NORTHUMBERLAND COUNTY COUNCIL PENSION FUND
Pension Fund Panel Meeting 28 February 2020

South Tyneside Council

Pensions Committee

Date: 4th March 2020

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:

    - the next local fund valuation will take place in 2022;

    - there was widespread opposition from LGPS stakeholders to the proposal to move to a quadrennial valuation cycle. At the present time, Government has made no decision on this matter and the issue is likely to be parked in the short term;

    - amendments to the scheme regulations to deal with issues relating to exit credits are expected soon.

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. There has been little progress on this review in the last 18 months, but this may be revived if academies are perceived to have been unfavourably treated (when compared to local authorities) in the 2019 valuation.

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.

24. There has been very little progress on the Tier 3 review in the last 2 years. Notwithstanding this, the proposals about closing active membership for the higher and further education sectors is believed to have its origins in the Tier 3 review.

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

SAB Review – Good Governance in the LGPS

26. Committee has been informed in recent meetings of the 'Good Governance in the LGPS' review by the Scheme Advisory Board.

This was followed up with a training session in Leeds last month where the Good Governance Review was looked at in detail.

27. Hymans Robertson has been appointed to assist with this project.

28. Hymans completed its Phase I report in July 2019. A number of "high level" recommendations were made to SAB. SAB was supportive of the Phase I recommendations, which were discussed at previous committee meetings, and tasked Hymans at Phase II of the project to expand on the Phase I recommendations.

29. In November 2019, Hymans completed its Phase II report and made a number of more detailed recommendations, specifically:

A. General

(1) MHCLG to produce statutory guidance to establish new governance requirements for funds to implement the proposals set out below ("the **Guidance**").

(2) Each administering authority must have a single named officer who is responsible for the delivery of all LGPS activity for that fund ("the **LGPS Senior Officer**")

(3) Each administering authority must publish an annual governance compliance statement of how they will comply with the Guidance.

B. Conflicts of interest

(1) Each fund must produce and publish a conflicts of interest policy which includes details of how actual, potential and perceived conflicts are addressed.

(2) SAB to produce guidance on statutory and fiduciary duties. The Guidance referred to in A(1) above should refer to the SAB guidance.

C. Representation

(1) Each fund must produce and publish a policy on the representation of scheme members and employers on its committee, explaining its approach to representation and voting.

D. Skills and training

(1) Introduce a requirement in the Guidance for key individuals, including officers and committee members, to have the appropriate level of knowledge and understanding.

(2) Introduce a requirement for s151 officers to carry out relevant LGPS training as part of their CPD requirements.

(3) Administering authorities must publish a policy setting out their approach to the delivery, assessment and recording of training plans.

(4) CIPFA and other professional bodies to be asked to produce appropriate guidance and training for s151 officers.

E. Service delivery for the LGPS function

(1) Each administering authority must document key roles and responsibilities and publish a 'roles and responsibilities matrix' setting out how key decisions are reached.

(2) Each administering authority must publish an administration strategy.

(3) Each administering authority must report the fund's performance against an agreed set of indicators designed to measure standards of service.

(4) Each administering authority must ensure their committee is included in the business planning process.

(5) Each administering authority must give proper consideration to the utilisation of pay and recruitment policies, including as appropriate market supplements, relevant to the needs of their pension fund. Administering authorities should not simply apply general Council staffing policies.

F. Compliance and improvement

(1) Each administering authority must undergo a biennial Independent Governance Review and, if applicable, produce the required improvement plan to address any issues identified.

(2) LGA to consider establishing a peer review process for LGPS funds.

30. SAB has given its endorsement to the above recommendations and news is awaited on the outcome of Phase III which is due to be considered by the SAB this month.

31. From the Fund's perspective, there is nothing revolutionary that has arisen in the Good Governance Review. However, the detail is awaited in the statutory guidance and performance indicators.

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 has largely been superseded by the anticipated implications of the Court of Appeal judgements in McCloud and Sargeant.

34. The full impact of McCloud remains unclear. Nonetheless funds have been advised to make an allowance for the 'McCloud liabilities' in the 2019 Valuation. Following discussions on this at the Committee training in September 2019 and in the subsequent Committee meeting, Committee decided to make an allowance for the McCloud liabilities by adding a 1.2% loading factor to the future service rate for employers.

35. It is currently anticipated that MHCLG will consult on proposals in 'the spring', but the actual remedy is not expected to be implemented before the end of the 2020/21 financial year. It is widely expected that whatever is implemented it will result in a considerable administrative burden for administering authorities.

36. The cost management review in the LGPS remains on hold whilst the full impact of McCloud is assessed. However, the Fire Brigade Union has launched a judicial review of the decision to delay the cost cap review in the Firefighters' Pension Scheme. If the FBU is successful, this will almost certainly impact the delay of the cost management review in the other public service schemes (including the LGPS).

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

37. 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.

38. 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.

39. 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. This report was also discussed in reasonable detail at the Committee training last month.

40. As previously discussed, 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.

41. Officers will be undertaking a full review of the Fund's governance arrangements as we progress towards implementation of the Good Governance Review. This will include consideration of the recommendations made by TPR. Committee will be kept informed as matters progress.

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 3rd July 2019. 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 1st April 2020.

49. There has been no further update on this matter since the last Committee meeting in November 2019.

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

50. 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.

51. Consultation occurred on this proposal in 2015, but this has largely been held in abeyance since. It had been assumed that the "clawback" regulations were not to be progressed. However, clawback was specifically referred to in the Conservative Party manifesto and it therefore seems possible this will resurface.

Recommendation

52. The Committee is recommended to note the report.