

**Local Pension Board**

**14 March 2022**

**Regulatory Update**



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## **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 Committee 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 Committee 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. 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 is currently finalising its policy approach to Employer Flexibilities.

### **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 2022 Valuation process.

### **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 is currently considering an impact investment in the North East which would support SME finance in the region. Additionally, as part of their strategic plan BCPP propose to launch an impact investment fund during 2023.
- 16 The LGPS Scheme Advisory Board have indicated that in the context of ‘local’ the whitepaper refers to UK rather than local to a particular LGPS fund. The Board 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 summer consultation which is expected to also include the outstanding climate risk and reporting regulations and the 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.

### **SAB Review – Tier 3 Employers**

- 19 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.
- 20 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.
- 21 The project is no longer part of SAB’s current projects. Officers will continue to monitor the position.

### **SAB Review – Good Governance in the LGPS**

- 22 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)
- 23 SAB have recently completed their report on Good Governance and submitted an Action Plan to DLUHC to take the recommendations of the project forward. A more detailed update to Committee, and overview of the recommendations proposed to DLUHC will be provided in due course.

## **SAB Review – Responsible Investment Guidance**

- 24 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.
- 25 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>.
- 26 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.

## **Cost Control Mechanism & Review**

- 27 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.
- 28 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.
- 29 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.

- 30 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.
- 31 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.
- 32 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.
- 33 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.
- 34 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**

- 35 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.

- 36 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. If made law, it would enable the LGPS to make provision for final salary benefits to be paid in respect of the remedy period. It is expected that the Bill will gain royal assent in March.
- 37 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.
- 38 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.

## **Non- LGPS Specific Matters**

### **Public Sector Exit Payments Caps**

- 39 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.
- 40 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.
- 41 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 (known 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 or loss of office.
- 42 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.
- 43 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.
- 44 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 Local Pension Board will be updated as further details emerge.

### **Mandatory TCFD Reporting**

- 45 Using powers granted under the Pension Schemes Bill, the Department for Works and Pensions (DWP) has 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.
- 46 Whilst the regulations will not apply to the LGPS it is expected that DLUHC will bring forward similar proposals requiring TCFD disclosures in the LGPS. At the time of writing, consultation on such requirements in the LGPS is expected soon.
- 47 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/>.
- 48 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.
- 49 A BCPP procurement for carbon data, including forward-looking metrics (scenario analysis), taking place this year 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.
- 50 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 Committee on the details of DLUHC's anticipated consultation on TCFD (now expected in the summer), and the availability of data through BCPP. The Local Pension Board will be updated as further details emerge.

## **UK Stewardship Code 2020**

- 51 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.

- 52 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 comprises a set of 12 Principles which require reporting and disclosure on an 'apply and explain' basis.
- 53 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.
- 54 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 Committee in due course.

### **Consultation on Minimum Pension Age**

- 55 A consultation entitled 'Increasing the normal minimum pension age: consultation on implementation' was launched on 11th February and ran until 22nd April 2021. The consultation proposes 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 than the State Pension Age. The minimum age a scheme member can currently retire voluntarily in the LGPS is 55.

### **TPR Code of Practice**

- 56 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.
- 57 The Regulator plans to carry out a full review of the comments received through the consultation which it will consider carefully. TPR does not now expect to lay the new code before Parliament before Spring 2022 so it is unlikely that the Code will become effective

before Summer 2022. It is therefore proposed that the Board's existing Workplan addressing the existing 'Public Service Pension Code of Practice' is rolled forward.

- 58 A copy of the rolled forward workplan and a summary of the Regulator's proposed Consolidated Code are included in Appendix 1 and 2.

### **Boycotts, Divestment and Sanctions**

- 59 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.
- 60 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.
- 61 The Public Services Pensions Bill is expected to gain royal assent in March, at which time the amendment may be subject to further debate. Members of the Board will be kept up to date, as the matter progresses.

### **Pension Scams and new Restrictions on Transfers**

- 62 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.
- 63 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 is included in Appendix 3. 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.

**Author(s)**

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