Appendix One

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Please ask for: Yvonne Caddock

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Dear Mr Kiddell

Local Government Pension Scheme (Amendment) Regulations Consultation Response

I refer to the above mentioned consultation document and I am responding to the invitation for comments on behalf of Wirral Council in its capacity as the Administering Authority for Merseyside Pension Fund (MPF).

The Fund is part of the Local Government Pension Scheme (LGPS) and the 5th largest of the 89 funds, with assets of £7bn. MPF undertakes the LGPS pension administration and investments on behalf of the five Merseyside district authorities, over 170 other employers on Merseyside and elsewhere throughout the UK. The Fund has over 125,000 active, deferred and pensioner members.

1/ Fair Deal Proposals (Draft Regulations 3, 4 & 5)

MPF concurs with many of the Local Government Association's views on the general proposals contained in the consultation document and specifically supports the Government's extension of the reformed Fair Deal to the Local Government Pension Scheme.

The removal of the 'broadly comparable' option and the use of the current admitted body framework will avoid any ambiguity for staff in regard their future pension provision. It should also assist in simplifying the tender documentation for Scheme Employers when outsourcing contracts.

However, there are a number of concerns that the definition of "local government service" as proposed exceeds the provisions of the reformed Fair Deal and its intent to protect public sector employees.

Employers under the remit of Fair Deal

As drafted the regulations impose pension protection requirements on all Scheme Employers, with the exception of Higher Education institutions, Further Education institutions and Police and Crime Commissioners (PCC).

This leads to the inclusion of many non-public sector organisations who participate in the LGPS as a 'community' admission body via an admission agreement. This will require them to ensure continued access to the LGPS for transferred staff in their new employment presenting a significant restriction to their flexibility, ability to outsource contracts and inevitably lead to increased financial pressures. Consequently it could lead to such bodies facing liquidation with irrecoverable pension debt.

It also appears contrary to the rationale used for excluding FE/HE institutions because they are classified as private sector bodies and PCCs from the proposals because they are not 'best value' authorities. On this basis, the same exclusion should also be extended to community admission bodies. Although to align with the New Fair Deal guidance it would appear equitable to include provisions within the regulations for employees of admission bodies who were originally public sector employees to have "protected transferee" status.

As PCCs are precepting authorities like local authorities it would seem logical that they are included in the bodies whose employees receive full protection under the amended Regulations when issued.

It would also be useful to have clarification of what "wholly or mainly employed on the delivery of the service or function transferred" in draft regulation 4 in proposed Regulation 3(1C) of the Local Government Regulations 2013 means in practice. There is a general view that "wholly and mainly engaged" means 50% of the employee's time is allocated to the outsourced function but a prescriptive definition within the regulations would be welcome to ensure consistency across the LGPS.

Impaired provision in comparison to 2007 Best Value Staff Transfers Pension Direction regarding an employer statutory duty

Unlike the explicit requirement in the 2007 Directions Order there appears to be no specific condition in the draft amendments for a ceding employer to be responsible for ensuring pension protection of protected transferees, either as part of an initial contractual arrangement or subsequent tender exercise. It is surely necessary for the regulations to specify that this responsibility rests with the ceding employer at all times and remains enforceable against them by the protected transferees.

The Revocation of the 2007 Directions Order

It is noted that on the re-tender of staff who are already in a broadly comparable scheme, it is proposed that neither the existing contractor nor any new bidder would be required to adhere to reformed Fair Deal for any remaining employees originally transferred from the ceding scheme employer. This is because at the point of re-tender the individuals will not be members of the public sector. As a result, at any subsequent re-tender it appears that the incumbent provider and any new bidder would be obliged only to provide pension protection at the basic TUPE level.

It is clearly inequitable to provide reduced pension protection to employees transferred from the public sector and who continue to work in the delivery of a public service. If it transpires such employees cannot access the LGPS at subsequent re-tenders, the 2007 Directions Order should continue to apply.

2/ Additional Voluntary Contributions (AVCs) (Draft Regulations 8 & 9)

The extension of 'Freedom and Choice' reform is welcomed, as the greater flexibility for members to access their AVCs aligns the LGPS with the changes that have taken place in the UK pension arena since April 2015.

Although there is a concern that providers will levy excessive charges on members who utilise the flexible provisions, the outcome of the recent consultations on charges for Defined Contribution arrangements could be used to cap fees.

3/ Assumed Pensionable Pay (Draft Regulations 10)

The introduction of new paragraph 5A giving the employer the scope to utilise a different or nominal pay figure from that which regulation 21(4)(a) & (b) would produce is more equitable and will eradicate the anomalies that have arisen in relation to underestimated APP . However, to ensure fairness in circumstances where the APP should be lower the wording requires further amendment. This ability to use nominal or "as was" pay will be less administratively burdensome and is more transparent to members and dependants.

4/ Pension Accounts (Draft Regulation 11)

The return to the model which applied under 2008 LGPS regulations, where a member is given the option to aggregate their deferred and active pension accounts, is a welcomed amendment. From our experience, both administrators and scheme members have found the current situation of automatic aggregation unduly complicated and time consuming. However, administrators will still need to resolve ongoing issues with those individuals where the aggregation occurs between April 2014 and the effective date of the legislative change.

It is noted that while the proposed amendment would exclude 'optants out' from subsequently aggregating the earlier period (as per the former scheme provisions), it does not propose to re-introduce automatic aggregation where the deferred benefit is derived from a TUPE or TUPE-like transfer. We see no reason why it should not also be re-introduced in these circumstances as it will assist to streamline the administration process and remove the bureaucracy and complexity involved for the member who is transferred under comparable pay arrangements.

5/ Survivor Benefits (Draft Regulation 14)

The amendment is welcomed as this will now allow survivors to benefit from the ill health enhancement that was awarded to the originator, although I suggest clarification is provided whether it is the policy intent to backdate this provision to 1st April 2014 in order to include the enhancements for survivors' benefits in payment.

6/ Special Circumstances Where Revised Actuarial Valuations and Certificates Must Be Obtained (Draft Regulation 15)

In principle, we agree with payment of an 'exit credit' to employers that have ceased participation in a fund in order to avoid the situation of a 'trapped surplus'. This should put an administering authority in much a stronger position when negotiating and agreeing contribution rates before an employer exits the scheme.

The provision needs to be capable of being disapplied or limited in respect of arrangements already entered into by administering authorities and scheme employers prior to the commencement date. This is on the basis that stakeholders will have entered into funding and commercial arrangements reflecting the Scheme regulations extant at the time of the agreement. In addition in circumstances where the exiting body would not be liable for any deficit then the Fund would not expect to pay an exit credit where the commercial contract deals with pension costs on a pass through basis.

Timing Issues (Draft Regulation 15)

The requirement to pay the exit credit to an employer within one month of exit could be too short in practice; taking into account administrative issues that could cause delays or if there are cash flow or disinvestment issues that need to be addressed.

A solution is that the administering authority reserves the right to take longer than one month if circumstances dictate, with no need to seek the agreement of the exiting employer.

Given that the 2016 triennial valuation exercise is now well underway any subsequent changes to the Regulations incorporating exit credits will likely not be in place for administering authorities to include in their Funding Strategy Statements.

7/ Scheme Employers (Draft Regulation 21)

The wording of the regulation appears to suggest that an admission agreement can take effect before it is actually sealed by the relevant parties, whereas I understand the intent is that a retrospective commencement date can be documented within the agreement. The wording will need strengthening to ensure the agreements are completed before protections are in place for the transferring employees and other employers in the Fund.

8/ Early payment of pension for members aged 55 and older (Draft Regulation 24)

This provision provides a welcome change to allow members who left the LGPS with a deferred benefit under the 2007 Benefits Regulations to elect to receive an actuarially reduced pension between the ages of 55 and 59 (inclusive) without requiring their employer's consent. This would bring the provisions of the 2007 Benefit Regulations in line with the 2013 Regulations, where members reaching the age of 55 can already choose to receive an actuarially reduced pension without employer consent being needed. By making this change, all individuals leaving the LGPS on or after 1st April 2008 with a deferred benefit would have this option available to them.

MPF very strongly supports this option being extended to members who left the LGPS prior to 1st April 2008, requiring changes to both the 1995 and 1997 Regulation. The extension of this measure may help to prevent these members from transferring out their pension rights which often results in the payment of a less generous pension benefit.

However, The Fund Actuary has advised that cost neutrality is not achieved in all circumstances solely by the application of the early retirement reduction factors due to differences between GAD factors and local actuarial assumptions and as such the extension of the policy may benefit from a clear consideration of actuarial neutrality.

9/ Extension of underpin protections (Draft Regulation 25)

MPF has serious reservations about the suggested proposal that would potentially require LGPS funds to provide underpin protection to members who have transferred in benefits from other public service pension schemes. The reasons why we oppose the provision are as follows:

- It is being retrospectively imposed on LGPS administering authorities long after the reformed scheme's design and protections have been costed and implemented.

- The individuals transferring into the LGPS make a conscious decision to do so and in the LGPS benefit from a good career average pension scheme. Many of them already benefit from public sector transfer club protections.

- The protection will have cost implications for the scheme and could potentially make it more likely that the scheme will breach either of the cost control measures that impact upon the LGPS.

- The underpin is only rarely effective as, in the majority of cases, the LGPS career average benefits structure provides a higher pension than the final salary section would have done. Very few members will see an increase to their pension due to being protected under the underpin.

- At a time of unprecedented workloads in local authority pension teams, the change will involve significant resource in ascertaining to whom this protection needs to be extended. It is an additional burden that will have very little practical benefit for members to whom the underpin would be extended.

- The proposed amendment would provide the individual with higher protection than they would have had if they had re-joined their former public service pension scheme.

- Most significantly, it is not a protection that is required by the Public Service Pensions Act 2013. Subsection 18(5) of that Act says schemes 'may' provide protections to members who meet certain criteria, but there is no requirement to do so.. This extension of the underpin was not agreed by the LGPS's employee and employer representatives at the time of the scheme's reform, and imposing it upon the scheme goes against the principles of collective bargaining which have worked so productively in the LGPS in recent years.

Ultimately, this change would stand to cause significant administrative difficulty for very little gain – we ask the Department to reconsider their approach.

If, however, despite our opposition, the amendment is to be enacted then we would strongly suggest that it is not backdated, as benefits may already have been paid to such members.

10/ Conclusion

MPF supports the majority of the proposed changes in the Amendment Regulations and would appreciate if you consider the above comments before issuing the final regulations.

Yours sincerely

Yvonne Caddock

Principal Pensions Officer