Local Pension Board

24 June 2024

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 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 Board.

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. On 17 October 2023, the SAB Chair wrote to DLUHC for an update with progress with the implementation of New Fair Deal in LGPS. 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.

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, which was considered and approved by the Committee.

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 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 has commenced implementation of its approach to GMP Rectification, with a separate report previously presented to the Board.

14 This work was brought to a conclusion in October 2023, with the Fund communicating with affected pensioners ahead of October pensions payroll. As previously highlighted to the Board and Committee in March 2023, individual overpayments would be exacerbated by the April 2023 pensions increase of 10.10%. However, around 550 pensions in payment were adjusted and despite this higher than usual rate of inflationary increase, 83% of pensions changed by no more than £10 per month.

15 The total amount of arrears paid to underpaid pensioners was c£41k whilst the total amount of overpayments written-off by the Fund was c£171k. Both the value of arrears and value of write offs compare favourably with initial modelling. The number of pensions in payment requiring rectification were lower than initially anticipated at the beginning of the project, and less than amounts experienced by similarly sized LGPS Funds who have completed their rectification. This is at least in part, due to accurate historic record keeping.

Levelling Up White Paper – LGPS Local Investment Plans

16 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”.

17 The Fund recently finalised an impact investment in the North-East which will support SME finance in the region, which is understood to meet the definitions set out in the whitepaper. Meanwhile, as part of their strategic plan, BCPP are progressing development of impact investing capabilities which will consider opportunities to support local investment decisions.

18 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 consultation which is expected to also include statutory pooling guidance.

19 Separately, On 9 December 2022, the Chancellor of the Exchequer announced a set of reforms (which were previously shared with the Committee) intended to drive growth and competitiveness in the financial services sector. It is also expected that there will be a consultation on new guidance on Local Government Pension Scheme asset pooling.

DLUHC Consultation – LGPS: Next Steps on Investments

20 A detailed briefing was considered by both the Pension Fund Committee and Local Pension Board in September 2023, following the launch of DLHC's consultation 'LGPS: Next Steps on Investments'.

21 Since 2015, the Pension Fund has worked in collaboration with 10 local authority partners to pool its c£3.5bn assets through its chosen pooling company, Border to Coast Pension Partnership. As of summer 2023, the Fund has pooled all of the liquid assets in its investment strategy. The Fund has benefitted from the availability of a Private Markets programme through the pool, extensive Responsible Investment resource, and has generated cost savings which are reported annually in the Fund's Annual Report and Accounts.

22 More widely however, progress on pooling has stalled across much of England and Wales. Despite a clear policy intention to deliver pooling, in the absence of guidance or regulation, many Administering Authorities have chosen to retain their assets outside of their respective pool.

23 In light of the lack of progress, DLUHC consulted on pooling consolidation, setting Administering Authorities a deadline of 2025 to pool liquid assets and introducing enhanced reporting requirements on pooling progress. The consultation proposed that a smaller number of larger pools would provide greater economies of scale, and that greater collaboration should be pursued. In a wide-ranging consultation, the government also proposed directing LGPS Funds in the way in which they invest. In particular, targets were proposed for allocations to investments which support UK Levelling Up and allocations to Private Markets more generally.

24 Following consultation with the Committee and Board, the Fund responded to the consultation and separately, worked with its pooling partners to formulate a collective response.

25 Subsequently, on 22 November, DLUHC responded to the consultation. The Fund is considering the consultation response individually, and collectively with its pooling Partners. The SAB is continuing to read and absorb the response, and a SAB update will

follow soon. On January 16 SAB representatives met the minister for local government, Simon Hoare MP, in person. Topics discussed included McCloud; the next steps on investments consultation; as well as government progress on the Good Governance recommendations and on the climate risk reporting consultation response.

26 The Minister later went on record at the LGA conference in February expressing that he was giving “serious thoughts to the prudence of retaining 87 LGPS funds”; and subsequently in discussion with the All-Party Parliamentary Group (APPG) for Local Authority Pension Funds on 22 February, the Minister outlined the intention to explore the pros and cons of 87 Administering Authorities in England and Wales, recognising that it “may well be that 87 is the right number”. The APPG discussion is available online at the following link https://www.youtube.com/watch?v=p8fPHqVUYN8.

27 On 15 May, the Minister wrote to all Administering Authorities in England asking that they respond by July 19 setting out their responses to a number of questions. The questions relate to the completion of pension asset pooling by the March 2025 deadline, as well as to how funds ensure that they are run efficiently, with appropriate governance structures in place.

28 Funds are specifically asked whether they could achieve long-term savings and efficiencies if they were to become part of a larger fund through merger or creation of a larger pensions authority. The council will respond in its capacity as Administering Authority of the Pension Fund. A copy of the letter is included in Appendix 3.

29 Subsequently, Officers of the Fund were invited in person to a roundtable with the Minister, to discuss related matters.

30 Once party manifestos are published, Officers will check whether any party outlines policy implications for the LGPS.

Mandatory TCFD Reporting

31 The Board 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.

32 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.

33 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/.

34 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.

35 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.

36 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).

37 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 (previously shared with the Committee) closed on 24 November 2022. As discussed with the Committee previously, Officers prepared a response in consultation with the Chair and Vice Chair of the Committee. A copy of the response is has previously been shared with the Committee and Board.

38 An overview of TCFD was included in training for members previously, as well as a dedicated training session with the Fund’s Actuary focused on scenario analysis. Further training will be provided to the Committee on the details of the TCFD expectations,

as well as the availability of data through BCPP. It is currently expected that the first LGPS TCFD reporting will become due in late 2025.

Cost Control Mechanism & Review

39 The Board 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.

40 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.

41 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.

42 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.

43 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.

44 Whilst it appears that the 2016 Cost Review is coming to a conclusion, it should be noted that the Fire Brigade Union has been granted permission to appeal against the High Court's judgement to allow the inclusion of the McCloud remedy as a "member cost". Whilst the High Court previously dismissed the case, the Court of Appeal granted permission to appeal the ruling.

45 The full judgment in the Fire Brigades Union and British Medical Association vs HM Treasury Cost Control Mechanism appeal has

now been published. The Court of Appeal agreed with the earlier ruling from the High Court (published in March 2023) which ruled in favour of HM Treasury on all grounds. The Court of Appeal's judgment can be read online at https://www.bailii.org/ew/cases/EWCA/Civ/2024/355.html.

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 The Government Actuary's Department has completed the valuation of the Local Government Pension Scheme (England and Wales) as at 31 March 2020. This was the first scheme valuation undertaken since revisions were made to the cost control mechanism, which the Government consulted on in 2021. The methodology by which this is undertaken was revised last year, which widened the cost corridor (the amount by which the scheme costs could vary from the target cost before action was taken to address it) from 2% to 3%. The process was also revised to include consideration of the wider economic situation through a new "economic check" that was introduced alongside the previously established core cost control mechanism.

48 The valuation has found that the core 'cost cap cost' of the scheme lies outside the 3% cost control mechanism corridor (3.2% below target cost). The new 'economic cost cap cost' of the scheme also lies outside the 3% corridor, but in the other direction (7.3% above target cost).

49 As a result, the mechanism, as a whole, is not breached and there is no proposal to make any changes to scheme benefits. The Scheme Advisory Board will shortly be publishing the final report of the scheme cost assessment that it is required to undertake under Regulation 116 of the LGPS Regulations 2013. However, the Board has already seen the initial results and agreed that it is not minded recommending to the Secretary of State any changes to scheme benefits through that process.

McCloud

50 The Board 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.

51 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.

52 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.

53 Following its 2020 consultation, on 30 May 2023 DLUHC launched a consultation seeking views on issues relating to the McCloud remedy, and the draft scheme regulations which would implement the remedy. A summary has previously been shared with the Board and Committee.

54 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. 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 meanwhile is working on member communications, and the Fund’s software supplier have established a McCloud Project Board – the Durham Fund is represented on both groups. Resources are expected to be published by the LGA on 1 October.

55 Additionally, 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.

56 Officers of the Fund continue to work in readiness for resolution of the issues McCloud presents. Whilst software solutions are in place to ensure that the ‘underpin’ is correctly provided for some categories of members, manual intervention will be required for others. The Fund continues to work with its software supplier in consideration of future Annual Benefit Statements, with the Pensions Regulator outlining that whilst accurate Benefit Statements are still expected to be issued accurately and on time and that failure to do so would be a reportable breach, a risk-based approach will be taken in response to any such breach. DLUHC expect to issue guidance outlining that 2024 LGPS Statements do not need to reflect the remedy.

57 The Fund continues to work closely with its software supplier with imminent updates to support the upload of data from employers, as well as delivery of a module to allow for the calculating of service for missing data. A dedicated McCloud project team is now in place. Once all data has been successfully uploaded, the McCloud remedy will be applied to all 'new' leavers. A module is expected to become available from our software supplier in October 2024, to allow a bulk recalculation of all historical cases. Detailed reporting will be provided to the Local Pensions Board.

DLUHC Consultation on Change to the LGPS Revaluation Date

58 Following a short consultation, DLUHC has implemented changes to the in-scheme revaluation date from 1 to 6 April, with effect from 1 April 2023. The change has the effect of removing the impact of high inflation (10.10% for 2023 revaluation) on the Annual Allowance and will reduce the number of members incurring a consequent tax charge. The Fund is working with its software supplier to ensure processes are in place to reflect the change in Annual Statements and Pension Savings Statements.

LGPS Scheme Advisory Board (SAB)

SAB Review – Academies

59 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.

60 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. In the meantime, SAB has produced guidance for converting Academies intended to provide information and common nomenclature for common actuarial approaches adopted by LGPS funds on a local authority (LA) school's conversion to academy status. The Fund will consider how best to utilise the guide to support converting schools.

61 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.

SAB Annual Report

62 On 12 June, the Scheme Advisory Board published its LGPS Scheme Annual Report. The aim of the Scheme Annual Report is to provide a single source of information about the status of the Local Government Pension Scheme for its members, employers, and other stakeholders. The report aggregates information supplied in the 86 fund annual reports, as of 31 March 2023, for the reporting year 2022/23 and can be found online at https://lgpsboard.org/index.php/foreword-2023.

SAB Review – Tier 3 Employers

63 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.

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

65 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.

66 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.

67 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.

68 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 in finalising rates for Colleges in the Fund’s triennial valuation. The Fund will initially maintain the rates for Colleges in line with the 2019 valuation, but will reconsider the position after the outcome of the College reclassification.

SAB Review – Good Governance in the LGPS

69 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)

70 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.

71 A further update to both the Committee and Local Pension Board will be provided at such time as there is progress on the implementation of the Good Governance recommendations.

SAB Review – Responsible Investment Guidance

72 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.

73 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.

74 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.

SAB Correspondence – LGPS Audit

75 In August 2022 the SAB Chair, Cllr Roger Phillips, wrote to DLUHC proposing a separation of pension fund accounts from main local authority accounts, due to each having the potential to delay the other. On 15 February the Minister for Local Government, Lee Rowley MP, responded to the SAB welcoming the Board's advice and recommendation to consider the separation of main authority accounts and the pension fund accounts. A copy of the correspondence was previously shared with the Board. The Minister has asked his officials to consider the scope for developing this further. The Board will be kept informed as the matter progresses.

76 The SAB issued a short response to the DLUHC consultation on "Addressing the local audit backlog in England". The consultation was discussed at the Compliance and Reporting Committee when it met on 12th February. The CRC Committee agreed that the Board should express concern that if there were wide-spread disclaiming of LGPS administering authority accounts in order to meet the new deadlines,

then there would be knock-on consequences for the 18,000 scheme employers that rely on information from the pension fund audit in order to complete their own audits.

77 Essentially, the scheme employer auditor will need to do further work to gain assurance on the information provided it to it by the LGPS actuary on its assets and liabilities under the scheme, which well may be material, depending on a range of factors. The Board's response also took the opportunity to re-emphasise the representations it made in its earlier letter asking that pension fund audit should be separated out from the host authority audit.

SAB – Preparing the Annual Report

78 The SAB Compliance and Reporting Committee (CRC) has convened a working group to review the 2019 CIPFA 'Preparing the Annual Report' guidance and has identified several areas within the current guidance which now require updating and clarification. A priority has been to streamline the guidance and reduce duplication wherever possible with other reporting obligations – SAB reported that this direction was supported by DLUHC.

79 The updated guidance has now been published. The guidance is the first publication which has been reviewed and jointly approved by the SAB's Compliance and Reporting Committee (CRC), the Chartered Institute of Public Finance and Accountancy (CIPFA) and the Department for Levelling Up, Housing and Communities (DLUHC). It replaces the 2019 guidance produced by the CIPFA Pensions Panel, which was disbanded in 2021.

80 The new guidance applies to 2023/24 annual reports which are due for publication by 1 December 2024, and later years. The guidance sets out that funds should use their best endeavours to comply fully with the requirements for 2023/24 but exercise judgement where, because of changes to the previous content, to do so would require disproportionate effort or cost. The new reporting requirements are set out in Appendix 1. Monitoring of compliance will form part of the Board's workplan going forward.

81 Following completion of the Annual Report guidance, the CRC has agreed its next priority will be to revise the Funding Strategy Statement (FSS) guidance. This was last updated in 2016 and the aim is to create content in relation to:

• setting up of academies on conversion

• use of employer flexibilities and deferred debt arrangements

• employer representations around asset strategies and partial terminations

• treatment of exit debts and credits

• consultation with employers.

SAB – Sharia Compliance

82 Committee members have previously been briefed on the issue of LGPS members opting out of the scheme on the basis of their (principally Islamic) religious belief, and whether this might constitute unlawful discrimination on behalf of the scheme. The SAB had received legal advice suggesting that it should instruct an expert in Islamic finance to provide evidence on Sharia Compliance in the LGPS. Consequently, the Board commissioned an expert in the field of Sharia finance seeking advice on whether the LGPS is Sharia compliant, and the range of views that Muslim members and potential members might have on that question. The Board commissioned Mufti Faraz Adam of Amanah Advisors to produce a report.

83 This report has now been received by SAB and examines the issue primarily from the starting point that a statutory defined benefit pension scheme, like the LGPS, is an extension of the employer/employee contract. The report concludes that as a part of the contractual arrangement between employer and employees, Muslim employees can continue to contribute to, and benefit from, the excellent benefits offered by the LGPS.

84 The SAB hopes that the report will offer comfort to Muslim members of the LGPS in the knowledge that they can continue to participate in the scheme. Indeed, SAB hopes that the report may encourage some who had opted out of the LGPS to opt back in and ensure that they benefit from the employer contribution to their pension, as well as the valuable benefits that the LGPS offers. A copy of the report was previously shared with the Board.

SAB - Gender Pay Gap

85 The Scheme Advisory Board has written to Treasury, suggesting that a consistent and active approach to the gender pensions gap is taken across public sector pension schemes. The Board set out that a gender pensions gap analysis, like that commissioned by the Board, would give a dynamic picture of how scheme members' salaries change over time and illustrates the different trajectory of men and women's careers. A copy of SAB's letter is included in Appendix 2.

Non- LGPS Specific Matters

Public Sector Exit Payments Caps

86 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.

87 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.

88 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.

89 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.

90 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.

91 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

92 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.

93 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.

94 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.

95 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, and the Board kept informed.

Increasing the UK Minimum Pension Age

96 The Board 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.

97 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.

98 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.

99 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 Annual Benefit Statements.

TPR Code of Practice

100 The Pensions Regulator (TPR) has consulted on a single Code of Practice to cover all regulated schemes. Previously, the Regulator had a specific Code for Public Service Pensions (Code of Practice 14). Whilst the new Code does not extend TPR’s powers in the LGPS beyond its existing remit on governance and administration, there had been some concerns over how the provisions of the Code fit with the LGPS. SAB subsequently responded on behalf of the LGPS.

101 The Regulator carried out a full review of the comments received through the consultation, and subsequently published its General Code of Practice (‘the Code’) which has been laid in Parliament and which is expected to come into force on 27th March 2024. It replaces Code of Practice 14 for Public Sector Pension Schemes and brings together 10 previous TPR Codes into one single Code.

102 The Regulator’s research on governance and administration shows that the LGPS already has high standards of governance in place, but the Code provides an opportunity for Funds to review current practices, but also presents challenges during what is an already busy time within the LGPS. Clarity is required on which parts of the Code specifically apply to the LGPS and what these mean for funds and how they should be applied in practice. The SAB is working to support funds in understanding any new requirements in the Code and where needed, will produce new or update existing guidance to assist funds with their responsibilities.

103 Officers will continue to consult with the Local Pension Board, whose work plan will be informed by the General Code of Practice. A copy of the Code has previously been shared with the Board; and a detailed overview of the Code and its applicability to the LGPS features later in the Board’s agenda.

Boycotts, Divestment and Sanctions

104 The legislative programme was laid out in May 2021, 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.

105 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. The Public Services Pensions Bill gained royal assent, but this does not place any immediate duty on Funds.

106 It was intended however to implement the commitment to prevent public bodies pursuing boycotts, divestments and sanctions campaigns (BDS) against foreign countries or territories, unless in line with the UK’s official foreign policy, through the Foreign Affairs (Economic Activity of Public Bodies) Bill. 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 and Committee.

107 It is understood that the dissolution of Parliament means that the Bill falls, as it has not proceeded through all stages and therefore cannot be given Royal Assent prior to dissolution. Once party manifestos are

published, Officers will check whether any party commits to bringing the Bill back to Parliament in future.

Pension Scams and new Restrictions on Transfers

108 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.

109 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.

110 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.

111 Following a major data breach at third-party pensions administrator, Capita, the Pensions Regulator has reminded pension funds of the importance of warning members about scams. A reminder will be provided to all active and deferred scheme members in their Annual Benefit Statements. The Committee have previously been informed of the Pensions Regulator’s statement on the Capita Breach.

112 On 10 August 2023, the Money and Pensions Service (MaPS) published its evidence review into pension scams in the U K. The key findings are:

• there remain significant challenges to estimate the scale of the problem

• the types of scams and tactics are very similar to investment scams

• the financial and emotional cost to individuals is high, going beyond financial loss and impacting on health and relationships

• scams can happen to anyone

• once an individual has been targeted, there is a high risk of retargeting

• government bodies, administrators and other organisations have at their disposal a range of touchpoints to provide strong protection against scams.

Stronger Nudge

113 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.

114 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.

115 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 Local Pension Board.

Dashboard

116 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. It is the government’s intention to create a national Pensions Dashboard that will enable savers to see all their pensions information in one place online, including on their State Pension. It is hoped that through the Dashboard savers will be able to make better informed decisions about their retirement, as well as find lost and forgotten pots.

117 Like all large pension schemes, the LGPS will be required to connect and supply data to the government’s national Pensions Dashboard. It was expected that pensions schemes would start to connect to the Dashboard from August 2023, with the LGPS expected to connect in

Autumn 2024. However, the Pensions Minister, Laura Trott MP, made a statement on 2 March announcing the intention to amend the staging timetable to allow more time for the technological system enabling dashboards to be delivered. As a result all schemes' deadlines will be changing.

118 Subsequently, DWP confirmed that The Pensions Dashboards Programme (PDP) is currently in reset, as part of refreshing its delivery plan for a new connection deadline of 31 October 2026. The process aims to allow DWP the opportunity to review the programme and reset the plan. It also provides the time to ensure required resources are in place to complete the delivery of the technical solution and documentation to support connection. The Board will be kept informed.

Changes to Pension Taxation

119 In the Spring Budget 2023, the Chancellor announced changes to pension taxation. The Annual Allowance (which is the maximum amount of pensions savings an individual can make each year before incurring a tax charge) was increased from £40,000 to £60,000 from 6 April 2023. Changes have also been made to the Lifetime Allowance, the charge for which will be reduced to zero from 6 April 2023, before being fully abolishing entirely in a future Finance Bill.

120 Officers will ensure that scheme members are appropriately advised of the implications through Annual Statements, and Pensions Savings Statements. All participating employers were made aware of the changes, enabling them to alert their employees who are most likely to be affected.

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