

PENSIONS COMMITTEE

13 December 2023

Title: Independent Advisors LGPS Update	
Report of the Chief Financial Officer	
Public Report	For Information
Wards Affected: None	Key Decision: No
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Accountable Director: Jo Moore, Chief Financial Officer	
Accountable Strategic Leadership Director: Fiona Taylor, Chief Executive	
Summary	
This report provides Members with the Independent Advisor's quarterly Local Government Pension Scheme update.	
Recommendations	
The Committee is asked to note:	
<ul style="list-style-type: none">• The recent Investment Consultation and Consultation Outcome,• Climate Change Reporting – awaiting Regulations and the• Regulations relating to “McCloud” (Age Discrimination in the LGPS).	

1. Introduction

1.1 This paper informs and updates the Committee in respect of a number of important issues relating to the LGPS at a national level. The issues covered in this paper are as follows:

- The recent Investment Consultation and Consultation Outcome.
- Climate Change Reporting – awaiting Regulations.
- Regulations relating to “McCloud” (Age Discrimination in the LGPS).

2. The recent Investment Consultation and Consultation Outcome

- 2.1 Below is a commentary on the recent Consultation on Investment and the subsequent Consultation Outcome issued by the Government.
- 2.2 On 11 July 2023 the Department for Levelling Up Housing and Communities (DLUHC) issued a **Consultation “Local Government Pension Scheme (England and Wales): Next steps on Investments.”** The Consultation included the long awaited (since 2019) Government proposals on the further development of Investment (Asset) Pooling and proposals in relation to a number of other Investment related issues. This consultation may be accessed at [Local Government Pension Scheme \(England and Wales\): Next steps on investments- GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/local-government-pension-scheme-england-and-wales-next-steps-on-investments). The period for responses to the Consultation closed on 2 October 2023. DLUHC received 152 responses including from 82 of the 86 LGPS Administering Authorities (LGPS Funds) in England and Wales. This included a response from the London Borough of Barking and Dagenham which was prepared by the Independent Advisor in consultation with the Fund Officers.
- 2.3 On 22 November 2022 DLUHC issued its **Consultation outcome** response which may be accessed at [Local Government Pension Scheme \(England and Wales\): Next steps on investments - government response - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/local-government-pension-scheme-england-and-wales-next-steps-on-investments-government-response). This states how the Government now intends to proceed.
- 2.4 The Consultation, issued on 11 July 2023 included proposals relating to:
- Asset Pooling together with Governance and Reporting
 - Levelling Up
 - Private Equity
 - Investment Consultancy Services to the LGPS
 - Definition of Investments
- 2.5 In respect of **Asset Pooling** the Consultation included a number of very significant proposals *“to accelerate and expand pooling...”* These included a deadline of March 2025 for LGPS Funds to transition their assets to their Investment Pool, the expansion of in-house investment by Investment Pools, proposals as to how LGPS Funds and Investment Pools should interact (in essence to increase the influence of Investment Pools over investment issues, see particularly Paragraph 31 of the Consultation), revised guidance on reporting, and a longer term *“transition towards fewer (Investment) pools maximise benefits of scale.”* The Consultation also included proposals that each Administering Authority (LGPS Fund) set a training policy for Pension Committee members and report in respect of this policy; that there be additional reporting requirements on LGPS Funds to provide *“greater clarity on progress of pooling...”* and that the Scheme Advisory Board (SAB) expand

their Scheme Annual Report *“to provide a report on the progress of pooling and on asset allocation across the LGPS.”*

- 2.6 In respect of **Levelling Up** a proposal to amend the LGPS Regulations *“to require LGPS funds to set a plan to invest up to 5% of assets in levelling up the UK, and to report annually on progress against the plan.”*
- 2.7 In a chapter titled **Investment opportunities in Private Equity** the Consultation proposed that LGPS Funds should have an ambition to invest 10% of their assets into Private Equity. Although the Consultation did not explicitly state that such investment in Private Equity must be in the United Kingdom the Government’s clear preference for this is clear in the narrative within the Consultation (see Paragraphs 84,88,89,90). In respect of Private Equity investment, the Consultation placed some particular emphasis on *“venture capital.”*
- 2.8 With regard to the provision of **Investment consultancy services to the LGPS** the Consultation proposed to clarify that all LGPS Funds be required to set objectives for their providers of Investment Consultancy services. However, where Investment Pools provide any such services to a LGPS Fund they would be exempt from this proposal.
- 2.9 The Consultation also proposed a technical change to the LGPS **definition of investments** to remedy an omission in the “Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016.”
- 2.10 The Consultation included a range of extremely important and indeed controversial proposals which by their nature were likely to result in a very significant level of response from LGPS stakeholders and in particular the 86 LGPS Funds and 8 Investment (Asset Pools) across England and Wales. By the time the Consultation closed on 22 November 2022 the DLUHC had received 152 responses. In its **Consultation outcome** issued on 22 November 2023 the DLUHC stated (Paragraph 16) that *“There were a wide range of views expressed around our proposals...”* Having considered the analysis of views on each proposal as detailed in the Consultation outcome it is clear there was some significant opposition to those proposals which may reasonably be described as controversial. The Government has however decided to go ahead with almost all its original proposals. In doing this however the Government is proposing an overall approach which is not mandatory and in respect of the crucial issue of transitioning LGPS Fund assets to Pools is a “comply or explain” regime.
- 2.11 In respect of **Asset Pooling** a clear majority of respondents opposed the March 2025 deadline for transitioning Assets to Pools as proposed in the Consultation. DLUHC has stated in the Consultation Outcome (Paragraph 37) that it will draft guidance to require LGPS Funds to *“either transition assets by March 2025, or set out a detailed rationale for each asset remaining outside the pool...This is effectively a “comply or explain” regime which does not mandate particular investment choices”*.

- 2.12 With regard to the interaction of LGPS Funds and their Pools the Consultation outcome states at Paragraph 49 that *“the government has decided to revise guidance on pooling as proposed. This will set a clear direction for all funds to move towards delegation of strategy implementation and manager selection, in order to deliver the benefits of scale for all.”* At Paragraph 50 the Consultation outcome states *“The revised guidance will therefore include a preferred model of pooling which we will expect pools to adopt over time...”* but also states *“The partner funds will remain in control of their pool, and this will be important in ensuring that it delivers the products and services which the funds wish to have...”* Therefore, the Government is proposing a larger role for Pools but within a framework where they remain under the *“control”* of their constituent LGPS Funds. This gives LGPS Funds the opportunity to exercise significant influence over their Pool, but in reality, only if they choose to do so. Despite significant opposition from respondents to the Consultation the Consultation outcome states at Paragraph 51 that *“The government does not consider that it would be a conflict of interest for the pool companies owned by LGPS funds to provide advice on investments...”* This does not mean LGPS Funds must use their Pool to provide investment advice but clearly indicates that they may choose to do so.
- 2.13 With regard to the longer term the Consultation outcome reaffirmed the Government’s view that there should be a reduction in the number of Pools from the current eight, but not in the short term. At Paragraph 27 of the Consultation outcome, it is stated that *there is no intention to take steps to mandate a move to fewer pools in the immediate term. The government’s view is that the focus in the short term should remain on accelerating transition of assets, improving governance and ensuring greater transparency and accountability.”*
- 2.14 The proposal that each Administering Authority (LGPS Fund) set a training policy for Pension Committee members and report in respect of this policy was widely supported by respondents and will be implemented by DLUHC. This is to be welcomed as it will support the good governance of all 86 LGPS Funds in England and Wales.
- 2.15 With regard to additional reporting requirements in respect of LGPS Funds DLUHC has stated in its Consultation outcome (Paragraph 66) that *“We will revise guidance to implement the proposed changes working with the Scheme Advisory Board...”* but will withdraw a proposal that LGPS Funds report on asset returns against an appropriate and consistent benchmark stating (Paragraph 68) *“In the light of responses highlighting the difficulties of setting benchmarks across the scheme, we intend to require funds to report performance for each asset class against the benchmark of their choice in their annual reports but not to seek to establish consistent benchmarks.”* The proposal that SAB expand their Scheme Annual Report to include an update on Pooling was widely supported by respondents and DLUHC have stated that they will implement this proposal.
- 2.16 While only 25% of respondents supported the proposal that LGPS Funds set a plan to invest up to 5% of assets in projects that support levelling up across the UK the DLUHC have stated in their Consultation outcome (Paragraph 94) that

“We will revise guidance on investment strategy statements to require funds to have a plan to invest up to 5% in levelling up projects...” However, at Paragraph 96 of the outcome the DLUHC also make clear that investing in levelling up projects is not a requirement stating *“... the government’s view is that the requirement to set a plan to invest in levelling up does not mandate investment and does not cut across fiduciary duty.”* The DLUHC approach is still however an exhortation and clear encouragement to the LGPS to actively support the Government’s levelling up agenda.

- 2.17 The Consultation proposed that LGPS Funds should have an ambition to invest 10% of their assets into Private Equity. In relation to this the Consultation outcome states (Paragraph 103) *“There were 144 responses to this question and 84% were opposed to the proposal...”* In response DLUHC at Paragraph 110 of the Consultation outcome states *“However, setting an ambition to invest 10% in private equity would not mandate investment. Administering authorities would be under the same requirement as currently to act in the interests of members under their fiduciary duty...”* and at Paragraph 111 that *“The government will therefore set a new ambition for funds to invest 10% of assets in private equity in revised guidance on investment strategy statements...”* Again, like with levelling up, the Government’s approach though not mandating investment in private equity is an exhortation and clear encouragement to the LGPS to support a particular Government agenda.
- 2.18 The proposal in the Consultation that all LGPS Funds be required to set objectives for their providers of Investment Consultancy services was widely supported by respondents and will be implemented by the Government through amendments to Regulations/Guidance. The proposal in the Consultation that where Investment Pools provide such services to a LGPS Fund they be exempt from this proposal was clearly questioned by respondents (see Paragraph 118 of the Consultation outcome) and the DLUHC has consequently stated in Paragraph 119 that *“With regard to the application of the requirements to pool companies owned by LGPS funds, we [consider] that it would be good practice to set objectives for all investment consultancy providers including pools, and will set this out in revised guidance.”*
- 2.19 The technical change to the LGPS definition of investments proposed in the Consultation received, overall, support from respondents and the DLUHC will now amend the LGPS Regulations accordingly.
- 2.20 In summary the Government has now confirmed that it intends to strengthen the Pooling regime and to seek to accelerate the transition of all LGPS assets into the Investment Pools. It has however stated that it will apply a “comply or explain” regime (Paragraph 37 of the Consultation outcome) in relation to asset transfers to Pools, and that Pools are required to *“act in the best interests of [LGPS] funds”* (Paragraph 50 of the Consultation outcome). While not mandating investment in Levelling Up projects or Private Equity the Government is clearly and actively encouraging these in support of wider Government policy.

3. Climate Change Reporting – Awaiting Regulations

- 3.1 In the March 2023 LGPS Update it was reported that it was anticipated that Regulations to introduce Climate Change reporting into the LGPS would be issued retrospectively, after 1 April 2023, but would apply from 1 April 2023. No such Regulations were, however, issued in April 2023.
- 3.2 In the June 2023 LGPS Update it was reported that on 23 May 2023 the Scheme Advisory Board stated on its website that the implementation of Climate Risk reporting in the LGPS – *“is now expected to commence from 1 April 2024, with first reports due in late 2025.”*
- 3.3 As at the date of this Update (1 December 2023) no proposed Regulations have been issued to implement Climate Change reporting. Therefore, unless the DLUHC acts soon it is likely that mandatory and consistent Climate Change reporting by LGPS Funds may be further delayed. This would be extremely disappointing given a Consultation on this matter was issued on 1 September 2022 and closed on 24 November 2022 which is now over a year ago.

4. Regulations relating to ‘McCloud’ (Age Discrimination in the LGPS)

- 4.1 As reported in the June 2023 LGPS Update the DLUHC issued on 30 May 2023 a further Consultation ***“McCloud’ remedy in the LGPS – supplementary issues and scheme regulations.”*** This Consultation closed on 30 June 2023. The DLUHC issued the outcome to this Consultation on 8 September 2023 and on that day also issued The Local Government Pension Scheme (Amendment) (No 3) Regulations 2023 which came into effect from 1 October 2023.
- 4.2 These new Regulations implement the “McCloud” remedy in the LGPS by removing age discrimination in the LGPS in accordance with the Court of Appeal decision of 2018 and the Government’s confirmation, of July 2019, that there would be changes to all public service pension schemes, including the LGPS, to remedy this issue.
- 4.3 In summary to qualify for the new (underpin) protections individual Members of the LGPS need to meet the following criteria:
- Were a member of the LGPS or another public service pension scheme before 1 April 2012.
 - Contributed to the LGPS at some point during the period between 1 April 2014 and 31 March 2022 or transferred in another public service pension scheme membership where the Member contributed to the Scheme at some time during this period.
 - Have been a member of the LGPS or another public service pension scheme without a continuous break of more than 5 years.
- 4.4 Underpin protection only applies to pension built up in the remedy period, between 1 April 2014 and 31 March 2022. The underpin ceases earlier if the Member left the scheme or reached their Final Salary normal retirement age (usually 65) before 31 March 2022. From 1 April 2022, there is no underpin

protection. Pension built up after this date is based on the Career Average Scheme only and there is no further link to the former Final Salary Scheme.

- 4.5 The McCloud remedy, including the implications for the Barking and Dagenham Fund is considered further in the **Administration and Governance** report elsewhere on this agenda.

5. Financial Implications

Implications completed by: Jo Moore, Chief Financial Officer

- 5.1 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.

6. Legal Implications

Implications completed by: Dr Paul Feild Senior Governance Solicitor

- 6.1 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.

7. Consultation

- 7.1 The 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.