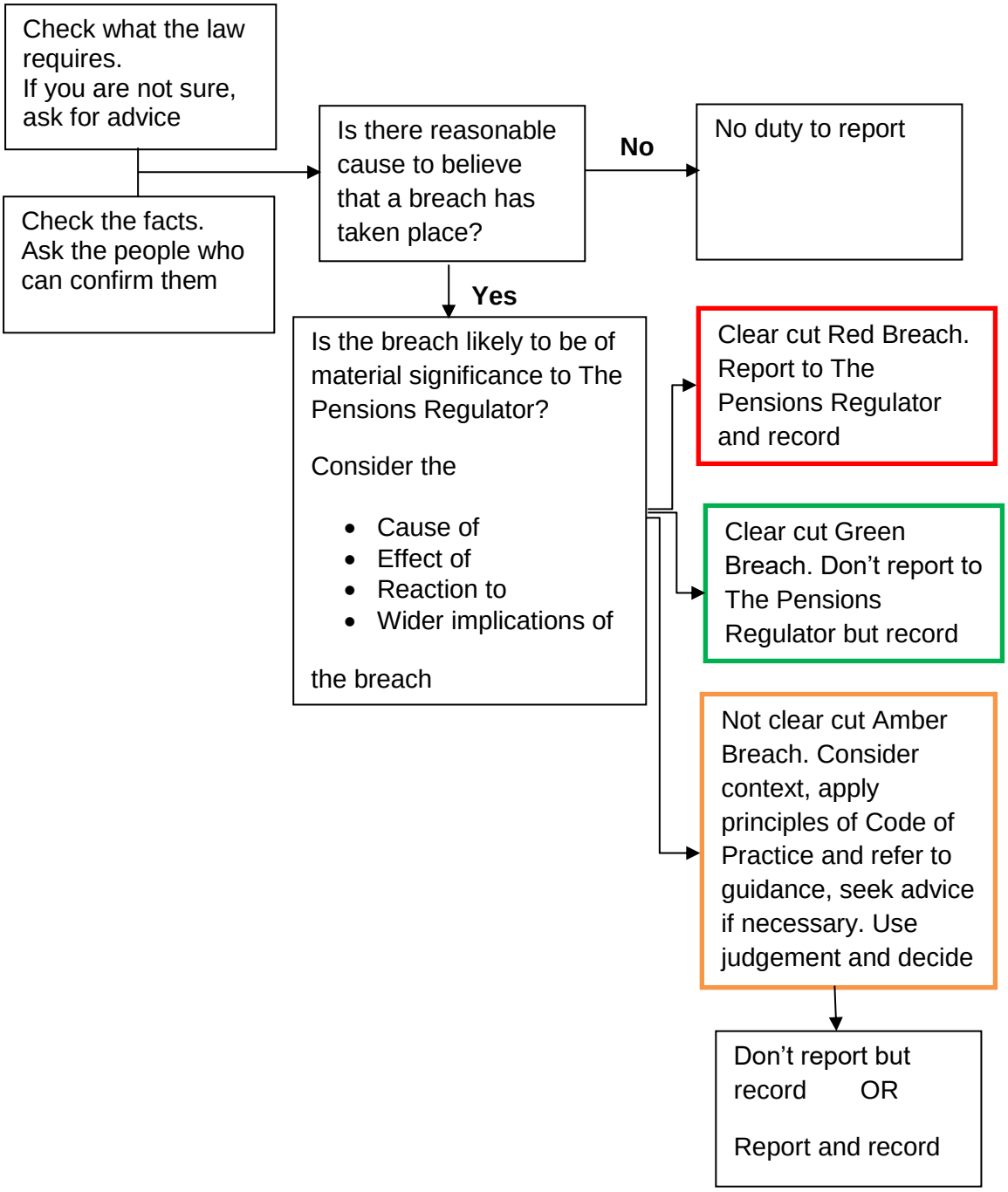
### 3.3 Determining whether the breach is likely to be of material significance

To decide whether a breach is likely to be of material significance an individual should consider the following, both separately and collectively:

- cause of the breach (what made it happen);
- effect of the breach (the consequence(s) of the breach);
- reaction to the breach; and
- wider implications of the breach.

Further details on the above four considerations are provided in Appendix A to this procedure. Individuals should use the traffic light framework described in Appendix B to help assess the material significance of each breach and to formally support and document their decision.

3.4 A decision tree is provided below to show the process for deciding whether or not a breach has taken place and whether it is materially significant and therefore requires to be reported.



### 3.5 Referral to a level of seniority for a decision to be made on whether to report

The Council's Head of Pensions is designated to ensure this procedure is appropriately followed as they have appropriate experience to help investigate whether there is reasonable cause to believe a breach has occurred, to check the law and facts of the case, to maintain records of all breaches and to assist in any reporting to The Pensions Regulator, where appropriate. If breaches relate to late or incorrect payment of contributions or pension benefits, the matter should be highlighted to the Head of Pensions at the earliest opportunity to ensure the matter is resolved as a matter of urgency. Individuals must bear in mind, however, that the involvement of the Head of Pensions is to help clarify the potential reporter's thought process and to ensure this procedure is followed. The reporter remains responsible for the final decision as to whether a matter should be reported to The Pensions Regulator.

The matter should not be referred to any officer if doing so will alert any person responsible for a possible serious offence to the investigation (as highlighted in section 2). If that is the case, the individual should report the matter to The Pensions Regulator setting out the reasons for reporting, including any uncertainty – a telephone call to the Regulator before the submission may be appropriate, particularly in more serious breaches.

### 3.6 Dealing with complex cases

The Council's Corporate Director of Resources or Monitoring Officer may be able to provide guidance on particularly complex cases. Information may also be available from national resources such as the Scheme Advisory Board or the LGPC Secretariat (part of the LG Group - http://www.lgpsregs.org/). If timescales allow, legal advice or other professional advice can be sought and the case can potentially be discussed at Resources Management Team (RMT), Local Pension Board or Pension Fund Committee meeting.

### 3.7. Timescales for reporting

The Pensions Act and Pension Regulator's Code of Practice require that if an individual decides to report a breach, the report must be made in writing as soon as reasonably practicable. Individuals should not rely on waiting for others to report, nor is it necessary for a reporter to gather all the evidence which The Pensions Regulator may require before taking action. A delay in reporting may exacerbate or increase the risk of the breach. The time taken to reach the judgements on "reasonable cause to believe" and on "material significance" should be consistent with the speed implied by 'as soon as reasonably practicable'. In particular, the time taken should reflect the seriousness of the suspected breach.

### 3.8 Early identification of very serious breaches

In cases of immediate risk to the scheme, for instance, where there is any indication of dishonesty, The Pensions Regulator does not expect reporters to seek an explanation or to assess the effectiveness of proposed remedies. They should only make such immediate checks as are necessary. The more serious the potential breach and its consequences, the more urgently reporters should make these necessary checks. In cases of potential dishonesty, the reporter should avoid, where possible, checks which might alert those implicated. In serious cases, reporters should use the quickest means possible to alert The Pensions Regulator to the breach.

### 3.9 Recording all breaches even if they are not reported

The record of past breaches may be relevant in deciding whether to report a breach (for example it may reveal a systemic issue). The Council will maintain a record of all breaches identified by individuals and reporters should therefore provide copies of reports to the Head of Pensions. Records of unreported breaches should also be provided as soon as reasonably practicable and certainly no later than within 20 working days of the decision made not to report. These will be recorded alongside all reported breaches. The record of all breaches (reported or otherwise) will be reported periodically to the Local Pension Board.

### 3.10 Reporting a breach

Reports must be submitted in writing via The Pensions Regulator's online system at www.tpr.gov.uk/exchange, or by post (The Information Team, The Pensions Regulator, Napier House, Trafalgar Place, Brighton, BN1 4DW) or email wb@tpr.gov.uk and should be marked urgent if appropriate. If necessary, a written report can be preceded by a telephone call. Reporters should ensure they receive an acknowledgement for any report they send to The Pensions Regulator. The Pensions Regulator will acknowledge receipt of all reports within five working days and may contact reporters to request further information. Reporters will not usually be informed of any actions taken by The Pensions Regulator due to restrictions on the disclosure of information.

As a minimum, individuals reporting should provide:

- full scheme name (Durham County Council Pension Fund);
- description of breach(es);
- any relevant dates;
- name, position and contact details;
- role in connection to the scheme; and
- employer name or name of scheme manager (the scheme manager is Durham County Council)

If possible, reporters should also indicate:

- the reason why the breach is thought to be of material significance to The Pensions Regulator;
- scheme address (Durham County Council Pension Fund, County Hall, Durham, DH1 5UE)
- scheme manager contact details (postal address as above, telephone 03000 269798, email: pensions@durham.gov.uk )
- pension scheme registry number (10079166)
  and
- whether the breach has been reported before.

The reporter should provide further information or reports of further breaches if this may help The Pensions Regulator in the exercise of its functions. The Pensions Regulator may make contact to request further information.

3.11 **Confidentiality**

If requested, The Pensions Regulator will do its best to protect a reporter's identity and will not disclose information except where it is lawfully required to do so. If an individual's employer decides not to report and the individual employed by them disagrees with this and decides to report a breach themselves, they may have protection under the Employment Rights Act 1996 if they make an individual report in good faith.

3.12 **Reporting to the Pension Fund Committee and Local Pension Board**

A periodic report will be presented to the Local Pension Board setting out:

- all breaches, including those reported to The Pensions Regulator and those unreported, with the associated dates;
- in relation to each breach, details of what action was taken and the result of any action (where not confidential);
- any future actions for the prevention of the breach in question being repeated; and
- highlighting new breaches which have arisen in the last year/since the previous meeting.

This information will also be provided upon request by any other individual or organisation (excluding sensitive/confidential cases or ongoing cases where discussion may influence the proceedings). An example of the information to be included in the periodic reporting is provided in Appendix C to this procedure.

Any breaches reported to the Pensions Regulator ('Red' breaches) will also be reported to the Pension Fund Committee, should they occur.

3.13 **Review**

This Reporting Breaches Procedure will be kept under review and updated as considered appropriate. It may be changed as a result of legal or regulatory

changes, evolving best practice and ongoing review of the effectiveness of the procedure.

## Appendix A

### 1. Determining whether a breach is likely to be of material significance

1.1 To decide whether a breach is likely to be of material significance individuals should consider the following elements, both separately and collectively:

- cause of the breach (what made it happen);
- effect of the breach (the consequence(s) of the breach);
- reaction to the breach; and
- wider implications of the breach.

### 2. The cause of the breach

2.1 Examples of causes which are likely to be of concern to The Pensions Regulator are provided below:

- acting, or failing to act, in deliberate contravention of the law;
- dishonesty;
- incomplete or inaccurate advice;
- poor administration, i.e. failure to implement adequate administration procedures;
- poor governance; or
- slow or inappropriate decision-making practices.

2.2 When deciding whether a cause is likely to be of material significance individuals should also consider:

- whether the breach has been caused by an isolated incident such as a power outage, fire, flood or a genuine one-off mistake.
- whether there have been any other breaches (reported to The Pensions Regulator or not) which when taken together may become materially significant.

### 3. The effect of the breach

3.1 Examples of the possible effects (with possible causes) of breaches which are considered likely to be of material significance to The Pensions Regulator in the context of the LGPS are given below:

- Pension Fund Committee or Local Pension Board members not having enough knowledge and understanding, resulting in pension boards not fulfilling their roles, the scheme not being properly governed and administered and/or scheme managers breaching other legal requirements.

- Conflicts of interest of Pension Fund Committee or Local Pension Board members, resulting in them being prejudiced in the way in which they

carry out their role and/or the ineffective governance and administration of the scheme and/or scheme managers breaching legal requirements.

- Poor internal controls, leading to schemes not being run in accordance with their scheme regulations and other legal requirements, risks not being properly identified and managed and/or the right money not being paid to or by the scheme at the right time.
- Inaccurate or incomplete information about benefits and scheme information provided to members, resulting in members not being able to effectively plan or make decisions about their retirement.
- Poor member records held, resulting in member benefits being calculated incorrectly and/or not being paid to the right person at the right time.
- Misappropriation of assets, resulting in scheme assets not being safeguarded.
- Other breaches which result in the scheme being poorly governed, managed or administered.

## 4. The reaction to the breach

4.1 A breach is likely to be of concern and material significance to The Pensions Regulator where a breach has been identified and those involved:

- do not take prompt and effective action to remedy the breach and identify and tackle its cause in order to minimise risk of recurrence;
- are not pursuing corrective action to a proper conclusion; or
- fail to notify affected scheme members where it would have been appropriate to do so.

## 5. The wider implications of the breach

5.1 Reporters should also consider the wider implications when deciding whether a breach must be reported. The breach is likely to be of material significance to The Pensions Regulator where the fact that a breach has occurred makes it more likely that further breaches will occur within the Fund or, if due to maladministration by a third party, further breaches will occur in other pension schemes.

## 6. Examples of breaches

<u>Example 1</u>

An employer is late in paying over employee and employer contributions, and so late that the employer is in breach of the statutory period for making such payments. The employer is contacted by officers from the administering authority, and immediately makes the payment that is overdue, as well as improving its procedures so that in future contributions are paid over on time. In this instance there has been a breach but members have not been adversely affected and the employer has put its house in order regarding future payments.

The breach is therefore not material to The Pensions Regulator and need not be reported but it will be recorded.

Example 2

An employer is late in paying over employee and employer contributions, and so late that it is in breach of the statutory period for making such payments. The employer is also late in paying Additional Voluntary Contributions (AVCs) to the AVC provider (Prudential or Standard Life). The employer is contacted by officers from the administering authority, and it eventually pays the moneys that are overdue, including AVCs. This has happened before, with there being no evidence that the employer is putting its house in order. In this instance there has been a breach that is relevant to The Pensions Regulator, in part because of the employer's repeated failures, and also because those members paying AVCs will typically be adversely affected by the delay in the investing of their AVCs.

The breach is therefore material to The Pensions Regulator and needs to be reported and recorded.

Example 3

An employer is late in submitting its statutory year end return of pay and contributions in respect of each of its active members and as such it is in breach. Despite repeated reminders the employer still does not supply its year end return. Because the administering authority does not have the year-end data it is unable to supply, by 31 August, annual benefit statements to the employer's members. In this instance there has been a breach which is relevant to The Pensions Regulator, in part because of the employer's failures, in part because of the enforced breach by the administering authority, and also because members are being denied their annual benefits statements.

The breach is therefore material to The Pensions Regulator and needs to be reported and recorded.

Example 4

A member of the Pension Fund Committee owns a property. A report is made to the Pension Fund Committee about a possible investment by the Fund, in the same area in which the member's property is situated. The member supports the investment but does not declare an interest and is later found to have materially benefitted when the Fund's investment proceeds. In this case a material breach has arisen, not because of the conflict of interest, but rather because the conflict was not reported.

The breach is therefore material to The Pensions Regulator and needs to be reported and recorded.

Example 5

A pension overpayment is discovered and thus the administering authority has failed to pay the right amounts to the right person at the right time. A

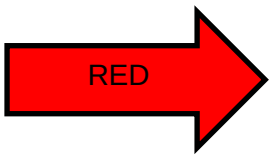
breach has therefore occurred. The overpayment is however for a modest amount and the pensioner could not have known that (s)he was being overpaid. The overpayment is therefore waived. In this case there is no need to report the breach as it is not material.

The breach is therefore not material to The Pensions Regulator and need not be reported but it will be recorded.

## Appendix B

### Traffic light framework for deciding whether or not to report

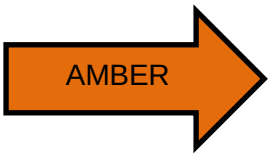
It is recommended that those responsible for reporting use the traffic light framework when deciding whether to report to The Pensions Regulator. This is illustrated below:




Where the cause, effect, reaction and wider implications of a breach, when considered together, are likely to be of material significance.

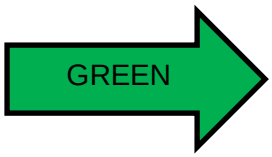
These must be reported to The Pensions Regulator.

Example: Several members' benefits have been calculated incorrectly. The errors have not been recognised and no action has been taken to identify and tackle the cause or to correct the errors.




Where the cause, effect, reaction and wider implications of a breach, when considered together, may be of material significance. They might consist of several failures of administration that, although not significant in themselves, have a cumulative significance because steps have not been taken to put things right. You will need to exercise your own judgement to determine whether the breach is likely to be of material significance and should be reported.

Example: Several members' benefits have been calculated incorrectly. The errors have been corrected, with no financial detriment to the members. However the breach was caused by a system error which may have wider implications for other public service schemes using the same system.




Where the cause, effect, reaction and wider implications of a breach, when considered together, are not likely to be of material significance. These should be recorded but do not need to be reported.

Example: A member's benefits have been calculated incorrectly. This was an isolated incident, which has been promptly identified and corrected, with no financial detriment to the member. Procedures have been put in place to mitigate against this happening again.

All breaches should be recorded even if the decision is not to report.

When using the traffic light framework individuals should consider the content of the red, amber and green sections for each of the cause, effect, reaction and wider implications of the breach, before you consider the four together. Some useful examples of this framework is provided by The Pensions Regulator at the following link:

https://www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/ps-reporting-breaches-examples-traffic-light-framework.ashx

# Appendix C

## Example Record of Breaches

**Durham County Council Pension Fund - Breach Monitoring**

| Ref | Date | Category | Description | Breach? | Action Taken | Impact - RAG | To be Reported to Regulator? | Comments | To be Reported to Data Protection Officer | Date Reported | Follow Up Actions |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Ref | dd/mm/yy | Breach Type | Narrative | Y/N | Narrative | R/A/G | Y/N | Narrative | Y/N | dd/mm/yy | Narrative |

The Pensions Regulator

# Reporting breaches of the law

REGULATORY
Code of practice
01

REGULATORY
# Code of practice 01

# Contents

# Introduction

1. This code of practice is issued by the Pensions Regulator, the body that regulates work-based pension arrangements (occupational pension schemes, stakeholder pension schemes and certain aspects of personal pension schemes which have direct payment arrangements, whereby the employer pays contributions on behalf of the employee).

2. The Pensions Regulator's objectives are to protect the benefits of pension scheme members, to reduce the risk of calls on the Pension Protection Fund (PPF), and to promote the good administration of work-based pension schemes.

3. The Pensions Regulator has a number of regulatory tools, including issuing codes of practice, to enable it to meet its statutory objectives. The Pensions Regulator will target its resources on those areas where members' benefits are at greatest risk.

4. Codes of practice provide practical guidelines on the requirements of pensions legislation and set out the standards of conduct and practice expected of those who must meet these requirements. The intention is that the standards set out in the code are consistent with how a well-run pension scheme would choose to meet its legal requirements.

### The status of codes of practice

5. Codes of practice are not statements of the law and there is no penalty for failing to comply with them. It is not necessary for all the provisions of a code of practice to be followed in every circumstance. Any alternative approach to that appearing in the code of practice will nevertheless need to meet the underlying legal requirements, and a penalty may be imposed if these requirements are not met. When determining whether the legal requirements have been met, a court or tribunal must take any relevant codes of practice into account.

### Other regulatory requirements

6. Pensions legislation also imposes duties to report to the regulator in some specific circumstances, for example changes in registrable information, a failure to pay contributions due[1] and certain failures in relation to the funding of defined benefit schemes.[2]

7. Additionally, there are requirements placed on trustees and employers to notify the Pensions Regulator about certain events that may affect the pension scheme and the sponsoring employer.[3]

**In this code of practice, references to the law that applies in Great Britain should be taken to include corresponding legislation in Northern Ireland; an annex lists the corresponding references.**

1 See s228(2) of the Pensions Act 2004.
2 See Part 3 of the Pensions Act 2004.
3 See for example s69 and s120 of the Pensions Act 2004. This code of practice does not cover these more specific requirements; if they arise, reference should be made to the relevant legislative provisions and any associated codes of practice.

# At a glance

**The requirement to report breaches**

- Breaches of the law which affect pension schemes should be considered for reporting to the Pensions Regulator.
- The decision whether to report requires two key judgements:
  (i) is there reasonable cause to believe there has been a breach of the law;
  (ii) if so, is the breach likely to be of material significance to the Pensions Regulator?
- Not every breach needs to be reported.

**Who does the requirement to report apply to?**

- There is a wide range of reporters:
  - trustees and their advisers and service providers (including those carrying out tasks such as administration or fund management);
  - managers of schemes not set up under trust; and
  - employers sponsoring or participating in work-based pension schemes.

**Which pension schemes does the requirement to report apply to?**

- The requirement applies to occupational and personal pension schemes (including stakeholder schemes).

**Reporting arrangements**

- All reporters should have effective arrangements in place to meet their duty to report breaches of the law.
- Reliance cannot be placed on waiting for others to report.
- Breaches should be reported as soon as reasonably practicable.
- Failure to report when required to do so if a civil offence.

# The Code of Practice

## 'Whistleblowing' – the requirement to report breaches of the law

1. The requirement to report is a vital part of the regulatory framework. Whistleblowing reports will be a key source of information used by the Pensions Regulator in fulfilling its regulatory responsibilities for work-based pensions. (The relevant legislation is at Appendix A.)

2. To enable the Pensions Regulator to fulfil its responsibilities and achieve its objectives, the categories of those required to report breaches of the law was expanded from April 2005.[4]

3. The duty applies to those involved in running occupational and personal pension schemes, including stakeholder schemes, and covers breaches in certain circumstances of any legislation or rule of law concerning the administration of pension schemes. There is no requirement to report every breach.

4. In this code the term 'reporter' is used to describe any person who may have a duty to report.

5. There are other requirements placed on firms and organisations to report to other bodies; these are outside the scope of this code.[5] Where the duty to report to another body arises, and a reporter also concludes that there is a separate duty to report to the Pensions Regulator, it would assist if the report to the Pensions Regulator referred to the other report.

6. The Pensions Regulator's expectation is that all those who may have this duty to report will have an understanding of the requirements of the law and this code of practice and, in particular, of how 'reasonable cause to believe', 'material significance' and 'as soon as reasonably practicable' should be interpreted.

7. This code and supporting guidance material issued by the Pensions Regulator will inform these judgements. Whilst it cannot cover every circumstance, it provides principles and benchmarks against which reporters can consider breaches they come across.

8. If you are concerned about whether or not to report a breach you should refer to the legislation, this code of practice, any other code of practice that may apply and any relevant supporting guidance. If you require further assistance, you can contact the Pensions Regulator for help and advice.[6]

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4 In particular it extends, compared with the Pensions Act 1995, the categories of those required to report.
5 For example, in relation to money laundering under chapter 29 of the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2003 (SI 2003/3075), certain persons are required to make suspicious activity reports to the National Criminal Intelligence Service.
6 Contact details will be available on the Pensions Regulator's website: www.thepensionsregulator.gov.uk.

## 'Whistleblowing' – the requirement to report breaches of the law

### Who has a duty to report?

**A legal duty falls on:**

**Trustees of trust-based schemes**

9. The duty to report applies to each individually appointed trustee. If the trustee is a corporate body, and the individuals concerned are trustee directors, the requirement to report falls on the trustee company.

**Managers of schemes not established under trust**

10. The requirement is placed on managers of personal pension schemes, including stakeholder schemes. Only breaches in relation to stakeholder schemes, or other personal pension schemes where a direct payment arrangement exists, will be of material significance to the Pensions Regulator.

**Persons otherwise involved in the administration of a scheme**

11. This category covers all those who provide services for the trustees or managers that relate to the administration and management of occupational and personal pension schemes, including stakeholder schemes. It includes:
- insurance companies and third party administrators who carry out administrative tasks relating to a scheme;
- a participating employer who provides staff to carry out administration tasks in-house (this includes performing payroll and similar functions as well as carrying out or helping with direct administration of the pension scheme); and
- independent financial advisers and consultants who provide services to trustees relating to administration such as record-keeping or acting as an intermediary receiving and forwarding scheme documents and other materials.

Any employer participating in an occupational pension scheme

12. The duty to report applies to employers participating in an occupational pension scheme. In the case of a multi-employer scheme, this includes any participating employer who becomes aware of a breach regardless of whether the breach relates to, or affects, members who are its employees or those of other employers.

**Professional advisers**

13. The duty to report applies to specific groups of professionals appointed by the trustees to provide them with advice or services in relation to their occupational pension scheme. This category comprises scheme actuaries, scheme auditors, legal advisers, fund managers and custodians of scheme assets.[7]

14. Often a firm, rather than an individual, is appointed to provide the relevant services; in these circumstances the duty to report applies to the firm. The firm must put in place suitable systems and train its staff to ensure that the firm meets this duty.

15. Where an individual is appointed to provide the service, as is the case with the scheme actuary, the duty to report applies to the individual.

**Persons otherwise involved in advising a trustee (or manager of a scheme not established under trust) in relation to the scheme**

16. The duty to report applies to other firms (or individuals where the appointments are personal) providing advice to the trustees or managers of occupational and personal pension schemes, including stakeholder schemes. Included within this category are:

- independent financial advisers, pensions consultants and investment consultants;
- actuaries and auditors providing advice to the managers of personal pension schemes;
- actuaries and auditors engaged to provide advice to the trustees of occupational pension schemes other than would cause them to be classed as professional advisers;
- reporting accountants appointed to stakeholder schemes; and
- anyone acting as custodian of the assets of a personal pension scheme.

**Reporters with more than one role**

17. In most cases it will be clear into which category a reporter falls. However, sometimes a reporter may have more than one role in relation to the scheme. Where this is the case, the Pensions Regulator expects reporters to apply their wider knowledge of the scheme in judging whether a matter is likely to be of material significance to the regulator. Where appropriate, they are expected to report irrespective of the function they were performing when the breach was identified.

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7 Professional advisers are defined in section 47(4) of the Pensions Act 1995.

## 'Whistleblowing' – the requirement to report breaches of the law

### Who has a duty to report?

**Systems and training**

18. The Pensions Regulator expects firms to ensure that their staff are adequately trained to a level commensurate with their roles. In particular, the staff of a firm appointed to provide advice or a service to trustees or managers, and which carries a reporting duty, should be trained to recognise potentially reportable situations. Firms should put adequate systems in place to ensure that staff are aware of their responsibilities and that they are familiar with reporting procedures.

**Whistleblowing protection and confidentiality**

19. The Pensions Act 2004 makes clear that the duty to report overrides any other duties a reporter may have such as confidentiality, and that any such duty is not breached by making a report. The Pensions Regulator understands the potential impact of a report on the relationship between a reporter and their client or, in the case of an employee, their employer.

20. The duty to report does not, however, override 'legal privilege'.[8] What this means is that communications (oral and written) between a professional legal adviser and their client, or a person representing that client, whilst obtaining legal advice, do not have to be disclosed. Where appropriate a legal adviser will be able to provide further information on this.

21. The Employment Rights Act 1996 (ERA) provides protection for employees making a whistleblowing disclosure to the Pensions Regulator. Consequently, where individuals employed by firms having a duty to report disagree with a decision not to report to the Pensions Regulator, they may have protection under the ERA if they make an individual report in good faith. The Pensions Regulator expects such individual reports to be rare and confined to the most serious cases.

22. The Pensions Regulator will, if requested, seek to protect the identity of reporters. However, this cannot be guaranteed. Even if the Pensions Regulator does not explicitly reveal the name of the reporter, their identity may become apparent in the course of an investigation.

23. In all cases, the Pensions Regulator expects reporters to act conscientiously and honestly, and to take account of expert or professional advice where appropriate.

8 See s311 of the Pensions Act 2004.

## The duty to report

24. The requirement to report breaches of the law arises when a duty which is:
- imposed by or by virtue of an enactment or rule of law; and
- relevant to the administration of a scheme

has not been or is not being complied with.

25. Not every breach has to be reported. The judgements required in order to reach a decision to report are outlined below.

**'Imposed by or by virtue of an enactment or rule of law'**

26. 'Enactment' covers Acts of Parliament and regulations or statutory instruments. For example, the Pensions Act 2004 is an enactment as are regulations made under that Act. Breaches of criminal law, such as an offence of dishonesty under the Theft Act, would also come within the term enactment.

27. 'Rule of law' covers law laid down by decisions of the courts. It would, for example, include trust law and common law.

28. When considering breaches of trust law, reporters should bear in mind the basic principle that trustees are holding property on behalf of others. Trustees should act in good faith and within the terms of their trust deed and rules for the benefit of all of the beneficiaries of the scheme. If they fail to do so, they are in breach of trust law. A very basic rule of thumb in considering whether an action or failure to act is, or may be, a breach of trust is this: if the trustees have acted in a way which would appear unfair or wrong to a reasonable and objective person, then a breach of trust may have taken place.

**'Relevant to the administration of the scheme'**

29. In view of its statutory objectives, the Pensions Regulator interprets 'administration' widely in the context of the need to report breaches. It is much wider than just those tasks normally associated with the administrative function such as keeping records, dealing with membership movements, calculating benefits and preparing accounts, though all these are included within it. The Pensions Regulator interprets administration to include such matters as the consideration of funding in defined benefit schemes, investment policy and investment management, as well as the custody of invested assets; indeed anything which could potentially affect members' benefits or the ability of members and others to access information to which they are entitled.

continued on p12...

## The decision to report

30. There are two key judgements required:
- First, does the reporter have reasonable cause to believe there has been a breach of the law?
- If so, then, secondly, does the reporter believe the breach is likely to be of material significance to the Pensions Regulator?

**'Reasonable cause to believe'**

31. Having a reasonable cause to believe that a breach has occurred means more than merely having a suspicion that cannot be substantiated.

32. Where the reporter does not know the facts or events around the suspected breach, it will usually be appropriate to check with the trustees or manager, or with others who are in a position to confirm what has happened. However, it would not be appropriate to check with the trustees or the manager or others in cases of theft, or if the reporter is concerned that a fraud or other serious offence might have been committed and discussion with those persons might alert those implicated or impede the actions of the police or a regulatory authority.

33. If the reporter is unclear about the relevant legal provision, they should clarify their understanding of the law to the extent necessary to form a view.

34. In establishing that there is reasonable cause to believe that a breach has occurred, it is not necessary for a reporter to gather all the evidence which the Pensions Regulator would require before taking legal action.

**'Likely to be of material significance to the Pensions Regulator'**

35. The legal requirement is that breaches likely to be of material significance to the Pensions Regulator in carrying out any of its functions[9] must be reported. What makes the breach of material significance depends on:

(i) The cause of the breach.
(ii) The effect of the breach.
(iii) The reaction to the breach.
(iv) The wider implications of the breach.

When reaching a decision whether to report, the reporter should consider these points together. Each of these aspects is considered in more detail below.

**(i) The cause of the breach**

36. Where the breach was caused by:

- dishonesty;
- poor governance, inadequate controls resulting in deficient administration, or slow or inappropriate decision-making practices;
- incomplete or inaccurate advice; or
- acting (or failing to act) in deliberate contravention of the law

the breach is likely to be of material significance to the Pensions Regulator.

37. In forming a view on whether the breach is of material significance, reporters should consider other reported and unreported breaches of which they are aware. Reporters should use historical information with care, however, particularly if changes have been made to address previously identified problems.

38. On the other hand, the Pensions Regulator will not regard as materially significant a breach arising from an isolated incident, for example resulting from teething problems with a new system or procedure, or from an unusual or unpredictable combination of circumstances. But in such a situation, it is also important to consider other aspects of the breach such as the effect it has had.

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9 To further assist reporters in reaching a judgement on material significance, examples of breaches are set out in separate guidance. The guidance is illustrative and does not form part of this code of practice.

## The decision to report continued

### (ii) The effect of the breach

39. The Pensions Regulator's objectives are to protect the benefits of pension scheme members, to reduce the risk of calls on the Pension Protection Fund, and to promote the good administration of work-based pension schemes.

40. In the light of these objectives, the Pensions Regulator considers the following to be particularly important elements which are likely to be of material significance to the regulator.

In relation to protecting members' benefits:

- substantially the right money is paid into the scheme at the right time;
- assets are appropriately safeguarded;
- payments out of the scheme are legitimate and timely;
- defined benefit schemes are complying with the legal requirements on scheme funding;
- trustees of occupational pension schemes are properly considering their investment policy, and investing in accordance with it;
- contributions in respect of money purchase members are correctly allocated and invested.

In relation to reducing the risk of compensation being payable from the PPF:

- the Pensions Regulator is informed of notifiable events;[10]
- trustees comply with PPF requirements during an assessment period. This is the period starting with an insolvency event and during which the scheme's eligibility for entry into the PPF is assessed and certain restrictions apply. Reports should continue to be made to the Pensions Regulator during the assessment period.

In relation to promoting good administration:

- schemes are administered properly and appropriate records maintained;
- members receive accurate, clear and impartial information without delay.

10 See section 69 of the Pensions Act 2004.

**(iii) The reaction to the breach**

41. The Pensions Regulator does not normally regard a breach as materially significant where the trustees or managers (or their advisers and service providers) take prompt and effective action to investigate and correct the breach and its causes, and, where appropriate, to notify any members whose benefits have been affected.

42. However, where, after a breach is identified, the trustees and their advisers or service providers involved:

- do not take prompt and effective action to remedy the breach and identify and tackle its cause in order to minimise risk of recurrence;
- are not pursuing corrective action to a proper conclusion; or
- fail to notify members whose benefits have been affected by the breach where it would have been appropriate to do so;

this is of concern to the Pensions Regulator, and the breach is likely to be of material significance.

43. For example, even where only a few members are not receiving benefits due to them, the breach is likely to be materially significant unless prompt and robust action is being taken to remedy the situation.

**(iv) The wider implications of the breach**

44. The wider implications of a breach should be taken into account when assessing which breaches are likely to be materially significant to the exercise of the Pensions Regulator's functions. For example, a breach is likely to be of material significance where:

- the fact that the breach has occurred makes it appear more likely that other breaches will emerge in the future because the trustees (or the manager) lack the appropriate knowledge and understanding to fulfil their responsibilities; or
- other schemes may be affected, for example schemes administered by the same organisation where a system failure is to blame.

45. In forming a judgement on whether a particular breach may have wider implications, the reporter should take into account such general risk factors as the level of funding (in a defined benefit scheme) or how well run the scheme appears to be. Some breaches which arise in respect of a poorly funded, poorly administered scheme will be more significant to the Pensions Regulator than the same breaches would be in a well funded, well administered scheme. Such an approach is consistent with the risk-focused approach to regulation adopted by the Pensions Regulator.

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## The decision to report continued

### 'As soon as reasonably practicable'

46. If a judgement has been reached that there is reasonable cause to believe that a breach has occurred, and that it is of material significance to the Pensions Regulator, it must be reported as soon as reasonably practicable. It is important that procedures are in place to allow reporters to make a judgement within an appropriate timescale as to whether a breach must be reported.

47. What is reasonably practicable depends on the circumstances. In any event the time taken to reach the judgements on reasonable cause to believe and on material significance should be consistent with the speed implied by 'as soon as reasonably practicable'. In particular, the time taken should reflect the seriousness of the suspected breach. In cases of immediate risk to scheme assets, the payment of members' benefits, or where there is any indication of dishonesty, the Pensions Regulator does not expect reporters to seek an explanation or to assess the effectiveness of proposed remedies but only to make such immediate checks as are necessary. The more serious the potential breach and its consequences, the more urgently these necessary checks should be made. In cases of potential dishonesty, the reporter should avoid, where possible, checks which might alert those implicated. In serious cases reporters should consider contacting the Pensions Regulator by the quickest means possible to alert the regulator to the breach.

### Identification of breaches

48. There is no requirement or expectation that reporters should search for breaches.

49. Reporters should nevertheless be alert to breaches relevant to the service or services which they are providing in relation to the scheme. For example, administrators and insurers are expected to be in a position to identify breaches relating to member disclosure, transfer value quotations and payments, payment of benefits and receipt of contributions.

50. There are some breaches that all reporters should be alert to, in particular any dishonest behaviour.

## Reporting arrangements

51. All reporters should have effective arrangements in place to identify breaches that occur in areas relating to their functions. These arrangements should enable them to evaluate and if appropriate report any breaches they become aware of in the course of their work.

52. If possible breaches are identified that do not relate to their functions, reporters should still follow the usual steps and consider reporting. If in doubt about whether a breach has in fact occurred, reporters should seek input from others having the necessary expertise.

53. All reporters should establish a procedure for evaluating matters to determine whether a breach has occurred and, if it has, whether it is likely to be of material significance to the Pensions Regulator. The nature of the arrangements is a matter for the reporter and should be conducive both to staff raising concerns and to the objective consideration of those concerns.

A satisfactory procedure is likely to include the following features:

- obtaining clarification of the law where it is not clear to the reporter;
- clarifying the facts around the suspected breach where these are not known;
- consideration of the material significance of the breach taking into account its cause, effect, the reaction to it, and its wider implications, including where appropriate dialogue with the trustees or managers;
- a clear process for referral to the appropriate level of seniority at which decisions can be made on whether to report to the Pensions Regulator;
- an established procedure for dealing with difficult cases such as a 'Regulator Committee' of experienced persons within the reporter's firm;
- a timeframe for the procedure to take place that is appropriate to the breach and allows the report to be made as soon as reasonably practicable;
- a system to record breaches even if they are not reported to the Pensions Regulator (the principal reason for this is that the record of past breaches may be relevant in deciding whether to report future breaches); and
- a process for identifying promptly any breaches that are so serious they must always be reported.

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## Reporting arrangements continued

### Collective reporting

54. The Pensions Regulator accepts that often trustees, together with one or more of their advisers or other groups, will wish to make a collective report.

55. If that is the approach taken, the procedure put in place must allow for the evaluation of each breach as described in this code of practice and for a report to be made as soon as reasonably practicable.

56. Where the trustee is not a corporate body, the duty to report falls on the individual trustees rather than on the board of trustees. If a consensus cannot be reached, or if there is insufficient time to agree a collective approach, the Pensions Regulator will expect the individuals to report.

### Duplicate reporting

57. The requirement to report applies to all those subject to the reporting duty who become aware of a breach that is likely to be of material significance to the Pensions Regulator; it is not automatically discharged by another party reporting the breach.

58. This gives rise to the possibility of duplicate reporting by those involved in a scheme. Duplicate reports carry a cost, which will ultimately be borne by the scheme members or the employer. Moreover, duplicate reports do not benefit the Pensions Regulator. Once aware of a particular breach, the Pensions Regulator does not regard that breach as being of material significance for the purpose of making further reports under the requirement to report breaches of the law. An exception is where another reporter has additional or different information about that breach or the circumstances relating to it.

59. The reporter coming across the breach should make the report to the Pensions Regulator. The regulator will send an acknowledgement to the reporter. The report (if not previously sent) and the acknowledgement should be sent by the reporter to the trustees or manager. The trustees or manager will be able to copy the original report and its acknowledgement to those other reporters who they consider may also be likely to come across the breach.

60. This arrangement is not intended to replace dialogue between trustees or managers and their advisers or service providers. When notified of a breach, trustees or managers may want to discuss matters with these groups. They will want to determine the best way to get things put right and may also want to discuss whether or not a report is needed. Indeed, trustees or managers should require their advisers to alert them when things appear to be going wrong and should ensure they are kept informed about matters affecting their scheme.

61. An exception to the arrangement above, and to the need for dialogue between trustees or managers and advisers or service providers, will apply in cases where there is a suspicion of dishonesty or other serious wrongdoing by the trustees or managers.

**Making a report**

62. Reports must be submitted in writing. Reporters should wherever practicable use the standard format available on the website at www.thepensionsregulator.gov.uk.

63. The report should be dated and should include as a minimum:
- name of the scheme;
- description of the breach or breaches;
- any relevant dates;
- name of the employer (in the case of an occupational scheme) or scheme manager (in the case of a personal pension scheme, including stakeholder schemes);
- name, position and contact details of the reporter; and
- role of the reporter in relation to the scheme.

The information that we would expect to see in addition is:
- reason the breach is thought to be of material significance to the Pensions Regulator;
- address of the scheme;
- type of scheme – whether occupational (defined benefit, defined contribution or hybrid) or personal;
- name and contact details of the trustees or scheme manager (if different to the scheme address);
- pension schemes registry number; and
- address of employer.

Reports can be sent by post or electronically, including by email or by fax.[11]

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11 Contact details are available on the Pensions Regulator's website: www.thepensionsregulator.gov.uk.

## Reporting arrangements continued

64. Urgent reports should be marked as such, and attention should be drawn to matters considered particularly serious by the reporter. A written report can be preceded by a telephone call if appropriate.

65. A reporter should ensure they receive an acknowledgement in respect of any report they send to the Pensions Regulator. Only when an acknowledgement of receipt is received by the reporter can they be confident that the Pensions Regulator has received their report.

**Follow up**

66. The regulator will acknowledge all reports within five working days of receipt.

67. The Pensions Regulator will not generally keep a reporter informed of the steps it takes in response to a report of a breach. There are restrictions on the information it can disclose. Further information or reports of further breaches should, however, be provided by the reporter, if this may assist the Pensions Regulator in exercising its functions. The regulator may in any case make contact to request further information.

## Failure to report

68. Failure to comply with the obligation imposed by the requirement to report breaches of the law without 'reasonable excuse' is a civil offence. To decide whether the reporter has a reasonable excuse for not reporting as required, or for reporting a breach later than the regulator would have expected, the regulator will look at:
- the legislation, case law, this code of practice and any guidance issued by the Pensions Regulator;
- the role of the reporter in relation to the scheme;
- the training provided to the individual or staff, and the level of knowledge it would be reasonable to expect that individual or those staff to have;
- the procedures put in place to identify and evaluate breaches and whether these procedures had been followed;
- the seriousness of the breach and therefore how important it was to report this to the Pensions Regulator without delay;
- any reasons for the delay in reporting;
- any other relevant considerations relating to the case in question.

69. If the Pensions Regulator is considering imposing a civil penalty, or exercising one of its functions, directly affected parties will receive a warning notice identifying the alleged breach and specifying the relevant function. Further details can be found in the regulator's guidance on determination procedures.

70. The Pensions Regulator may, in addition, where it considers it appropriate to do so, make a complaint to the reporter's professional or other governing body.

continued overleaf...

## The Pensions Regulator's response to a report of a breach in the law

71. When the Pensions Regulator receives a report of a breach it has discretion over whether to take action and, if so, what action to take. The decision will depend on the breach and its circumstances and other information about the scheme notified to, or known by, the regulator.

72. The Pensions Regulator has a range of measures it can take, including:
- assisting or instructing trustees and others to achieve compliance;
- providing education or guidance;
- appointing trustees to help run the scheme;
- removing trustees from office;
- freezing the scheme;
- imposing special measures where the scheme funding requirements of the Pensions Act 2004 are not complied with;
- ordering that the scheme's funding position be restored to the level before a breach or other detrimental event occurred; and
- imposing fines where appropriate.

# Appendix A

## Section 70 of the Pensions Act 2004 is reproduced under the terms of Crown Copyright Policy Guidance issued by HMSO

**70 Duty to report breaches of the law**

(1) Subsection (2) imposes a reporting requirement on the following persons –

(a) a trustee or manager of an occupational or personal pension scheme;

(b) a person who is otherwise involved in the administration of such a scheme;

(c) the employer in relation to an occupational pension scheme;

(d) a professional adviser in relation to such a scheme;

(e) a person who is otherwise involved in advising the trustees or managers of an occupational or personal pension scheme in relation to the scheme.

(2) Where the person has reasonable cause to believe that –

(a) a duty which is relevant to the administration of the scheme in question, and is imposed by or by virtue of an enactment or rule of law, has not been or is not being complied with, and

(b) the failure to comply is likely to be of material significance to the Regulator in the exercise of any of its functions, he must give a written report of the matter to the Regulator as soon as reasonably practicable.

(3) No duty to which a person is subject is to be regarded as contravened merely because of any information or opinion contained in a written report under this section.

This is subject to section 311 (protected items).

(4) Section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to any person who, without reasonable excuse, fails to comply with an obligation imposed on him by this section.

## Article 65 of the Pensions (Northern Ireland) Order 2005 is reproduced under the terms of Crown Copyright Policy Guidance issued by HMSO

65 Duty to report breaches of the law

(1) Paragraph (2) imposes a reporting requirement on the following persons –

(a) a trustee or manager of an occupational or personal pension scheme;

(b) a person who is otherwise involved in the administration of such a scheme;

(c) the employer in relation to an occupational pension scheme;

(d) a professional adviser in relation to such a scheme;

(e) a person who is otherwise involved in advising the trustees or managers of an occupational or personal pension scheme in relation to the scheme.

(2) Where the person has reasonable cause to believe that –

(a) a duty which is relevant to the administration of the scheme in question, and is imposed by or by virtue of a statutory provision or rule of law, has not been or is not being complied with, and

(b) the failure to comply is likely to be of material significance to the Regulator in the exercise of any of its functions, he must give a written report of the matter to the Regulator as soon as reasonably practicable.

(3) Subject to Article 283 (protected items), no duty to which a person is subject is to be regarded as contravened merely because of any information or opinion contained in a written report under this Article.

(4) Article 10 of the 1995 Order (civil penalties) applies to any person who, without reasonable excuse, fails to comply with an obligation imposed on him by this Article.

# Annex

| GB Legislation | NI Legislation |
|---|---|
| Section 70 of the Pensions Act 2004 | Article 65 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)) |
| Section 228(2) of the Pensions Act 2004 | Article 207(2) of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)) |
| Part 3 of the Pensions Act 2004 | Part IV of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)) |
| Section 69 and section 120 of the Pensions Act 2004 | Article 64 and Article 104 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)) |
| Pensions Act 1995 | Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)) |
| Section 47(4) of the Pensions Act 1995 | Article 47(4) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)) |
| The Employment Rights Act 1996 | The Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16)) |
| Section 311 | Article 283 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)) |

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COP1.A4.APR05

# Responsible Investment Policy

## Border to Coast Pensions Partnership

January 2023

# Responsible Investment Policy

This Responsible Investment Policy details the approach that Border to Coast Pensions Partnership follows in fulfilling its commitment to our Partner Funds in their delegation of the implementation of certain responsible investment (RI) and stewardship responsibilities.

## 1. Introduction

Border to Coast Pensions Partnership Ltd is an FCA-authorised investment fund manager (AIFM). It operates investment funds for its eleven shareholders which are Local Government Pension Scheme funds (Partner Funds). The purpose is to make a difference to the investment outcomes for our Partner Funds through pooling to create a stronger voice; working in partnership to deliver cost effective, innovative, and responsible investment now and into the future; thereby enabling great, sustainable performance.

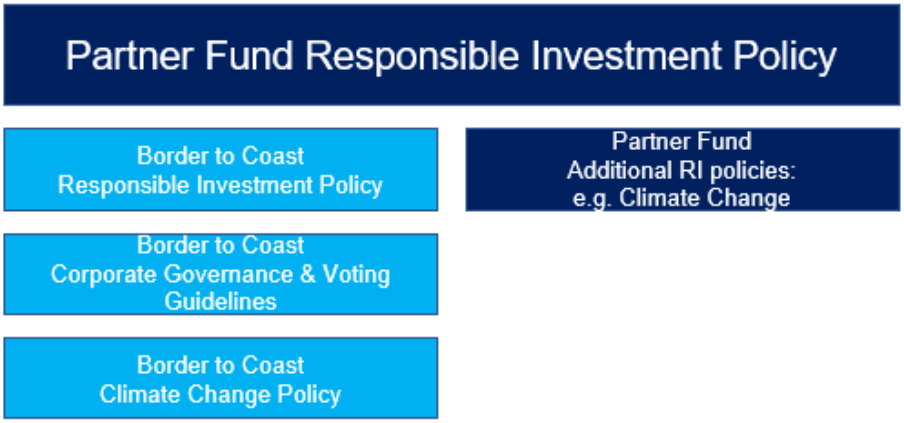
Border to Coast takes a long-term approach to investing and believes that businesses that are governed well, have a diverse board and run in a sustainable way are more resilient, able to survive shocks and have the potential to provide better financial returns for investors. Diversity of thought and experience on boards is significant for good governance, reduces the risk of 'group think' leading to better decision making. Environmental, social and governance (ESG) issues can have a material impact on the value of financial assets and on the long-term performance of investments, and therefore need to be considered across all asset classes in order to better manage risk and generate sustainable, long-term returns. Well-managed companies with strong governance are more likely to be successful long-term investments.

Border to Coast is an active owner and steward of its investments across all asset classes. This commitment is demonstrated through achieving signatory status to the Financial Reporting Council UK Stewardship Code. As a long-term investor and representative of asset owners, we hold companies and asset managers to account regarding environmental, societal and governance factors that have the potential to impact corporate value. We incorporate such factors into our investment analysis and decision making, enabling long-term sustainable investment performance for our Partner Funds. As a shareowner, Border to Coast has a responsibility for effective stewardship of the companies it invests in, whether directly or indirectly through mandates with fund managers. It practices active ownership through voting, monitoring companies, engagement and litigation.

### 1.1. Policy framework

The LGPS (Management and Investment of Funds) 2016 regulations state that the responsibility for stewardship, which includes shareholder voting, remains with the Partner Funds. Stewardship day-to-day administration and implementation have been delegated to Border to Coast by the Partner Funds, on assets managed by Border to Coast, with appropriate monitoring and challenge to ensure this continues to be in line with Partner Fund requirements. To leverage scale and for operational purposes, Border to Coast has, in conjunction with Partner Funds, developed this RI Policy and accompanying Corporate Governance & Voting Guidelines to ensure clarity of approach on behalf of Partner Funds. This collaborative approach results in an RI policy framework illustrated below with the colours demonstrating ownership of the various aspects of the framework.

## RI Policy Framework




## 2. What is responsible investment?

Responsible investment (RI) is the practice of incorporating ESG issues into the investment decision making process and practicing investment stewardship, to better manage risk and generate sustainable, long-term returns. Financial and ESG analysis together identify broader risks and the opportunities leading to better informed investment decisions and can improve performance as well as risk-adjusted returns.

Investment stewardship includes active ownership, using voting rights, engaging with investee companies, influencing regulators and policy makers, and collaborating with other investors to improve long-term performance.

## 3. Governance and Implementation

Border to Coast takes a holistic approach to the integration of sustainability and responsible investment, which are at the core of our corporate and investment thinking. Sustainability, which includes RI, is considered and overseen by the Board and Executive Committees. Specific policies and procedures are in place to demonstrate the commitment to RI, which include the Responsible Investment Policy and Corporate Governance & Voting Guidelines (available on the **website**). Border to Coast has dedicated staff resources for managing RI within the organisational structure.

The RI Policy is owned by Border to Coast and created after collaboration and engagement with our eleven Partner Funds. The Chief Investment Officer (CIO) is accountable for implementation of the policy. The policy is monitored with regular reports to the CIO, Investment Committee, Board, Joint Committee and Partner Funds. It is reviewed at least annually or whenever revisions are proposed, taking into account evolving best practice, and updated, as necessary.

## 4. Skills and competency

Border to Coast, where needed, takes proper advice in order to formulate and develop policy. The Board and staff maintain appropriate skills in responsible investment and stewardship

through continuing professional development; where necessary expert advice is taken from suitable RI specialists to fulfil our responsibilities.

## 5. Integrating RI into investment decisions

Border to Coast considers material ESG factors when analysing potential investments. ESG factors tend to be longer term in nature and can create both risks and opportunities. It is therefore important that, as a long-term investor, we take them into account when analysing potential investments.

The factors considered are those which could cause financial and reputational risk, ultimately resulting in a reduction in shareholder value. ESG issues are considered and monitored in relation to all asset classes. The CIO is accountable for the integration and implementation of ESG considerations. Issues considered include, but are not limited to:

| Environmental | Social | Governance | Other |
|---|---|---|---|
| Climate change<br>Resource & energy management<br>Water stress<br>Single use plastics<br>Biodiversity | Human rights<br>Child labour<br>Supply chain<br>Human capital<br>Employment standards<br>Pay conditions (e.g. living wage in UK) | Board independence<br>Diversity of thought<br>Executive pay<br>Tax transparency<br>Auditor rotation<br>Succession planning<br>Shareholder rights | Business strategy<br>Risk management<br>Cyber security<br>Data privacy<br>Bribery & corruption<br>Political lobbying |

When considering human rights issues, we believe that all companies should abide by the UN Global Compact Principles and the OECD Guidelines for Multinational Enterprises. Companies should have processes in place to both identify and manage human rights risks across their business and supply chain. Further detail on our voting approach is included in the Corporate Governance & Voting Guidelines.

Whilst the specific aspects and form of ESG integration and stewardship vary across asset class, the overarching principles outlined in this policy are applied to all assets of Border to Coast. More information on specific approaches is outlined below.

### 5.1. Listed equities (Internally managed)

Border to Coast looks to understand and evaluate the ESG-related business risks and opportunities companies face. We consider the integration of ESG factors into the investment process as a necessary complement to the traditional financial evaluation of assets; this results in a more informed investment decision-making process. Rather than being used to preclude certain investments, it is used to provide an additional context for stock selection.

ESG data and research from specialist providers is used alongside general stock and sector research; it is an integral part of the research process and when considering portfolio construction, sector analysis and stock selection. The Head of RI works with colleagues to ensure they are knowledgeable and fully informed on ESG issues. Voting and engagement should not be detached from the investment process; therefore, information from engagement meetings is shared with the team to increase and maintain knowledge, and portfolio managers are involved in the voting process.

### 5.2. Private markets

Border to Coast believes that ESG risk forms an integral part of the overall risk management framework for private market investment. An appropriate ESG strategy will improve downside protection and help create value in underlying portfolio companies. Border to Coast takes the following approach to integrating ESG into the private market investment process:

- The assessment of ESG issues is integrated into the investment process for all private market investments.
- A manager's ESG strategy is assessed through a specific ESG questionnaire agreed with the Head of RI and reviewed by the alternatives investment team with support from the Head of RI as required.
- Managers are requested to complete an annual monitoring questionnaire which contains both binary and qualitative questions, enabling us to monitor several key performance indicators, including RI policies, people, and processes, promoting RI and RI-specific reporting.
- Managers are requested to report annually on the progress and outcomes of ESG related values and any potential risks.
- Ongoing monitoring includes identifying any possible ESG breaches and following up with the managers concerned.
- Work with managers to improve ESG policies and ensure the approach is in-line with developing industry best practice.

### 5.3. Fixed income

ESG factors can have a material impact on the investment performance of bonds, both negatively and positively, at the issuer, sector and geographic levels. ESG analysis is therefore incorporated into the investment process for corporate and sovereign issuers to manage risk. The challenges of integrating ESG in practice are greater than for equities with the availability of data for some markets lacking.

The approach to engagement also differs as engagement with sovereigns is much more difficult than with companies. Third-party ESG data is used along with information from sources including UN bodies, the World Bank and other similar organisations. This together with traditional credit analysis is used to determine a bond's credit quality. Information is shared between the equity and fixed income teams regarding issues which have the potential to impact corporates and sovereign bond performance.

### 5.4. Real estate

Border to Coast is preparing to launch funds to make Real Estate investments through both direct properties and indirect through investing in real estate funds. For real estate funds, a central component of the fund selection/screening process will be an assessment of the General Partner and Fund/Investment Manager's Responsible Investment and ESG approach and policies. Key performance indicators will include energy performance measurement, flood risk and rating systems such as GRESB (formerly known as the Global Real Estate Sustainability Benchmark), and BREEAM (Building Research Establishment Environmental Assessment Method). Our process will review the extent to which they are used in asset management strategies. We are in the process of developing our ESG and RI strategies for

direct investment which includes procuring a third-party manager and working with them to develop our approach to managing ESG risks.

### 5.5. External manager selection

RI is incorporated into the external manager appointment process including the request for proposal (RFP) criteria and scoring and the investment management agreements. The RFP includes specific requirements relating to the integration of ESG by managers into the investment process which includes assessing and mitigating climate risk, and their approach to engagement. We expect to see evidence of how material ESG issues are considered in research analysis and investment decisions. Engagement needs to be structured with clear aims, objectives and milestones.

Voting is carried out by Border to Coast for both internally and externally managed equities where possible and we expect external managers to engage with companies in alignment with the Border to Coast RI Policy.

The monitoring of appointed managers also includes assessing stewardship and ESG integration in accordance with our policies. All external fund managers are expected to be signatories or comply with international standards applicable to their geographical location. We encourage managers to become signatories to the UN-supported Principles for Responsible Investment[1] ('PRI'). We also encourage managers to make a firm wide net zero commitment and to join the Net Zero Asset Manager initiative (NZAM) or an equivalent initiative. Managers are required to report to Border to Coast on their RI activities quarterly.

### 5.6. Climate change

The world is warming, the climate is changing, and the scientific consensus is that this is due to human activity, primarily the emissions of carbon dioxide ($CO_2$) from burning fossil fuels. We support this scientific consensus; recognising that the investments we make, in every asset class, will both impact climate change and be impacted by climate change. We actively consider how climate change, the shifting regulatory environment and potential macroeconomic impact will affect investments. We believe that we have the responsibility to contribute and support the transition to a low carbon economy in order to positively impact the world in which pension scheme beneficiaries live in.

Climate change is a systemic risk with potential financial impacts associated with the transition to a low-carbon economy and physical impacts that may manifest under different climate scenarios. Transition will affect some sectors more than others, notably energy, utilities and sectors highly reliant on energy. However, within sectors there are likely to be winners and losers which is why divesting from and excluding entire sectors may not be appropriate.

In addition, the transition to a low-carbon economy will undoubtedly affect the various stakeholders of the companies taking part in the energy transition. These stakeholders include the workforce, consumers, supply chains and the communities in which the companies' facilities are located. A just transition involves maximising the social and economic opportunities and minimising and managing challenges of a net zero transition. We expect companies to consider the potential stakeholder risks associated with decarbonisation.

[1] The UN-supported Principles for Responsible Investment (PRI) is the world's leading advocate for responsible investment enabling investors to publicly demonstrate commitment to responsible investment with signatories committing to supporting the six principles for incorporating ESG issues into investment practice.

Detail on Border to Coast's approach to managing the risks and opportunities associated with climate change can be found in our Climate Change Policy on our website.

## 6. Stewardship

As a shareholder Border to Coast has a responsibility for effective stewardship of the companies it invests in, whether directly or indirectly through mandates with fund managers. It practises active ownership through the full use of rights available including voting, monitoring companies, engagement and litigation. As a responsible shareholder, we are committed to being a signatory to the 2020 UK Stewardship Code[2] and were accepted as a signatory in March 2022. We are also a signatory to the PRI.

### 6.1. Voting

Voting rights are an asset and Border to Coast exercises its rights carefully to promote and support good corporate governance principles. It aims to vote in every market in which it invests where this is practicable. To leverage scale and for practical reasons, Border to Coast has developed a collaborative voting policy to be enacted on behalf of the Partner Funds which can be viewed on our **website**. Where possible the voting policies are also applied to assets managed externally. Policies are reviewed annually in collaboration with the Partner Funds. There may be occasions when an individual fund may wish Border to Coast to vote its pro rata holding contrary to an agreed policy; there is a process in place to facilitate this. A Partner Fund wishing to diverge from this policy will provide clear rationale in order to meet the governance and control frameworks of both Border to Coast and, where relevant, the Partner Fund.

#### 6.1.1. Use of proxy advisors

Border to Coast use a Voting and Engagement provider to implement the set of detailed voting guidelines and ensure votes are executed in accordance with policies. Details of the third-party Voting and Engagement provider and proxy voting advisor are included in Appendix A.

A proxy voting platform is used with proxy voting recommendations produced for all meetings voted managed by the Voting & Engagement provider. The proxy voting advisor provides voting recommendations based upon Border to Coast's Corporate Governance & Voting Guidelines ('the Voting Guidelines'). A team of dedicated voting analysts analyse the merit of each agenda item to ensure voting recommendations are aligned with the Voting Guidelines. Border to Coast's Investment Team receives notification of voting recommendations ahead of meetings which are assessed on a case-by-case basis by portfolio managers and responsible investment staff prior to votes being executed. A degree of flexibility is required when interpreting the Voting Guidelines to reflect specific company and meeting circumstances, allowing the override of voting recommendations from the proxy adviser.

The Voting and Engagement provider evaluates its proxy voting agent at least annually, on the quality of governance research and the alignment of customised voting recommendations and Border to Coast's Voting Guidelines. This review is part of the control framework and is externally assured. Border to Coast also monitors the services provided monthly, with a six monthly and full annual review.

[2] The UK Stewardship Code aims to enhance the quality of engagement between investors and companies to help improve long-term risk-adjusted returns to shareholders. https://www.frc.org.uk/directors/corporate-governance-and-stewardship

Border to Coast has an active stock lending programme. Where stock lending is permissible, lenders of stock do not generally retain any voting rights on lent stock. Procedures are in place to enable stock to be recalled prior to a shareholder vote. Stock is recalled ahead of meetings, and lending can also be restricted, when any, or a combination of the following, occur:

- The resolution is contentious.
- The holding is of a size which could potentially influence the voting outcome.
- Border to Coast needs to register its full voting interest.
- Border to Coast has co-filed a shareholder resolution.
- A company is seeking approval for a merger or acquisition.
- Border to Coast deems it appropriate.

Proxy voting in some countries requires share blocking. This requires shareholders who want to vote their proxies to deposit their shares before the date of the meeting (usually one day after cut-off date) with a designated depositary until one day after meeting date.

During this blocking period, shares cannot be sold; the shares are then returned to the shareholders' custodian bank. We may decide that being able to trade the stock outweighs the value of exercising the vote during this period. Where we want to retain the ability to trade shares, we may refrain from voting those shares.

Where appropriate Border to Coast considers co-filing shareholder resolutions and notifies Partner Funds in advance. Consideration is given as to whether the proposal reflects Border to Coast's Responsible Investment policy, is balanced and worded appropriately, and supports the long-term economic interests of shareholders.

### 6.2. Engagement

The best way to influence companies is through engagement; therefore, Border to Coast will not divest from companies principally on social, ethical or environmental reasons. As responsible investors, the approach taken is to influence companies' governance standards, environmental, human rights and other policies by constructive shareholder engagement and the use of voting rights.

The services of specialist providers may be used when necessary to identify issues of concern. Meeting and engaging with companies are an integral part of the investment process. As part of our stewardship duties, we monitor investee companies on an ongoing basis and take appropriate action if investment returns are at risk. Engagement takes place between portfolio managers and investee companies across all markets where possible.

Border to Coast has several approaches to engaging with investee holdings:

- Border to Coast and all eleven Partner Funds are members of the Local Authority Pension Fund Forum ('LAPFF'). Engagement takes place with companies on behalf of members of the Forum across a broad range of ESG themes.

- We seek to work collaboratively with other like-minded investors and bodies in order to maximise Border to Coast's influence on behalf of Partner Funds, particularly when deemed likely to be more effective than acting alone. This is achieved through actively supporting investor RI initiatives and collaborating with various other external groups e.g. LAPFF, the Institutional Investors Group on Climate Change, other LGPS pools and other investor coalitions.

- Due to the proportion of assets held in overseas markets it is imperative that Border to Coast is able to engage meaningfully with global companies. To enable this and complement other engagement approaches, Border to Coast use an external Voting and Engagement service provider. We provide input into new engagement themes which are considered to be materially financial, selected by the external engagement provider on an annual basis, and also participate in some of the engagements undertaken on our behalf.
- Engagement takes place with companies in the internally managed portfolios with portfolio managers and the Responsible Investment team engaging directly across various engagement streams; these cover environmental, social, and governance issues as well as UN Global Compact[3] breaches or OECD Guidelines[4] for Multinational Enterprises breaches.
- We expect external managers to engage with investee companies and bond issuers as part of their mandate on our behalf and in alignment with our RI policies.

Engagement conducted can be broadly split into two categories: engagement based on financially material ESG issues, or engagement based on (potential) violations of global standards such as the UN Global Compact or OECD Guidelines for Multinational Enterprises.

When engagement is based on financially material ESG issues, engagement themes and companies are selected in cooperation with our engagement service provider based on an analysis of financial materiality. Such companies are selected based on their exposure to the engagement topic, the size and relevance in terms of portfolio positions and related risk.

For engagement based on potential company misconduct, cases are selected through the screening of news flows to identify breaches of the UN Global Compact Principles or OECD Guidelines for Multinational Enterprises. Both sets of principles cover a broad variety of basic corporate behaviour norms around ESG topics. Portfolio holdings are screened on the validation of a potential breach, the severity of the breach and the degree of to which management can be held accountable for the issue. For all engagements, SMART[5] engagement objectives are defined.

In addition, internal portfolio managers and the Responsible Investment team monitor holdings which may lead to selecting companies where engagement may improve the investment case or can mitigate investment risk related to ESG issues. Members of the Investment Team have access to our engagement provider's thematic research and engagement records. This additional information feeds into the investment analysis and decision making process.

We engage with regulators, public policy makers, and other financial market participants as and when required. We encourage companies to improve disclosure in relation to ESG and to report and disclose in line with the TCFD recommendations.

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[3] UN Global Compact is a shared framework covering 10 principles, recognised worldwide and applicable to all industry sectors, based on the international conventions in the areas of human rights, labour standards, environmental stewardship and anti-corruption.

[4] OECD Guidelines for Multinational Enterprises are recommendations providing principles and standards for responsible business conduct for multinational corporations operating in or from countries adhering to the OECD Declaration on International and Multinational Enterprises.

[5] SMART objectives are: specific, measurable, achievable, relevant and time bound.

### 6.2.1. Engagement themes

Recognising that we are unable to engage on every issue, we focus our efforts on areas that are deemed to be the most material to our investments - our key engagement themes. These are used to highlight our priority areas for engagement which includes working with our Voting and Engagement provider and in considering collaborative initiatives to join. We do however engage more widely via the various channels including LAPFF and our external managers.

Key engagement themes are reviewed on a three yearly basis using our Engagement Theme Framework. There are three principles underpinning this framework:

- that progress in the themes is expected to have a material financial impact on our investment portfolios in the long-term;
- that the voice of our Partner Funds should be a part of the decision; and
- that ambitious, but achievable milestones can be set through which we can measure progress over the period.

When building a case and developing potential new themes we firstly assess the material ESG risks across our portfolios and the financial materiality. We also consider emerging ESG issues and consult with our portfolio managers and Partner Funds. The outcome is for the key themes to be relevant to the largest financially material risks; for engagement to have a positive impact on ESG and investment performance; to be able to demonstrate and measure progress; and for the themes to be aligned with our values and important to our Partner Funds.

The key engagement themes following the 2021 review are:

- Low Carbon Transition
- Diversity of thought
- Waste and water management
- Social inclusion through labour management

### 6.2.2. Escalation

Border to Coast believe that engagement and constructive dialogue with the companies in which it invests is more effective than excluding companies from the investment universe. However, if engagement does not lead to the desired result escalation may be necessary. A lack of responsiveness by the company can be addressed by conducting collaborative engagement with other institutional shareholders, registering concern by voting on related agenda items at shareholder meetings, attending a shareholder meeting in person and filing/co-filing a shareholder resolution. If the investment case has been fundamentally weakened, the decision may be taken to sell the company's shares.

### 6.2.3. Exclusions

We believe that using our influence through ongoing engagement with companies, rather than divestment, drives positive outcomes. This is fundamental to our responsible investment approach. Our investment approach is not to divest or exclude entire sectors, however there may be specific instances when we will look to sell or not invest in some industries based on investment criteria, the investment time horizon, and the likelihood for success in influencing company strategy and behaviour.

When considering whether a company is a candidate for exclusion, we do so based on the associated material financial risk of a company's business operations and whether we have concerns about its long-term viability. We initially assess the following key financial risks:

- regulatory risk
- litigation risk
- reputational risk
- social risk
- environmental risk

**Thermal coal and oil sands:**

Using these criteria and due to the potential for stranded assets, we will not invest in companies with more than 70% of revenues derived from thermal coal and oil sands. We will continue to monitor companies with such revenues for increased potential for stranded assets and the associated investment risk which may lead to the revenue threshold decreasing over time.

We support a just transition towards a low-carbon economy which should be inclusive and acknowledge existing global disparities. We recognise that not all countries are at the same stage in their decarbonisation journey and need to consider the different transition timelines for emerging market economies. Therefore, in the interests of a just transition we will assess the implications of the exclusion policy and where we consider it appropriate, may operate exceptions.

For illiquid assets the threshold will be 25%. This is due to the long-term nature of the investments and less ability for investors to change requirements over time.

**Cluster munitions:**

In addition, we will not invest in companies contravening the Convention on Cluster Munitions (2008). It is illegal to use these weapons in many jurisdictions and many signatories to the Convention regard investing in the production of cluster munitions as a form of assistance that is prohibited by the convention. Therefore, as a responsible investor we will not invest in the following:

- Companies where there is evidence of manufacturing cluster munition whole weapons systems.
- Companies manufacturing components that were developed or are significantly modified for exclusive use in cluster munitions.

Companies that manufacture "dual-use" components, such as those that were not developed or modified for exclusive use in cluster munitions, will be assessed and excluded on a case-by-case basis.

Restrictions relate to the corporate entity only and not any affiliated companies.

Any companies excluded will be monitored and assessed for progress and potential reinstatement at least annually.

### 6.3. Due diligence and monitoring procedure

Internal procedures and controls for stewardship activities are reviewed by Border to Coast's external auditors as part of the audit assurance (AAF) control review. The external Voting and Engagement provider is also monitored and reviewed by Border to Coast on a regular basis to ensure that the service level agreement is met.

The Voting and Engagement provider also undertakes verification of its stewardship activities and the external auditor audits stewardship controls on an annual basis; this audit is part of the annual International Standard for Assurance Engagements control.

## 7. Litigation

Where Border to Coast holds securities, which are subject to individual or class action securities litigation, where appropriate, we participate in such litigation. There are various litigation routes available dependent upon where the company is registered. We use a case-by-case approach to determine whether or not to participate in a class action after having considered the risks and potential benefits. We work with industry professionals to facilitate this.

## 8. Communication and reporting

Border to Coast is transparent with regard to its RI activities and keeps beneficiaries and stakeholders informed. This is done by making publicly available RI and voting policies; publishing voting activity on our **website** quarterly; reporting on engagement and RI activities to the Partner Funds quarterly, and in our annual RI report.

We also report in line with the Task Force on Climate-related Financial Disclosures (TCFD) recommendations and provide an annual progress report on the implementation of our Net Zero Plan.

## 9. Training and assistance

Border to Coast offers the Partner Funds training on RI and ESG issues. Where requested, assistance is given on identifying ESG risks and opportunities in order to help develop individual fund policies and investment principles for inclusion in the Investment Strategy Statements.

The Investment Team receive training on RI and ESG issues with assistance and input from our Voting & Engagement Partner and other experts where required. Training is also provided to the Border to Coast Board and the Joint Committee as and when required.

## 10. Conflicts of interest

Border to Coast has a suite of policies which cover any potential conflicts of interest between itself and the Partner Funds which are applied to identify and manage any conflicts of interest, this includes potential conflicts in relation to stewardship.

**Appendix A: Third-party Providers**

| | | |
|---|---|---|
| Voting and Engagement provider | Robeco Institutional Asset Management BV | June 2018 - Present |
| Proxy advisor | Glass Lewis | June 2018 - Present |
| | | |

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# Corporate Governance & Voting Guidelines

## Border to Coast Pensions Partnership

January 2023

## 1. Introduction

Border to Coast Pensions Partnership believes that companies operating to higher standards of corporate governance along with environmental and social best practice have greater potential to protect and enhance investment returns. As an active owner Border to Coast will engage with companies on environmental, social and governance (ESG) issues and exercise its voting rights at company meetings. When used together, voting and engagement can give greater results.

An investment in a company not only brings rights but also responsibilities. The shareholders' role includes appointing the directors and auditors and to be assured that appropriate governance structures are in place. Good governance is about ensuring that a company's policies and practices are robust and effective. It defines the extent to which a company operates responsibly in relation to its customers, shareholders, employees, and the wider community. Corporate governance goes hand-in-hand with responsible investment and stewardship. Border to Coast considers the UK Corporate Governance Code and other best practice global guidelines in formulating and delivering its policy and guidelines.

## 2. Voting procedure

These broad guidelines should be read in conjunction with the Responsible Investment Policy. They provide the framework within which the voting guidelines are administered and assessed on a case-by-case basis. A degree of flexibility will be required when interpreting the guidelines to reflect specific company and meeting circumstances. Voting decisions are reviewed with the portfolio managers. Where there are areas of contention the decision on voting will ultimately be made by the Chief Executive Officer. A specialist proxy voting advisor is employed to ensure that votes are executed in accordance with the policy.

Where a decision has been made not to support a resolution at a company meeting, Border to Coast will, where able, engage with the company prior to the vote being cast. In some instances, attendance at AGMs may be required.

Border to Coast discloses its voting activity on its website and to Partner Funds on a quarterly basis.

We will support incumbent management wherever possible but recognise that the neglect of corporate governance and corporate responsibility issues could lead to reduced shareholder returns.

We will vote **For**, **Abstain** or **Oppose** on the following basis:

- We will support management that acts in the long-term interests of all shareholders, where a resolution is aligned with these guidelines and considered to be in line with best practice.
- We will abstain when a resolution fails the best practice test but is not considered to be serious enough to vote against.
- We will vote against a resolution where corporate behaviour falls short of best practice or these guidelines, or where the directors have failed to provide sufficient information to support the proposal.

## 3. Voting Guidelines

### Company Boards

The composition and effectiveness of the board is crucial to determining corporate performance, as it oversees the running of a company by its managers and is accountable to shareholders. Company behaviour has implications for shareholders and other stakeholders. The structure and composition of the board may vary between different countries; however, we believe that the following main governance criteria are valid across the globe.

### Composition and independence

The board should have a balance of executive and non-executive directors so that no individual or small group of individuals can control the board's decision making. They should possess a suitable range of skills, experience and knowledge to ensure the company can meet its objectives. Boards do not need to be of a standard size: different companies need different board structures, and no simple model can be adopted by all companies.

The board of companies, excluding the Chair, should consist of a majority of independent non-executive directors although local market practices shall be taken into account. Controlled companies should have a majority of independent non-executive directors, or at least one-third independent directors on the board. As non-executive directors have a fiduciary duty to represent and act in the best interests of shareholders and to be objective and impartial when considering company matters, the board must be able to demonstrate their independence. Non-executive directors who have been on the board for a significant length of time, from nine to twelve years (depending on market practice) have been associated with the company for long enough to be presumed to have a close relationship with the business or fellow directors. We aspire for a maximum tenure of nine years but will review resolutions on a case-by-case basis where the local corporate governance code recommends a maximum tenure between nine and twelve years.

The nomination process of a company should therefore ensure that potential risks are restricted by having the right skills mix, competencies and independence at both the supervisory and executive board level. It is essential for boards to achieve an appropriate balance between tenure and experience, whilst not compromising the overall independence of the board. The re-nomination of board members with longer tenures should be balanced out by the nomination of members able to bring fresh perspectives. It is recognised that excessive length of tenure can be an issue in some markets, for example the US where it is common to have a retirement age limit in place rather than length of tenure. In such cases it is of even greater importance to have a process to robustly assess the independence of long tenured directors. Where it is believed an individual can make a valuable and independent contribution, tenure greater than nine years will be assessed on a case-by-case basis.

The company should, therefore, have a policy on tenure which is referenced in its annual report and accounts. There should also be sufficient disclosure of biographical details so that shareholders can make informed decisions. There are a number of factors which could affect independence, which includes but is not restricted to:

- Representing a significant shareholder.
- Serving on the board for over nine years.
- Having had a material business relationship with the company in the last three years.

- Having been a former employee within the last five years.
- Family relationships with directors, senior employees or advisors.
- Cross directorships with other board members.
- Having received or receiving additional remuneration from the company in addition to a director's fee, participating in the company's share option or performance-related pay schemes, or being a member of the company's pension scheme.

If the board has an average tenure of greater than 10 years and the board has had fewer than one new board nominee in the last five years, we will vote against the chair of the nomination committee.

**Leadership**

The role of the Chair is distinct from that of other board members and should be seen as such. The Chair should be independent upon appointment and should not have previously been the CEO. The Chair should also take the lead in communicating with shareholders and the media. However, the Chair should not be responsible for the day-to-day management of the business: that responsibility rests with the Chief Executive. The role of Chair and CEO should not be combined as different skills and experience are required. There should be a distinct separation of duties to ensure that no one director has unfettered decision making power.

However, Border to Coast recognises that in many markets it is still common to find these positions combined. Any company intending to combine these roles must justify its position and satisfy shareholders in advance as to how the dangers inherent in such a combination are to be avoided; best practice advocates a separation of the roles. A senior independent non-executive director should be appointed, in-line with local corporate governance best practice, if roles are combined to provide shareholders and directors with a meaningful channel of communication, to provide a sounding board for the chair and to serve as an intermediary for the other directors and shareholders. Led by the senior independent director, the non-executive directors should meet without the chair present at least annually to appraise the chair's performance. Where the Chair and CEO roles are combined and no senior independent non-executive director has been appointed, we will vote against the nominee holding the combined Chair/CEO role, taking into consideration market practice.

**Non-executive Directors**

The role of non-executive directors is to challenge and scrutinise the performance of management in relation to company strategy and performance. To do this effectively they need to be independent; free from connections and situations which could impact their judgement. They must commit sufficient time to their role to be able to carry out their responsibilities. A senior independent non-executive director should be appointed to act as liaison between the other non-executives, the Chair and other directors where necessary.

**Diversity**

Board members should be recruited from as broad a range of backgrounds and experiences as possible. A diversity of directors will improve the representation and accountability of boards, bringing new dimensions to board discussions and decision making. Companies should broaden the search to recruit non-executives to include open advertising and the process for board appointments should be transparent and formalised in a board nomination

policy. Companies should have a diversity and inclusion policy which references gender, ethnicity, age, skills and experience and how this is considered in the formulation of the board. The policy should give insight into how diversity is being addressed not only at board level but throughout the company, it should reflect the demographic/ethnic makeup of the countries a company is active in and be disclosed in the Annual Report.

We support the government-backed Davies report, Hampton Alexander and Parker reviews, which set goals for UK companies regarding the representation of women and ethnic minorities on boards, executive teams and senior management. Therefore, in developed markets without relevant legal requirements, we expect boards to be composed of at least 33% female directors. Where relevant, this threshold will be rounded down to account for board size. Recognising varying market practices, we generally expect emerging market and Japanese companies to have at least one female on the board. We will vote against the chair of the nomination committee where this is not the case and there is no positive momentum or progress. On ethnic diversity, we expect FTSE 100 companies to have met the Parker Review target and FTSE 250 companies to disclose the ethnic diversity of their board and have a credible plan to achieve the Parker Review targets by 2024. We will vote against the chair of the nomination committee at FTSE 100 companies where the Board does not have at least one person from an ethnic minority background, unless there are mitigating circumstances or plans to address this have been disclosed.

**Succession planning**

We expect the board to disclose its policy on succession planning, the factors considered and where decision-making responsibilities lie. A succession policy should form part of the terms of reference for a formal nomination committee. The committee should comprise of a majority of independent directors or comply with local standards and be headed by the Chair or Senior Independent Non-executive Director except when it is appointing the Chair's successor. External advisors may also be employed.

**Directors' availability and attendance**

It is important that directors have sufficient time to devote to the company's affairs; therefore, full time executives should not hold more than one non-executive position in a FTSE 100 company, or similar size company in other regions; nor the chairmanship of such a company. In the remaining instances, directors working as full-time executives should serve on a maximum of two publicly listed company boards.

With regard to non-executive directors, there can be no hard and fast rule on the number of positions that are acceptable: much depends upon the nature of the post and the capabilities of the individual. Shareholders need to be assured that no individual director has taken on too many positions. Full disclosure should be made in the annual report of directors' other commitments and attendance records at formal board and committee meetings. A director should attend a minimum of 75% of applicable board and committee meetings to ensure commitment to responsibilities at board level.

**Re-election**

For a board to be successful it needs to ensure that it is suitably diverse with a range of skills, experience and knowledge. There is a requirement for non-executive directors to be independent to appropriately challenge management. To achieve this, boards need to be

regularly refreshed to deal with issues such as stagnant skill sets, lack of diversity and excessive tenure; therefore, all directors should be subject to re-election annually, or in-line with local best practice. As representatives of shareholders, directors should preferably be elected using a majority voting standard. In cases where an uncontested election uses the plurality[1] voting standard without a resignation policy, we will hold the relevant Governance Committee accountable by voting against the Chair of this committee.

**Board evaluation**

A requisite of good governance is that boards have effective processes in place to evaluate their performance and appraise directors at least once a year. The annual evaluation should consider its composition, diversity and how effectively members work together to achieve objectives. As part of the evaluation, boards should consider whether directors possess the necessary expertise to address and challenge management on key strategic topics. These strategic issues and important areas of expertise should be clearly outlined in reporting on the evaluation. The board should disclose the process for evaluation and, as far as reasonably possible, any material issues of relevance arising from the conclusions and any action taken as a consequence. Individual director evaluation should demonstrate the effective contribution of each director. An internal evaluation should take place annually with an external evaluation required at least every three years.

**Stakeholder engagement**

Companies need to develop and maintain relationships with key stakeholders to be successful in the long-term. The board therefore should take into account the interests of and feedback from stakeholders which includes the workforce. Considering the differences in best practice across markets, companies should report how key stakeholder views and interests have been considered and impacted on board decisions. Companies should also have an appropriate system in place to engage with employees.

Engagement and dialogue with shareholders and wider stakeholders on a regular basis are key for companies; being a way to discuss governance, strategy, and other significant issues. Companies should engage with shareholders ahead of the AGM in order that high votes against resolutions can be avoided where possible.

Where a company with a single share class structure has received 20% votes against a proposal at a previous AGM, a comprehensive shareholder and stakeholder consultation should be initiated. A case-by-case approach will be taken for companies with a dual class structure where a significant vote against has been received. Engagement efforts and findings, as well as company responses, should be clearly reported on and lead to tangible improvement. Where companies fail to do so, the relevant board committees or members will be held to account.

**Directors' remuneration**

Shareholders at UK companies have two votes in relation to pay; the annual advisory vote on remuneration implementation which is non-binding, and the triennial vote on forward-looking pay policy which is binding. If a company does not receive a majority of shareholder support

[11] A plurality vote means that the winning candidate only needs to get more votes than a competing candidate. If a director runs unopposed, he or she only needs one vote to be elected.

for the pay policy, it is required to table a resolution with a revised policy at the next annual meeting.

It must be noted that remuneration structures are varied, with not one model being suitable for all companies; however, there are concerns over excessive remuneration and the overall quantum of pay. Research shows that high executive pay does not systematically lead to better company performance. Excessive rewards for poor performance are not in the best interests of a company or its shareholders. Remuneration levels should be sufficient to attract, motivate and retain quality management but should not be excessive compared to salary levels within the organisation and with peer group companies. There is a clear conflict of interest when directors set their own remuneration in terms of their duty to the company, accountability to shareholders and their own self-interest. It is therefore essential that the remuneration committee is comprised solely of non-executive directors and complies with the market independence requirement.

Remuneration has serious implications for corporate performance in terms of providing the right incentives to senior management, in setting performance targets, and its effect on the morale and motivation of employees. Corporate reputation is also at risk. Remuneration policy should be sensitive to pay and employee conditions elsewhere in the company, especially when determining annual salary increases.

Where companies are potentially subject to high levels of environmental and societal risk as part of its business, the remuneration committee should also consider linking relevant metrics and targets to remuneration to focus management on these issues. The selection of these metrics should be based on a materiality assessment that also guides the company's overall sustainability strategy. If environmental or social topics are incorporated in variable pay plans, the targets should set stretch goals for improved ESG performance, address achievements under management's control, and avoid rewarding management for basic expected behaviour. Where relevant, minimum ESG standards should instead be incorporated as underpins or gateways for incentive pay. If the remuneration committee determines that the inclusion of environmental or social metrics would not be appropriate, a clear rationale for this decision should be provided in the remuneration report.

The compensation provided to non-executive directors should reflect the role and responsibility. It should be structured in a manner that does not compromise independence, enhancing objectivity and alignment with shareholders' interests. Non-executive directors should, therefore, not be granted performance-based pay. Although we would not expect participation in Long-term Incentive Plans (LTIPs), we are conscious that in some exceptional instances non-executives may be awarded stock, however the proportion of pay granted in stock should be minimal to avoid conflicts of interest.

To ensure accountability there should be a full and transparent disclosure of directors' remuneration with the policy published in the annual report and accounts. The valuation of benefits received during the year, including share options, other conditional awards and pension benefits, should be provided. Companies should also be transparent about the ratio of their CEO's pay compared to the median, lower and upper quartiles of their employees.

• **Annual bonus**

Bonuses should reflect individual and corporate performance targets which are sufficiently challenging, ambitious and linked to delivering the strategy of the business and performance over the longer-term. Bonuses should be set at an appropriate level of base salary and should be capped. Provisions should be in place to reduce or forfeit the annual bonus where the company has experienced a significant negative event. For large cap issuers, we expect the annual bonus to include deferral of a portion of short-term payments into long-term equity scheme or equivalent. We will also encourage other companies to take this approach.

• **Long-term incentives**

Remuneration policies have over time become more and more complex making them difficult for shareholders to adequately assess. Border to Coast therefore encourages companies to simplify remuneration policies.

Performance-related remuneration schemes should be created in such a way to reward performance that has made a significant contribution to shareholder value. Poorly structured schemes can result in senior management receiving unmerited rewards for substandard performance. This is unacceptable and could adversely affect the motivation of other employees.

Incentives are linked to performance over the longer-term in order to create shareholder value. If restricted stock units are awarded under the plan, the vesting period should be at least three years to ensure that the interests of both management and shareholders are aligned in the long-term. Executives' incentive plans should include both financial and non-financial metrics and targets that are sufficiently ambitious and challenging. Remuneration should be specifically linked to stated business objectives and performance indicators should be fully disclosed in the annual report.

The performance basis of all such incentive schemes under which benefits are potentially payable should be clearly set out each year, together with the actual performance achieved against the same targets. We expect clawback or malus provisions to be in place for all components of variable compensation, taking into account local market standards. We encourage Executive Directors to build a significant shareholding in the company to ensure alignment with the objectives of shareholders. These shares should be held for at least two years post exit.

The introduction of incentive schemes to all employees within a firm is encouraged and supported as this helps all employees understand the concept of shareholder value.

**Directors' contracts**

Directors' service contracts are also a fundamental part of corporate governance considerations. Therefore, all executive directors are expected to have contracts that are based upon no more than twelve months' salary. Retirement benefit policies of directors should be aligned with those of the majority of the workforce, and no element of variable pay should be pensionable. The main terms of the directors' contracts including notice periods on both sides, and any loans or third-party contractual arrangements such as the provision of housing or removal expenses, should be declared within the annual report. Termination benefits should be aligned with market best practice.

**Corporate reporting**

Companies are expected to report regularly to shareholders in an integrated manner that allows them to understand the company's strategic objectives. Companies should be as transparent as possible in disclosures within the report and accounts. As well as reporting financial performance, business strategy and the key risks facing the business, companies should provide additional information on ESG issues that also reflect the directors' stewardship of the company. These could include, for example, information on a company's human capital management policies, its charitable and community initiatives and on its impact on the environment in which it operates.

Every annual report should include an environmental section, which identifies key quantitative data relating to energy and water consumption, emissions and waste etc., explains any contentious issues and outlines reporting and evaluation criteria. It is important that the risk areas reported upon should not be limited to financial risks.

We will encourage companies to report and disclose in line with the Financial Stability Board's Task Force on Climate-related Financial Disclosures (TCFD) recommendations, and the Workforce Disclosure Initiative in relation to human capital reporting.

**Audit**

The audit process must be objective, rigorous and independent if it is to provide assurance to users of accounts and maintain the confidence of the capital markets. To ensure that the audit committee can fulfil its fiduciary role, it should be established as an appropriate committee composition with at least three members who are all independent non-executive directors and have at least one director with a relevant audit or financial background. Any material links between the audit firm and the client need to be highlighted, with the audit committee report being the most appropriate place for such disclosures. Audited financial statements should be published in a timely manner ahead of votes being cast at annual general meetings.

FTSE 350 companies should tender the external audit contract at least every ten years. Reappointment of the same firm with rotation of the audit partner, will not be considered as sufficient. If an auditor has been in place for more than ten fiscal years, their appointment will not be supported. For the wider market, the external audit contract should be put out to tender at least every ten years. Where an auditor has resigned, an explanation should be given. If the accounts have been qualified or there has been non-compliance with legal or regulatory requirements, this should be drawn to shareholders' attention in the main body of the annual report. If the appropriate disclosures are not made, the re-appointment of the audit firm will not be supported.

**Non-Audit Fees**

There is concern over the potential conflict of interest between audit and non-audit work when conducted by the same firm for a client. Companies must therefore make a full disclosure where such a conflict arises. There can be legitimate reasons for employing the same firm to do both types of work, but these need to be identified. As a rule, the re-appointment of auditors will not be supported where non-audit fees are considerably in excess of audit fees in the year under review, and on a three-year aggregate basis, unless sufficient explanation is given in the accounts.

**Political donations**

There are concerns over the reputational risks and democratic implications of companies becoming involved in funding political processes, both at home and abroad. Companies should disclose all political donations, demonstrate where they intend to spend the money and that it is the interest of the company and shareholders. Where these conditions are not met, or there is insufficient disclosure that the money is not being used for political party donations, political donations will be opposed. Any proposals concerning political donations will be opposed.

**Lobbying**

A company should be transparent and publicly disclose direct lobbying, and any indirect lobbying through its membership of trade associations. We will assess shareholder proposals regarding lobbying on a case-by-case basis; however, we will generally support resolutions requesting greater disclosure of trade association and industry body memberships, any payments and contributions made, and requiring alignment of company and trade association values. This includes expectations of companies to be transparent regarding lobbying activities in relation to climate change and to assess whether a company's climate change policy is aligned with the industry association(s) it belongs to.

**Shareholder rights**

As a shareowner, Border to Coast is entitled to certain shareholder rights in the companies in which it invests (Companies Act 2006). Boards are expected to protect such ownership rights.

- **Dividends**

Shareholders should have the chance to approve a company's dividend policy and this is considered best practice. The resolution should be separate from the resolution to receive the report and accounts. Failure to seek approval would elicit opposition to other resolutions as appropriate unless there is a clearly disclosed capital management and allocation strategy in public reporting.

- **Voting rights**

Voting at company meetings is the main way in which shareholders can influence a company's governance arrangements and its behaviour. Shareholders should have voting rights in equal proportion to their economic interest in a company (one share, one vote). Dual share structures which have differential voting rights are disadvantageous to many shareholders and should be abolished. We will not support measures or proposals which will dilute or restrict our rights.

- **Authority to issue shares**

Companies have the right to issue new shares in order to raise capital but are required by law to seek shareholders' authority. Such issuances should be limited to what is necessary to sustain the company and not be in excess of relevant market norms.

- **Disapplication of Pre-emption Rights**

Border to Coast supports the pre-emption rights principle and considers it acceptable that directors have authority to allot shares on this basis. Resolutions seeking the authority to issue shares with and without pre-emption rights should be separate and should specify the amounts involved, the time periods covered and whether there is any intention to utilise the authority.

**Share Repurchases**

Border to Coast does not necessarily oppose a company re-purchasing its own shares but it recognises the effect such buy backs might have on incentive schemes where earnings per share measures are a condition of the scheme. The impact of such measures should be reported on. It is important that the directors provide a full justification to demonstrate that a share repurchase is the best use of company resources, including setting out the criteria for calculating the buyback price to ensure that it benefits long-term shareholders.

**Memorandum and Articles of Association**

Proposals to change a company's memorandum and articles of association should be supported if they are in the interests of Border to Coast, presented as separate resolutions for each change, and the reasons for each change provided.

If proposals to adopt new articles or amend existing articles might result in shareholders' interests being adversely affected, we will oppose the changes.

**Mergers and acquisitions**

Border to Coast will normally support management if the terms of the deal will create rather than destroy shareholder value and makes sense strategically. Each individual case will be considered on its merits. Seldom will compliance with corporate governance best practice be the sole determinant when evaluating the merits of merger and acquisition activity, but full information must be provided to shareholders on governance issues when they are asked to approve such transactions. Recommendations regarding takeovers should be approved by the full board.

**Articles of Association and adopting the report and accounts**

It is unlikely that Border to Coast will oppose a vote to adopt the report and accounts simply because it objects to them per se; however, there may be occasions when we might vote against them to lodge dissatisfaction with other points raised within this policy statement. Although it is a blunt tool to use, it can be an effective one especially if the appropriate Chair or senior director is not standing for election.

**Virtual Shareholder General Meetings**

Many companies are considering using electronic means to reach a greater number of their shareholders. An example of this is via a virtual annual general meeting of shareholders where a meeting takes place exclusively using online technology, without a corresponding in-person meeting. There are some advantages to virtual only meetings as they can increase shareholder accessibility and participation; however, they can also remove the one opportunity shareholders have to meet face to face with the Board to ensure they are held to account. We

would expect an electronic meeting to be held in tandem with a physical meeting. If extraordinary circumstances rule out a physical meeting, we expect the company to clearly outline how shareholders' rights to participate by asking questions and voting during the meeting are protected. Any amendment to a company's Articles to allow virtual only meetings without these safeguards will not be supported.

**Shareholder Proposals**

We will assess shareholder proposals on a case-by-case basis. Consideration will be given as to whether the proposal reflects Border to Coast's Responsible Investment policy, is balanced and worded appropriately, and supports the long-term economic interests of shareholders.

Shareholder proposals are an important tool to improve transparency. Therefore, we will, when considered appropriate, support resolutions requesting additional reporting or reasonable action that is in shareholders' best interests on material business risk, ESG topics, climate risk and lobbying.

**Human rights**

When considering human rights issues, we believe that all companies should abide by the UN Global Compact Principles and the OECD Guidelines for Multinational Enterprises. We expect companies exposed to human rights issues to have adequate due diligence processes in place to identify risks across their business and supply chain, in line with the UN Guiding Principles on Business and Human Rights. Where a company is involved in significant social controversies and at the same time is assessed as having poor human rights due diligence, we will vote against the most accountable board member or the report and accounts.

**Climate change**

Climate change is a systemic risk which poses significant investment risks, but also opportunities, with the potential to impact long-term shareholder value. We believe it is vital we fully understand how companies are dealing with this challenge, and feel it is our duty to hold the boards of our investee companies to account.

Our primary objective from climate related voting and engagement is to encourage companies to adapt their business strategy in order to align with a low carbon economy and reach net zero by 2050 or sooner. The areas we consider include climate governance, strategy and Paris alignment, command of the climate subject, board oversight and incentivisation, TCFD disclosures and scenario planning, scope 3 emissions and the supply chain, capital allocation alignment, climate accounting, a just transition and exposure to climate-stressed regions.

For companies in high emitting sectors that do not sufficiently address the impact of climate change on their businesses, we will oppose the agenda item most appropriate for that issue. To that end, the nomination of the accountable board member takes precedence. Companies that are not making sufficient progress in mitigating climate risk are identified using recognised industry benchmarks including the Transition Pathway Initiative (TPI) and the Climate Action 100+ (CA100+) Net Zero Benchmark. We will vote against the Chair (or relevant agenda item) where companies are scored 2 or lower by the TPI. In addition, we will vote against the Chair for Oil and Gas companies scoring 3 or lower. Where a company covered by CA100+ Net Zero Benchmark fails indicators of the Benchmark, which includes a net zero by 2050 (or

sooner) ambition, and short, medium and long-term emission reduction targets, we will also vote against the Chair of the Board.

Additionally, an internally developed framework is used to identify companies with insufficient progress on climate change.

Banks will play a pivotal role in the transition to a low carbon economy, and we will therefore be including the sector when voting on climate-related issues. We will assess banks using the IIGCC/TPI framework and will vote against the Chair of the Sustainability Committee, or the agenda item most appropriate, where a company materially fails the first four indicators of the framework.

We support a just transition towards a low-carbon economy which should be inclusive and acknowledge existing global disparities. We recognise that not all countries are at the same stage in their decarbonisation journey and need to consider the different transition timelines for emerging market economies. Therefore, in the interests of a just transition we will assess the implications when considering our voting decisions on a case-by-case basis.

**Investment trusts**

Border to Coast acknowledges that issues faced by the boards of investment companies are often different to those of other listed companies. The same corporate governance guidelines do not necessarily apply to them; for example, investment companies can operate with smaller boards. However, the conventions applying to audit, board composition and director independence do apply.

The election of any representative of an incumbent investment manager onto the board of a trust managed or advised by that manager will not be supported. Independence of the board from the investment manager is key, therefore management contracts should not exceed one year and should be reviewed every year. In broad terms, the same requirements for independence, diversity and competence apply to boards of investment trusts as they do to any other quoted companies.

We may oppose the adoption of the report and accounts of an investment trust where there is no commitment that the trust exercises its own votes, and there is no explanation of the voting policy.

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# Climate Change Policy

## Border to Coast Pensions Partnership

Policy Owner: The Chief Investment Officer
Live from: January 2023

# Climate Change Policy

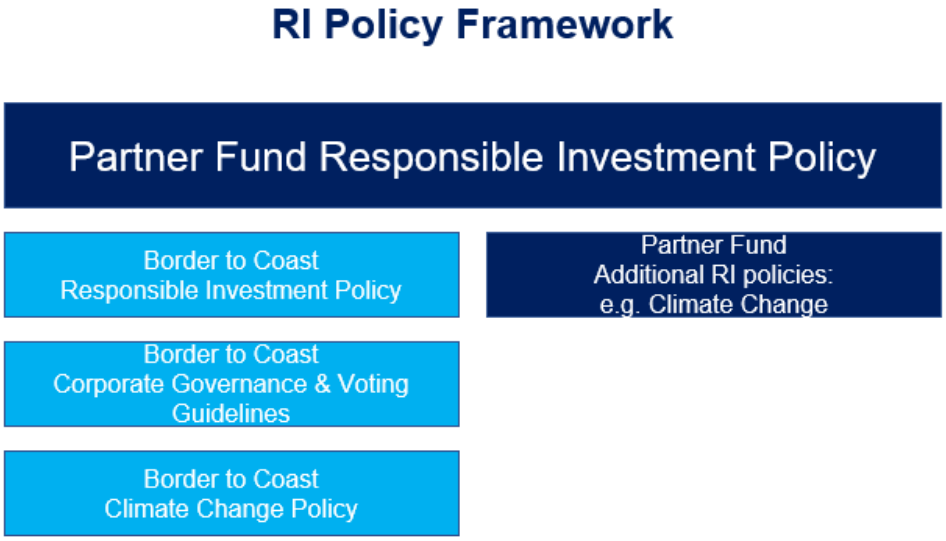
This Climate Change Policy details the approach that Border to Coast Pensions Partnership will follow in fulfilling its commitment to managing the risks and opportunities associated with climate change across the assets managed on behalf of our Partner Funds.

## 1 Introduction

Border to Coast Pensions Partnership Ltd is an FCA regulated and authorised investment fund manager (AIFM), operating investment funds for its eleven shareholders which are Local Government Pension Scheme funds (Partner Funds). As a customer-owned, customer-focused organisation, our purpose is to make a sustainable and positive difference to investment outcomes for our Partner Funds. Pooling gives us a stronger voice and, working in partnership with our Partner Funds and across the asset owner and asset management industry, we aim to deliver cost effective, innovative and responsible investment thereby enabling sustainable, risk-adjusted performance over the long-term.

### 1.1 Policy framework

Border to Coast has developed this Climate Change Policy in collaboration with our Partner Funds. It sits alongside the Responsible Investment Policy and other associated policies, developed to ensure clarity of approach and to meet our Partner Funds' fiduciary duty and fulfil their stewardship requirements. This collaborative approach resulted in the RI policy framework illustrated below with the colours demonstrating ownership of the various aspects of the framework:




## 2 Policy overview

### 2.1 Our views and beliefs on climate change

The world is warming, the climate is changing, and the scientific consensus is that this is due to human activity, primarily the emissions of carbon dioxide (CO2) from burning fossil fuels. Our planet has warmed by over 1ºC relative to the pre-industrial average temperature, and we are starting to experience the significant effects of this warming. This changes the world in which we live, but also the world in which we invest.

Atmospheric CO2 is at unprecedented levels in human history. Further warming will occur, and so adaptation will be required. The extent of this further warming is for humankind to collectively decide, and the next decade is critical in determining the course. If the present course is not changed and societal emissions of CO2 and other greenhouse gases (GHG) are not reduced to

mitigate global warming, scientists have suggested that global society will be catastrophically disrupted beyond its capability to adapt, with material capital market implications.

Recognising the existential threat to society that unmitigated climate change represents, in 2015, the nations of the world came together in Paris and agreed to limit global warming to 2ºC and to pursue efforts to limit the temperature increase to 1.5ºC. A key part of the Paris Agreement was an objective to make finance flows consistent with a pathway towards low GHG emissions and climate resilience. This recognises the critical role asset owners and managers play, reinforcing the need for us and our peers to drive and support the pace and scale of change required.

In 2018, the Intergovernmental Panel on Climate Change (IPCC) published a special report, "Global warming of 1.5ºC"[1], which starkly illustrated how critical successful adaptation to limit global warming to 1.5ºC is. The report found that limiting global warming to 1.5°C would require "rapid and far-reaching" transitions in land, energy, industry, buildings, transport, and cities. This includes a need for emissions of carbon dioxide to fall by approximately 45 percent from 2010 levels by 2030, and reach 'net zero' around 2050. We support this scientific consensus; recognising that the investments we make, in every asset class, will both impact climate change and be impacted by climate change. Urgent collaborative action is needed to reach net zero greenhouse gas emissions globally by 2050, and everyone has a part to play in ensuring the goal is met.

## 2.2 Why climate change is important to us

The purpose of embedding sustainability into our actions is twofold: we believe that considering sustainable measures in our investment decisions will increase returns for our Partner Funds, in addition to positively impacting the world beneficiaries live in.

Our exposure to climate change comes predominantly from the investments that we manage on behalf of our Partner Funds. We develop and operate a variety of internally and externally managed investments across a range of asset classes both in public and private markets for our Partner Funds to invest in.

We try to mitigate these exposures by taking a long-term approach to investing as we believe that businesses that are governed well and managed in a sustainable way are more resilient, able to survive shocks and have the potential to provide better financial returns for investors. Climate change can have a material impact on the value of financial assets and on the long-term performance of investments, and therefore needs to be considered across all asset classes in order to better manage risk and generate sustainable, long-term returns.

Climate change is a systemic risk which poses significant investment risks, but also opportunities, with the potential to impact long-term shareholder value. There are two types of risks that investors are exposed to, the physical risk of climate change impacts and the transitional risk of decarbonising economies, both can also impact society resulting in social risks.

Transition to a low carbon economy will affect some sectors more than others, and within sectors there are likely to be winners and losers, which is why divesting from and excluding entire sectors may not be appropriate. We actively consider how climate change, the shifting regulatory environment and potential macroeconomic impact will affect investments. We believe that we have the responsibility to contribute and support the transition to a low carbon economy in order to positively impact the world in which pension scheme beneficiaries live in.

[1] https://www.ipcc.ch/sr15/

In addition, the transition to a low-carbon economy will undoubtedly affect the various stakeholders of the companies taking part in the energy transition. A just transition refers to the integration of the social dimension in the net zero transition and is part of the Paris Agreement, the guidelines adopted by United Nations' International Labour Organization (ILO) in 2015, and the European Green Deal. These stakeholders include the workforce and the communities in which the companies' facilities are located. We expect companies to consider the potential stakeholder risks associated with decarbonisation.

Our climate change strategy is split into four pillars**: Identification and Assessment, Investment Strategy, Engagement and Advocacy, and Disclosures and Reporting.** We will continue to monitor scientific research in this space; evolving and adapting our strategy in order to best respond to the impacts of climate change.

## 2.3 How we execute our climate change strategy

*We integrate climate change risks within our wider risk management framework and have robust processes in place for the identification and ongoing assessment of climate risks.*

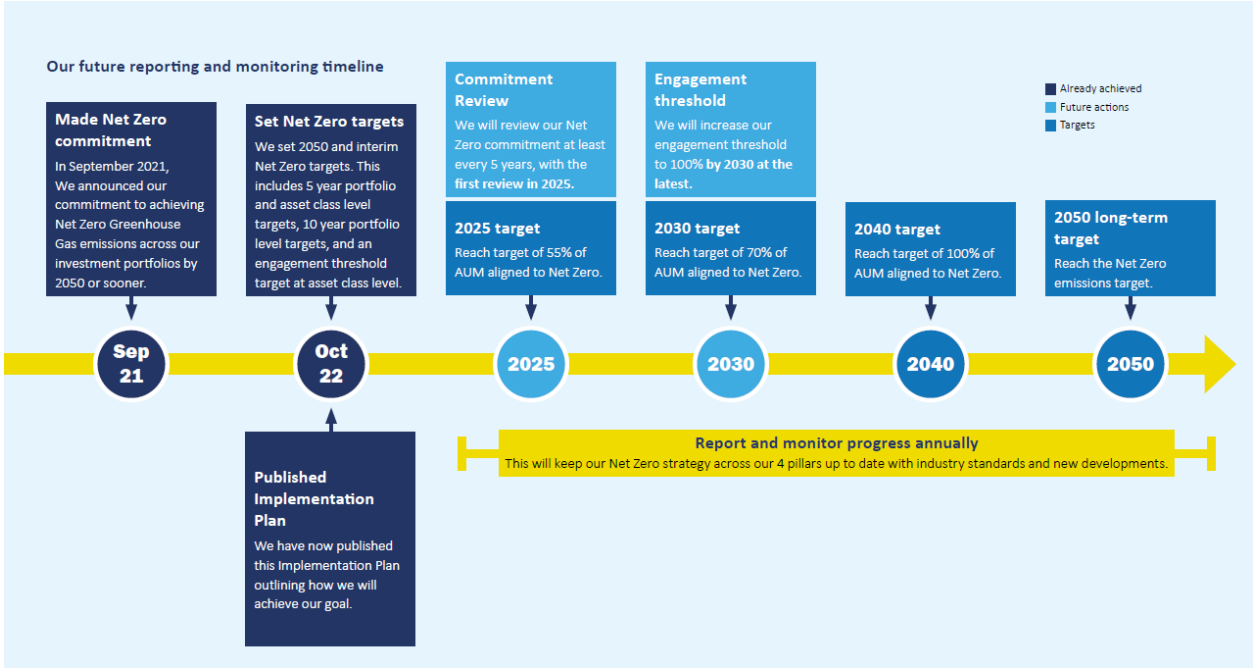
*We consider climate change risks and opportunities within our investment decision making process.*


*Border to Coast, as a large investor, aims to influence companies to adapt and articulate their climate change strategy, to enable them to be well prepared for the transition to a low carbon economy. This in turn will improve investment outcomes.*

*We are committed to transparency regarding our climate change issues and activities.*

## 2.4 Roadmap

The roadmap demonstrates the future reporting and monitoring timeline for implementing our Net Zero plan.




# 3 Climate change strategy and governance

## 3.1 Our ambition – Net Zero

Our climate change strategy recognises that there are financially material investment risks and opportunities associated with climate change which we need to manage across our investment portfolios. We have therefore committed to a net zero carbon emissions target by 2050 at the latest for our assets under management, in order to align with efforts to limit temperature increases to under 1.5ºC.

We recognise that assessing and monitoring climate risk is under constant development, and that tools and underlying data are developing rapidly. There is a risk of just focusing on carbon emissions, a backwards looking metric, and it is important to ensure that metrics we use reflect the expected future state and transition plans that companies have in place or under development. We will continue to assess the metrics and targets used as data and industry standards develop.

As a supporter of the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD), we continue to embed climate change into our investment process and risk management systems, reporting annually on our progress in the TCFD report.

To demonstrate our Net Zero commitment, we joined the Net Zero Asset Manager initiative (NZAM) pledging to decarbonise investment portfolios by 2050 or sooner.

We are using the Net Zero Investment Framework to support us in implementing our strategy to being Net Zero by 2050.We have developed an implementation plan which sets out the four pillars of our approach: governance and strategy, targets and objectives, asset class alignment, and stewardship and engagement. We believe success across these four elements will best enable us to implement the change needed. The Net Zero Implementation Plan can be found on our website.

## 3.2 Governance and implementation

We take a holistic approach to the integration of sustainability and responsible investment; it is at the core of our corporate and investment thinking. Sustainability, which includes RI is considered

and overseen by the Board and Executive Committee. We have defined policies and procedures that demonstrate our commitment to managing climate change risk, including this Climate Change Policy, our Responsible Investment Policy and Corporate Governance & Voting Guidelines which can be found on our website.

### 3.3 Division of roles and responsibilities

The Board determines the Company's overall strategy for climate change and with support from the Board Risk Committee, more broadly oversees the identification and management of risk and opportunities. The Board is responsible for the overarching oversight of climate related considerations as part of its remit with respect to Border to Coast's management of investments. The Board approves the Responsible Investment strategy and policies, which includes the Climate Change Policy. Updates on Responsible Investment are presented to the Board at regular intervals, this includes activities related to climate change. The Board reviews and approves the TCFD report prior to publication.

The Climate Change Policy is owned by Border to Coast and created after collaboration and engagement with our Partner Funds. We will, where needed, take appropriate advice in order to further develop and implement the policy.

The Chief Investment Officer (CIO) is responsible for the implementation and management of the Climate Change Policy, with oversight from the Investment Committee, which is chaired by the Chief Executive Officer. Each year the CIO reviews the implementation of the policy and reports any findings to the Board. The policy is reviewed annually, taking into account evolving best practice, and updated as needed.

The Investment Team, which includes a dedicated Responsible Investment Team, works to identify and manage environmental, social and governance (ESG) issues including climate change. Climate change is one of our responsible investment priorities and sits at the core of our sustainability dialogue. We are on the front foot with UK, European and Global climate change regulation, horizon scanning for future regulation and actively participate in discussions around future climate policy and legislation through our membership of industry bodies.

### 3.4 Training

Border to Coast's Board and colleagues maintain appropriate skills in responsible investment, including climate change, maintaining and increasing knowledge and understanding of climate change risks, available risk measurement tools, and policy and regulation. Where necessary expert advice is taken from suitable climate change specialists to fulfil our responsibilities. We also offer our Partner Funds training on climate change related issues.

### 3.5 Regulatory change management

Regulatory change horizon scanning is a key task undertaken by the Compliance function, which regularly scans for applicable regulatory change. This includes FCA, associated UK financial services regulations, and wider regulation impacting financial services including Responsible Investment, and climate change. The relevant heads of functions and departments, as subject matter experts, also support the process and a tracker is maintained to ensure applicable changes are appropriately implemented.

## 4 Identification and assessment

### 4.1 How we identify climate-related risks

The Identification and Assessment pillar is a key element of our climate change strategy. Our investment processes and approach towards engagement and advocacy reflect our desire to culturally embed climate change risk within our organisation and drive change in the industry.

The risk relating to climate change is integrated into the wider Border to Coast risk management framework. The Company operates a risk management framework consistent with the principles

of the 'three lines of defence' model. Primary responsibility for risk management lies with the Investment and Operations teams. Second line of defence is provided by the Risk and Compliance functions, which report to the Board Risk Committee, and the third line of defence is provided by Internal Audit, which reports to the Audit Committee and provides risk-based assurance over the Company's governance, risk and control framework.

We consider both the transition and physical risks of climate change. The former relates to the risks (and opportunities) from the realignment of our economic system towards low-carbon, climate-resilient and carbon-positive solutions (e.g. via regulations). The latter relates to the physical impacts of climate change (e.g. rising temperatures, changing precipitation patterns, increased risk arising from rising sea levels and increased frequency and severity of extreme weather events).

### 4.2 How we assess climate-related risks and opportunities

We currently use a number of different tools and metrics to measure and monitor climate risk across portfolios. We acknowledge that this is a rapidly evolving area, and we are developing our analytical capabilities to support our ambition. Carbon data is not available for all equities as not all companies disclose, therefore there is a reliance on estimates. Data is even more unreliable for fixed income and is only just being developed for Private Markets. We will work with our managers and the industry to improve data disclosure and transparency in this area.

We utilise third party carbon portfolio analytics to conduct carbon footprints across equity and fixed income portfolios, analysing carbon emissions, carbon intensity and weighted carbon intensity and fossil fuel exposure when assessing carbon-related risk, on a quarterly basis. The Transition Pathway Initiative (TPI)[2] tool and climate Action 100+ Net Zero Company Benchmark analysis is used to support portfolio managers in decision making with respect to net zero assessments. We use research from our partners and specific climate research, along with information and data from initiatives and industry associations we support.

We continue to develop climate risk assessments for our listed equity investments that combines several factors to assess overall whether a company is aligned with the Paris Agreement (to limit global warming to 2ºC), so that we can both engage appropriately with the company on their direction of travel and also track our progress. This is an iterative process, recognising that data, tools and methodologies are developing rapidly.

We understand that scenario analysis is useful for understanding the potential risks and opportunities attached to investment portfolios and strategies due to climate change. We note that scenario analysis is still developing, with services and products evolving as data quality and disclosure from companies continues to improve. During 2022 we will be evaluating our third-party scenario analysis tools and conducting analysis using a number of different scenarios.

## 5 Investment strategy

### 5.1 Our approach to investing

We believe that climate change should be systematically integrated into our investment decision-making process to identify related risks and opportunities. This is critical to our long-term objective of improving investment outcomes for our Partner Funds.

Border to Coast offers Partner Funds a variety of internally and externally managed investment funds covering a wide-ranging set of asset classes with different risk-return profiles. Partner Funds then choose the funds which support their strategic asset allocation.

[2] The Transition Pathway Initiative ('TPI') is a global initiative led by asset owners and supported by asset managers. Aimed at investors, it is a free-to-use tool that assesses how prepared companies are for the low carbon transition.

Partner Funds retain responsibility for strategic asset allocation and setting their investment strategy, and ultimately their strategic exposure to climate risk. Our implementation supports Partner Funds to deliver on their fiduciary duty of acting in the best interests of beneficiaries.

We consider climate change risks and opportunities in the process of constructing and developing investment funds. Engaging with our investee companies and fund managers will be a key lever we will use to reach our Net Zero goals, but we also recognise the role of screening, adjusting portfolio weights, and tilted benchmarks in decarbonising our investments.

Climate change is also considered during the external manager selection and appointment process. We monitor and challenge our internal and external managers on their portfolio holdings, analysis, and investment rationale in relation to climate-related risks.

We monitor a variety of carbon metrics, managing climate risk in portfolios through active voting and engagement, whilst also looking to take advantage of the long-term climate-related investment opportunities.

We believe in engagement rather than divestment and that by doing so can effect change at companies. Our investment approach is not to divest or exclude entire sectors, however there may be specific instances when we will look to sell or not invest in some industries based on investment criteria, the investment time horizon and if there is limited scope for successful engagement. Using these criteria and due to the potential for stranded assets, we interpret this to cover public market companies with 70% of revenue derived from thermal coal and oil sands and will therefore not invest in these companies. For illiquid assets a revenue threshold of 25% is in place, this is due to the long-term nature of these investments. Any companies excluded will be monitored with business strategies and transition plans assessed for potential reinstatement.

### 5.2 Acting within different asset classes

We integrate climate change risks and opportunities into our investment decisions within each asset class. The approach we take for each asset class is tailored to the nature of the risk and our investment process for that asset class. The timeframe for the impact of climate change can vary, leading to differing risk implications depending on the sector, asset class and region. These variations are considered at the portfolio level. This policy gives our overall approach and more detail on the processes and analysis can be found in our annual TCFD report.

Climate risks and opportunities are incorporated into the stock analysis and decision-making process for **listed equities** and **fixed income**. Third-party ESG and carbon data are used to assess individual holdings. We also use forward looking metrics including the TPI ratings, Climate Action 100+ (CA100+) Net Zero Company Benchmark and the Science Based Targets initiative (SBTi) to assess companies' transition progress. Internal, sell-side and climate specific research, and engagement information are also utilised. Carbon footprints are conducted relative to the benchmark. Climate scenario analysis is also conducted for listed equity and fixed income portfolios using third-party data.

For our **alternative funds**, ESG risks, which includes climate change, are incorporated into the due diligence process including ongoing monitoring. Across both funds and co-investments, we consider the impact of carbon emissions and climate change when determining our asset allocation across geographies and industries. We assess and monitor if our GPs track portfolio metrics in line with TCFD recommendations. Climate change presents real financial risks to portfolios but also provides opportunities with significant amounts of private capital required to achieve a low-carbon transition. We have therefore launched a Climate Opportunities offering and will be facilitating increased investment in climate transition solutions taking into account Partner Fund asset allocation decisions.

To meet our commitment to reach net zero carbon emissions by 2050 or sooner, we have developed targets for our investments in line with the Net Zero Investment Framework (NZIF). We have set targets at two levels: portfolio level, which refers to our combined total investments in the asset classes covered by this plan, and asset class level, which refers to our investments split by investment type (i.e. listed equity, corporate fixed income etc). This covers 60% of our

AUM (at 31/03/2022) and we will look to increase coverage across the rest of our investments when appropriate.

### 5.3 Working with External Managers

Assessing climate risk is an integral part of the External Manager selection and appointment process. It also forms part of the quarterly screening and monitoring of portfolios and the annual manager reviews. We monitor and review our fund managers on their climate change approach and policies. Where high emitting companies are held as part of a strategy managers are challenged and expected to provide strong investment rationale to substantiate the holding. We expect managers to engage with companies in line with our Responsible Investment Policy and to support collaborative initiatives on climate, and to report in line with the TCFD recommendations. In addition, we encourage managers to make a firm wide net zero commitment. We will work with External Managers to implement specific decarbonisation parameters for their mandate. We will monitor our managers' carbon profiles and progress against targets on a quarterly basis and as part of our annual reviews. We will also consider the suitability of those targets on an annual basis. Where carbon profiles are above target, this will act as a prompt for discussion with the manager to understand why this has occurred, any appropriate actions to be taken to bring them back to target, and the timescales for any corrective action.

## 6 Engagement and advocacy

As a shareholder, we have the responsibility for effective stewardship of all companies or entities in which we invest, whether directly or indirectly. We take the responsibilities of this role seriously, and we believe that effective stewardship is key to the success for our climate ambition. As well as engaging with our investee companies it is important that we engage on systemic risks, including climate change, with policymakers, regulators and standard setters to help create a stable environment to enhance long-term investment returns.

### 6.1 Our approach to engagement

As a long-term investor and representative of asset owners, we will hold companies and asset managers to account regarding environmental, social and governance issues, including climate change factors, that have the potential to impact corporate value. We support engagement over divestment as we believe that constructive dialogue with companies in which we invest is more effective than excluding companies from the investment universe, particularly with regard to promoting decarbonisation in the real world. If engagement does not lead to the desired results, we have an escalation process which forms part of our RI Policy, this includes adverse voting instructions on related AGM voting items, amongst other steps. We practice active ownership through voting, monitoring companies, engagement and litigation. Through meetings with company directors, we seek to work with and influence investee companies to encourage positive change. Climate is one of our key engagement themes. We believe it is vital we fully understand how companies are dealing with this challenge, and feel it is our duty to hold the boards of our investee companies to account.

Our primary objective from climate related engagement is to encourage companies to adapt their business strategy in order to align with a low carbon economy and reach net zero by 2050 or sooner. The areas we consider in our engagement activities include climate governance; strategy and Paris alignment; command of the climate subject; board oversight and incentivisation; TCFD disclosures and scenario planning; scope 3 emissions and the supply chain; capital allocation alignment, a just transition and exposure to climate-stressed regions.

In order to increase our influence with corporates and policy makers we work collaboratively with other like-minded investors and organisations. This is achieved through actively supporting investor RI initiatives and collaborating with various other external groups on climate related issues, including the Institutional Investors Group on Climate Change (IIGCC), CA100+, the UN-supported Principles for Responsible Investment, the Local Authority Pension Fund Forum and the TPI.

In particular, we are currently focusing on the following actions:

- When exercising our voting rights for companies in high emitting sectors that do not sufficiently address the impact of climate change on their businesses, we will oppose the agenda item most appropriate for that issue. To that end, the nomination of the accountable board member takes precedence. Companies that are not making sufficient progress in mitigating climate risk are identified using recognised industry benchmarks including the TPI and CA 100+ Net Zero Company Benchmark. Additionally, an internally developed framework is used to identify companies with insufficient progress on climate change. Our voting principles are outlined in our Corporate Governance & Voting Guidelines. We are also transparent with all our voting activity and publish our quarterly voting records on our website.
- Support climate-related resolutions at company meetings which we consider reflect our Climate Change Policy. We will co-file shareholder resolutions at company AGMs on climate risk disclosure and lobbying, after conducting due diligence, that we consider to be of institutional quality and consistent with our Climate Change Policy.
- Engage with companies in relation to business sustainability and disclosure of climate risk in line with the TCFD recommendations.
- Encourage companies to publish targets and report on steps taken to reduce greenhouse gas emissions.
- Work collaboratively with other asset owners in order to strengthen our voice and make a more lasting impact for positive change. Engagement is conducted directly, through our engagement partner and through our support of collaborations. We also expect our external asset managers to engage with companies on climate-related issues.
- Use the IIGCC's Net Zero Stewardship Toolkit to develop our net zero stewardship strategy.
- Use carbon footprints the TPI toolkit, CA100+ Net Zero Company Benchmark and SBTi to assess companies and inform our engagement and voting activity. This will enable us to prioritise shareholder engagement, set timeframes and monitor progress against our goals.
- Engage collaboratively alongside other institutional investors with policy makers through membership of the IIGCC. We will engage with regulators and peer groups to advocate for improved climate related disclosures and management in the pensions industry and wider global economy.

## 7 Disclosures and reporting

Transparency is one of our key organisational values. We disclose our RI activity on our website, publishing quarterly stewardship and voting reports, annual RI & Stewardship reports and our TCFD report. We are committed to improving transparency and reporting in relation to our RI activities, which include climate change related activities.

We will keep our Partner Funds and our stakeholders informed on our progress of implementing the Climate Change Policy and Net Zero commitment, as well as our exposure to the risks and opportunities of climate change. This will include:

- Reviewing annually how we are implementing this policy with findings reported to our Board and Partner Funds. report in line with the TCFD recommendations on an annual basis, including reporting on the actions undertaken with regards to implementation of this policy and progress against our Net Zero commitment.
- We will disclose our voting activity and report on engagement and RI activities, including climate change, to the Partner Funds quarterly and in our annual RI & Stewardship report.

- Disclose climate metrics and targets that help to analyse the overall exposure of our portfolios to the risks and opportunities presented by climate mitigation and adaption.

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