# Croydon Council

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| **REPORT TO:** | **Pension Committee**<br>**20 June 2023** |
| **SUBJECT:** | **Local Government Pension Scheme Advisory Board / The Pensions Regulator Update** |
| **LEAD OFFICER:** | **Matthew Hallett – Acting Head of Pensions and Treasury** |

## 1. RECOMMENDATION

1.1 The Committee are asked to note the contents of this report.

## 2. EXECUTIVE SUMMARY

2.1 This report advises the Committee of the matters currently being considered by the Local Government Pension Scheme Advisory Board and The Pensions Regulator which are relevant to the Fund. Any implications for the Fund have been noted and are being addressed in consultation with Fund advisers.

## 3 DETAIL

### 3.1. Local Government Pension Scheme Advisory Board (SAB)

**‘McCloud’ remedy in the LGPS – supplementary issues and scheme regulations consultation**

On 30 May 2023 DLUHC launched a consultation that seeks views on changes to the Local Government Pension Scheme in England and Wales (LGPS). This follows a previous consultation that DLUHC undertook in 2020 on proposals to address discrimination found by the courts in the ‘McCloud’ case. The Court of Appeal ruled in 2018 that younger members of the judicial and firefighters’ pension schemes had been unlawfully discriminated against – known as the McCloud judgement. The Department published the government response in April 2023 confirming the steps it will be taking to resolve the McCloud age gap discrimination in respect of the LGPS in England and Wales.

DLUHC are now seeking views on issues relating to the McCloud remedy. This will cover reconsulting on some areas, and consulting on issues not covered in the first consultation. The department are also seeking views on draft scheme regulations (see annex A) which would implement the remedy. The consultation closes at 11:59pm on 30 June 2023.

On 3 March 2023 SAB has published guidance to assist administering authorities with McCloud data issues. The guidance sets out what options administering authorities may consider if they are unable to collect the data needed to implement the McCloud remedy. It covers both missing data and data that may be inaccurate. The guidance should be read in conjunction with the legal advice provided by Eversheds on McCloud data issues which is referenced within the guidance document.

## 2021/22 Annual Reports and Audit issues within the LGPS

On 30 May 2023 SAB issued the following statement in respect of the impact of completed triennial valuations on the delayed 2021/22 accounts

> *Councils may be aware that the delay in finalising accounts for 2021/22 has meant that information from the March 2022 triennial valuations of pension funds has become available before the audit of many accounts has been signed-off. This has led some auditors to request that the accounts are re-done using this more up to date information.*
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> *Following discussions between stakeholders, last week the National Audit Office (NAO) issued supplementary guidance to auditors (guidance note SGN 3) and CIPFA issued supplementary guidance to accounts preparers (CIPFA Bulletin 14 Supplement). Taken together these make it clear that there is no need for the accounts to be re-stated using the triennial valuations, unless the original valuation in the accounts contained material omissions such as not taking account of an existing large-scale restructuring/redundancy programme. Hopefully, this will now prevent the issue of pension valuations adding further to the delays in finalising accounts.*

On 15 February 2023 the Minister for Local Government responded to the letter written to him in August 2022 by SAB on delays in the external audit of local authority accounts, including pension fund accounts. He welcomed the Board's advice and recommendation to consider the separation of main authority accounts and the pension fund accounts and has asked his officials to consider the scope for developing this further.

On 30 November 2022 the Board stated that it is aware that some pension fund audits are likely to be delayed again this year, largely due to issues with auditing the host authority's accounts. There is a statutory duty under regulation 57 of the LGPS Regulations 2013 for administering authorities to publish an annual report 'on or before 1 December'. The Board has written to the minister with proposals to help improve the timely completion of audit. In the meantime, it urges administering authorities to publish their 2021/22 annual reports based on the best data available to them by the statutory deadline. Ideally, the report would be based on audited data. However, if that is likely to result in a significant delay, the Board asks funds to produce and publish reports based on unaudited data (labelled as draft), and to re-publish an amended annual report with the external auditor's opinion and revised data after audit, where necessary.

On 3 August 2022 the Board Chair, Cllr Phillips, has written to the Minister outlining issues facing funds as a result of audit issues relating to the main local authority accounts. The letter proposes separating pension fund accounts from main local authority accounts as a potential solution to the problem and asks the Minister to task officials to work with the Board and its committees to consider the benefits and risks of such an approach.

**Climate risk reporting**

On 23 May 2023 the Board advised that TPR have published a review of climate-related disclosures by occupational pension schemes. The paper sets out TPR's preliminary observations and feedback to industry, based on their review of a selection of climate-related disclosures published by occupational pension schemes. The review relates to private pension schemes but contains observations which may be useful for LGPS funds ahead of the implementation of climate risk (TCFD) reporting in the LGPS – which is now expected to commence from 1 April 2024, with first reports due in late 2025.

On 22 February 2023 SAB published the results of their survey to guage the preparedness of pension funds for the changes being considered by Government as follows:

*We received a total of 51 responses to this survey. Approximately 30% of respondents indicated their fund does not have adequate resources to produce a risk report. From those without the adequate resources, 45% indicated they do not have a sufficient project plan in place to deliver a report by the anticipated deadline of December 2024. 25% of respondents do not believe that they have access to sufficient data to populate a risk report and a further 27% of respondents are unsure if they have access to the necessary data. Scope 3 carbon emissions data and carbon emissions data for alternatives and private markets were regularly cited as being extremely difficult to obtain. Although 56% responded that they have a plan in place to produce the data required to an acceptable standard, many funds cited they were dependent on the ability of third parties such as pools and fund managers to source the data and conduct the climate risk analysis.*

*35% of respondents indicated they had conducted a full assessment on what expertise was required for risk analysis. 27% have not and 35% of funds had undertaken some sort of assessment. 69% of respondents indicated they had a plan to source the resources required for the production of the report. While many funds indicated they were awaiting more certainty before carrying out assessments of what was required for the report, some were pressing ahead with plans as soon as possible.*

*The Board is working closely with the Department and administering authorities to better understand the challenge and support them through it. We intend to repeat this survey after the Government Response to last year's consultation is published, and the precise requirements are clearer.*

*Interestingly, the survey also found that 25 funds reported a date of 2050 or sooner for reaching net zero in their asset portfolio, however a substantial number of respondents indicated that risk reporting will not change or will have a limited impact on their asset allocation or choice of investments. Rather they considered it as a means to "show progress" against targets set. Some stated that it provided a focus for engagement both with their asset managers and the underlying companies in order to effect real world change, rather than simply "greening" the portfolio.*

On 18 November 2022 the Board submitted its response to DLUHC's climate risk reporting consultation. The response includes some over-arching observations on the role of pension funds (as well as their limitations), the production of climate risk reports as well as responses to the Department's specific questions on governance, scenario analysis, metrics, and risk management. The Board welcomed the opportunity to engage with the Department's proposals and believes that pension funds should be able to make a positive contribution by supporting the just transition to a sustainable future. The full response can be found here.

On 1 September 2022 The Department for Levelling Up, Housing and Communities (DLUHC) launched its consultation regarding governance and reporting of climate change risks. The consultation seeks views on proposals to require Local Government Pension Scheme administering authorities in England and Wales to assess, manage and report on climate-related risks, in line with the recommendations of the Taskforce on Climate-related Financial Disclosures (TCFD). The consultation closed on 24 November 2022.

**DLUHC consultation on changes to the SAB's cost management process (Scheme Cost Assessment – SCA)**

On 23 May 2023 the Board issued the following statement:

> *DLUHC has issued the final regulations and published its response to the consultation on reforming the SAB's own parallel process for reviewing scheme cost. This is the process set out in Regulation 116 of the 2013 Regulations, which runs during the HM Treasury-led quadrennial scheme valuation process. The changes take into account SAB's response to the consultation and better align the SCA with HMT's reformed cost control mechanism (CCM).*
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> *It helpfully re-iterates that the SAB process operates prior to the HMT CCM and gives the SAB greater flexibility in the making of recommendations to the Secretary of State where there is a breach. However, it leaves open for further discussion the link with the new "economic check" in the CCM.*

On 6 March 2023 SAB submitted its response to DLUHC's consultation. The SAB scheme cost assessment is the part of the cost management process which operates independently of, and prior to, the HM Treasury directed cost management process. The response is generally supportive of the Department's approach as they have taken on board many of the points made by the Board on how best to re-align the SAB process with the HM Treasury process, which was reformed last year. SAB hope that an opportunity will be found to make the necessary amendments to the 2013 LGPS Regulations ahead of the 2020 scheme valuation process being undertaken. The full response can be found here.

On 30 January 2023 DLUHC launched an 8 weeks consultation on changes to the Scheme Advisory Board's cost management process – the process that operates separately from, but alongside, the quadrennial scheme-level cost management process, which is based upon HM Treasury legislation and directions. The consultation follows the report from the Government Actuary's Department into changes to the HM Treasury cost management process, and the resulting policy and legislative changes set out in HM Treasury's response to that report. It acknowledges the differences between these two processes but proposes measures suggested by SAB in its consultation response to better integrate the SAB process within the statutory HMT mechanism. The consultation closed on 24 March 2023 and can be found here.

**SAB statement on Freedom of Information Act requests on climate advice and data (30th March 2023)**

"Some funds have raised with the Board the increasing prevalence of requests for information about the responsible investment policies of administering authorities. These may come from interested scheme members or activist groups and can be "round robin" requests that are made to all LGPS funds with a view to collating information across the scheme (and making comparisons between funds' responses).

"As public authorities, there are duties on all administering authorities to be open and transparent about their policies and actions. However, the resources available to deal with requests are not unlimited and there will be occasions where cost, commercial sensitivity or other considerations will outweigh the public interest in releasing information. Further guidance on this is available from the Information Commissioner's Office. Support in how to respond to these requests, especially if they become onerous or vexatious, should be sought from the authority's legal and FOI advisers.

"If the new climate reporting duties had been brought in by the Government, as consulted on last year, from 1st April 2023 then that may have helped authorities currently considering the request from Carbon Tracker by putting, or at least having a plan to put, a large amount of information into the public domain which may have helped address some of the requests for information that are being received. Despite the delays in DLUHC concluding that consultation, the Board would recommend that all funds consider having a proactive publication scheme in place for climate data, and their stewardship activities, to minimise the volume of ad hoc requests that they have to field."

**Changes to pensions taxation**

On 15 March 2023 the Chancellor announced some changes to pensions taxation in the Spring Budget. The Annual Allowance (which is the maximum amount of pensions savings an individual can make each year before incurring a tax charge) will increase from £40,000 to £60,000 from 6 April 2023, with individuals continuing to be able to carry forward unused Annual Allowances from the three previous tax years. Changes were also made to the Lifetime Allowance, the charge for which will be reduced to zero from 6 April 2023, before being fully abolished in a future Finance Bill. Other changes were made to the Money Purchase Annual Allowance and Tapered Annual Allowance. More detail can be found in the Budget document and the Pension Tax Limits policy paper.

**DLUHC consultation on changing the revaluation date**

On 10 February 2023 DLUHC issued a consultation on changing the Scheme revaluation date from 1 to 6 April, with effect from 1 April 2023. The proposed change would remove the impact of high inflation on the annual allowance and reduce the number of members incurring a tax charge. The consultation ran for two weeks and closed on 24 February 2023. The consultation can be viewed on the Scheme consultations page.

SAB appear not to have responded to the consultation but the Council has been advised by the LGA of their response as follows:

*We have published our response to DLUHC's consultation on changing the annual revaluation date in the LGPS. The consultation documents and our response can be viewed on the scheme consultations page of www.lgpsregs.org.*

On 9 March 2023 DLUHC responded to the consultation on changing the revaluation date. The response confirmed that it would be proceeding with the change. Regulations had been published and the Local Government Pension Scheme (Amendment) Regulations 2023 took effect on 31 March 2023.

**"Edinburgh Reforms"**

On 9 December 2022, the Chancellor of the Exchequer announced a set of reforms to drive growth and competitiveness in the financial services sector. It has been confirmed that the Government will be consulting in early 2023 on issuing new guidance on Local Government Pension Scheme asset pooling. The government will also consult on requiring LGPS funds to ensure they are considering investment opportunities in illiquid assets such as venture and growth capital, as part of a diversified investment strategy.

**Statement on employer contributions**

On 1 November 2022 the Board announced that, at their meeting on 10 October 2022, they discussed emerging results from the current round of triennial fund valuations. Whilst understanding and recognising the extremely challenging position for local government finance, the Board asks that administering authorities and other fund employers have regard to the desirability for long term stability in pension contributions when considering whether reductions in employer contributions are desirable as a result of an improved funding position. The full statement gives more detail of the Board's discussion, and full reasons for making this statement.

**Scheme Advisory Board response to HM Treasury's exit pay consultation**

In August 2022, HM Treasury issued a consultation on a new controls process for high value exit payments paid to staff working in central government. Although that will not affect local government workers directly, some LGPS employers are likely to be covered by the new arrangements and on 17 October 2022 the Scheme Advisory Board submitted this response.

**Age discrimination in LGPS benefits**

On 26 August 2022 the Board Chair, Cllr Phillips, has written to the Minister recommending reform of the LGPS rules on death grants and survivor benefits. This is to address recent challenges that the current rules are discriminatory and also to investigate "future proofing" Scheme benefits against potential future legal challenge.

## 3.2 The Pensions Regulator (TPR)

TPR has a wider remit than the SAB and most of its publications / press releases concern private sector schemes. However, in recent months it has published the following matter of interest to the LGPS:

**Pensions Dashboards compliance and enforcement policy**

On 2 March 2023 the Council received the following email from the Local Government Association:

*"DWP have today issued a written ministerial statement announcing delays to the delivery of pensions dashboards. A full version of the statement can be seen here.*

- *In the statement, the government announced its intention to legislate to amend schemes' connection deadlines, to give PDP the time it needs to meet the significant challenges in developing the necessary digital architecture.*
- *While this announcement will come as a disappointment to many, we have to recognise that this is a hugely complex project. We owe it to savers to get this right, even if it means taking longer to deliver.*
- *DWP, PDP, TPR and FCA remain committed to the delivery of pensions dashboards. We are in continuous discussion with PDP, FCA and DWP on the progress of the project and the impact of any issues or delays which arise.*
- *We will continue to work with industry to make dashboards happen – to maintain an open dialogue and work collaboratively to meet any challenges which arise.*
- *TPR will not be taking regulatory action if schemes are unable to meet their deadlines because the technological system is not in place.*
- *We recognise the importance of supporting schemes through this process, and we will continue to provide education to support trustees in meeting their duties. We expect industry to continue preparing for dashboards, in particular by getting to grips with members' data.*
- *We will shortly be updating our guidance in light of the recent announcement, and to provide further clarity on the steps schemes should be taking to continue to prepare.*

On 24 November 2022 TPR invited occupational pension schemes, their administrators, providers, and the wider industry, to respond to its newly published **consultation on dashboards compliance and enforcement**.

The compliance and enforcement policy sets out TPR's expectations on how schemes should comply with new regulations, and its approach to regulating dashboard obligations. TPR is keen to hear from schemes of all sizes, their administrators and integrated service providers to ensure the new policy is understood by, and meets the needs of, the industry.

While TPR already regulates trustees and workplace pensions, a key part of complying with dashboard obligations will rest with third parties, such as administrators, employers and integrated service providers.

New legislation has been introduced enabling TPR to issue third parties with compliance notices. If they do not comply, they could be fined up to £50,000 (and individuals up to £5,000) for each breach. This is alongside other new powers to fine trustees and managers in the case of non-compliance with dashboard regulations. They include an option to issue penalties of up to £5,000 to individuals and up to £50,000 in other cases for any instance of a single compliance breach.

The consultation closed on 24 February 2023 and TPR expected to publish its final policy in spring 2023, ahead of the first schemes' dashboard deadlines.

**Guidance on tendering for fiduciary managers and setting objectives for investment consultants**

On 4 August TPR took over the regulation of trustee duties from the Competition and Markets Authority. TPR has revised its guidance on the tender process for fiduciary management services and trustees setting objectives for their investment consultants.

Since December 2019, trustees have been legally required to run a competitive tender process when appointing fiduciary managers in relation to 20% or more of scheme assets. They have also been prohibited from receiving investment consultancy services without having set strategic objectives for their investment consultancy provider.

https://www.thepensionsregulator.gov.uk/en/document-library/scheme-management-detailed-guidance/funding-and-investment-detailed-guidance/tender-and-set-objectives-for-investment-service-providers/tender-for-fiduciary-management-services

https://www.thepensionsregulator.gov.uk/en/document-library/scheme-management-detailed-guidance/funding-and-investment-detailed-guidance/tender-and-set-objectives-for-investment-service-providers/set-objectives-for-your-investment-consultant

## 4. CONSULTATION

4.1 No consultation is required for this report however Fund advisors are consulted as appropriate on matters arising from it.

## 5. FINANCIAL IMPLICATIONS

5.1 There are no significant direct financial implications arising from this report.

**Approved by**: Allister Bannin on behalf of Jane West, Corporate Director of Resources (Section 151 Officer)

## 6. LEGAL CONSIDERATIONS

6.1 (Burges Salmon LLP (a legal advisor appointed to the Pension Fund) comments that there are no direct legal implications arising from the content of this report although it is important to be aware that a number of changes to the regulations governing the LGPS are likely to be announced or implemented in the next few months (for example dealing with McCloud remedies, climate change reporting and updated statutory guidance on investment matters (including pooling)).

## 7. HUMAN RESOURCES IMPACT

7.1 There are no immediate workforce implications arising from the content of this report.

**Approved by:** Gillian Bevan**,** Head of HR, Resources and Assistant Chief Executives on behalf of the Chief People Officer

## 8. EQUALITIES IMPACT

8.1 The Council has a statutory duty to comply with the provisions set out in Sec 149 of the Equality Act 2010. The Council must therefore have due regard to:

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act.
(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

8.2 Any risks arising from pension payments in relation to the scheme would be likely to have an adverse impact on older workers along with women who make up the majority of the workforce. This may have an intersectional impact on older women.

**Approved by:** Denise McCausland Equality Programme Manager – 8/06/23

## 9. OTHER IMPLICATIONS

9.1 None.

**Approved by:** Allister Bannin on behalf of Jane West, Corporate Director of Resources (Section 151 Officer)

## CONTACT OFFICER:

Matthew Hallett – Acting Head of Pensions and Treasury.

## BACKGROUND DOCUMENTS:

None.

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## APPENDICES:

None.