

# Cambridgeshire Pension Fund



## Pension Fund Board

3<sup>rd</sup> July 2020

**Report by:** Head of Pensions

<b>Subject:</b>	<b>Governance and Compliance Report</b>
<b>Purpose of the Report</b>	To provide the Pension Fund Board with information on: 1) The activities of the Scheme Advisory Board (section 2) 2) The Local Government Pensions Committee, The Pensions Ombudsman and The Pensions Regulator – Coronavirus response (section 3, 4 and 5) 3) Legislation update (section 6) 4) Local governance matters (section 7 and 8) 5) Skills and knowledge opportunities (section 9 and appendix 4).
<b>Recommendations</b>	<b>That the Pension Fund Board notes the content of the report.</b>
<b>Enquiries to:</b>	Jo Walton – Governance and Regulations Manager, LGSS Pensions E-mail: <a href="mailto:jwalton@northamptonshire.gov.uk">jwalton@northamptonshire.gov.uk</a>

## 1. Background

- 1.1 This is a standing report that identifies issues concerning the governance of the Local Government Pension Scheme (LGPS) and also potential, new, amending and overriding legislation that will have an impact on how the Scheme is managed and on members' benefits.

## 2. The Scheme Advisory Board

### 2.1 Guidance on Responsible Investment Guidance - update

- 2.1.1 On 22<sup>nd</sup> November 2019 the Scheme Advisory Board issued the first part of guidance on responsible investment which was open for consultation until 11<sup>th</sup> January 2020 (section 13.2 refers). The aim of the first part of the guidance was to assist and help investment decision makers to identify the parameters of operation within scheme regulations, statutory guidance, fiduciary duty and the general public law and the scope for integrating ESG (environmental, social and governance) policies as part of investment strategy statements.
- 2.1.2 The Scheme Advisory Board made it clear that there is no intention to prescribe the extent to which ESG policies must be adopted as this must remain a matter for local consideration and agreement in accordance with Ministry of Housing, Communities and Local Government (MHCLG) statutory guidance.
- 2.1.3 ACCESS Funds collectively sought legal advice on the Draft Guidance which was fed into a joint response to the Scheme Advisory Board which can be found in **private appendix 1.**

- 2.1.4 As a result of the feedback from ACCESS and other Funds the Scheme Advisory Board issued a statement on 24<sup>th</sup> February 2020 acknowledging the concerns around the issues of fiduciary duty in the context of the LGPS and in particular the roles and responsibilities of elected members responsible for making investment decisions.
- 2.1.5 The Scheme Advisory Board statement recognised that the issues of fiduciary duty that were discussed during the recent Palestine Solidarity Supreme Court case (see 2.2) could shed some light on how the fiduciary duty test applies to LGPS investment decision makers and also the amendments to the Pension Schemes Bill which could have a significant impact on the way in which Investment Strategy Statements are prepared on ESG and climate change issues (section 4.1.1 refers).
- 2.1.6 For these reasons the Scheme Advisory Board felt it was not prudent at that stage to offer any definitive advice or guidance on how the fiduciary duty test applies to investment decision makers in the LGPS. Instead, the Scheme Advisory Board will consider and evaluate the judgement handed down by the Supreme Court and the government's position on the proposed climate change provisions in the Pension Schemes Bill before proceeding further.
- 2.1.7 However, the Scheme Advisory Board note that there are matters outside fiduciary duty where advice and information would continue to be helpful and so the guidance will be restructured to explain and clarify the terminology associated with responsible investment and provide investment decision makers with a range of information, case studies and tools to assist with the challenges associated with responsible investment. Stakeholders will be able to comment on this document once produced.

## **2.2 Supreme Court Decision on LGPS Investment Guidance**

- 2.2.1 In June 2017 the High Court published its judgement in a judicial review case concerning the statutory guidance issued to accompany the LGPS (Management and Investment of Funds) Regulations 2016. The case was brought by the Palestine Solidarity Campaign Ltd and an LGPS member. It ruled that the section within the guidance stating that administering authorities should not pursue policies that are contrary to UK foreign policy or UK defence policy was unlawful.
- 2.2.2 The statutory guidance was reissued in 2017 with the relevant statements removed, however, the Ministry of Housing, Communities and Local Government (MHCLG) appealed the High Court decision.
- 2.2.3 In June 2018 the Court of Appeal disagreed with the original ruling by the High Court which allowed the case to move to the Supreme Court. The statutory guidance remained published with the relevant statements removed.
- 2.2.4 In April 2020 the Supreme Court ruled that the legislation does not permit the Secretary of State to impose the government's view on foreign and defence policy on LGPS administering authorities.
- 2.2.5 On 11<sup>th</sup> May 2020 the Scheme Advisory Board published a statement on the Supreme Court judgement within which the Board welcomed the clarity resulting from the judgement. It also stated that the view of the Board is that responsible investment policy decisions belong at the local level reflecting the need to pay pensions now and in the future, local democratic accountability and the view of scheme members and that outcomes of policy developments should not be subject to restrictions based on unrelated matters.

- 2.2.6 On 8<sup>th</sup> June 2020 the Scheme Advisory Board published a summary of the Supreme Court judgement which was drafted with the assistance of the Board's legal advisor in an attempt to clarify the impact of the judgement on administering authorities.
- 2.2.7 The summary concludes that the fundamental duties and responsibilities of administering authorities remain the same in that they are responsible for investment decisions.
- 2.2.8 Should an authority wish to consider the non-financial factors in its investment decisions it may do so taking into account the requirements of the guidance including the potential financial impact and the views of its members. Such consideration may legally result in boycotts or disinvestment should the authority decide.
- 2.2.9 It should be noted that summary (that can be found in **appendix 2**) represents the views of the Scheme Advisory Board and doesn't constitute legal advice nor should it be relied upon or treated as a substitute for specific legal advice relevant to particular circumstances.

## **2.3 Good Governance Review**

- 2.3.1 At the Scheme Advisory Board meeting of 3 February 2020 resources for phase 3 of the project were agreed. Phase 3 will determine the outcome measures it will use, the format of this work and a timetable for implementation.
- 2.3.2 At the time of writing there were no further updates to report.
- 2.3.3 An in-depth presentation on the Good Governance Review was delivered at the Information Day held at Wyboston Lakes on 6<sup>th</sup> March 2020. Copies of the slides were sent to members of the Pension Fund Board following the event.

## **2.4 Annual Report**

- 2.4.1 On 22<sup>nd</sup> May 2020, the 2019 LGPS England and Wales scheme annual report was published of which the highlights were:
- Total membership increased from 5.8m in 2018 to 5.9m in 2019 (0.6% increase)
  - Total assets increased by 5.9% to £291bn
  - Local authority returns on investment over 2018/19 was 6.6% (this was reflective of the market conditions during the year and set against the UK return of 6.4%).
  - The scheme maintained a positive cash-flow position overall, including investment income
  - Over 1.7m pensioners were paid over the year.
- 2.4.2 The full report can be found at the following link:  
<https://lgpsboard.org/index.php/schemedata/scheme-annual-report>

## **2.5 Coronavirus Response and Governance Survey**

- 2.5.1 During the first two weeks of May 2020 the Scheme Advisory Board undertook a survey to understand how the governance of the LGPS has been affected by the Coronavirus. The majority of administering authorities in England, Wales, Scotland and Northern Ireland responded to the survey.

- 2.5.2 One of the highlights from the report concerned virtual Pension Fund Committee and Local Pension Board meetings. 73 out of the 83 respondents had already held or were planning to hold virtual meetings with the remaining 10 using alternative methods for decision making such as delegated decision making to a combination of the s151 Officer and/or Chairman or Vice-Chairman, the Chief Executive or a Covid-19 Special Committee.
- 2.5.3 The summary of the survey findings can be found at the following link:  
[https://lgpsboard.org/images/Covid-19/LGPS\\_governance\\_survey\\_results\\_May2020.pdf](https://lgpsboard.org/images/Covid-19/LGPS_governance_survey_results_May2020.pdf)

### **3. Local Government Pensions Committee (LGPC) – Coronavirus response**

- 3.1 The LGPC, which is part of the Local Government Association (LGA), provides technical advice and information on the LGPS and related compensation matters to LGPS administering authorities and employers. It is a vital and valuable service that is funded through an annual levy calculated on membership numbers.
- 3.2 To support administering authorities during the pandemic the LGPC have set up dedicated news and information pages on their website <http://www.lgpsregs.org/news/covid-19-news-2020.php>. These pages contain:
- Frequently asked questions for scheme members, employers and administrators
  - Guidance on the government's Coronavirus job retention scheme, re-employment of key workers and the NHS and Social Care Coronavirus Life Assurance Scheme (England).
  - Links to the Pensions Regulator and Pensions Administration Standards Association guidance for administrators and employers.
- 3.3 The frequently asked questions for employers and scheme members have been made available on the LGSS Pensions Website at the following links:
- Scheme members: <https://lgssmember.pensiondetails.co.uk/home/coronavirus>  
Scheme employers: <https://pensions.northamptonshire.gov.uk/covid-19-important-information/>

### **4. The Pensions Ombudsman – Coronavirus response**

- 4.1 At the start of lockdown the Pensions Ombudsman made an announcement that they would not be able to process any new enquiries or complaints received either by email or post and that they would be focussing on existing queries and complaints only. The Pensions Ombudsman did state that they would, wherever possible, use their discretion to extend the three-year time limit for new applicants affected by the period of restricted service.
- 4.2 The Pensions Ombudsman has since announced that from 22<sup>nd</sup> April 2020 they will accept new applications by email and their telephone lines were reopened but do not have access to correspondence sent by post during the lockdown period.

### **5. The Pensions Regulator**

#### **5.1 Coronavirus Response**

- 5.1.1 On 2<sup>nd</sup> April the Pensions Regulator issued guidance on the operational priorities that scheme administrators should focus on during the pandemic as follows;

Paying members' benefits  
Retirement processing

Bereavement services  
Processes needed to ensure benefits are accurate

- 5.1.2 These operational priorities reflect those contained within the Fund's Business Continuity Plan.

## **5.2 Pension Scams**

- 5.2.1 The Pensions Regulator also warned scheme administrators to be vigilant and make sure members are not rushed into any financial decisions during the uncertain time of the pandemic where members could be at risk of being targeted by scammers.
- 5.2.2 As such the Pensions Regulator in conjunction with the Financial Conduct Authority and the Money & Pensions Service have produced a leaflet for scheme members advising of how they may be a target of a scam and signposting for further support and advice.
- 5.2.3 This leaflet (which can be found in **appendix 3** is now included in all communications to scheme members in which they have enquired about a transfer to any non-occupational pension scheme.

## **6. Legislation update**

### **6.1 Pension Schemes Bill 2019**

- 6.1.1 On 19 December, in the Queen's Speech, it was announced that the Pension Schemes Bill will be reintroduced. The Bill will create a legislative framework for the introduction of pension dashboards, to strengthen the Pensions Regulator's powers to take action against employers and introduce regulations covering the right to a pension transfer. Further amendments to the Bill concern the way in which Investment Strategy Statements are prepared with reference to ESG and climate change issues.
- 6.1.2 Further line by line examination of the Bill was scheduled to be undertaken by the House of Lords on 30 June 2020.

### **6.2 McCloud update**

- 6.2.1 The McCloud case concerns the transitional protections given to scheme members, who in 2012 were within 10 years of their normal retirement age, in the Judges and Firefighters' Pension Scheme introduced as part of the public service pension schemes reform.
- 6.2.2 On 20<sup>th</sup> December 2018 the Court of Appeal found that these protections were unlawful on the grounds of age discrimination and couldn't be justified. The Supreme Court denied the government permission to appeal on 27<sup>th</sup> June 2019.
- 6.2.2 On 15<sup>th</sup> July 2019 a statement from the Chief Secretary to the Treasury confirmed that as protections were applied to all members within 10 years of retirement in all other public service pension schemes (such as the LGPS) that the principals of the outcome would apply to all public service pension schemes.
- 6.2.3 In the LGPS the protection compares the benefits payable under current rules with benefits that would have been paid if the scheme had not changed in 2014 and pays the higher.

- 6.2.4 Members who have been discriminated against will need to be offered appropriate remedies to ensure they are placed in an equivalent position to the protected members. Such remedies will need to ensure that the benefits of unprotected members will need to be raised rather than the benefits of protected members being reduced.
- 6.2.5 On 15<sup>th</sup> November 2019, the Scheme Advisory Board provided an update within which it was suggested that it was likely the LGPS will be treated separately from the rest of the public sector with regards to the remedy and would likely involve the extension of some form of underpin to members in scope who are currently not offered protection. As such a full history of part time hour changes and service breaks from 1<sup>st</sup> April 2014 will be needed to recreate the service history. It is also likely that in order to ensure reverse discrimination doesn't occur all leavers since 2014 will need to be checked against a new underpin.
- 6.2.6 Decisions on scope, extent, nature of the remedy will largely be driven by the views of government lawyers who will seek to ensure that any agreed remedy removes as far as possible the risk of challenge.
- 6.2.7 It is thought that not many members will see any increase to their benefits and for others any increase is likely to be small due to low salary growth since the new schemes were introduced. Changes to the scheme will be backdated to April 2014 and will apply to all qualifying members who left the LGPS after that date and will also include the benefits of those that have since transferred out and survivors pensions.
- 6.2.8 Implementing and communicating the changes will be extremely challenging and not expected to commence before the end of 2020/21. The Scheme Advisory Board have established an implementation group to assist LGPS administering authorities and employers with this challenge.
- 6.2.9 Scheme members need not take any action or submit a 'claim' as their benefits will be automatically adjusted where appropriate. Claims companies have been targeting members of other public service pension schemes such as the Teachers' and Police Pension Schemes and charging a fee for a service that members do not need to use.
- 6.2.10 A 12 week consultation on the proposed changes to the LGPS regulations as a result of the remedy is expected to commence in July 2020. Ahead of this, the Fund's benefit and governance consultants Aon Solutions UK Limited have been commissioned to provide all key staff within LGSS Pensions with training on the background and remedy of McCloud. Senior managers will be provided with information on the likely scale of the administration work required as a result of the remedy with a view to scoping a project plan as referenced in the Business Plan and Medium Term Strategy. It is anticipated that a verbal update will be provided at this meeting on the information supplied by Aon.

### **6.3 LGPS (Amendment) Regulations 2020 – exit credits**

- 6.3.1 On 27<sup>th</sup> February 2020, the Ministry of Housing, Communities and Local Government (MHCLG) published a partial response to the consultation covering the changes to the local valuation cycle and the management of employer risk. The response covers the proposals on exit credits only. MHCLG will submit a further response on the outstanding items in due course.
- 6.3.2 As a result the LGPS regulations, via the LGPS (Amendment) Regulations 2020, were amended on 20<sup>th</sup> March 2020 but with effect from 14<sup>th</sup> May 2018 so that:

- Administering authorities may determine the amount of any exit payment credit due, having regard to any relevant considerations
- An exit payment must be made within 6 months (previously 3 months)
- Administering authorities will not be obliged to enquire into the precise risk sharing agreement adopted
- Any exit credits that have not been paid shall only be due if the administering authority exercises its discretion to pay them
- Any exit credits that have been paid shall be treated as if the administering authority exercised its discretion to pay that amount – an administering authority may not seek to change the amount paid
- The Pensions Ombudsman has jurisdiction to hear complaints if any dispute is not resolved using the Internal Dispute Resolution process
- Administering authorities should set out their exit credit policy in their Funding Strategy Statement.

## **7. Local Pension Board Insurance**

- 7.1 The Local Pension Board insurance policy for members of the Cambridgeshire Pension Fund Local Pension Board has been renewed for the 2020/21 financial year. A copy of the policy can be made available upon request.

## **8. Transfer of Additional Voluntary Contributions (AVC) policies from Equitable Life to Utmost Life and Pensions**

- 8.1 Following the High Court hearings on 22 and 25 November 2019, court approval to transfer the business of Equitable Life to Utmost Life and Pensions was received on 4 December 2019 effective 1 January 2020.
- 8.2 Uplifts have now been applied to with-profits policies and subsequently converted to unit-linked policies. Members with these AVC policies have been written to confirming the transfer has taken place and have been given details of the alternative investment strategies other than the default investment option selected by the Fund.

## **9. Skills and knowledge opportunities – training events**

- 9.1 Section 248A of The Pensions Act 2004 as incorporated within The Pensions Regulator's Code of Practice (Governance and administration of public service pension schemes) requires all members of the Pension Fund Committee to maintain the necessary skills and knowledge to undertake their role effectively.
- 9.2 In order to facilitate the acquisition of skills and knowledge for members of the Pension Committee, **appendix 4** lists the main events that are deemed useful and appropriate.
- 9.3 Requests to attend events will be facilitated by the Governance Team. It may be necessary to restrict numbers of attendees on some courses through reasons of cost.
- 9.4 It should be noted that the schedule of events in appendix 4 details only the events that are known to be taking place during the pandemic and are virtual/online events only. As soon confirmation is received that face-to-face events are able to be held an amended schedule of events will be issued.

## 10. Relevant Pension Fund Objectives

To have robust governance arrangements in place, to facilitate informed decision making, supported by appropriate advice, policies and strategies, whilst ensuring compliance with appropriate legislation and statutory guidance. <i>Objective 1</i>
To manage the Fund in a fair and equitable manner, having regard to what is in the best interest of the Fund's stakeholders, particularly the scheme members and employers. <i>Objective 2</i>
To ensure that the relevant stakeholders responsible for managing, governing and administering the Fund, understand their roles and responsibilities and have the appropriate skills and knowledge to ensure those attributes are maintained in a changing environment. <i>Objective 3</i>
To continually monitor and manage risk, ensuring the relevant stakeholders are able to mitigate risk where appropriate. <i>Objective 5</i>

## 11. Risk Management

11.1 The Local Pension Board are required to have the appropriate skills and knowledge to effectively carry out their duties. This report ensures that the Local Pension Board is up to date with:

- New or amending legislation affecting the LGPS;
- Relevant activities of the LGPS Scheme Advisory Board and the Pensions Regulator that concern the governance of the (LGPS) on a national and local basis; and
- Skills and knowledge opportunities.

11.2 The risks associated with the Local Pension Board not having the required level of knowledge and understanding have been captured in the Fund's risk register as detailed below.

Risk No	Risk	Residual risk rating
7	Those charged with governance of the Fund and Scheme are unable to fulfil their responsibilities effectively.	Green
13	Failure to administer the scheme in line with regulations and guidance.	Green
16	Failure to provide relevant information to the Pension Fund Committee/Pension Board to enable informed decision making.	Green

11.3 The Fund's risk register can be found on the LGSS Pensions website at the following link: <https://pensions.cambridgeshire.gov.uk/app/uploads/2019/10/RiskRegisterCPF.pdf>

## 12. Finance & Resources Implications

12.1 There are no financial or resource implications connected to the contents of this report is for information only.

## 13. Communication Implications

<b>Training</b>	All staff involved in the administration of the LGPS are aware of the new legislation and the impact on the calculation and payment of benefits from the scheme.
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## 14. Legal Implications

- 14.1 There are no legal implications connected to the contents of this report as this report is for information only.

## 15. Consultation with Key Advisers

- 15.1 There has been no requirement to consult with advisers over the content of this report.

## 16. Alternative Options Considered

- 16.1 There are no alternative options to be considered.

## 17. Background Papers

- 17.1 Scheme Advisory Board Draft Responsible Investment Guidance (Part 1) - [https://lgpsboard.org/images/Consultations/RIGuidance/DRAFT\\_Part\\_1\\_Responsible\\_Investment\\_Guidance\\_Final\\_pdf\\_version.pdf](https://lgpsboard.org/images/Consultations/RIGuidance/DRAFT_Part_1_Responsible_Investment_Guidance_Final_pdf_version.pdf)

## 18. Appendices

- 18.1 **Private Appendix 1** – ACCESS response to Scheme Advisory Board draft responsible guidance
- 18.2 Appendix 2 – Scheme Advisory Board summary Supreme Court judgement
- 18.3 Appendix 3 – The Pensions Regulator’s scam warning leaflet
- 18.4 Appendix 4 – Schedule of virtual training events.

Checklist of Key Approvals	
Has this report been cleared by Head of Pensions?	Mark Whitby – 22 June 2020