**NORTHUMBERLAND COUNTY COUNCIL PENSION FUND**
**Pension Fund Panel Meeting 6 December 2019**

South Tyneside Council

# Pensions Committee

Date: 26th November 2019

# Pensions Administration

(for information and discussion)

Report of the Head of Pensions

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- **Purpose of Report**

1. This report briefs the Committee on developments in certain pension administration matters that are LGPS specific and also provides an update on non-LGPS specific matters which are of interest.

2. The Committee is asked to note the report.

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## Background

3. This report provides an update to Committee on important pensions administration and governance matters that are of particular relevance at this time. The report is split into 2 main sections, namely:

- Local Government Pension Scheme specific matters; and
- Non-Local Government Pension Scheme specific matters which are of interest. Issues in this section of the report are for information only.

## LGPS Specific Matters:

### MHCLG consultation – LGPS: Fair Deal – Strengthening Pension Protection

4. In January 2019, MHCLG launched a consultation on a proposal to introduce the concept of Fair Deal in the LGPS. Fair Deal is not new and has applied to other public sector bodies for several years. However, whilst long mooted, this has not previously applied to local authorities or other Best Value bodies.

5. If introduced, Fair Deal will remove the option for staff to be granted access to a Government Actuary's Department (GAD) certified broadly comparable scheme. Instead, outsourcing 'Fair Deal Employers' (this term will include most Scheduled and Designation Bodies) will be required to provide continued LGPS membership for "Protected Transferees" (a person with LGPS eligibility employed by a Fair Deal Employer).

6. The Fund submitted a response to the consultation on 4th April, a copy of this was included in this report to Committee in June 2019. The response was largely supportive of the proposals.

7. MHCLG is considering the consultation responses at this time and a response from MHCLG will be expected in due course. Officers will continue to monitor the position.

### MHCLG consultation – LGPS: Changes to the Local Valuation Cycle and the Management of Employer Risk

8. The Committee has previously been informed of a consultation by MCHLG called the 'Local Government Pension Scheme: Changes to the Local Valuation Cycle and the Management of Employer Risk'.

9. The Fund submitted a response to the consultation on 30th July 2019, following the prior approval of the Chair and Vice Chair of Committee. A full copy of the consultation was emailed to Committee members on

23rd July 2019 and a summary was provided to Committee in this report at the meeting on 26th September 2019.

10. MHCLG received around 280 responses to the consultation and is currently considering its response. Nonetheless, we understand that MHCLG expects:

    - the next local fund valuation will take place in 2022;
    - Government is inclined to move the LGPS to a 4 yearly (i.e. quadrennial) valuation cycle, but amendment regulations are not expected on this until after 2022;
    - additional flexibilities on the exit regime to be introduced soon. MHCLG had stated its aspiration of laying amendment regulations before Christmas, but the imminent general election is likely to delay this.

11. Officers will continue to monitor the position and keep Committee updated accordingly.

**Ongoing Consultation – Guaranteed Minimum Pensions**

12. In a number of earlier reports the Committee has been advised that in February 2017 the Fund responded to an HM Treasury ("HMT") consultation on options for how the Guaranteed Minimum Pension element of pensions paid to those members who will reach state pension age on or after 6th December 2018 should be indexed. Since then members have been provided with an update at each meeting.

13. In January 2018, HMT published its response to this consultation. This acknowledged that it is a complex area and more time is required to identify a long term solution. As a result, it will now extend the existing interim solution, covering those members of public service schemes reaching state pension age between 6th April 2016 and 5th December 2018 to those that reach state pension age on or before 5th April 2021. Further time will then be taken to identify a longer term solution.

14. The interim solution increases the value of liabilities in the LGPS, though this increase is not generally material and the Fund Actuary did not need to review employer contributions before the 2019 valuation.

15. It is expected that further consultation will take place, but to date no further progress has been made. The Committee will be kept up to date on this matter.

## SAB Review - Academies

16. The Scheme Advisory Board ("SAB") has commenced a review of the participation of existing academies and commissioned PwC to investigate these issues and prepare a report.

17. The report, which was released on 17th July 2017, made no recommendations but set out three broad types of approach or mechanisms to try and resolve these issues. These are:

- non-regulatory measures within the LGPS
- regulatory measures within the scheme, and
- measures outside of the LGPS, including through primary legislation.

18. The SAB review has been split between a funding working group and an administration working group. Work on the administration working group was put on hold due to competing work pressures; however, this has now been lifted and work on this is to resume.

19. Officers will continue to monitor the position and update Committee accordingly.

## SAB Review – Tier 3 Employers

20. In addition to the review noted above, the SAB has also commissioned some work in respect of "Tier 3 employers" in the LGPS.

21. Broadly speaking, Tier 3 employers are those employers which: (i) have no tax raising powers, (ii) are not backed by an employer with tax raising powers; or (iii) are not an academy.

22. It is understood that the SAB is seeking to identify the potential funding, legal and administrative issues and liabilities relating to Tier 3 employers.

23. SAB has established a small working group to review concerns expressed by Tier 3 employers and the ways in which they may be resolved. The working group is tasked with reporting back to the SAB with a set of recommendations for further consideration. At the current time, no changes are expected in advance of the 2019 valuation.

24. The Committee will continue to be updated on this matter.

## SAB Review – Good Governance in the LGPS

25. Committee has been informed in recent meetings of the 'Good Governance in the LGPS' review by the Scheme Advisory Board. This review has its origins in 2014/15 when the SAB commissioned a report to look at the issues and challenges of potentially separating the pensions function of LGPS administering authorities from their host authorities.

26. The review previously centred on the potential conflicts of interest that can arise. The view was expressed that, in principal, the greater the separation between the Pension Fund and the employers, the lesser the risk there is of a conflict arising.

27. Whilst a report was produced by KPMG on this subject no firm decisions were taken on how to progress and the initiative was largely put on hold as the SAB prioritised other areas of work such as pooling and academies.

28. In 2018/19, the SAB restarted this initiative and, following a tender exercise, appointed Hymans Robertson to assist with the project on the "good governance of the LGPS".

29. Hymans completed its report for SAB earlier this year and a link to the report was initially sent to Committee members on 31st July 2019 and was followed up on 12th August with further details and a summary of the report. Hymans have made a number of recommendations to SAB in the report, specifically:

I. To take an 'outcomes-based' approach to governance in the LGPS with minimum standards rather than a prescribed governance model. Hymans considers it preferable to specify what outcomes are desired so individual administering authorities can then set their own governance procedures. Hymans does not view prescribing a 'one size fits all' governance model as appropriate for the LGPS.

II. The 'outcomes based' approach should include:

(a) robust conflict management, including clarity on roles and responsibilities for decision-making;
(b) assurance on sufficiency of administration and other resources (quantity and competency) and appropriate budget;
(c) explanation on employer and scheme member engagement and representation in governance; and
(d) regular independent review of governance – this should be based on an enhanced governance compliance statement which should explain how the required outcomes are delivered.

III. Enhanced training requirements for s151 officers and Pensions Committee members (the requirements for Committee members should mirror those for Local Pensions Board members).

IV. For central guidance to be updated to be more applicable for the modern day LGPS.

30. Overall, there is nothing within the Hymans report which proposes anything revolutionary from a TWPF perspective. Nevertheless, the report has made recommendations only and the final outcome may yet differ from what is listed above.

31. For the next stage of the project, SAB has again invited Hymans to continue to provide support. Two working groups are to be established, one to focus on defining good governance outcomes and the guidance needed to clearly set them out and the other working group to focus on options for independent assessment of outcomes and mechanisms to improve the delivery of those outcomes. Both working groups are to comprise a wide range of stakeholders within the LGPS and the working groups are to report back to SAB at its next meeting in November. The proposals SAB considers recommending to MHCLG will be consulted on before SAB formally reports back to MHCLG.

32. Officers will continue to monitor the position and update Committee accordingly.

**Cost Management Review / McCloud**

33. Committee has been kept informed of the Cost Management Review in the LGPS and how this was largely superseded by the anticipated implications of the Court of Appeal judgements in McCloud and Sargeant.

34. The Fund's position on McCloud has been discussed in detail at recent committee meetings and the training event in Edinburgh in September. This has resulted in the Fund adding an additional 1.2% to the employer contribution rate for all employers at the 2019 valuation. Further details on this can be found elsewhere in the agenda.

35. Whilst the full implications of McCloud are unknown, the Cost Management Review is now being held in abeyance until further notice.

**The Pensions Regulator: Governance and Administration Risks in Public Service Pension Schemes: An Engagement Report**

36. In Autumn 2018, The Pensions Regulator ("TPR") announced plans to conduct engagement sessions with 10 LGPS funds (for the avoidance of doubt, this did not include Tyne and Wear Pension Fund). This was prompted by concerns by TPR about a slowdown in improvements across

LGPS funds and a desire on the part of TPR to gain a greater understanding of the reasons for this.

37. The TPR review was undertaken at a high level and based on meetings with funds as TPR sought to understand the challenges the individual funds were facing. TPR indicated that they saw good practice across the LGPS funds they engaged with, but also saw a number of areas with room for improvement.

38. A copy of the report was published on the TPR website in late September. A link to this report and a summary from Hymans Robertson was emailed to the Committee.

39. TPR has made a number of recommendations which can be summarised as follows:

    Record keeping – accuracy of member data should be measured correctly, regularly reviewed and, importantly, understood by the scheme manager and the pension board. Ensuring a strategy is in place can assist in clearly setting out roles and responsibilities and consequences of non-compliance.

    Internal controls – while taking a holistic view of risk, funds should have a risk register in place, that should be regularly reviewed by the pension board. Funds should also record all internal controls and processes, reducing the possible impact of key person risks.

    Administrators – performance targets should be agreed, measured and, if required, challenged if not met.

    Member communication – ensure all communication is clear, precise and free from jargon. Consideration should also be given to measuring the effectiveness of all material, to ensure it is understood by the audience.

    Internal dispute resolution – information on the dispute process should be easily available for those who might use it. Funds should have a policy on dealing with complaints, with the pension board having regular oversight on them, along with their outcomes. Learning lessons from complaints, and compliments, should be used as a means of improving the service.

    Pension boards – funds should ensure individual training plans are in place and ensure appropriate training is available and attended. A process should exist for dealing with ineffective board members.

Employers and contributions – funds should have a greater understanding of the financial position of their participating employers. Reviewing covenant strength should be considered more regularly than at each valuation. An admissions and cessations policy can help in managing the introduction of new employers, security required and dealing with employers when they exit the scheme.

Cyber security – funds should put this on their risk registers, carry out penetration testing and not rely solely on Local Authority security processes and systems.

Internal fraud and false claims – funds should ensure procedures are in place to minimise the risk of fraud, including the actions to be taken where a fraud has been uncovered.

40. The above is only a high level summary of the Pensions Regulator's report. Officers need to digest the report in further detail and apply it to the Fund. Whilst we can take comfort from certain sections of the report there is, of course, room for improvement.

41. A more detailed report will be brought to Committee on this matter in the future. It is also intended to take a report to the Local Pension Board.

## Non LGPS Specific Matters

### Public Sector Exit Payments Cap

42. The Small Business, Enterprise and Employment Act 2015 introduced the concept of a 'public sector exit payments cap'. The legislation provides that exit payments to be paid to a person are not to exceed £95,000. The 2015 Act provided the overarching principles of how the exit cap was to operate, but the detail was to be prescribed in regulations that were expected to soon follow.

43. This matter was very topical in 2015 and 2016; however, following the referendum on EU membership, the matter was placed in abeyance as 'Brexit' dominated central government's attention.

44. After several years of inactivity on the public sector exit payments cap, HMT launched a new consultation on this matter in April 2019. Included in the consultation were draft regulations called 'The Restriction of Public Sector Exit Payment Regulations 2019' (the "Exit Cap Regulations 2019") which provided most of the detail on how the exit cap regime will operate from an employer's perspective. The consultation posed eight specific questions all targeted at employers, not administering authorities.

45. Under the Exit Cap Regulations 2019, it is proposed that the exit cap will be phased into the public sector, but local government is covered by phase 1. The exit payment cap is to remain at £95,000 despite the passage of 4 years (i.e. it is not index linked) and the exit payment amount is determined by the accumulation of the following:

- redundancy payment(s);
- any payment to offset an actuarial reduction to a pension arising by virtue of early retirement (we refer to this as a 'strain on the fund' cost);
- any payment made pursuant to an award of compensation under the ACAS arbitration scheme or a settlement or conciliation agreement;
- any severance payment or ex gratia payment;
- any payment in the form of shares or share options;
- any payment on voluntary exit;
- any payment in lieu of notice due under a contract of employment;
- any payment made to extinguish any liability under a fixed term contract;
- any other payment made, whether under a contract of employment or otherwise, in consequence of termination of employment of loss of office.

46. As can be seen from the above, the list of what can contribute towards the exit payment cap is extensive. Of particular interest to the Fund is that 'strain on the fund' costs are included towards the cap. In this context, it should be noted that strain on the funds costs alone can exceed £95,000. It can also be noted this is not just in respect of higher earners. Strain on the fund costs can also exceed this amount for members with long periods of membership.

47. Despite the subject matter of the consultation being largely employer issues, Officers submitted a response, in agreement with the Chair and Vice Chair of the Committee on 3 July. Details of the proposed response were emailed out to the Committee and the Local Pension Board on 1st July 2019 and a summary was provided in the last Committee agenda.

48. HMT received approximately 600 responses to the consultation and a response was anticipated this autumn with the cap to be introduced no sooner than 1 April 2020. These timescales will likely be impacted by the forthcoming general election.

## Repayment of public sector exit payments (also referred to as "clawback")

49. As well as the public sector exit payment cap, the Small Business, Enterprise and Employment Act 2015 allows for the introduction of a mechanism for the repayment of some or all of qualifying exit payments to be repaid by high earners (i.e. those earning £80,000 or more) should they return to public sector employment within 12 months.

50. Consultation occurred on this proposal in 2015, but this continues to be held in abeyance. Unlike the public sector exit payments cap, the "clawback" provisions are not being progressed at this time.

## Recommendation

51. The Committee is recommended to note the report.