CIPFA The Chartered Institute of Public Finance & Accountancy

Response to the MHCLG LGPS: Changes to the Local Valuation Cycle and the Management of Employer Risk

July 2019

CIPFA appreciates the opportunity to comment on the proposals.

CIPFA is generally supportive of the principles and intentions of the proposals. The following comments are therefore intended to assist and support in the implementation of the intended policy direction. Primarily therefore the comments relate to some practical issues and risk considerations which are required in the interests of LGPS members and employers.

Question 1 – As the Government has brought the LGPS scheme valuation onto the same quadrennial cycle as the other public service schemes, do you agree that LGPS fund valuations should also move from a triennial to a quadrennial valuation cycle?
Agreed. Maintaining a different cycle for the LGPS funds valuations compared to the scheme valuation would be illogical and could pose challenges, add additional costs and have unforeseen consequences.
Question 2 - Are there any other risks or matters you think need to be considered, in addition to those identified above, before moving funds to a quadrennial cycle?
Continuing liaison with the TPR, NAO and the FRC may be advisable in order to ensure that there are no regulatory issues arising. Although these valuations are not IAS 19 accounting standards valuations, auditor reliance and comfort in up to date funding valuations and roll forwards arrangements may be a consideration for these stakeholders. A longer valuation period means the data used to calculate accounting liabilities becomes less reliable over time which lead auditors to having less confidence in the figures produced.
Question 3 - Do you agree the local fund valuation should be carried out at the same date as the scheme valuation?
Agreed. This will provide a common and consistent basis for the valuation, and the calculation of any interim estimations required (e.g. due to court rulings or scheme changes etc.).
Question 4 - Do you agree with our preferred approach to transition to a new LGPS valuation cycle?
Agreed. A longer gap of five years may involve less short term effort and cost, but this would be at the expense of increased risks and uncertainties. This is particularly relevant given current

uncertainties regarding the global economy, including US and China trade arrangements and the UK's withdrawal from the EU, which may affect fund asset values and pension fund investment decisions and returns in the next few years.

The proposed shorter 'two-step' approach would help to address any significant asset value movements.

Question 5 - Do you agree that funds should have the power to carry out an interim valuation in addition to the normal valuation cycle?

Agreed.

Good governance and financial management principles would suggest that funds should be able to react and take prudent action, for the interests of LGPS members and all employers, where significant changes in their financial position including liquidity, are considered to arise.

Question 6 - Do you agree with the safeguards proposed?

Agreed.

In particular the safeguard of ministerial consent, in relation to unanticipated circumstances, and of ministerial direction where appropriate are supported. Where ministerial direction arises it may be appropriate for this to be subject to a formal consultation process with relevant parties.

Consideration should also be given as to the ability of funds and councillors (effective trustees) to comply with TPR expectations and good practice in safeguarding LGPS member interests.

Further Guidance in this area would be welcome. Within the existing CIPFA Guidance on *Preparing and Maintaining a Funding Strategy Statement* the following section highlights the need for Funds to assess and monitor the financial health of employing bodies:

"In the interests of transparency, the FSS should clearly set out the risk assessment methodology and criteria by which the administering authority will assess the long-term financial health of employers, and how this will be monitored. The outcome should inform the decision-making process as to the appropriate employer contribution rate and deficit recovery period. The FSS should also explicitly state the fund's policy on employers leaving the fund, either at the end of the term of an admission agreement or for any other reason."

CIPFA would be willing to update this Guidance in light of these proposed changes and to work with MHCLG and the Scheme Advisory Board in this process and any related additional guidance.

Question 7 – Do you agree with the proposed changes to allow a more flexible review of employer contributions between valuations?

Generally agreed, with a note of some potential risks arising.

The ability to review contributions, in either direction is supported. Implementation of this however may need to consider risks arising from:

Overly pessimistic assumptions, particularly on the part of LGPS funds concerned with downside risks for LGPS members; and

Overly optimistic assumptions, particularly on the part of employers concerned with immediate realisation of potentially temporary favourable conditions

Consequently consideration of the operation of appropriate moderation processes may be appropriate. The ability to request a reassessment of liabilities and/or contribution rates should be accompanied by the requirement to set out clearly in the Funding Strategy Statement the criteria to be satisfied before a request is granted and the principles involved in the reassessment to ensure both Funds and employers retain realistic expectations from the process. Anything that could lead to a short-term 'opportunistic' reassessments should be avoided in order to protect the long term solvency of the Scheme.

The proposed differentiation between statutory or tax raising employers and others may potentially be a risk. While the higher security of statutory or tax raising bodies is not questioned in practical terms, it may be preferable to avoid the impression that such bodies will never have funding challenges and pressures to address. In a particularly extreme and hopefully only theoretical case (e.g. more extreme than Northamptonshire) reliance on additional government funding to support pension contributions could arise. Since such funding is not necessarily guaranteed, and the timing of cash support may be critical, there is at least a hypothetical risk to LGPS fund liquidity arising.

Consequently a more common approach to the criteria for reassessment could be supported, with an acknowledgement that these would be extremely unlikely to apply to statutory and/or tax raising bodies.

In respect of the costs, the proposal that a fund requested review is borne by the fund is agreed, as this is done in the interests of LGPS members as a whole. An employer's request for review should be borne by the employer concerned, as this is specific to their membership and should be supported by a solid business case before requesting a review.

Question 8 – Do you agree that Scheme Advisory Board guidance would be helpful and appropriate to provide some consistency of treatment for scheme employers between funds in using these new tools?

Agreed.

It would be beneficial to support consistency i.e. to avoid the situation where one fund approaches such reviews significantly differently to others, as this may lead to relationship challenges. In particular there would be risks in individual funds being either particularly stringent or particularly flexible in comparison to other funds.

Any further guidance should be drafted so as to be aligned with CIPFA's Guidance on *Preparing and maintaining a Funding Strategy Statement* along with the principles of employer risk management in the *Managing Risk in the LGPS* guidance.

Question 9 – Are there other or additional areas on which guidance would be needed? Who do you think is best placed to offer that guidance?
CIPFA has a long-standing record of supporting LGPS financial management through guidance, networks and professional expectations. In particular CIPFA would consider that appropriate support for employer body CFOs would be beneficial in ensuring appropriate implementation of the policy objectives. CIPFA would note that the proposed Financial Management Code (FM Code) and supporting guidance may provide a suitable opportunity to embed and support employer CFO consideration of pension contributions responsibilities and management.

Question 10 – Do you agree that funds should have the flexibility to spread repayments made on a full buy-out basis and do you consider that further protections are required?
Generally agreed, with some comments on possible implementation. It is recognised that the requirement for cash settlement was presumably intended to mitigate or avoid the risk of default of future cash payments from exiting employers. This however has created a longer term risk that employers who cannot make a cash exit payment remain 'locked in' to the LGPS, potentially to their detriment and at the risk to the LGPS fund of defaulting in later years. Consequently the proposal would allow more balanced risk management options for LGPS funds and for employers. CIPFA would note that the commentary refers to a requirement to ensure that such employers have sufficient assets so as to "not adversely affect other employers". CIPFA considers that this should also refer to not adversely affecting LGPS members, as potentially cost cap scheme arrangements may involve some risk for active (employed) scheme members. It may be appropriate to consider, either in regulations or guidance, the requirement for an annual assessment of deferred payment agreements (e.g. similar to an 'impairment review') to ensure that risks are managed on at least an annual basis. On this basis some flexibility regarding the initial term of an exit payment schedule may be appropriate, which would support reference to individual circumstances in determining an appropriate schedule. Arrangements for immediate settlement, where circumstances arise that would expose the fund to a significant increase in risk, may be appropriately specified in any arrangements.

Question 11 – Do you agree with the introduction of deferred employer status into LGPS?
Agreed. This would provide a further alternative to an immediate cash settlement, subject to risk assessment.

Question 12 – Do you agree with the approach to deferred employer debt arrangements set out above? Are there ways in which it could be improved for the LGPS?

Agreed, with comments on risk.

It is assumed, but may be worth clarifying, that any cost cap arrangements, potentially affecting LGPS members still in employment with that employer cease to apply i.e. that all risk would rest with the deferred employer.`

As above an annual review process may be appropriate.

Consideration may also be given as to whether the proposals create particular incentives or disincentives for employers, including authority subsidiaries, in respect of structural changes. In order to mitigate these it is assumed an employer could move from a 'deferred employer' arrangement to a 'flexible exit payment' arrangement.

Question 13 – Do you agree with the above approach to what matters are most appropriate for regulation, which for statutory guidance and which for fund discretion?

Agreed.

The key principles and responsibilities should be clearly specified in regulations, with the primary relevant factors to be considered outlined in statutory guidance. More detailed supporting guidance can then inform the practical implementation and enactment of those considerations. It is considered that this would support the achievement of policy objectives while allowing the application of professional judgement by all parties on a case by case basis.

Question 14 – Do you agree options 2 and 3 should be available as an alternative to current rules on exit payments?

Agreed, with comment on responsibilities.

The extension of additional options places increased focus on the role and responsibilities of the administering authority's pensions committee, local pension board and s151 officer. This should be extended to cover all officers to whom the role and responsibilities of the pension fund apply. It is more important than ever in this scenario to have a clear line between the contracting authority and consideration for options for managing employer exits, providing a good test to the measures in place to manage s151 conflicts of interest.

CIPFA believe that it is important that these responsibilities are appropriately highlighted and supported, especially in terms of relationships with employers. Potentially the LGPS governance review will suitably ensure that this is achieved.

Question 15 – Do you consider that statutory or Scheme Advisory Board guidance will be needed and which type of guidance would be appropriate for which aspects of these proposals?

As above, as a general approach, the key principles and responsibilities should be clearly specified in regulations, with the primary relevant factors to be considered outlined in statutory guidance. More detailed supporting guidance can then inform the practical implementation and enactment of those considerations. It is considered that this would support the achievement of policy objectives while allowing the application of professional judgement by all parties on a case by case basis.

Question 16 – Do you agree that we should amend the LGPS Regulations 2013 to provide that administering authorities must take into account a scheme employer's exposure to risk in calculating the value of an exit credit?

Agreed in principle.

CIPFA agrees that the potential payment of a pension credit to an employer where a pass-porting arrangement protected them from risk is inappropriate.

Overall we recognise the issue and support the intention of the proposed solution but see problems on implementation, which adds complexity, cost and risk for administering authorities at a point when relationships between employers within the fund may already be strained:

- Administering authorities are generally not sighted on any pension risk sharing an employer may agree with a contracted employer on LGPS pension benefits and are not party to the contractual and commercial agreements these are typically contained within (particularly other local authorities and academies within the Fund).
- Based on our experience, there can be significant variation in the terms of pension risk sharing and the extent and robustness of the written agreements in place which document (with more experienced contractors and more recent agreements tending to be better documented to limit the pension risk borne by the contractor but still a wide variation).
- The extent of risk exposure in practice is a matter of judgement which could vary between each contract and also depending on experience (member and funding, known on exit) during the lifetime of the contract, there could be very different views on what and how much of the risk sharing agreements between Fund employers "offset" any credit due.
- How the exit credit valuation is "adjusted" to reflect the risk could vary substantially across employers and Funds as a result. The inconsistency this could introduce between Funds seems at odds with the desire for consistency noted elsewhere in the consultation
- In our view, it will be difficult for the Administering Authority to enforce any adjustment to exit credit i) based on risk sharing arrangements which could themselves be subject to debate between the affected employers and legal challenge on use by the Administering Authority (who is not party); ii) where is there is a wide variety of risk sharing arrangements operating between employers within a Fund; and iii) without upfront transparency on how any exit credit will be adjusted.
- If regulations state "MUST take into account a scheme employer's exposure to risk in calculating the value of the exit credit" Funds will need to obtain additional information and undertake additional legal and actuarial work in each case to assess employer risks and justify the calculation of any lower credit, and may then still face significant challenge from the contractor on implementation, potentially leading to dispute between employers within the fund.
- This could add significant additional workload and cost given the level of turnover in employers.

Question 17 – Are there other factors that should be taken into account in considering a solution?
The legal ramifications and measures to amend this situation is beyond the remit of this response. CIPFA notes that this proposal introduces a role for the administering authority in relation to an arrangement, presumably contractually binding, which was previously specifically only a bilateral arrangement between the employer and the service provider. CIPFA considers that it would be beneficial to ensure that LGPS funds are not exposed, if possible, to the risk of legal action (e.g. being sued) in relation to the exercise of any new responsibilities arising. Consideration may need to be given to scenarios where a risk sharing agreement (to split risk between the authority and the service provider may have existed. In this situation presumably the limit on the pension credit that a service provider may reasonably expect would be specifically considered. Potentially this is a purely hypothetical scenario. In seeking to make the application retrospective CIPFA queries whether this creates an incentive, in the interim, for service providers to seek to exit from existing service contracts. CIPFA would also note that, presumably, there is no action which can be taken in respect of exit credits which have already been triggered and paid to a service provider in these circumstances. In our view, steps can be taken through the FSS (following consultation) to help mitigate the incidence and amount of exit payments based on funding position. Retrospective application is likely to be met with challenge (either through regulation, guidance or FSS) given the amounts involved in some cases. If the proposal did proceed, consideration would also need to be given to the timeframe within which exit credits (as specified in the current regulations) must be paid and whether this is feasible in the context of additional work required to assess each case and potential debate on the outcome.

Question 18 – Do you agree with our proposed approach?
Agreed. Non local government bodies, particularly those with insolvency risk, should be enabled to assess whether to enable LGPS membership for new employees.

Question 19 – Are you aware of any other equalities impacts or of any particular groups with protected characteristics who would be disadvantaged by the proposals contained in this consultation?
None identified.