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Date: 12 February 2016

Dear Vicky

Local Government Pension Scheme – Revoking and replacing the LGPS (Management & Investment of Funds) Regulations 2009

Merseyside Pension Fund provides the Local Government Pension Scheme for the Merseyside region, delivering pensions administration, investments and accounting on behalf of the 5 Merseyside District Councils, plus 145 other employers.

The Fund has over 128,000 scheme members and is responsible for the investment and accounting for a pension fund of £6.5bn.

Response to questions within the consultation.

1. **Does the proposed deregulation achieve the intended policy aim of removing any unnecessary regulation while still ensuring that authorities' investments are made prudently and having taken advice?**

   We welcome the intention to deregulate and simplify the investment regulations to bring the LGPS more in line with private sector occupational pensions legislation.

   Understandably, the draft regulations provide broad direction but do not provide detail on requirements or definitions in relation to the preparation of an investment strategy statement and it is important that the accompanying guidance addresses fully areas of uncertainty.

2. **Are there any specific issues that should be reinstated? Please explain why**

   It would be helpful for the regulations to make some reference to the ultimate purpose of the investment; the fiduciary responsibility to pay members' benefits.

   In his recent opinion regarding fiduciary responsibility in the LGPS, Nigel Giffin QC said that, whilst he acknowledged the Government's argument that

common law fiduciary duty would apply, he did state that 'it would clearly be preferable if the relevant provisions of the Occupational Pension Schemes (Investment) Regulations 2005 were made to apply to the LGPS'. These relevant provisions include the requirement that assets are invested 'in the best interests of members and beneficiaries and, in the event of a conflict of interest, in the sole interests of members and beneficiaries.' We would suggest that this requirement be included in the regulations to put this duty beyond all doubt.

3. **Is six months the appropriate period for the transitional arrangements to remain in place?**

   As the 2016 Actuarial Valuation and pooling discussions may influence the scope of an Investment Strategy Statement, we would recommend that the timescale is extended to twelve months to reflect this.

4. **Should the regulation be explicit that derivatives should only be used as a risk management tool? Are there any other circumstances in which the use of derivatives would be appropriate?**

   We believe it would be unhelpful for the regulation to stipulate that derivatives should only be used as a risk management tool.

   Private sector funds are permitted to make use of derivatives for 'efficient portfolio management' and we would recommend that an equivalent arrangement was permitted within the LGPS.

   As a fund, we already use derivatives to implement asset allocation decisions in a timely and cost effective manner. Not all the derivative transactions undertaken by us would be deemed risk management although we have clear guidelines which ensure that, at no time, are derivatives used to 'gear' the portfolio.

   In view of the current ambiguity around direct and indirect investment in derivatives, the Regulations should provide clarity around this point.

5. **Are there any other sources of evidence that then Secretary of State might draw on to establish whether an intervention is required?**

   The regulations allow the Secretary of State to draw on external advice to determine what the specific intervention should be. Additional information may be available from:

   Auditor

   Actuary

   The Pensions Regulator / Ombudsman

   Local Pension Board

6. **Does the intervention allow authorities sufficient scope and time to present evidence in favour of their existing arrangements when**

either determining an intervention in the first place, or reviewing whether one should remain in place?

Yes, subject to a reasonable timetable for intervention being set by the Secretary of State.

7. **Does the proposed approach allow the Secretary of State sufficient flexibility to ensure that he is able to introduce a proportionate intervention?**

   Yes, providing such intervention and direction to invest is not made without regard to a fund's fiduciary duty.

8. **Do the proposals meet the objectives of the policy, which are to allow the Secretary of State to make a proportionate intervention in the investment function of an administering authority if it has not had regard to best practice, guidance or regulation?**

   In principle, yes, but guidance from the Secretary of State will be central to how these Regulations are applied.

Yours sincerely

Head of Pension Fund