PENSIONS COMMITTEE

16 December 2020

Title: Administration and Governance Report	
Report of the Chief Operating Officer	
Public Report	**For Information**
Wards Affected: None	**Key Decision:** No
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Accountable Director: Philip Gregory, Finance Director	
Accountable Strategic Leadership Director: Claire Symonds, Acting Chief Executive	
Recommendations The Committee is recommended to note: i. The Independent Advisors LGPS Update ii. that the Fund is cash flow negative; iii. the Fund's three-year budget for the period 1 April 2020 to 31 March 2023; iv. the London CIV Update	

1. Introduction

1.1 It is best practice for Members to receive regular administration data and governance updates. This report covers four main areas including:

i. Independent Advisors LGPS Update
ii. Pension Fund Budget 1 April 2020 to 31 March 2023;
iii. Cash flow to 30 September 2020;
iv. London CIV update

2. Independent Advisors LGPS Update

2.1 <u>Introduction</u>

This paper updates the Pensions Committee on developments relating to three important issues. Firstly, the restriction of public sector exit payments, otherwise known as the "Exit Cap" with a particular emphasis on its effects on the LGPS; Secondly, developments relating to the Good Governance in the LGPS project which have occurred since the last update, on this issue, to the Pensions Committee on 10 June 2020; Thirdly, it provides details of amendments to the

LGPS Regulations resulting from the Ministry of Housing, Communities and Local Government (MHCLG) Consultation "Changes to the Local Valuation Cycle and the Management of Employer Risk" which was issued in 2019 and which was covered in the LGPS Update presented to the Committee on 12 June 2019.

2.2 The "Exit Cap" and the LGPS

In 2015 the Government announced its intention to cap exit payments in the public sector. On the 14 October 2020 the Government approved The Restriction of Public Sector Exit Payments Regulations 2020 ('the exit cap regulations') and the Regulations came into force on 4 November 2020. These cap exit payments for the public sector (including local authorities) at a maximum £95,000. What constitutes an exit payment includes pension strain costs as well as statutory redundancy and discretionary payments but not contractual payments (provided Pay in Lieu of notice is less than 25% of annual pay).

Currently there is a conflict between the exit cap regulations and the LGPS Regulations if a scheme member aged 55 or over but under state retirement age is made redundant and the total exit payment exceeds £95,000. Regulation 30(7) of the Local Government Pension Scheme Regulations 2013 requires the member to take payment of an unreduced pension, but the Exit Cap Regulations prevent the Employer from paying the full strain cost. MHCLG are consulting on the required changes to the LGPS to bring those provisions in line with the Exit Cap Regulations. But it is unlikely those changes will be enacted until late January or early February to allow for the consultation period.

Therefore on 28 October 2020 Luke Hall MP the Minister for Regional Growth and Local Government at the MHCLG wrote to all Chief Executives stating that *"the recommended course of action for an administering authority to act consistently with its legal duties is that the provisions of Regulation 30(7) are subject to the cap…The Government's view is that LGPS members…should be able to elect to receive an immediate but fully reduced pension or, if they do not so elect, a deferred pension…"*

Each administering authority (LGPS Fund) therefore needs to decide whether to pay an unreduced pension in line with regulation 30(7) or provide the option of either a deferred pension under regulation 6(1) or an immediate reduced pension under regulation 30(5) in line with the Government's recommendations.

Both options contain risks pending legal clarification be that from the change in legislation (LGPS Regulations) and/or resolution of pending legal actions. Offering a deferred or reduced pension risks challenge, from the Member seeking to enforce their rights under Regulation 30(7). A decision to pay an unreduced pension (following the LGPS Regulations 2013 as though the Exit Cap does not apply), means a risk that the Administering Authority (Pension Fund) could end up in the position of having to try and recover monies from the Employer and/or the Member.

The Scheme Advisory Board has therefore stated (Update 30.10.2020, paragraph 18) that *"Given that clarity may only emerge following a challenge, the prudent course may be for the LGPS administering authority to state their intention to, and in the event of termination, offer the member a deferred pension or pay a fully reduced pension under LGPS regulation 30(5) and for the scheme employer to delay making any cash alternative payment until the inevitable claim is settled."*

The above approach appears logical given that if an Administering Authority (LGPS Fund) were to pay an unreduced pension there is a risk that the Pension Fund could end up in the position of having to try to recover monies from the Employer and or the Member and that this would not prove successful. For example, the Employer is restricted to a maximum of £95,000 for all exit payments including the pension strain cost. The Scheme Advisory Board has suggested Employers do not pay any cash alternative to an Employee. If the Employer pays a cash alternative, they are unlikely to be able to pay any strain cost.

Therefore, Pension Funds and Employers have to make decisions in the light of some uncertainty until the legal position is fully resolved. It is understood that after considering the issues including the letter from Luke Hall MP of 28 October 2020, the legal advice obtained by the Scheme Advisory Board and the options the London Borough of Barking and Dagenham in its role as an Administering Authority (Pension Fund Authority) has determined to offer Employees a deferred or immediate fully reduced pension and that the Council in its role as an Employer has determined not to offer a cash alternative.

2.3 Good Governance in the LGPS project

As previously reported in detail in previous papers in 2019, March and June 2020 the Scheme Advisory Board for England and Wales (SAB) has been developing proposals to significantly enhance governance within the LGPS.

This project – The Good Governance in the LGPS project - is the most important development presently underway in the LGPS as it seeks to fundamentally enhance and strengthen the governance of the individual LGPS Funds across England and Wales (over 80 in total).

A Phase I report was produced by Hymans Robertson in July 2019 and a Phase II report by Hymans Robertson and two stakeholder Working Groups was considered by the SAB and issued in November 2019. This Phase II report included a broad range of proposals to enhance the governance of the LGPS across England and Wales. These included that each LGPS Fund have a single named Officer responsible for the delivery of all LGPS related activity – the "LGPS Senior Officer," enhanced training requirements for Pension Committee members, that each LGPS Fund be required to report performance against a set of national Key Performance Indicators and that each LGPS Fund be subject to a bi-annual independent Governance Review with the results reported to and assessed by the Scheme Advisory Board.

At the meeting of the Scheme Advisory Board held on 3 February 2020 it was agreed that the two working groups who prepared the Phase II report be combined to form an Implementation Group. This 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. The social distancing restrictions introduced by the government in March prevented the group meeting in person and therefore in April 2020 the Scheme Advisory Board stood down the Implementation Group until further notice but asked the project team at Hymans Robertson to continue to work on papers for consideration by the Implementation Group once meetings again become viable.

Hymans Robertson have continued to work on the Good Governance project and momentum has increased again. Further work has been undertaken on draft papers including on the form of the independent Governance Review and the Key Performance Indicators (KPIs) to be utilised by all LGPS Funds as well as additional work on the role of the LGPS Senior Officer. Hymans Robertson have also engaged in discussions with individual Officers.

At the 2 November 2020 meeting of the Scheme Advisory Board (SAB) working papers on the LGPS Senior Officer role and the proposed KPIs were circulated. The introduction to these stated *"These working papers address 2 of the recommendations which the working groups identified need further detail before they can be implemented. Please note that these are draft working papers which set out the thinking and feedback received to date. Not all stakeholders have had an opportunity to comment on all areas and we recognise that different stakeholders have different views. These papers do not therefore at this stage represent a consensus position."* A possible example of the new Governance Compliance Statement was also circulated, together with a possible example of the summary page of a report issued under the proposed independent Governance Review arrangements.

It was recommended that the SAB agree these four working papers along with other relevant materials be circulated to the Implementation Group, Treasurer's groups and other relevant parties for comment. It was further recommended that finalised proposals be presented to the February 2021 meeting of the SAB.

Once SAB has considered the finalised proposals, and possibly made any amendments it considers appropriate, it will then share these with the MHCLG. For proposals to become applicable to individual LGPS Funds this would require the MHCLG to consult on revised Statutory Guidance (and possibly some changes to the actual LGPS Regulations), consider responses to the Consultation and issue final guidance/regulations.

The MHCLG were represented on the Phase II Working Groups and are on the (Phase III) Implementation Group. A senior representative from MHCLG also attends the meetings of the Scheme Advisory Board. Therefore, the proposals of the Good Governance in the LGPS project are likely to be adopted, eventually, by the MHCLG and compliance with them required of LGPS Funds through the issuing, in due course, of new Statutory Guidance on Governance in the LGPS (and if necessary, amendment to the LGPS Regulations).

It is very difficult, however, to suggest when the proposals of the Good Governance in the LGPS project may become mandatory on individual LGPS Funds such as Barking and Dagenham. Once MHCLG issues a Consultation a 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. Furthermore, as the paper to the SAB of 2 November 2020 states *"Board members also need to be mindful of the strong statement from MHCLG that in view of other competing priorities, eg, 95k Cap and McCloud remedy, they are unlikely to be able to devote any time to the good governance project over the next six months or so."* Consequently, it would seem unlikely that the MHCLG will issue any Consultation on the Good Governance proposals until the late spring/summer of 2021 at earliest.

Therefore, it would seem that the proposals will not become mandatory on individual LGPS Funds until late 2021 at earliest but much more likely not until sometime in 2022.

2.4 Amendments to the LGPS Regulations resulting from the Ministry of Housing, Communities and Local Government (MHCLG) Consultation "Changes to the Local Valuation Cycle and the Management of Employer Risk"

The LGPS Update report presented to the Committee at its meeting held on 12 June 2019 included a section describing and explaining the proposals in the Consultation issued by MHCLG on 8 May 2019 entitled "Changes to the Local Valuation Cycle and the Management of Employer Risk." This Consultation closed on 31 July 2019.

No response was issued by the MHCLG until early 2020 when a first partial response was issued. This resulted in the Local Government Pension Scheme (Amendment) Regulations 2020 which came into force on 20 March 2020 but have effect from 14 May 2018. This gives Administering Authorities such as the London Borough of Barking and Dagenham certain additional discretions regarding the value of exit payments which may be paid to an Employer leaving a LGPS Fund.

A second partial response was issued on 26 August 2020. This included reference to the need for new regulations to allow Administering Authorities to manage and mitigate risk in the context of COVID-19. Consequently, the Local Government Pension Scheme (Amendment) (No. 2) Regulations 2020 came into force on 23 September 2020. These are concerned with three issues:

- The review of Employer contributions by the Administering Authority – The Administering Authority now has greater ability to review Employer Contributions between Actuarial Valuations where there has been a significant change to the liabilities or covenant of an Employer.

- The spreading of Exit Payments – This expressly permits the Administering Authority the discretion to allow an Employer to spread exit payments to be paid to the Fund over a period it "considers reasonable."

- Deferred Debt Agreements – The Administering Authority "may enter into a deferred debt agreement" with an exiting Employer in certain circumstances. Where an Employer ceases to employ any active members the Administering Authority, at its discretion, may permit the deferment of any due exit payment and instead permit the payment of regular ("secondary rate") contributions to cover the exit payment due. A Deferred Debt Agreement may be terminated in a number of circumstances including where "…the administering authority is reasonably satisfied that the deferred employer's ability to meet the contributions payable under the deferred debt arrangement has weakened materially or is likely to weaken materially in the next 12 months."

As at 1 December 2020 the MHCLG were still to publish its response to the other matters in the Consultation including proposed changes to the LGPS Actuarial Valuation Cycle and proposed changes to the requirements for some Education sector Employers to offer LGPS membership to their new non-teaching Employees.

In the light of the Local Government Pension Scheme (Amendment) Regulations 2020 and the Local Government Pension Scheme (Amendment) (No. 2) Regulations 2020 the London Borough of Barking and Dagenham Pension Fund should review its Funding Strategy Statement (FSS). This should be undertaken with the advice of the Fund Actuary, Barnett Waddingham, and consider the issues of Exit Credits, review of Employer Contributions, spreading Exit Payments and Deferred Debt Agreements.

Resulting proposed changes to the FSS will, in accordance with Regulation 58 of the Local Government Pension Scheme Regulations 2013 and the Statutory Guidance of 2016 issued by CIPFA on behalf of the MHCLG, need to be consulted upon with such persons as the Pension Fund "considers appropriate." The Statutory Guidance of 2016 issued by CIPFA (page 25) states "this must include a meaningful dialogue" with all Employers in the Fund. Following such consultation any final proposed revisions to the FSS will need to be considered and formally approved by the Pensions Committee.

3. Pension Fund Budget 1 April 2020 to 31 March 2023

3.1 Table 1 provides Members with the Fund's three-year budget to 31 March 2023.

Table 1: Pension Fund Budget 1 April 2020 to 31 March 2023

Contributions	2020/21 Budget	2021/22 Budget	2022/23 Budget
Opening Market Value	**974,493**	**1,012,293**	**1,050,243**
Employee Contributions			
Council	6,800	6,600	6,400
Admitted bodies	1,000	900	800
Scheduled bodies	1,950	2,000	2,050
Employer Contributions			
Council	21,000	22,000	23,000
Admitted bodies	4,000	3,750	3,500
Scheduled bodies	7,250	7,400	7,500
Pension Strain	1,000	1,000	1,000
Transfers In	2,500	2,500	2,500
Total Member Income	**45,500**	**46,150**	**46,750**
Expenditure			
Pensions	-36,500	-37,500	-38,500
Lump Sums and Death Grants	-7,000	-6,500	-6,500
Transfers Out	-2,500	-2,500	-2,500
Administrative expenses	-700	-700	-700
Total Expenditure on members	**-46,700**	**-47,200**	**-48,200**
Net dealings with members	**-1,200**	**-1,050**	**-1,450**
Returns on Investments			
Investment Income	7,500	7,500	7,500
Profit (losses)	35,000	35,000	35,000
Investment management expenses	-3,500	-3,500	-3,500
Net returns on investments	**39,000**	**39,000**	**39,000**
Net increase (decrease) in assets	**37,800**	**37,950**	**37,550**
Closing Market Value	**1,012,293**	**1,050,243**	**1,087,793**

3.2 The three-year budget shows a movement from members being employed by the Council to being funded by admitted bodies as staff move across to the various companies set up by the Council. The forecast is for the Council contribution to increase as the rate increases from 21.0% in 2020/21, 22.0% in 2021/22 and 23.0% in 2022/23. Admitted body contribution will initially increase, but as the admitted bodies are closed to new entries, their contributions will decrease over time. Due to these changes, the overall member income will decrease in 2021/22 and 2022/23.

3.3 An increase in death grant payments is projected in 2020/21. Pension payments are forecast to increase due to an increase in the number of pensioners as well as to reflect a pension increase of 1.7% for 2020/21.

3.4 Overall the Fund is expected to be cashflow negative for net dealings with members but cashflow positive if investment income and management expenses are included. Officers will be working with the fund managers over the coming year to establish a process to utilise the income from property and infrastructure to fund any cash flow shortfalls.

4. Cash flow to 30 September 2020

4.1 Table 2 below provides Members with the Fund's Cash flow to 30 September 2020.

Table 2: Actual Pension Fund Cash Flow to 30 September 2020

	2020/21 Budget £000's	2020/21 Actual £000's	Over / Under £000's
Contributions			
Employee Contributions			
Council	6,800	7,300	500
Admitted bodies	1,000	700	-300
Scheduled bodies	1,950	1,960	10
Employer Contributions			
Council	21,000	22,900	1,900
Admitted bodies	4,000	2,700	-1,300
Scheduled bodies	7,250	7,800	550
Pension Strain	1,000	1,000	0
Transfers In	2,500	2,600	100
Total Member Income	**45,500**	**46,960**	**1,460**
Expenditure			
Pensions	-36,500	-35,600	900
Lump Sums and Death Grants	-7,000	-6,900	100
Payments to and on account of leavers	-2,500	-6,200	-3,700
Administrative expenses	-700	-700	0
Total Expenditure on members	**-46,700**	**-49,400**	**-2,700**
Net additions for dealings with members	**-1,200**	**-2,440**	**-1,240**
Returns on Investments			
Investment Income	7,500	7,500	-
Profit (losses)	35,000	35,000	-
Investment management expenses	-3,500	-3,500	-
Net returns on investments	**39,000**	**39,000**	**-**
Net increase (decrease) in the net assets	**37,800**	**36,560**	**-1,240**

Asset Values	**1,012,293**	**1,121,611**	
Liabilities	**-1,189,704**	**-1,280,706**	
Funding Level	**85.1%**	**87.6%**	

5. London CIV Update

5.1 The London Collective Investment Vehicle is the first fully authorised investment management company set up by Local Government. It aims to be the LGPS pool for London to enable Local Authorities to achieve their pooling requirements.

5.2 Having set up in 2015, CIV launched a number of funds which were seeded by London Borough Pension Funds. At 30 September 2020, London CIV assets under management was £9.6 billion which is a rise of 7% compared to the previous quarter. Most of this increase is due to investments into the Global Equity Core Fund.

5.3 The table below provides members with a breakdown of the LBBD Pension Funds holdings in LCIV as at 30 September 2020.

Fund	Manager	Value of Holdings (£)	% of Pension Fund
Global Alpha Growth Fund	Baillie Gifford	275,139,453	24.5%
Real Return Fund	Newton	75,671,120	6.7%
Global Total Real Fund	Pyrford	105,363,797	9.4%
Total		**435,974,687**	**40.6%**

5.4 The funds passive investment can also be accessed via the London CIVs passive equity fund, however there is a cost to transfer so the fund remains invested with UBS.

6. Consultation

6.1 Council's Pension Fund governance arrangements involve continuous dialogue and consultation between finance staff and external advisers. The Finance Director and the Fund's Chair have been informed of the commentary in this report.

7. Financial Implications

Implications completed by: Philip Gregory, Finance Director

7.1 The Pension Fund is a statutory requirement to provide a defined benefit pension to scheme members. The management of the administration of benefits the Fund is supported and monitored by the Pension Board.

8. Legal Implications

Implications completed by: Dr. Paul Feild Senior Governance Solicitor

8.1 The Council operates the Local Government Pension Scheme which provides death and retirement benefits for all eligible employees of the Council and organisations which have admitted body status. There is a legal duty fiduciary to administer such funds soundly according to best principles balancing return on investment against risk and creating risk to call on the general fund in the event of deficits. With the returns of investments in Government Stock (Gilts) being very low they cannot be the primary investment. Therefore, to ensure an ability to meet the liability to pay beneficiaries the pension fund is actively managed to seek out the best investments. These investments are carried out by fund managers as set out in the report working with the Council's Officers and Members.

8.2 This report refers to the recent Supreme Court decision in R (on the application of Palestine Solidarity Campaign Ltd and another) (Appellants) v Secretary of State for Housing, Communities and Local Government (Respondent). Its implications are considered.

8.3 It related to a judicial review of Guidance issued by the Secretary of State on preparing and maintaining an Investment Strategy Statement. The Guidance was issued was issued pursuant to regulation 7(1) of the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016 (SI 2016/946) ("the 2016 Regulations"), and to take effect when the regulations did so, on 1 November 2016. The Guidance was entitled: "Local Government Pension Scheme: Guidance on Preparing and Maintaining an Investment Strategy Statement".

8.4 The guidance contained new stipulations designed to prohibit LGPS funds from pursuing boycotts, divestment and sanctions against foreign nations and UK defence industries. This guidance was challenged on the basis that the Secretary of State had exceed his authority in that the power to issue guidance was limited to the purpose of the legislation creating the power. The challenge was successful in the High Court and so the Secretary of State appealed to the Court of Appeal where he won as the Court reversed the High Courts decision. A further appeal was then entered to the Supreme Court (the replacement to the House of Lords and the highest court in the land). Here the objectors to the Guidance were successful by a majority 3 to 2 judges who held that the guidance extended to matters outside the Secretary of States authority to give guidance. It was determined that the position was that the Secretary of State sought to promote the government's own wider political approach, by insisting that, in two particular contexts related to foreign affairs and to defence, administering authorities could not refrain from making particular investments on non-financial grounds, regardless of the views held by the scheme members. The flaw according to the majority was that the position was that judgements about non-financial considerations in investment decisions were for administering authorities not the Secretary of State to take. Administering authorities may take non-financial considerations into account provided that in doing so would not involve significant risk of financial detriment to the scheme and where they have good reason to think that scheme members would support their decision.

8.5 In terms of direct implications, the guidance will need to be changed or at least amended. However, for practical purposes it has no specific impact for Barking and Dagenham as the administering authority has no stated intentions with regards to foreign policy or UK defence and within its investment strategy.

9. Other Implications

9.1 There are no other immediate implications arising from this report though the Public Service Pensions Act changes will have an impact on the short and long-term workload of the Pension Fund. This will continue to be monitored.

Background Papers Used in the Preparation of the Report:
The Statutory Guidance of 2016 issued by CIPFA