

Governance issues in waiting

Good Governance Review – The proposals in the final report from Hymans Robertson were agreed by the SAB on 8 February 2021 together with a work plan. A response is still awaited from DLUHC to these proposals and the scope for regulatory and guidance changes.

Pooling arrangements – DLUHC issued an informal consultation in January 2019 which was subsequently withdrawn for revision following a significant amount of criticism and challenge. As it stands, there is no mandatory guidance in place regarding the implementation of pooling, other than to report policy in the ISS. It is not clear when revised guidance will be issued.

Investment strategy guidance – Revised guidance on the preparation of the investment strategy statement is awaited following the Supreme Court judgement in favour of the Palestine Solidarity Campaign handed down on 29th April 2020. In broad terms, the position is that the Government can regulate how funds are invested through statutory regulations but cannot determine the choice of individual investments through guidance. It is not clear how DLUHC will progress this issue. The position is to some extent exacerbated by indecision over pooling guidance and issues about responsible investment.

Responsible Investment guidance – The Scheme Advisory Board issued guidance on responsible investment which included their views on the meaning of 'fiduciary duty'. This was heavily criticised and subsequently withdrawn. They have published an on-line A-Z guide to responsible investing but without reference to fiduciary duty. It has been proposed by the SAB that revised guidance on governance should include some form of definition. It seems likely that there will be pressure on DLUHC to regulate on responsible investment and climate change in some way, although this may require secondary or even primary legislation.

Climate risk disclosure – The Pensions Schemes Act 2021 requires the largest occupational pension schemes to publish climate risk disclosures by the end of 2022 (£5bn + of assets) and by the end of 2023 (£1bn + of assets). This will mean that such schemes are legally required to assess and report on the financial risks of climate change within their portfolios.

The requirements are to be regulated by tPR and failure to comply could be subject to mandatory penalty. It is not clear at this stage whether and how these requirements might be applied to LGPS funds, given that tPR does not have regulatory authority over LGPS investments. It is possible that this could be achieved through DLUHC guidance, and it will be important to monitor the position.

A Government consultation on the introduction of mandatory climate risk reporting across the LGPS, using the Task-force on Climate-related Financial Disclosures ("TCFD") is expected soon.

The Act also contains new requirements, e.g. pensions dashboard, funding requirements, which may be applied to the LGPS. This would require extensive consultation but might be used to find solutions to the various investment related regulatory and guidance issues outlined above.

Changes to the local valuation cycle and management of employer risk –

DLUHC published a partial response to the consultation in 2020 but it is not yet clear how the transition to quadrennial valuations will be managed or the implications for the cost cap mechanism. Clarity is exacerbated by the outcome of the McCloud judgement, exit caps, etc.

The Pensions Regulator

A draft of the new combined code of practice was issued for consultation which concluded at the end of May 2021. The draft Code covers five key areas:

- The Governing Body;
- Funding and investment;
- Administration;
- Communication and Disclosure;
- Reporting to TPR;

and contains 51 modules to replace 10 existing individual codes. The modules are topic based and interlinked, have a consistent style and a glossary, and are searchable.

For the Board's purposes, the main code replaced is Code of Practice 14 and it will be necessary to consider how the new expectations apply to the LGPS and the changes in compliance terms that will need to be addressed. It will be necessary to monitor compliance on a regular basis. Publication of the final Code has now been pushed back to spring (possibly summer) 2022 at the earliest.

Peter Scales

30th November 2021