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Haringey Pension Fund

LGPS Investment Consultation and Outcome 2023

A paper by the Independent Advisor January 2024

1. Introduction

This paper informs and updates the Committee and Board in respect the 2023 LGPS Investment Consultation “*Local Government Pension Scheme (England and Wales): Next Steps on Investments*” and the Consultation Outcome.

On 11 July 2023, the Department for Levelling Up Housing and Communities (DLUHC) issued a Consultation “**Local Government Pension Scheme (England and Wales): Next steps on Investments.**” The Consultation included the long awaited (since 2019) Government proposals on the further development of Investment (Asset) Pooling and proposals in relation to a number of other Investment related issues. This consultation may be accessed at [Local Government Pension Scheme \(England and Wales\): Next steps on investments - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/local-government-pension-scheme-england-and-wales-next-steps-on-investments)

The period for responses to the Consultation closed on 2 October 2023. DLUHC received 152 responses including from 82 of the 86 LGPS Administering Authorities (LGPS Funds) in England and Wales. This included a response from the London Borough of Haringey which was prepared by the Head of Pensions and Treasury in consultation with the Independent Advisor and submitted to the DLUHC in accordance with the decision of the Pensions Committee and Board in respect of Agenda Item 11 (“**Investment Consultation**”) at its meeting held on 6 September 2023.

On 22 November 2023 DLUHC issued its **Consultation Outcome** response which may be accessed at [Local Government Pension Scheme \(England and Wales\): Next steps on investments - government response - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/local-government-pension-scheme-england-and-wales-next-steps-on-investments-government-response) This states how the Government now intends to proceed.

2. The Consultation “Local Government Pension Scheme (England and Wales) Next Steps on Investments

The Consultation, issued on 11 July 2023 included proposals relating to:

- Asset Pooling together with Governance and Reporting.
- Levelling Up.
- Private Equity.
- Investment Consultancy Services to the LGPS.
- Definition of Investments.

In respect of **Asset Pooling** the Consultation included a number of significant proposals *“to accelerate and expand pooling...”* These included a deadline of March 2025 for LGPS Funds to transition their assets to their Investment Pool, the expansion of in house investment by Investment Pools, proposals as to how LGPS Funds and Investment Pools should interact (in essence to increase the influence of Investment Pools over investment issues, see particularly Paragraph 31 of the Consultation), revised guidance on reporting, and a longer term *“transition towards fewer (Investment) pools to maximise benefits of scale.”* The Consultation also included proposals that each Administering Authority (LGPS Fund) set a training policy for Pension Committee members and report in respect of this policy; that there be additional reporting requirements on LGPS Funds to provide *“greater clarity on progress of pooling...”* and that the Scheme Advisory Board (SAB) expand their Scheme Annual Report *“to provide a report on the progress of pooling and on asset allocation across the LGPS.”*

In respect of **Levelling Up** a proposal to amend the LGPS Regulations *“to require [LGPS] funds to set a plan to invest up to 5% of assets in levelling up the UK, and to report annually on progress against the plan.”*

In a chapter titled **Investment opportunities in Private Equity** the Consultation proposed that LGPS Funds should have an ambition to invest 10% of their assets into Private Equity. Although the Consultation did not explicitly state that such investment in Private Equity must be in the United Kingdom the Government’s clear preference for this is clear in the narrative within the Consultation (see Paragraphs 84,88,89,90). In respect of Private Equity investment, the Consultation placed some particular emphasis on *“venture capital.”*

With regard to the provision of **Investment consultancy services to the LGPS** the Consultation proposed to clarify that all LGPS Funds be required to set objectives for their providers of Investment Consultancy services. However, where Investment Pools provide such services to a LGPS Fund they would be exempt from this proposal.

The Consultation also proposed a technical change to the LGPS **definition of investments** to remedy an omission in the “Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016.”

The Consultation included a range of important proposals, some of which were clearly likely to be controversial, and which by their nature were likely to result in a very significant level of response from LGPS stakeholders and in particular the 86 LGPS Funds across England and Wales. By the time the Consultation closed on 2 October 2023 the DLUHC had received 152 responses.

3. The Consultation Outcome

In its **Consultation Outcome** issued on 22 November 2023 the DLUHC stated (Paragraph 16) that *“There were a wide range of views expressed around our proposals...”* Having considered the analysis of views on each proposal as detailed in the Consultation Outcome it is clear there was some significant opposition to those proposals which may reasonably be described as controversial. The Government has however decided to go ahead with almost all its original core proposals. In doing this however the Government is proposing an overall approach which is not mandatory and in respect of the crucial issue of transitioning LGPS Fund assets to Pools is clearly a “comply or explain” regime.

In respect of Asset Pooling a clear majority of respondents opposed the March 2025 deadline for transitioning Assets to Pools as proposed in the Consultation. DLUHC has stated in the Consultation Outcome (Paragraph 37) that it will draft guidance to require LGPS Funds to *“either transition assets by March 2025, or set out a detailed rationale for each asset remaining outside the pool...This is effectively a “comply or explain” regime which does not mandate particular investment choices”*. **The wording used in the Consultation Outcome is therefore clear that LGPS Funds do not have to transition all their assets to their Pool by 31 March 2025, rather they will merely need to comply or explain.**

With regard to the interaction of LGPS Funds and their Pools the Consultation Outcome states at Paragraph 49 that *“the government has decided to revise guidance on pooling as proposed. This will set a clear direction for all funds to move towards delegation of strategy implementation and manager selection, in order to deliver the benefits of scale for all.”* This means that the government intends that operational investment issues should increasingly be Pool rather than individual LGPS Fund responsibilities. However, the Consultation Outcome specifically, and crucially, states (Paragraph 40) that *“We do not propose any changes to the responsibility of funds for setting investment strategies.”*

At Paragraph 50 the Consultation Outcome states *“The revised guidance will therefore include a preferred model of pooling which we will expect pools to adopt over time. This model will be based on characteristics and outcomes rather than prescribing particular structures...”* but also states *“The partner funds will remain in control of their pool, and this will be important in ensuring that it delivers the products and services which the funds wish to have...”* Therefore,

the Government is proposing a larger role for Pools but within a framework where they remain under the “*control*” of their constituent LGPS Funds. This gives LGPS Funds the opportunity to exercise considerable influence over their Pool, but in reality, only if they choose to so do. If individual LGPS Funds want their Pool to act wholly and genuinely in the interests of the LGPS Funds who own it, they must ensure robust governance arrangements including intensive/detailed oversight over Pool policies and activity.

Despite significant opposition from respondents to the Consultation the Consultation Outcome states at Paragraph 51 that “*The government does not consider that it would be a conflict of interest for the pool companies owned by LGPS funds to provide advice on investments...*” This does not mean LGPS Funds must use their Pool to provide investment advice but clearly indicates that they may choose to do so. It must be stated that given the Government intends to give Pools clear authority over “*strategy implementation and manager selection*” (see Paragraph 49 of the Consultation Outcome) it is difficult to see how the Government can claim that there is not a conflict of interest where a Pool also provides advice which leads to the strategy implementation and manager selection that a Pool undertakes for a particular LGPS Fund.

With regard to the longer term the Consultation Outcome reaffirmed the Government’s view that there should be a reduction in the number of Pools from the current eight, but not in the short term. At Paragraph 27 of the Consultation Outcome, it is stated that “*there is no intention to take steps to mandate a move to fewer pools in the immediate term. The government’s view is that the focus in the short term should remain on accelerating transition of assets, improving governance and ensuring greater transparency and accountability.*”

The proposal that each LGPS Fund set a training policy for Pension Committee members and report in respect of this policy was widely supported and will be implemented by DLUHC. This is to be welcomed as it will support the good governance of all 86 LGPS Funds in England and Wales. Although many LGPS Funds have already adopted a policy and practices (based on CIPFA guidance) which seek to ensure that Members of the Pensions Committee have appropriate knowledge and skills to discharge their responsibilities effectively at present only 2 of the 86 LGPS Funds in England and Wales (Haringey and Hampshire) are under a statutory duty to adopt and actually implement such an approach.

This is because the Haringey Pension Fund and the Hampshire Pension Fund have applied (by virtue of Regulation 106(2) of the LGPS Regulations 2013 (as Amended)) to the Secretary of State and have been given approval to operate a combined Pensions Committee and Board. Consequently, Haringey is already under a statutory obligation to adopt a policy and implement practices which seek to ensure that Members of the Pension Committee and Board have appropriate knowledge and skills to discharge their responsibilities effectively. This is because Members of a LGPS Pension Board are subject to a statutory requirement under the Public Service Pensions Act 2013 and the Pensions Act 2004 (as Amended) to have “*knowledge and understanding*” of pensions law and be “*conversant*” with the Scheme Regulations and Fund documents.

The government therefore now intends (Consultation Outcome Paragraph 56) to implement a statutory requirement for *“...all funds to publish formal training policies for pension committee members, to report on training undertaken, and to align expectations for pension committee members with those for local pension board members...”*

With regard to additional reporting requirements in respect of LGPS Funds DLUHC has stated in its Consultation Outcome (Paragraph 66) that *“We will revise guidance to implement the proposed changes working with the Scheme Advisory Board...”* but will withdraw a proposal that LGPS Funds report on asset returns against an appropriate and consistent benchmark stating (Paragraph 68) *“In the light of responses highlighting the difficulties of setting benchmarks across the scheme, we intend to require funds to report performance for each asset class against the benchmark of their choice in their annual reports but not to seek to establish consistent benchmarks.”* The proposal that SAB expand their Scheme Annual Report to include an update on Pooling was widely supported by respondents and DLUHC have stated that they will implement this proposal.

While only 25% of respondents supported the proposal that LGPS Funds set a plan to invest up to 5% of assets in projects that support levelling up across the UK the DLUHC have stated in their Consultation Outcome (Paragraph 94) that *“We will revise guidance on investment strategy statements to require funds to have a plan to invest up to 5% in levelling up projects...”* However, at Paragraph 96 of the Outcome the DLUHC also make clear that actually investing in levelling up projects is not a requirement stating *“... the government’s view is that the requirement to set a plan to invest in levelling up does not mandate investment and does not cut across fiduciary duty.”* The DLUHC approach is still however an exhortation and clear encouragement to the LGPS to actively support the Government’s levelling up agenda.

The Consultation proposed that LGPS Funds should have an ambition to invest 10% of their assets into Private Equity. In relation to this the Consultation Outcome states (Paragraph 103) *“There were 144 responses to this question and 84% were opposed to the proposal...”* In response DLUHC at Paragraph 110 of the Consultation Outcome states *“However, setting an ambition to invest 10% in private equity would not mandate investment. Administering authorities would be under the same requirement as currently to act in the interests of members under their fiduciary duty...”* and at Paragraph 111 that *“The government will therefore set a new ambition for funds to invest 10% of assets in private equity in revised guidance on investment strategy statements...”* Again, like with levelling up, the Government’s approach though not mandating investment in private equity is an exhortation and clear encouragement to the LGPS to support a particular Government agenda.

The proposal in the Consultation that all LGPS Funds be required to set objectives for their providers of Investment Consultancy services was widely supported by respondents and will be implemented by the Government through amendments to Regulations/Guidance. The proposal in the Consultation that where Investment Pools provide such services to a LGPS Fund they be exempt

from this proposal was clearly questioned by respondents (see Paragraph 118 of the Consultation Outcome) and the DLUHC has consequently stated in Paragraph 119 that *“With regard to the application of the requirements to pool companies owned by LGPS funds, we [consider] that it would be good practice to set objectives for all investment consultancy providers including pools, and will set this out in revised guidance.”*

The technical change to the LGPS definition of investments proposed in the Consultation received, overall, support from respondents and the DLUHC will now amend the LGPS Regulations accordingly.

4. Summary

In summary the Government has now confirmed that it intends to strengthen the Pooling regime and to seek to accelerate the transition of all LGPS assets into the Investment Pools. It has however stated that it will apply a “comply or explain” regime (Paragraph 37 of the Consultation Outcome) in relation to asset transfers to Pools, and that Pools are required to *“act in the best interests of [LGPS] funds”* (Paragraph 50 of the Consultation Outcome). However, it will very much be up to the Haringey Fund, and the other 85 LGPS Funds across England and Wales to ensure that Pools do actually truly act for them rather than themselves.

While not mandating investment in Levelling Up projects or Private Equity the DLUHC is clearly and actively encouraging these in support of wider Government policy. Crucially, however, there is no attempt at mandation which would almost certainly result in legal challenge(s).

Finally, it must be noted that none of the proposals in the Consultation Outcome issued on 22 November 2023 has yet come into effect. These can only be put in place by issuing amended and/or new LGPS Regulations and/or Statutory Guidance (as appropriate). This has not happened as at the date of finalising this briefing and it is not known when it will happen. Until such time existing LGPS Regulations and Guidance (or lack of them) relating to Asset Pooling, Levelling Up, Private Equity, Investment Consultancy Services to the LGPS, and the Definition of Investments, remain in force and applicable.

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