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London Borough of Tower Hamlets - LGPS Consultation: Revoking and replacing the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009

Dear Sirs

We have considered the consultation on revoking and replacing the LGPS (Management and Investment of Funds) Regulations and are pleased to submit our comments and responses to the questions as stated below.

In summary, the council believe that the approach taken to deregulate and to simplify the regulations is the appropriate approach and will enable Funds to implement asset pooling more effectively. We do have concerns over the scale and scope of powers that are proposed in draft regulations.

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?

The London Borough of Tower Hamlets is pleased to see the general review of the investment regulation. We believe that the deregulation will enable funds to pursue greater collaboration without fear of breaching limits on the levels of investments in pools.

We note the requirements under investment strategy statement in section 7 and the requirement for taking proper advice and in accordance with guidance to be issued. We would ask that **such guidance be fully consulted upon and available for Funds by the start of the new financial year** to assist with planning on how best to meet such guidance.

We note the government's reference to ensuring that authorities' investments are made prudently, but this does not appear in the regulations, will this be included within the guidance?

We are concerned that the draft regulations also state the investment strategy 'must be in accordance' with the guidance and that this is a change in approach from the usual comply or explain and we would have concerns about the powers referred to later in the consultation, whether for practical and rational reasons a fund does not accord with an area of guidance whether this leads to intervention. This is particularly the case when funds adopt a different view of prudence to either other funds or government's views. Until such guidance is issued, it is difficult to fully respond to this question, but we would seek a change of term to a 'comply or explain' basis for the guidance.

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

Further to above comments which refer to re-instating the 'comply or explain' terminology in relation to guidance rather than it being 'must be in accordance'.

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

A 6 month timeframe for transitional arrangements would be adequate ordinarily, However, given the current workload for funds, that is working on detailed pooling arrangements in conjunction with the triennial valuations, makes a 6 months' timeframe unrealistic and does not give funds sufficient time to consider fundamental issues from pooling and also the valuation need to be reflected in any strategy.

A more realistic timeframe would be 31st March 2017 allowing the outcome of any investment strategy work both in connection with pooling and the valuation to be fully incorporated in our response.

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?

It is good to have clarification that the use of derivatives, futures and options contracts count as investments, given that there has been some confusion over the nature of their use by LGPS funds historically. Given the fast moving nature of financial markets and the uses that such instruments might be put to in the future, it would seem anomalous to be too prescriptive on how these should be used, a mechanism which could in future seem too restrictive.

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

In recognising the additional flexibility that the draft regulations offer authorities, we are concerned about the far ranging powers of intervention.

If the adoption of guidance is on a 'comply or explain' basis then this would provide the Secretary of State with additional evidence. If the Fund has also taken 'proper advice' then assuming that this can be made available this could also provide an additional source of evidence along with any exempt minutes of Committee decision making.

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?

The regulations as drafted (Regulation 8) are unclear on setting out timelines, either for the Secretary of State or indeed for the authority where intervention is taking place. A clear timeline for all parties will be essential to avoid funds operating in a vacuum for any period of time.

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

The Secretary of State's powers of intervention are too broad. We recognise that the additional flexibility given to authorities in managing their investments is a major relaxation of the current regulations and we do not believe that the policy intention at this stage is to intervene in the way that funds manage their investments. However, government policy objectives can change over time and the regulations as set out mean that the powers of intervention could at some point lead to a conflict of government policy over what the fund perceives to be its fiduciary responsibilities.

The question asks about 'proportionate intervention' and the draft regulations at 8(a) and 8(b) would seem to be going beyond 'proportionate' as directions. If part of the policy intention is to ensure that funds are participating in the new LGPS investment pools, then it would seem that this could be drafted more clearly without the need for what would appear to be an all-encompassing power to direct investments in LGPS funds.

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?

There is the need for the Secretary of State to intervene in authorities where there is complete disregard for best practice, guidance or regulation, but without access to the guidance at this stage it is difficult to comment further.