

## **Regulatory Update**

### **Pension Committee meeting June 2020**

#### **Covid-19**

There has been guidance and advice issued from numerous sources over the course of the last couple of months in relation to pension schemes and how they should operate during the Covid-19 pandemic and as a result of the lockdown restrictions the government have put in place. We have taken on board all guidance that has been issued, paying particular attention to requests from both the SAB, in relation to the relaxation of our abatement policy for those returning to work as a result of the pandemic, and the Pensions Regulator in relation to prioritisation of work, communication to members, transfers from DB to DC schemes and the rise in pension scams during this time. We have also completed numerous surveys that have been issued by the LGA and TPR.

#### **McCloud Judgement**

At the SAB meeting in February, the Board agreed to create two working groups to help implement the outcome of the McCloud judgment for the LGPS. These will be a small policy group to help MHCLG consider areas of policy not determined by HMT and a larger implementation group made up of practitioners, member representatives, actuaries, software providers and employers. They will consider the challenges of implementing and communicating the scheme changes.

Due to differences in LGPS transitional protection, MHCLG are planning to undertake an LGPS specific consultation on the regulatory changes required to address McCloud. We are expecting the consultation to begin late June / early July 2020.

#### **Cost Management Process**

As previously reported the 2016 valuation found that the cost of providing public service pension schemes was below target and improvements to benefits for members would therefore be required. However, in January 2019, the Government announced a pause in the cost control mechanism process due to the McCloud decision.

In April 2020, four unions, including the FBU and the GMB, filed court proceedings against the Government claiming that the pause in the cost control mechanism is unlawful. The unions are arguing for an improvement in member benefits as a result of the valuation results. The Government plans a new valuation once the remedies to remove the age discrimination, as a result of the McCloud court case, have been finalised and the true cost of providing public service pension schemes can be assessed.

#### **Responsible Investment Guidance**

On 24 February 2020 SAB published a statement on the draft responsible investment guidance. They advised that responses to the earlier consultation were generally positive, however, some respondents raised concerns about fiduciary duty in the context of the LGPS.

The issue of fiduciary duty was discussed in the Supreme Court hearing involving the Palestine Solidarity Campaign and MHCLG on which the Supreme Court has since handed down its judgment, on 29 April 2020, finding in favour of the appellants.

Also, the Government recently introduced amendments to the Pension Schemes Bill 2020 which could also impact how investment strategy statements are prepared in relation to issues like ESG and climate change.

For these reasons, the SAB had decided not to offer definitive advice or guidance on how the fiduciary duty test applies in the LGPS at this time. It will change direction and restructure the draft guidance to explain and clarify the terminology associated with responsible investment and provide investment decision makers with a range of information, case studies and tools to help them meet the challenges associated with responsible investment. SAB will circulate the revised draft guidance to scheme stakeholders for comment in the normal way.

On 11 May 2020, SAB issued the following statement in response to the Supreme Court judgement:-

'The SAB welcomes the clarity brought by the judgement of the Supreme Court in the case of R (on the application of Palestine Solidarity Campaign Ltd and another) Appellants) v Secretary of State for Housing, Communities and Local Government (Respondent). In seeking to restrict the outcome as well as the considerations taken account of by an LGPS administering authority when developing its responsible investment policy, the government has been judged to have overstepped its powers. It is the Board's view that Responsible Investment policy decisions belong at the local level reflecting: the need to pay pensions both now and in the future; local democratic accountability and the views of scheme members; and that outcomes of policy developments should not be subject to restrictions based on unrelated matters'

The Board's secretariat and legal advisor have commenced work on a draft summary of the judgement which was published on the SAB website on 8 June 2020.

### **Good Governance**

A virtual meeting of the chairs of the SAB and its two committees was held on 6 April 2020 and it was agreed that Hymans Robertson's work on Phase three of the Good Governance project should proceed on a limited basis. They should continue to prepare papers for the SAB's consideration based on discussions already undertaken with the implementation group. However, they should avoid engaging with members of the implementation group, or local government in general at this time.

### **Code of transparency compliance system**

On 1 April 2020, the SAB and Byhiras issued a press statement to announce that the Cost Transparency compliance and validation system is now live.