



REPORT OF THE GROUP DIRECTOR, FINANCE & CORPORATE RESOURCES

Regulatory Update Pensions Committee 16th June 2021	Classification PUBLIC	Enclosure None
	Ward(s) affected ALL	AGENDA ITEM NO.

1. INTRODUCTION

- 1.1 This report provides an update on recent regulatory and oversight developments which will affect the management of the Fund and may require resources to be deployed to ensure the Fund is compliant once the changes are finalised in regulations or guidance.

2. RECOMMENDATIONS

- 2.1 The Pensions Committee is recommended to:
- Note the report.

3. RELATED DECISIONS

- None.

4. COMMENTS OF THE GROUP DIRECTOR, FINANCE AND CORPORATE RESOURCES

- 4.1 The Pensions Committee acts as scheme manager for the Pension Fund and is responsible for the management of £1.7 billion worth of assets and for ensuring the effective and efficient running of the Fund.
- 4.2 Keeping up-to-date with regulatory and other developments affecting the management of the Fund helps ensure that the Committee is able to plan and understand the resourcing decisions that it will be faced with over the coming years. The decisions taken by the Committee impact directly on the external standing of the Fund and can affect its ability to serve its stakeholders. Understanding and anticipating future changes helps to ensure members are paid the correct benefits at the right time and that the Fund is compliant with legislation and guidance.
- 4.3 There are no direct financial implications as a result of this update but, when implemented, it is likely these requirements will result in additional work and therefore the resource implications will be considered at that point.

5. **COMMENTS OF THE DIRECTOR OF LEGAL AND GOVERNANCE**

- 5.1 The Council's Constitution gives the Pensions Committee responsibility for various specified functions relating to management of the Council's Pension fund. In carrying out those functions the Committee must have regard to the various legislative obligations imposed on the Council as the Fund's Administering Authority, including the Local Government Pension Scheme (LGPS) Regulations 2013.
- 5.2 It is sensible against this background, and consistent with good administration and governance, for the Committee to keep up-to-date on regulatory and other developments with which the Fund will need to comply in due course.

6. **BACKGROUND TO THE REPORT**

- 6.1 The London Borough of Hackney is the Administering Authority for the Pension Fund; delegated powers under the Council Constitution have been given to the Pensions Committee to oversee its management. This includes ensuring compliance with all relevant legislation and guidance.

7. **THE PENSIONS REGULATOR (TPR) – CONSULTATION ON NEW COMBINED CODE OF PRACTICE**

- 7.1 On 17 March 2021 TPR issued its consultation on a new Code of Practice which ran for 10 weeks until 26 May 2021. The new code can be found here - [Single code of practice consultation | The Pensions Regulator](#). It brings together 10 existing codes of practice, including Code of Practice 14 (Governance and Administration of Public Service Pension Schemes), into a single modular (on-line) code which will apply to all UK pension schemes.
- 7.2 Not all parts of the new Code apply to the LGPS, whilst some others are only recommended best practice and not strictly required by law. Appendix 1 of the consultation document summarises which parts of the Code apply to the LGPS and of those that apply, which are new. Further to this, some of the requirements listed as already "existing" contain some new requirements. Some of the 'new' modules contain already existing requirements whilst others do not contain any new legal requirements but contain new 'best practice' recommendations. It is therefore clearly important that the Fund notes all requirements in detail to ensure it complies with all legal requirements and best practice.
- 7.3 The Code proposes a new term "governing body". Unless further clarity on this is included when the final code is published, LGPS administering authorities may need to determine whether a module applies to the Scheme Manager (which for the LGPS means the Pensions Committee or equivalent) and / or the Local Pension Board.
- 7.4 The modules are set out in 5 sections:
- **The governing body.** Most of the modules within this section will apply to the LGPS, with the exception of areas such as member-nominated trustees and value for members which only apply to private sector schemes. The modules are a mixture of new, existing and best practice

requirements.

- **Funding and Investment.** This section does not apply to the LGPS (as TPR does not have jurisdiction over LGPS investment matters) although the modules on investment governance and investment monitoring are marked as best practice for public service schemes.
- **Administration.** There are a number of new modules in this section, including on cyber controls (although this is based on 2018 guidance which wasn't part of Code of Practice 14 so represents a helpful consolidation of additional guidance into the new code for public service schemes).
- **Communications and disclosure.** New modules in this section relate to general principles for member communications and preventing scams when scheme members transfer their benefits to what they think are other pension schemes.
- **Reporting to TPR.** Largely based on existing guidance other than the introduction of a new module, registrable information and scheme returns.

7.5 It is expected that the new Code will be published by the end of this calendar year. Officers are liaising with the Fund's benefits and governance advisors to understand the impact of the new Code and will be assessing compliance against the New Code once it is published.

8. SCHEME ADVISORY BOARD – GOOD GOVERNANCE REVIEW

8.1 On 15 February 2021 the Scheme Advisory Board (SAB) published its third and final report as part of its Good Governance Review ([Good Governance Final Report February 2021.pdf \(lgpsboard.org\)](#)), carried out with the support of Hymans Robertson. The review was initially referred to as the "separation project" but was re-positioned to embrace a wider remit with an overriding objective to improve governance standards across all LGPS funds.

8.2 The recommendations in the report can be summarised as follows:

- **General**, including production of statutory guidance to implement the good governance recommendations, the introduction of a single named officer ("LGPS Senior Officer") with responsibility for a fund's LGPS activity and additional requirements for the governance compliance statements.
- **Conflicts of Interest**, including a requirement to produce and publish a conflicts of interest policy that includes details of how actual, potential and perceived conflicts are addressed within a fund's governance arrangements.
- **Representation**, including the requirement to produce and publish a policy on the representation of scheme members and non-administering authority employers on its committees, explaining its approach to voting rights for each party.
- **Knowledge and understanding**, introducing a requirement for key individuals in the LGPS, including officers, Pension Committee members and s151 officers, to have appropriate knowledge and understanding and requiring publication of a policy on a fund's approach to delivery, assessment and recording of training plans to

meet the requirements.

- **Service Delivery for the LGPS Function**, ensuring documentation and publication of key roles and responsibilities in relation to the LGPS, introducing a requirement to publish an administration strategy, the requirement to report performance against an agreed set of performance indicators, ensuring the Pension Committee is included in the business planning process and that the Committee and LGPS Senior Officer are satisfied with the resource and budget allocated to deliver the LGPS service over the next financial year.
- **Compliance and improvement**, introducing a requirement for a biennial independent governance review and production of an improvement plan to address any issues identified and for LGA to consider establishing a peer review process for LGPS funds.

8.3 SAB has written to MHCLG highlighting the actions they are recommended to take in order to implement the proposals from the review through amending scheme regulations and/or producing statutory guidance and we understand SAB will be taking forward the recommendations which fall within its remit.

8.4 Officers are liaising with the Fund's benefits and governance advisors to understand the impact of the recommendations. A further report will be brought to the Committee with recommendations relating to how the new requirements should be implemented once legislation/guidance is published. Many of the requirements are already in place for Hackney Pension Fund including having a Fund Conflicts of Interest Policy and the Pension Committee approving the Fund's Business Plan.

9. **WRITTEN MINISTERIAL STATEMENT ON MCCLOUD**

9.1 Committee members may recall previous updates relating to the McCloud rectification project. Following the Court of Appeal's ruling relating to public service scheme members McCloud and Sargeant, it has been determined by Government that regulatory changes are required to rectify age discrimination identified in the transitional protections put in place across the public sector in moving from final salary to career average revalued earnings (CARE) benefits schemes in 2014 and 2015. The key features of the proposed remedy include levelling up benefits for the younger members who suffered discrimination using a form of final salary "underpin". A consultation on the proposed remedy in the LGPS took place last year.

9.2 MHCLG issued a Written Ministerial Statement on McCloud on 13 May 2021. The Statement can be found here - [Written statements - Written questions, answers and statements - UK Parliament](#). It confirms the key elements of the changes that will be made to the LGPS Regulations to rectify the illegal age discrimination posed by the underpin which was implemented alongside the 2014 scheme reforms:

- Underpin protection will apply to LGPS members who meet the revised qualifying criteria, principally that they were active in the scheme on 31st March 2012 and subsequently had membership of the career average scheme without a continuous break in service of more than five years.
- The period of protection will apply from 1st April 2014 to 31st March

2022 but will cease earlier where a member leaves active membership or reaches their final salary scheme normal retirement age (normally 65) before 31st March 2022.

- Where a member stays in active membership beyond 31st March 2022, the comparison of their protected benefits will be based on their final salary when they leave the LGPS, or when they reach their final salary scheme normal retirement age, if earlier.
- Underpin protection will apply to qualifying members who leave active membership of the LGPS with an immediate or deferred entitlement to a pension.
- A 'two stage process' will apply for assessing the underpin so that, where there is a gap between a member's last day of active membership and the date they take their pension, members can be assured they are getting the higher benefit.
- Scheme regulations giving effect to the above changes will be retrospective to 1st April 2014.

9.3 A full Government response to the consultation is expected to be published later this year. This will include the Government's decision on whether members will be expected to meet the underpin qualifying criteria in a single period of scheme membership for the underpin to apply.

9.4 The expectation is that the required LGPS regulations will be made after the Public Service Pensions Bill amendments have been passed and that the new regulations will come into force on 1st April 2023. Further information about the Fund's progress on the McCloud project is included in the Quarterly Update report. The Written Ministerial Statement includes no surprises, other than the regulations being later than was originally expected. The programme of work will therefore continue unaffected following the Statement albeit it appears the overall timescale may be longer than originally anticipated.

10. **CIPFA KNOWLEDGE AND SKILLS FRAMEWORK**

10.1 Working with Aon, CIPFA is refreshing its knowledge and skills framework, bringing together and updating content from previous documents:

- The Pensions Finance Knowledge and Skills Framework – Technical Guidance for Pensions Practitioners in the Public Sector (published 2010) and
- The Pensions Finance Knowledge and Skills Framework – Technical Guidance for Elected Representatives and Non-executive Members in the Public Sector (published 2010).

It will also be publishing a new code of practice based on the Code of Practice on Public Sector Pensions Finance Knowledge and Skills (published 2013).

10.2 The new Framework will apply to Committee members and Senior Officers and is expected to reflect developments such as the Pension Regulator's involvement in LGPS, Pooling, MIFID II and the increasing focus on Responsible Investment. It is also expected to better link to other areas such as the Good Governance recommendations from the Scheme Advisory Board.

10.3 At the time of writing, the date of publication has not yet been confirmed but is expected to be late May/early June. Officers will liaise with the Fund's benefits and governance advisors to understand the implications of the new Framework and will provide further details to Committee at future meetings including any recommended updates to the Fund's Training Policy.

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