

Report to Pension Advisory Board

28 April 2021

Regulations and Governance Update

Report by the Chairman of the Pension Advisory Board

Summary

Members of the Pension Advisory Board (PAB) are required to maintain a suitable level of knowledge and understanding in relation to the Scheme Regulations and Guidance and should maintain their awareness of developments in the regulatory framework. This report provides a brief update on issues covered by the LGPC bulletins, by the Scheme Advisory Board at its meetings, by the Pensions Regulator, and other guidance.

Recommendations

The Board is asked to note the current issues relating to Scheme Regulations and Governance.

Proposal

1. Background and context

- 1.1 The Board receives updates on regulatory changes at each meeting but has decided that access to the websites for the LGPS, the Scheme Advisory Board (SAB), and the Pensions Regulator (tPR) provides an additional and valuable source of information on the LGPS regulations and guidance, and to changes under consideration or consultation.
- 1.2 Reviewing current developments not only improves knowledge and understanding but also enables the Board to keep pace with these developments as they are considered by the officers and reported to the Pensions Committee.

2. LGPS Bulletins and regulations

2.1 Bulletins issued by the LGPC since the last meeting are:

February Bulletin 206 containing articles on the exit payment cap being disapplied from 12 February 2021 and a new technical guide covering non-Club transfers out.

Annual update Mach 2021 Bulletin 207 containing the rates and bands that apply from April 2021 for various purposes.

March Bulletin 208 containing articles on exit payment reform and tiered contribution rates.

2.2 Full details of these are available on the LGPC website (www.lgpsregs.org) under "LGPC Bulletins". Other changes or potential changes to the regulations are addressed in the Administration report on the agenda.

3. Scheme Advisory Board/MHCLG outstanding issues

3.1 Inevitably, the impact of the COVID-19 pandemic has slowed progress on a number of regulatory and guidance matters. Furthermore, it would appear that MHCLG has a 'build-up' of regulatory matters requiring their attention but do not have sufficient resources to deal with them.

3.2 The SAB has not met since the last PAB meeting and their next meeting is scheduled for 10 May. There are therefore no further developments to report. Information about their past meetings and other issues is available on their website (www.lgpsboard.org). However, it is worth monitoring issues currently in process.

Good Governance Review – The proposals in the final report from Hymans Robertson were agreed by the SAB on 8 February together with a work plan. Further progress will depend on the response from MHCLG to these proposals and the scope for regulatory and guidance changes.

Pooling arrangements – MHCLG 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 MHCLG can regulate how funds are invested through statutory regulations but cannot determine the choice of individual investments through guidance. It is not clear how MHCLG will progress this issue. The position is to some extent exacerbated by indecision over pooling guidance and issues about responsible investment.

Responsible Investment guidance – SAB issued guidance on responsible investment which included their views on the meaning of 'fiduciary duty'. This was heavily criticised and subsequently withdrawn. They are currently working on 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 MHCLG to regulate on responsible investment and climate change in some way, although this may require secondary or even primary legislation.

Climate risk disclosure – The recent Pensions Schemes Act will require 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 MHCLG guidance and it will be important to monitor the position.

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 – MHCLG published a partial response to last year's consultation but it is not yet clear how the transition to quadrennial valuations will be managed or the implications for the cost cap mechanism.

- 3.3 All these issues and potential changes will impact upon the governance framework and timescales are likely to be truncated due to the loss of momentum during the pandemic. They will also further complicate the requirements for compliance, knowledge and understanding on both the Committee and the Board.

4. The Pensions Regulator

- 4.1 A draft of the new combined code of practice has been issued for consultation which concludes at the end of May. The draft Code cover 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.

4.2 From the Board's perspective, 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.

5. Other options considered (and reasons for not proposing)

N/A

6. Consultation, engagement and advice

N/A

7. Finance

N/A

8. Risk implications and mitigations

8.1 ***Failure of Board members to maintain a suitable level of knowledge and understanding*** – By having this report as a standing item for each Board meeting, members are kept abreast of developments.

8.2 ***New training requirements imposed on the Board in relation to compliance testing*** – monitoring new developments in this way should identify potential new requirements at an early stage.

9. Policy alignment and compliance

9.1 Integral part of agreed training strategy.

Peter Scales
Chairman of the Pension Advisory Board

Contact Officer: Adam Chisnall, Democratic Services Officer,
033022 28314 adam.chisnall@westsussex.gov.uk

Appendices

None

Background papers

None