

Open Report on behalf of Executive Director of Finance and Public Protection

Report to:	Pensions Committee
Date:	21 March 2019
Subject:	MHCLG Statutory Guidance on Asset Pooling Consultation

Summary:

This report proposes a response to the Government's draft statutory guidance on asset pooling that is currently under consultation.

Recommendation(s):

That the committee:

- 1) note the report;
- 2) consider the points raised in this paper; and
- 3) delegate authority for the Executive Director of Finance and Public Protection, in consultation with the Chairman and Vice Chairman of the Pensions Committee, to respond to the consultation.

Background

1. The Government first published guidance (non-statutory) on asset pooling in November 2015 (attached at Appendix B). The key focus of this guidance was that the 89 LGPS Funds across England and Wales should create vehicles to pool their investment assets that would meet the criteria of:
 - Asset pools that achieve the benefits of scale (greater than £25bn);
 - Strong governance and decision making;
 - Reduced costs and excellent value for money; and
 - An improved capacity and capability to invest in infrastructure.
2. This led to the creation of the eight asset pools that now exist: London CIV, Brunel, LPP, Wales, Access, Northern, Central and Border to Coast (Lincolnshire Pension Fund's (LPF's) asset pool). The guidance was not prescriptive as to how these pools should be set up, and the eight pools have all been created differently based on the decisions and requirements of the underlying funds.
3. In January 2019, MHCLG published its draft statutory guidance on asset pooling. This sets out the requirements on administering authorities, replacing previous guidance, and builds on previous Ministerial

communications and guidance on investment strategies. The consultation is open for 12 weeks (closing on 28 March). It is deemed an informal consultation which is addressed to “*interested parties only, including the Scheme Advisory Board, Pensions Committees, Local Pension Boards, the pool Joint Committees or equivalent, the Cross Pool Collaboration Group, the pool operating companies where owned by participating funds, CIPFA and ALATS*”. This consultation is unusual in that it has no questions to respond to, rather just views are invited.

4. The document has had much discussion across the LGPS and Teresa Clay (Head of Local Government Pensions at MHCLG) was invited to attend the Cross Pool Collaboration Group (CPCG) meeting held last week to provide some further background and hear informal feedback from the representatives from the pools.
5. Key points from the presentation by Teresa Clay were:

Background

- All eight pools now operational
- Major challenge ahead to complete transition and deliver full benefits of reform
- Current basis in non-statutory guidance and Ministerial statements
- Collective understanding has grown and developed over last three years

Aims

- Set out up to date list of requirements on statutory basis
- Establish common terminology
- Clarify position on questions raised by funds and pools

Levels of requirements in the guidance

- Must – (4 of these) – requirement: only one way to comply
- Should – (36 of these) – requirement: more than one way to comply
- May – (27 of these) – option: permitted or available, depends on facts and circumstances

6. The intentions of the guidance, as presented by Teresa Clay, are set out below, followed by a brief commentary in italics as to whether this is an issue or concern for the Fund:

Structure and scale

- Must pool assets
 - *this is the understanding from the 2015 guidance*
- Must appoint pool company or companies regulated by the FCA
 - *Border to Coast is an FCA regulated company*
- Should review services and procurement and balance of active and passive management
 - *Service providers are regularly reviewed and the active or passive decision is part of the strategic asset allocation setting process*

Governance

- Must establish a pool governance body
 - *Border to Coast has a Joint Committee on which the 12 Chairs of the Partner Fund Pension Committees sit*
- Fund committees and pool governance bodies should take long term view of implementation and costs, including benefits across the pool
 - *Agree with the long term view – as a pension fund we are long term*
- Should decide balance between strategic and tactical asset allocation with involvement of pool company
 - *The definition of strategic and tactical differs across funds and is regularly discussed with Border to Coast and the partner funds*

Transition of assets to the pool

- Should transition assets quickly and effectively, with involvement of pool
 - *Concern raised here – effectively and efficiently rather than quickly*
- May charge to the fund payments made by a pool member to meet its agreed share of costs
 - *Initial principle agreed with Border to Coast Partner Funds on equitable sharing of transition costs*
- May retain existing assets on temporary basis but should keep under review
 - *Expectation for LPF is to transition all assets possible over the medium term*

Making new investments outside the pool

- Should normally make all new investments through the pool company
 - *Where structures are available*
- May make local investments but should not normally exceed 5% of total assets
 - *LPF does not make local investments so not an issue*

Infrastructure investment

- No target or requirement to invest in UK or overseas infrastructure
 - *As per the 2015 guidance*
- Should set ambition for infrastructure investment
 - *Contradictory to the point above*
- May invest in local areas but investment decisions should be made at pool level
 - *What is local to a pool?*
- Includes all forms of residential property
 - *Not within the normal definition of infrastructure*

Reporting

- Should report investment costs and performance in line with CIPFA guidance from 2018-19

- *The CIPFA Annual Report guidance which details how these should be set out has not yet been published and may not be available in time*
 - Should ensure that pool company and investment managers follow SAB Code of Transparency
 - *Border to Coast will only appoint managers who have signed up to the code and have themselves signed up to it*
 - Should explain differences between fund, pool and SAB reports in narrative
 - *Fund and Pool reports need to meet different requirements (company reporting vs. CIPFA reporting requirements) so will not be comparable*
7. The key concern across the LGPS Funds and the asset pools (as shared at the CPCG) is that whilst the intentions are generally agreeable, the translation of them into the guidance is poor: further clarity is required in some areas, there are a number of inconsistencies, some statements are very unhelpful and some elements do not need to be included.
8. MHCLG have requested that all responses indicate which section of the guidance is being commented on, therefore a detailed response will be required.
9. The key areas that officers recommend LPF responding on are shown below:
- 2.1 – Clarity - definition of local asset contradicted at 6.2.
 - 3.2 – Further clarity on the decision to use internal or external management.
 - 3.6 – Removal of the requirement to benchmark to passive and the push towards it.
 - 4.3 – Incorrect assumption that all pension committee members are elected members.
 - 4.4 – Clarity on how the funds should take account of the benefits across the scheme as a whole, and how this fits with their fiduciary duty to the Fund.
 - 4.5 and 4.6 – References to the role of the Local Pension Board in pool governance should be removed. Their responsibilities are clearly set out in the Public Service Pensions Act 2013 and the LGPS 2013 Regulations.
 - 5.1 – Removal of the references to transitioning quickly and for listed assets over a relatively short period.
 - 5.3 – Clarity on inter-authority payments in sharing costs.
 - 6.1 – Removal of expectation to make all new investments through the pool from 2020 – what are "limited circumstances"?
 - 6.2 – Removal of reference to local investments – these are included in the Investment Regulations.

- 6.3 – Clarity on investing in a pool other than their own – intention to create competition? Not all pools set up to enable this and it could impact business models.
 - 7 – Detailed section on Infrastructure investment is confusing. Definition not required in this guidance as included in CIPFA guidance.
 - 8 – Reporting section is far too detailed and only needs to refer to CIPFA Guidance.
 - 8.8 – pool members have no say over the format of the Pool company accounts.
 - 8.9 – clarity on the requirement to report failures to SAB and MHCLG.
 - There are now no references to scale requirements in the guidance.
10. In addition to the above there is a concern that the guidelines are now too prescriptive in a number of areas and a "one size fits all" approach is now required.
11. Delegated authority is requested for the Executive Director of Finance and Public Protection, in consultation with the Chairman and Vice Chairman of the Pensions Committee, to respond to the consultation following comments from this Committee.

Conclusion

12. The draft statutory guidance on asset pooling currently out for consultation is very detailed and a step change from the guidance issued in 2015. Whilst the intentions may be generally agreeable, the translation into a guidance document that funds must adhere to is a cause for concern. It is expected that there will be a high number of responses to the consultation.

Consultation

a) Have Risks and Impact Analysis been carried out?

Yes

b) Risks and Impact Analysis

The Pension Fund has a risk register which can be obtained by contacting the author of this report.

Appendices

These are listed below and attached at the back of the report	
Appendix A	MHCLG Statutory Guidance on Asset Pooling
Appendix B	Asset Pooling Guidance 2015

Background Papers

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

This report was written by Jo Ray, who can be contacted on 01522 553656 or jo.ray@lincolnshire.gov.uk.

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