

**Pension Fund Committee**

**Date:** 10<sup>th</sup> October 2019

**Report by:** Head of Pensions

<b>Subject:</b>	<b>Governance and Compliance Report</b>
<b>Purpose of the Report</b>	<p>To provide the Pension Fund Committee with information on:</p> <ol style="list-style-type: none"> <li>1) Potential, new or amending legislation and Court judgements affecting the LGPS;</li> <li>2) Other pensions legislation;</li> <li>3) The LGPS Scheme Advisory Board and the Pensions Regulator;</li> <li>4) Issues concerning the governance of the Local Government Pension Scheme (LGPS) on a national and local basis;</li> <li>5) The Equitable Life Proposal</li> <li>6) Skills and knowledge opportunities.</li> </ol>
<b>Recommendations</b>	<p><b>That the Pension Fund Committee:</b></p> <ol style="list-style-type: none"> <li><b>1) Notes the content of the report; and</b></li> <li><b>2) Approves the recommendation for the Pension Fund Committee to delegate the decision on how to vote on Equitable Life's Proposal to the Head of Pensions in conjunction with the Chairman and Vice-Chairman (6.11) ; and</b></li> <li><b>3) Approves the recommendation for the Pension Fund Committee to delegate the choice of default investment strategy should the Equitable Life Proposal go ahead to the Head of Pensions in conjunction with the Chairman and Vice-Chairman (6.12)</b></li> </ol>
<b>Enquiries to:</b>	<p>Jo Walton – Governance and Regulations Manager, LGSS Pension E-mail: <a href="mailto:jwalton@northamptonshire.gov.uk">jwalton@northamptonshire.gov.uk</a></p>

## 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. New legislation and Court judgements**

### **2.1 The Investment Consultancy and Fiduciary Management Market Investigation Order 2019**

2.1.1 On 10<sup>th</sup> June 2019 the Competition and Market's Authority (CMA) published The Investment Consultancy and Fiduciary Management Market Investigation Order 2019. The order defines fiduciary management services and potentially has implications for LGPS asset pools. The Scheme Advisory Board is in discussion with the Ministry of Housing Communities and Local Government (MHCLG), the CMA and legal advisers to seek further clarity.

2.1.2 The Scheme Advisory Board has produced a briefing note which can be found at the link below.

<https://lgpsboard.org/images/Guidance/CMABrief182019.pdf>

2.1.3 The main impact for LGPS asset pools appears to be around part 7 of the Order which prohibits scheme managers from entering into a contract or continuing to obtain investment consultancy services without setting strategic objectives for the investment consultancy provider. Part 7 of the Order comes into effect from 10<sup>th</sup> January 2020.

2.1.4 A report will be prepared for the November meeting of the Investment Sub Committee on this matter.

### **2.2 Written Ministerial statement – Walker v Innospec Supreme Court judgement**

2.2.1 On 4<sup>th</sup> July 2019, the Parliamentary Under Secretary of State (Department for Work and Pensions) issued a response to the Supreme Court judgement in respect of Walker v Innospec and others.

2.2.2 The judgement was issued on 12<sup>th</sup> July 2017 with the Supreme Court deciding that Mr Walker's husband, on the death of Mr Walker, is entitled to the same benefits as the survivor of an opposite sex spouse. For public service pension schemes it means that civil partners and survivors of same sex marriages are entitled to receive benefits equal to those received by widows of male members (as introduced to the LGPS by the 2018 Amendment Regulations).

2.2.3 The Government has concluded that aside from the changes brought about by the Supreme Court judgement, it will not make any further retrospective changes to the existing provisions in public service pension schemes to equalise survivor benefits. The view is that any differences in survivor benefits will work their way out over time.

2.2.4 In the LGPS, in some cases, the widower of a female scheme member is entitled to a lower survivor pension than the widow of a male scheme member. This decision means that this will not change.

### **2.3 Langford v RAF Pension Scheme Court of Appeal ruling**

2.3.1 On 17<sup>th</sup> July 2019 the Court of Appeal awarded a survivor pension in the RAF pension scheme to Ms Langford following the death of her partner in 2011. Ms Langford had cohabited with the scheme member for 15 years, but she was married to someone else at the time of her partner's death.

- 2.3.2 This decision could have far-reaching consequences for other cohabiting couples in the public sector where a surviving partner is married to a third party. In the LGPS, both partners need to be “free to marry” to qualify for payment of a cohabiting partner’s pension (amongst other qualifying criteria). The Government’s response to this decision is awaited.

## **2.4 McCloud**

- 2.4.1 On 15<sup>th</sup> July 2019, the Chief Secretary to the Treasury announced in a written statement that remedies relating to the McCloud judgement will need to be made in relation to all public service pension schemes. At the time of writing there is no further progress to report.
- 2.4.2 The Scheme Advisory Board have produced a questions and answers document on the McCloud case which can be found at the following link:

<http://www.lgpsboard.org/index.php/structure-reform/cost-management/ccmcloud>

## **3. Scheme Advisory Board**

### **3.1 Good Governance Report**

- 3.1.1 The Scheme Advisory Board commissioned Hymans Robertson to examine the effectiveness of current LGPS governance models and to consider alternatives or enhancements to existing models which can strengthen LGPS governance going forward with recognition that any models considered must maintain strong links to local democratic accountability.
- 3.1.2 Hymans Robertson engaged with all stakeholder groups and all fund types via an online survey, one-to-one conversations and workshops. The Scheme Advisory Board requested that existing and alternative governance arrangements be assessed on standards, consistency, representation, conflict management, clarity of roles and responsibilities and cost. As such four governance models were considered:

Model 1	Improved practice
Model 2	Model 1 plus greater ring-fencing
Model 3	Joint Committee; and
Model 4	Separate Local Authority body

- 3.1.3 The survey responses favoured Model 2 followed by Model 1 and the following proposals have been put forward to the Scheme Advisory Board for consideration:
- An outcomes-based approach to LGPS governance with minimum standards rather than a prescribed governance model.
  - Critical features of an outcome based model should include:
    - Robust conflict management including clarity on roles and responsibilities for decision-making;
    - Assurance on sufficiency of administration and other resources (quantity and competency) and appropriate budget;
    - Explanation of policy on employer and scheme member engagement and representation in governance; and
    - Regular independent review of governance – this should be based on an enhanced governance compliance statement which should explain how the required outcomes are delivered.

- 3.1.4 Enhanced training requirements for s151s and s101 committee members (requirements for s101 should be on a par with Local Pension Board members).
- 3.1.5 Update relevant guidance and better sign-posting.
- 3.1.6 The full report can be found at the link below.

<http://www.lgpsboard.org/images/PDF/GGreport.pdf>

- 3.1.7 A detailed plan to implement the report's recommendations is being constructed and will be presented at the Scheme Advisory Board in November 2019. Any proposals agreed by the Scheme Advisory Board will be subject to a full stakeholder consultation before being put to MHCLG.

## **4. The Pensions Regulator**

### **4.1 Combining of codes of practice**

- 4.1.2 The Pensions Regulator has announced that they plan to combine the current 15 codes of practice into one single shorter code. The changes will reflect the Occupational Pension Schemes (Governance) (Amendment) Regulations 2018. The codes that are most affected by these regulations will be addressed first and this includes the code of practice 14 (public service pension schemes). Schemes will need to demonstrate that they have an effective governance system within 12 months of the date the code is updated.

### **4.2 Governance and administration survey (2018) findings**

- 4.2.1 The Pensions Regulator have published their findings of the governance and administration survey of public service pension schemes undertaken at the end of 2018. 195 out of 207 schemes completed the survey.

- 4.2.2 The main findings are as follows:

- The report highlights the importance of receiving accurate and timely data and identifies employer performance as a common reason for missing or inaccurate data.
- The percentage of LGPS members who were sent an annual benefit statement before the statutory deadline was lower than average across the sector.
- The top three barriers to improvements in administration and governance were identified as complexity, lack of resources and legislative change.
- Within the LGPS, staff retention and lack of knowledge was cited as a top three risks by 28% of funds. Cambridgeshire Pension Fund responded with funding and investment risk, securing compliance with changes to the scheme regulations and receiving contributions from scheme employers.
- Six LGPS funds reported that they had fewer Board (Local Pension Board) members at the time of the survey than is required by regulation (Cambridgeshire Pension Fund is compliant in this area).

- 4.2.3 The full report can be found at the following link:

<https://www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/public-service-research-2019.ashx>

## 5. Consultations

### 5.1 Local valuation cycle and the management of employer risk

5.1.1 On 8<sup>th</sup> May 2019 MHCLG issued a 12 week policy consultation called LGPS: 'Changes to the local valuation cycle and the management of employer risk'.

5.1.2 The consultation covered the following areas:

- Amendments to the local fund valuations from the current 3 year to 4 year cycle
- A number of measures aimed at mitigating the risks of moving to a 4 year cycle
- Proposals for flexibility on exit payments
- Proposals for further policy changes to exit credits
- Proposals for changes to the employers required to offer local government pension scheme membership

5.1.3 The Cambridgeshire Pension Fund's response to the consultation (as agreed by the Chairman and Vice-Chairman of the Pension Fund Committee and Local Pension Board) can be found in **appendix 2**.

### 5.2 Exit payments cap

5.2.1 In 2015 the Government first announced plans to introduce a £95,000 cap on exit payments in the public sector. The cap includes any pension strain costs (the cost to the employer of paying a scheme member's pension early normally on the grounds of efficiency or redundancy) and apply where there has been a 'relevant public sector exit' which occurs when an employee leaves the employment of a public sector authority.

5.2.2 On 10<sup>th</sup> April 2019 HM Treasury launched a consultation on the draft regulations entitled 'Restricting exit payments in the public sector: consultation on implementation of the regulations'. The consultation closed on 3<sup>rd</sup> July 2019.

5.2.3 The Cambridgeshire Pension Fund's response to the consultation (as agreed by the Chairman and Vice-Chairman of the Pension Fund Committee and Local Pension Board) can be found in **appendix 3**.

## 6. Equitable Life Proposal

6.1 On 15<sup>th</sup> June 2018, Equitable Life accounted that they have entered into an agreement to transfer the Society and all its policies to Utmost Life and Pensions (previously known as Reliance Life).

6.2 The Cambridgeshire Pension Fund has 69 members who have an AVC account with Equitable Life.

6.3 Equitable Life's proposal concerning the transfer is in two parts:

- **Part One:** To increase With-Profits policy values with immediate one off uplift. Remove any investment guarantees (including any guaranteed annual increase) and switching rights. Convert all With-Profits policies to Unit-Linked policies.
- **Part Two:** To transfer all of the business of Equitable Life to Utmost Life and Pensions except for certain excluded policies (German and Irish Policies which will remain with Equitable Life which will become a subsidiary of Utmost Life and Pensions).

- 6.4 Cambridgeshire County Council, the administering authority and 'Scheme Policy Holder' has been asked to vote to:
- Approve the 'Scheme' (Part 1)
  - 'Change the Articles' to make Utmost Life and Pensions the sole Member of Equitable Life (Part 2)
- 6.5 Administering authorities can object to the transfer of Equitable Life's business to Utmost Life and Pensions (the transfer does not require a vote but does need the approval of the High Court).
- 6.6 The deadline for receipt of online or postal votes is 10am on 30<sup>th</sup> October 2019.
- 6.7 On behalf of the LGPS administering authorities that have Equitable Life as an AVC provider for their members, the LGA obtained a QC opinion (dated 6<sup>th</sup> September 2019) on the obligations and future challenges associated with this vote. In summary the opinion is as follows:
- an administering authority is entitled to vote
  - the administering authority has a duty to secure that the value of additional benefits from AVCs is 'reasonable' having regard to the amount of the voluntary contributions and the value of other scheme benefits
  - it is for administering authorities to determine how they exercise their votes; they cannot and must not abdicate their responsibility in this regard
  - administering authorities must not allow themselves to be dictated to by Scheme members
  - administering authorities will not generally be liable if they act reasonably.
- 6.8 QC opinion was also that it would be prudent for administering authorities to communicate with scheme members before it is determined how to vote in order to assist with that determination (for the reasons set out in the opinion).
- 6.9 The full QC opinion can be found in **appendix 4**.
- 6.10 In line with other LGPS Funds that have Equitable Life as their AVC provider, LGSS Pensions are in the process of obtaining advice on Equitable Life's proposals from Aon. Aon will conduct an in-depth review on the reasonableness of the uplifts proposed by Equitable Life and the default investment strategy for funds transferred from the With Profits Fund and a member analysis of the proposed uplifts and suitability of the investment strategy for the Fund's members. Aon will also produce the member communication as recommended by the QC.
- 6.11 As the closing date for votes is 30th October 2019 and so before the next meeting of the Pension Fund Committee and that the administering authority has a fiduciary duty to make an informed decision on how to vote on the Proposal it is proposed that the Head of Pensions in conjunction with the Chairman and Vice-Chairman of the Pension Fund Committee decide on how the administering authority should cast its vote based on the advice provided by Aon outside of a formal meeting.

- 6.12 In addition, should the Proposal go ahead, the administering authority will be required to make a decision on the default investment strategy in respect of the transfer payments by 12<sup>th</sup> December 2019. It is proposed that the Head of Pensions in conjunction with the Chairman and Vice-Chairman of the Pension Fund Committee make this decision outside of the formal meeting as the next meeting falls on the 12<sup>th</sup> December 2019, the date by which the investment instructions need to be received by Equitable Life.

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

- 7.1 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.
- 7.2 In order to facilitate the acquisition of skills and knowledge for members of the Pension Fund Committee, **appendix 1** lists the main events that are deemed useful and appropriate.
- 7.3 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.

## **8. Relevant Pension Fund Objectives**

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>
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>
Ensure 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>
Continually monitor and manage risk, ensuring the relevant stakeholders are able to mitigate risk where appropriate. <i>Objective 5</i>

## **9. Risk Management**

- 9.1 The Pension Fund Committee are required to have the appropriate skills and knowledge to effectively carry out their duties. This report ensures that the Pension Fund Committee is up to date with:
- New or amending legislation affecting the LGPS;
  - Relevant activities of the LGPS Scheme Advisory Board and the TPR that concern the governance of the (LGPS) on a national and local basis; and
  - Skills and knowledge opportunities.
- 9.2 The risks associated with Pension Fund Committee not having the required level of knowledge and understanding have been captured in the Fund's risk register as detailed below.

<b>Risk No</b>	<b>Risk</b>	<b>Residual risk rating</b>
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 Committee/Pension Board to enable informed decision making.	Green

- 9.3 The Fund's risk register can be found - <https://pensions.cambridgeshire.gov.uk/app/uploads/2019/04/Cambridgeshire-Risk-Register.pdf>

## **10. 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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## **11. Finance & Resources Implications**

- 11.1 The costs associated with the advice required for the Equitable Life Proposal (section 6) will be met by the administration budget.

## **12. Legal Implications**

- 12.1 There are no legal implications connected to the contents of this report.

## **13. Consultation with Key Advisers**

- 13.1 Aon, the Fund's governance and benefits advisors have been consulted with regards to the Equitable Life Proposal as detailed in section 6.

## **14. Alternative Options Considered**

- 14.1 There are no alternative options to be considered.

## **15. Background Papers**

- 15.1 None.

## **16. Appendices**

- 16.1 Appendix 1 List of training events/conferences.  
Appendix 2 Exit payments cap consultation response  
Appendix 3 Local valuation cycle and the management of employer risk consultation response  
Appendix 4 QC opinion on the role of the administering authority and the Equitable Life Proposal



### Checklist of Key Approvals

Is this decision included in the Business Plan?	No
Will further decisions be required? If so, please outline the timetable here	No
Is this report proposing an amendment to the budget and/or policy framework?	No
Has this report been cleared by Section 151 Officer?	Sarah Heywood – 23 <sup>rd</sup> September 2019
Has this report been cleared by Head of Pensions?	Mark Whitby – 20 <sup>th</sup> September 2019
Has the Chairman of the Pension Committee been consulted?	Councillor Rogers – 23 <sup>rd</sup> September 2019
Has this report been cleared by Legal Services?	Fiona McMillan – 26 <sup>th</sup> September 2019

### Appendix 1 – Internal/External training and events 2019-2020

Date	Event	Training Credits	Target Audience	Host/Website
17-18 January 2019	LGPS Governance Conference	4	Officers, Committee/Board members	Local Government Association <a href="https://www.local.gov.uk">https://www.local.gov.uk</a>
13 February 2019	<b>LGSS Pensions Information Day</b>	2	Officers, Committee/ Board Members	In house ACCESS – appointment of operator
27 February 2019 (morning)	Chartered Institute of Public Finance and Accountancy (CIPFA) Spring Seminar	2	Officers only	<a href="https://www.cipfa.org/training/l/lgps-spring-officers-spring-seminar-20190227-london">https://www.cipfa.org/training/l/lgps-spring-officers-spring-seminar-20190227-london</a> Latest updates on the LGPS and regulations.
27 February 2019 (afternoon)	CIPFA Spring Seminar	2	Local Pension Board members only	<a href="https://www.cipfa.org/training/l/lgps-members-spring-seminar-20190227-london">https://www.cipfa.org/training/l/lgps-members-spring-seminar-20190227-london</a> Latest updates on the LGPS and regulations.
28 February – 01 March 2019	Local Government Chronicle (LGC) Investment Seminar	4	Officers, Committee/ Board Members	<a href="https://investmentseminar.lgcplus.com">https://investmentseminar.lgcplus.com</a> Keeping the LGPS affordable and accessible through austerity and uncertain times.
1 March 2019	Schroders Trustee Training (Part 1)	2	Officers, Committee/ Board Members	<a href="https://www.schroders.com/en/uk/pensions/events/training/schroders-trustee-training-2019-london-part-1-spring/">https://www.schroders.com/en/uk/pensions/events/training/schroders-trustee-training-2019-london-part-1-spring/</a> The programme is designed to cover a wide range of different asset classes and investment strategies, as well as how to manage some of the risks associated with them
22 March 2019	Schroders Trustee Training (Part 2)	2	Officers, Committee/ Board Members	<a href="https://www.schroders.com/en/uk/pensions/events/training/schroders-trustee-training-2019-london-part-2-spring/">https://www.schroders.com/en/uk/pensions/events/training/schroders-trustee-training-2019-london-part-2-spring/</a> The programme is designed to cover a wide range of different asset classes and investment strategies, as well as how to manage some of the risks associated with them
13 - 15 May 2019	Pensions and Lifetime Savings Association (PLSA) Local Authority Conference	4	Officers, Committee/ Board Members	<a href="https://www.plsa.co.uk/Events-Local-Authority-Conference">https://www.plsa.co.uk/Events-Local-Authority-Conference</a>

26 June 2019	CIPFA & Barnett Waddingham Local Pension Boards' Annual Full Day Event	2	Local Pension Board members only	
2 – 4 July 2019	Local Authority Pension Fund Forum (LAPF) Strategic Investment Forum	4	Chairman of Pension Committee / Officers	<a href="https://www.dgpublishing.com/lapf-strategic-investment-forum/">https://www.dgpublishing.com/lapf-strategic-investment-forum/</a>
3 - 4 July 2019	Heywood Class Group Annual General Meeting (AGM)	4	Officers	
10 – 12 July 2019	LGC Pension Fund Symposium	4	Officers	<a href="https://pensionfund.lgcplus.com">https://pensionfund.lgcplus.com</a>
17 July 2019	<b>LGSS Pensions Information Day</b>	2	Officers, Committee/ Board Members	
5-6 September 2019	LGC Investment Summit	4	Officers, Committee/ Board Members	<a href="https://investmentsummit.lgcplus.com">https://investmentsummit.lgcplus.com</a>
25 September 2019	Introduction to the LGPS	2	Officers, Committee/ Board Members	<a href="https://www.cipfa.org/training/i/introduction-to-the-lgps-20190925-london">https://www.cipfa.org/training/i/introduction-to-the-lgps-20190925-london</a> Aimed at new or inexperienced officers and elected members this course, based on the CIPFA knowledge and skills framework.
3 October 2019	LGPC Fundamentals Training (Day 1/3)	2	Committee/Board Members	Provides members of Pension Committees and Local Pension Boards with the knowledge and skills to enable them to carry out their duties effectively. Further information to follow.
9 October 2019	<b>LGSS Pensions Information Day</b>	2	Officers, Committee/ Board Members	
11 October 2019	Schroders Trustee Training (Part 1)	2	Officers, Committee/ Board Members	<a href="https://www.schrodersevents.co.uk/schroders/frontend/reg/tOtherPage.csp?pageID=573019&amp;ef_sel_menu=10552&amp;eventID=1592">https://www.schrodersevents.co.uk/schroders/frontend/reg/tOtherPage.csp?pageID=573019&amp;ef_sel_menu=10552&amp;eventID=1592</a> The programme is designed to cover a wide range of different asset classes and investment strategies, as well as how to manage some of the risks associated with them

16 October 2019	Access Investor Day	2	Officers, Committee/ Board Members	
6 November 2019	LGPC Fundamentals Training (Day 2/3)	2	Committee/Board Members	Provides members of Pension Committees and Local Pension Boards with the knowledge and skills to enable them to carry out their duties effectively. Further information to follow.
8 November 2019	Schroders Trustee Training (Part 2)	2	Officers, Committee/ Board Members	<a href="https://www.schrodersevents.co.uk/schroders/frontend/reg/tOtherPage.csp?pageID=573019&amp;ef_sel_menu=10552&amp;eventID=1592">https://www.schrodersevents.co.uk/schroders/frontend/reg/tOtherPage.csp?pageID=573019&amp;ef_sel_menu=10552&amp;eventID=1592</a> The programme is designed to cover a wide range of different asset classes and investment strategies, as well as how to manage some of the risks associated with them.
19 – 20 November 2019	Pension Managers’ Conference	4	Officers	<a href="http://www.swcouncils.gov.uk/nqcontent.cfm?a_id=339&amp;tt=swra&amp;eventStatus=list&amp;eventAction=view&amp;eventId=1271">http://www.swcouncils.gov.uk/nqcontent.cfm?a_id=339&amp;tt=swra&amp;eventStatus=list&amp;eventAction=view&amp;eventId=1271</a>
4 – 6 December	LAPFF Annual Conference	4	Officers	<a href="http://www.lapfforum.org/events/lapff-conference">http://www.lapfforum.org/events/lapff-conference</a>
18 December 2019	LGPC Fundamentals Training (Day 3/3)	2	Committee/Board Members	Provides members of Pension Committees and Local Pension Boards with the knowledge and skills to enable them to carry out their duties effectively. Further information to follow.
26 February 2020	<b>LGSS Pension Information Day</b>	2	Officers, Committee/ Board Members	