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Nottinghamshire Local Pension Board

LGPS Update

A paper by the Advisor to the Pension Board

September 2021

Introduction

This paper updates the Board on some developments relating to the Local Government Pension Scheme (LGPS). The issues covered are:

1. Awaited LGPS investment related Consultations
2. Age Discrimination in the LGPS (commonly referred to as “McCloud”)
3. The Pension Regulators (TPR) Consultation on new Code of Practice
4. Increase in the Normal Minimum Pension Age from 6 April 2028

Each issue will be addressed in terms of both the LGPS generally and the Nottinghamshire Pension Fund in particular.

1. Awaited LGPS investment related Consultations

Two significant LGPS investment related Consultations are awaited from the Ministry of Housing Communities and Local Government (MHCLG). Firstly, on updated Investment Pooling Guidance and secondly a Consultation on TCFD (Task Force on Climate Related Financial Disclosures) reporting by the LGPS.

In November 2015, the government issued guidance entitled “Local Government Pension Scheme Investment Reform Criteria and Guidance.” This set out criteria for the (then) 89 LGPS Funds in England and Wales to form Asset Pools whose fundamental role is to select asset managers to implement the investment strategy determined by each individual LGPS Fund. This resulted in the creation of 8 Asset Pools across the LGPS. Crucially all Asset Pools are creations of their constituent LGPS Funds and are ultimately accountable to them. Furthermore, all assets continue to belong to the individual LGPS Funds not the Pools. The Nottinghamshire Fund, along with seven other LGPS Funds formed the LGPS Central Asset Pool.

The 8 Asset Pools across England and Wales are truly diverse in their structure, resourcing, and approach. In addition, the original Government Guidance of 2015 has not been updated. In November 2020, the Government announced that it would “consult” in 2021 “on next steps” to implement “a strengthened framework for LGPS investment and pooling.” As at 9 September 2021 the MHCLG has yet to issue this Consultation. The MHCLG, however, clearly stated earlier in 2021 that the Consultation will be issued this year.

The Consultation when issued will certainly set a more defined framework for the future progress of investment pooling across the LGPS. For the Nottinghamshire and other individual LGPS Funds it will be crucial to respond to this Consultation as it will more clearly define the relationship between individual LGPS Funds and their Asset Pool. For individual LGPS Funds it is, I suggest, vital that they ensure they collectively retain strategic control of their Asset Pool and that there is absolutely no further drift of responsibility from Funds to Pools over and above the initial function of Asset Pools which was to select asset managers to implement the investment strategy determined by each individual LGPS Fund.

The Department for Work and Pensions (DWP) has consulted upon and issued final Regulations on TCFD (Task Force on Climate Related Financial Disclosures) reporting by private sector pension schemes. These set out how private sector schemes are required to report against the TCFD framework which has four key elements – Governance, Strategy, Risk Management, Metrics and Targets for the assessment and management of climate risks and opportunities by Pension Funds.

The DWP Regulations do not apply to the LGPS. However, the MHCLG will, this year, issue a Consultation to amend the LGPS Regulations to apply TCFD reporting to Local Government Pension Funds. This will seek to apply the principles of TCFD reporting in the specific context of the LGPS. It is important that the Nottinghamshire Fund carefully considers, and responds as it considers appropriate, to this Consultation when issued as the MHCLG have stated (to the Scheme Advisory Board Investment Governance and Engagement Committee) that the regulatory requirement to report on TCFD will lie with individual LGPS Funds not their Asset Pool.

2. Age Discrimination in the LGPS (commonly referred to as “McCloud”)

At the meeting held on 10 December 2020 the Board received an Officer report which included commentary on the Government Consultation issued on 16 July 2020 to address age discrimination relating to transitional protection arrangements introduced as part of the 2014 reforms of the LGPS. This issue is commonly referred to as “McCloud.” The report included a link to the Consultation and a copy of the Nottinghamshire response to it.

On 11 May 2021, the Government confirmed that a Public Service Pensions and Judicial Offices Bill will introduce amendments to incorporate the McCloud judgment into public service pension schemes. This Bill is now in the process of passing through the Parliamentary approval process.

On 13 May 2021 in a Ministerial Statement Luke Hall MP, the Minister of State with responsibility for the LGPS, confirmed that it is intended that remedial regulations will come into force on 1 April 2023 but “*will be retrospective to 1st April 2014.*” Luke Hall MP referred to the Consultation issued in July 2020 and stated “*...The Government received responses from a variety of stakeholders. These were detailed and varied, and the Government is grateful for the consideration and thought given to the issues covered in the consultation. Responses were largely supportive of the key elements of the proposals.*”

After consideration of the responses, we can now confirm the key elements of the changes to scheme regulations which will be made in due course. The overarching aim is that the changes will address the findings of the Courts and provide protection to all qualifying members when their benefits are drawn from the scheme. The key points are:

- *Underpin protection will apply to LGPS members who meet the revised qualifying criteria, principally that they were active in the scheme on 31st March 2012 and subsequently had membership of the career average scheme without a continuous break in service of more than five years.*
- *The period of protection will apply from 1st April 2014 to 31st March 2022 but will cease earlier where a member leaves active membership or reaches their final salary scheme normal retirement age (normally 65) before 31st March 2022.*
- *Where a member stays in active membership beyond 31st March 2022, the comparison of their benefits will be based on their final salary when they leave the LGPS, or when they reach their final salary scheme normal retirement age, if earlier.*
- *Underpin protection will apply to qualifying members who leave active membership of the LGPS with an immediate or deferred entitlement to a pension.*
- *A ‘two stage process’ will apply for assessing the underpin so that, where there is a gap between a member’s last day of active membership and the date they take their pension, members can be assured they are getting the higher benefit.*
- *Scheme regulations giving effect to the above changes will be retrospective to 1st April 2014.*

A full Government response, containing further detail on the matters addressed above, and on other issues which were covered in the consultation, will be published later this year...It is anticipated that regulations giving effect to these changes will be made after new primary legislation in relation to public service pensions has completed its passage through Parliament and the Government’s intention is that regulations will come into force on 1st April 2023...”

It is clearly very positive that the Government has now confirmed proposals to remedy the existing Age Discrimination in the LGPS and is putting a Bill through Parliament to make the necessary changes to primary legislation required before the LGPS Regulations can be amended. The Nottinghamshire, and all LGPS Funds, will need to carefully consider the full Government response to the 2020 Consultation, on remedying Age Discrimination in the LGPS, when issued.

3. The Pension Regulator (TPR) Consultation on a new Code of Practice

By virtue of the Public Service Pensions Act (PSPA) 2013 the Pensions Regulator (TPR) has, since April 2015, had an oversight role in relation to the Administration of Benefits and (to a lesser extent) Governance of public service pension schemes including the LGPS. The remit of TPR does not extend to LGPS investment issues which remain solely the responsibility of MHCLG.

As a result of the extension of its remit to public service pension schemes TPR issued in 2015 its Code of Practice No14 "Governance and Administration of Public Service Pension Schemes." This is one of the 15 Codes of Practice issued by TPR with the others covering various issues as they relate to private sector pension schemes/arrangements.

On 17 March 2021 TPR issued a Consultation which sought to combine 10 of the existing 15 Codes of Practice, including Code No14, into one consolidated Code. TPR drew themes from the 10 separate Codes to form 51 modules which were shorter than the previous 10 Codes. Overall, the proposed consolidated Code was a rearrangement of existing content into thematic sections but with updating where appropriate. The proposed consolidated Code built on the content of Code 14 as well as referencing aspects of other codes relevant to the public sector. The proposed new Code did not (and could not) extend the Regulator's powers to include LGPS investment. Therefore, none of the modules covering investment apply directly to the LGPS.

The Consultation which closed on 26 May 2021 received 103 responses from a broad range of stakeholders across private and public service schemes and those providing services to schemes. TPR issued an interim response on 24 August 2021. In this response TPR indicated that they intend to carefully consider the extensive responses received stating *"We are carrying out a full review of the comments received on each of the modules and will consider each carefully. In considering our next steps, and preparing the final version of modules, we may contact stakeholders to examine whether our proposals address the issues they identified. We would particularly like to thank those organisations who have already volunteered to assist in this way.*

We do not currently have a firm final publication date for the new code. However, we do not expect to lay the new code in Parliament before spring 2022. It is, therefore, unlikely to become effective before summer 2022."

Therefore it appears that the Pension's Regulator will be looking very carefully at the responses it has received to ensure the Code meets the diverse circumstances of all those schemes, including the LGPS, to which the consolidated Code when issued in its final form will have applicability. From the perspective of the LGPS it is noteworthy that the Scheme Advisory Board for England and Wales issued a detailed response to the Consultation which may be accessed at <http://www.lgpsboard.org/images/Responses/TPRCCJune2021.pdf>

When the Pensions Regulator issues the final version of the new consolidated Code the Nottinghamshire Fund should, I suggest, as a matter of urgency, assess whether it fully, partially, or does not comply with each element of the Code applicable to an LGPS Fund.

4. Increase in Normal Minimum Pension Age (NMPA) from 6 April 2028

On 20 July 2021, following a HM Treasury Consultation, the Government announced that with effect from 6 April 2028 the Normal Minimum Pension Age (NMPA) will increase from 55 to 57. On the same day HMRC published a policy paper and draft legislation which will be part of the next Finance Bill and will amend the Finance Act 2004. The NMPA is the minimum age when members of most pension schemes (including the LGPS) can usually access their pension benefits. The primary reason for this change (from the Government's perspective) is to ensure pension savings are only used to provide income in later life and to maintain the earliest (normal) retirement age as 10 years earlier than state retirement age (which will increase to 67 from March 2028). The Government has indicated that it will issue further advice on any transitional arrangements (including in respect of individuals who have reached age 55 but not 57 by 6 April 2028) in due course.

For all LGPS Funds including the Nottinghamshire Fund the minimum age at which a member will, in normal circumstances, be able to access their benefits will increase (subject to any transitional or exceptional arrangements the Government may introduce/permit) from 55 to 57 on 6 April 2028. This is a matter each Fund will need to address (including in terms of communication with employers and individual members) taking account of changes (consequent to the new Finance Act when passed) to the LGPS Regulations, any relevant Statutory Guidance and the guidance provided in LGPC (Local Government Pensions Committee) Bulletins issued on behalf of the Local Government Association. Given the changes do not come into effect for another six and a half years there should be ample time for the Fund to prepare effectively.

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