

JOHN RAISIN FINANCIAL SERVICES LIMITED

Nottinghamshire Local Pension Board

LGPS Update

A paper by the Advisor to the Pension Board **March 2021**

Introduction

This paper updates the Board on developments in respect of two major issues relating to the LGPS since the Board last met on 10 December 2020. Firstly, the consideration and publication by the Scheme Advisory Board (SAB) of the Phase III (Final) report in respect of the “Good Governance” in the LGPS project together with the approval of an Action Plan based on the Phase III report and the decision of SAB to write to the Local Government Minister inviting him to consider the Board’s Action Plan.

Secondly, developments in relation to the Reform of Local Government Exit Payments including the withdrawal of the Treasury “Exit Cap Regulations” (which came into effect on 4 November 2020) on 12 February 2021. It should be noted however that the Government has announced that it intends to reintroduce some form of proposals to limit public sector exit payments although at the time of writing the nature of these and their implications for and effects on the Local Government Pension Scheme (LGPS) were unknown.

1. Scheme Governance – Good Governance in the LGPS project

Background and Phase I

The Board has previously received detailed updates on the national Scheme Advisory Board’s Good Governance in the LGPS project in the training session held before the meeting held on 12 December 2019 and in papers to the Board, presented at the 10 December 2020, 11 September 2019 and 4 December 2018 meetings. This update will summarise the earlier updates and cover developments since December 2020.

As stated in previous papers to the Board this project seeks to fundamentally enhance and strengthen the governance of the individual LGPS Funds across England and Wales (over 80 in total). Completion of the project and its effective implementation across the LGPS in England and Wales is surely the most effective means of maintaining the existing and longstanding local management of the LGPS and avoiding the possibility of compulsory amalgamations of individual Funds going forward.

In August 2018 the Scheme Advisory Board (SAB) invited proposals from interested parties to assist it in developing options for change with regard to the relationship of LGPS Pension Funds to their existing host authorities for consideration prior to potentially making recommendations to the Secretary of State. Hymans Robertson were awarded the contract to work with the SAB to develop possible options.

In July 2019 Hymans Robertson issued a report (Phase I) to the Scheme Advisory Board which did not suggest any structural change in relation to the number of LGPS Funds in England and Wales (87 at the time this report was issued) but rather proposed a framework for improving governance at individual Fund level based on an 'outcomes-based' approach.

Phase II

The Board meeting of the SAB held on 8 July 2019 agreed that the SAB Secretariat (Officers) should in liaison with the project team from Hymans Robertson and Scheme stakeholders develop a detailed plan to implement the conclusions from the Hymans Robertson report for presentation to the November 2019 meeting of the SAB. Two stakeholder working groups (the Standards & Outcomes Group and the Compliance & Improvement Group) were established to work with Hymans Robertson on the Phase II report. [The Advisor to the Nottinghamshire Pension Board was a member of both working groups].

A report by both Working Groups and Hymans Robertson, including detailed implementation proposals was considered by the SAB and issued in November 2019. This report included 17 Recommendations/Proposals supported by explanatory and supportive narrative. In brief these proposed:

- The Ministry for Housing Communities and Local Government (MHCLG) to produce Statutory Guidance to establish new governance requirements for Funds to effectively implement the proposals in the Phase II report
- Each Administering Authority (LGPS Fund) must have a single named officer responsible for the delivery of all LGPS related activity for the Fund – “the LGPS Senior Officer”
- Each Administering Authority must publish an annual Governance Compliance Statement that sets out how they comply with the governance requirements for LGPS Funds as set out in the new Statutory Guidance
- Enhancements to the requirements in relation to - Conflicts of Interest, Knowledge and Understanding, Service Delivery including Business Planning/Budgeting and performance against a key set of indicators

- Each Administering Authority to be required undergo a biennial Independent Governance Review and, if applicable, produce the required improvement plan to address any issues identified.

Phase III

The Scheme Advisory Board (SAB) agreed in November 2019 that the SAB Secretariat, with Hymans Robertson and stakeholders, should develop Phase III (the Implementation stage of the project including the draft Statutory Guidance and key performance indicators). The two working groups that had participated in the preparation of the Phase II report were re-established as a single (Implementation) group to participate in the Phase III stage.

The Implementation Group began its work in February 2020. In March an initial draft of the new Statutory Guidance on Governance in the LGPS and draft paper on the role of the LGPS Senior Officer were issued and circulated for comments. In April 2020 in the light of the COVID pandemic SAB stood down the Phase III Implementation Group but asked Hymans Robertson to continue work on finalising the Phase III report.

In November 2020 SAB considered a work in progress Phase III report and agreed that Hymans Robertson should continue to finalise their report for consideration at the February 2021 meeting of SAB.

In February 2021 SAB considered the final Phase III report from Hymans Robertson and agreed it should be published and sent to MHCLG together with an Action Plan.

The Phase III Proposals very closely follow those in the Phase II report but includes further explanation of and/or proposals for the further development of a number of these. These proposals when implemented will significantly enhance the levels and extent of Governance expected by the MHCLG of every LGPS Fund in England and Wales. This is particularly so given the requirements reiterated in the Phase III report that *“Each administering authority must undergo a biennial Independent Governance Review and, if applicable, produce the required improvement plan to address any issues identified”* and that these reviews *“be assessed by a SAB panel of experts.”*

In particular the Phase II proposals in respect of “the LGPS Senior Officer,” Governance Compliance Statement, Conflicts of Interest, Knowledge and Understanding (Skills and Training), Reporting the Fund’s Performance against an Agreed set of Indicators, Business Planning and Budgeting have been further developed/emphasised in the Phase III report. These are summarised below:

The LGPS Senior Officer: The Phase III report includes a significant section developing the proposal that each LGPS Fund should have a single named officer responsible for the delivery of all LGPS related activity for the Fund – “the LGPS Senior Officer.” The Phase III report states *“This is one of the core recommendations in [the] Phase 2 report and we have provided further detail on the proposal...including details of the core requirements of the role, organisational guidelines and personal competencies for individuals.”* The Core requirements begin with a statement that clearly demonstrates that it is expected that all core LGPS activity will be the responsibility of the “LGPS Senior Officer” stating *“The role of the LGPS senior officer is to lead and take responsibility for the delivery of the LGPS function. The core requirements include but are not limited to: ...developing the fund’s strategic approach to funding, investment, administration, governance and communication...Managing delivery of the LGPS function...”* The Phase III report provides quite extensive commentary on the LGPS Senior Officer role which can only be properly understood fully by reading the relevant section in the Phase III report (pages 4 to 6 and Appendix 1) which makes clear the vital role that this Officer will perform in the Governance of each LGPS Fund once the Proposals in the Phase III report are approved (which they almost certainly will be) by the MHCLG.

Governance Compliance Statement: Appendix 2 of the Phase III report includes a possible example of the enhanced Governance Compliance Statement as proposed in the Phase II report.

Conflicts of Interest: The Good Governance review has been concerned with Conflicts of Interest particularly in the context of those *“that can arise as a result of managing a pension fund within the local authority environment.”* It is expected that *“all administering authorities publish a specific LGPS conflicts of interest policy...The expectation is that the areas covered will include...Contribution setting for the administering and other employers; Cross charging for services or shared resourcing between the administering authority and the fund...Investment decisions about local infrastructure...How the pension fund appropriately responds to Council decisions or policies on global issues...”*

Knowledge and Understanding (Skills and Training): The Phase III report develops further the Phase II proposal that key individuals in the LGPS including Pension Committee Members have an appropriate level of knowledge and understanding to carry out their duties effectively. The Phase III report includes the statement that new MHCLG Guidance *“should clarify that the expectation is that the TPR [The Pensions Regulator] requirements that apply to Local Pension Boards should equally apply to pension committees. As a minimum those sitting on pension committees or the equivalent should comply with the requirements of MiFID II opt-up to act as a professional client but the expectation is that a higher level and broader range of knowledge will be required.”*

This section of the Phase III report also emphasises that the Pensions function should not be treated as or utilised as a political forum stating “*A pension committee member should put aside political considerations, act in the interest of all employers and members and act within a regulatory framework.*”

Reporting the Fund’s performance against an agreed set of indicators: The Phase III report develops the Phase II Proposal that each Fund be required to report performance against a (nationally) agreed set of indicators “*designed to measure standards of service.*” The proposed indicators (pages 14 to 16) which are concerned with service standards and governance cover *Breadth of representation, Training and expertise, Compliance/Risk, Appropriate governance time spent on key areas, Data quality, Service Standards/SLAs, Engagement and communication – capabilities and take up, Customer satisfaction.*

Business Planning and Budgeting: The Phase III report reinforces the Phase II Proposal that there should be a Pension Fund Business Planning process and proper resourcing of the Pension function. It includes (page 17) the following statement “*Each Administering Authority has a specific legal responsibility to administer the LGPS within their geographical region and to maintain a specific reserve for that purpose. It is important therefore that the fund’s budget is set and managed separately from the expenditure of the host authority. Budgets for pension fund functions should be sufficient to meet all statutory requirements, the expectations of regulatory bodies and provide a good service to Scheme members and employers. The budget setting process should be one initiated and managed by the fund’s officers and the pension committee and assisted by the local pension board. Required expenditure should be based on the fund’s business plan and deliverables for the forthcoming year. The practice should not simply be to uprate last year’s budget by an inflationary measure or specify an “available” budget and work back to what level of service that budget can deliver...*”

Action Plan and Next Steps

In addition to receiving the final Phase III report the SAB, at its meeting on 8 February 2021 also considered and approved an Action Plan based on the final report. It was agreed that the Board’s Chair (Councillor Roger Phillips) would write to the Local Government Minister Luke Hall MP inviting him to consider the Board’s Action Plan.

The Action Plan “*consists of formal requests from the SAB to MHCLG...to implement the project...*” Given that the MHCLG were represented on both the Phase II Working Groups and the Phase III Implementation Group it is highly likely that the Action Plan will be positively received by the MHCLG. The Action Plan includes the Recommendations in the Phase III report, the consequent proposed actions for MHCLG either by Regulation or Statutory Guidance, and work to be undertaken by SAB.

The approval of the Phase III report by SAB and the submission of the Action Plan to the MHCLG bring much closer the practical implementation of the Good Governance in the LGPS project proposals. However, as stated in the Paper to the Board of 10 December 2020, implementation of the proposal by the MHCLG requires a formal Consultation.

Once MHCLG issues a Consultation a total period of six months might be anticipated for the actual Consultation (likely 13 weeks), consideration of responses and issuing of the final Statutory Guidance (and if necessary, any amendments to the LGPS Regulations). This period however could be longer. In addition there is a small team at the MHCLG who work on the LGPS and they have a number of other and important issues to address including the Age Discrimination in the LGPS (“McCloud” case) and the implications for the LGPS of any further Reform of Public Sector Exit Payments proposals from the Treasury when issued. Therefore, it would seem that the Good Governance in the LGPS proposals will not become mandatory on individual LGPS Funds until sometime in 2022.

The full **“Good Governance: Phase 3 Report to SAB”** can be accessed at https://www.lgpsboard.org/images/Other/Good_Governance_Final_Report_February_2021.pdf

The **Action Plan** can be accessed at https://www.lgpsboard.org/images/Other/Annex_to_Good_Governance_letter_11_0221.pdf

2.The Reform of Local Government Exit Payments

At its meeting held on 10 December 2020 the Board received a report (Agenda Item 7, authored by the Pension Manager) on the Reform of Local Government Exit Payments with an emphasis on the effects on the LGPS in respect of Scheme, Members, Scheme Employers and LGPS Funds. This paper updates the Board on developments in respect of this issue since 10 December 2020 (until 18 March 2021 when this report was completed).

The Report received at the 10 December 2020 Pension Board meeting explained the background to the restrictions on public sector exit pay and the specific implications for the LGPS, its Employers and individual Scheme Members. In essence from 4 November 2020 Regulations issued by the Treasury came into effect which meant that the total severance payment of a public sector employee was limited to £95,000. This £95,000 however included the value of any pension strain cost payable by an Employer to an LGPS Fund to facilitate immediate full payment of a Scheme Member (employees) LGPS Pension (as the LGPS

Regulations require) when their employment is terminated on the grounds of redundancy or efficiency. Consequently, Regulations introduced by the Treasury were in contradiction with the LGPS Regulations. As the Officer report to the 10 December 2020 Pension Board explained the LGA issued guidance on this matter and the Nottinghamshire Pension Fund took legal advice which resulted in a decision that from 4 November 2020 in redundancy cases that breached the £95,000 Exit Cap the Fund would not allow full immediate payment of unreduced benefits. Instead the individual member would be offered either fully reduced benefits available to someone leaving voluntarily or a deferred benefit.

The application of the Exit Cap was hugely controversial and on 22 December 2020 three Judicial Review applications regarding the application of the Exit Cap Regulations in the LGPS were granted permission for a hearing in March 2021. The applications included 16 grounds covering the legality of the cap regulations themselves, the question of their impact prior to amendment of the LGPS Regulations and the status of the Treasury Directions. One of the applications also questioned the legality of the draft MHCLG Regulations to amend the Scheme in the light of the Treasury actions.

However, on 12 February 2021 the Government, through the Treasury, suddenly and unexpectedly revoked the November 2020 introduction of restrictions on Public Sector Exit Payments. This means that the exit cap does not apply to exits in England on or after 12 February 2021. The Government referred to possible *“unintended consequences”* of the 2020 Treasury Regulations. However, the Treasury has also stated that it is intended to reintroduce some revised form of exit payment restrictions *“at pace to tackle unjustified exit payments.”*

In respect of exits during the period 4 November 2020 and 11 February 2021 the position is that actions taken to reduce or restrict LGPS benefits because of the then Treasury Regulations should be reversed and that individuals who left during this period should be entitled to the LGPS benefits they would have received if the Treasury Exit Cap Regulations (the Restriction of Public Sector Exit Payment Regulations 2020, to give them their full title) had not been applied. A letter from the Deputy Director, Local Government Finance at the MHCLG to all Councils and LGPS Administering Authorities of 4 March 2021 included the statement that *“relevant public authorities”* are required *“to pay to former employees or the relevant pension fund all sums that were not paid as a result of the application of the 2020 Regulations...”* The Scheme Advisory Board has stated (10 March 2021) *“In summary unreduced pensions should now be paid regardless of whether or not a cash alternative payment has been made to the individual and a full strain cost should be requested.”* Step by step guides for Administering Authorities and Employers have been produced by the Local Government Association.

In respect of the future of “Exit Cap” provisions there is much uncertainty. The Government has not stated when new proposals will be introduced or details of their likely nature. The effect of any new proposals on LGPS Funds, Employers in the LGPS and individual LGPS Members is therefore unknown.

Notwithstanding the Treasury statement regarding introducing new proposals “*at pace*” the Local Government Association (LGA) has stated in its document entitled “***Exit cap information for LGPS administering authorities***” (Version 3.0 – Feb 2021) that “*The Government has not confirmed when the exit cap or further reforms will be introduced, although we think it is unlikely to happen in the next few months due to the changes necessary to legislation.*” The LGA does however further state that “*Public sector employers planning future workforce reform will need to be aware that: an exit cap may be in force later in 2021, and MHCLG may introduce further reforms to exit pay when the exit cap is reintroduced.*” Therefore, there may be a future impact on the LGPS Regulations and consequently LGPS Funds, Employers and individual Scheme Members from new Exit Cap provisions introduced by the Government.

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