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To whom it may concern,

Response to the consultation on the Local Government Pension Scheme England and Wales; Scheme improvements (access and protections)

LB Brent Pension Fund is pleased to provide its response to MHCLG's consultation on the above topic.

The Government believes that the LGPS should be available to all those who provide the services for which local government is responsible.

On 13 October 2025, the Ministry of Housing, Communities and Local Government (MHCLG) published its LGPS Scheme improvements (access and protections) consultation.

The consultation focuses on promoting equal access to the scheme and its benefits, and protections for its members and Brent will set out its observations in order.

Local Government Pension Scheme in England and Wales: Scheme improvements (access and protections)

Normal Minimum Pension Age (NMPA)

The Finance Act 2022 legislated to increase the NMPA from 55 to 57, effective from 6 April 2028, for all registered pension schemes in the country.

As the increase in NMPA is a fait accompli, the consultation focuses on protections for members who were in a registered pension scheme prior to 4 November 2021, who may have a protected pension age (PPA).

The latest consultation proposes only offering a PPA to members with continuous membership in the LGPS; however, PPA's from other registered pension schemes should be noted in case the member subsequently returns to it, and they are able to revive their PPA in that scheme.

Q1. Do you agree with keeping the NMPA at below 57 for members with a PPA?

Yes. It is an attractive proposal for members who envisage working their whole careers in local government, but it cuts across the Government's aspiration to encourage mobility within the public sector.

However, it adds another layer of complexity to an already complex pension scheme and there needs to be a thorough impact assessment that considers cost, potential age discrimination and the creation of a two-tier workforce.

Q2. Do you agree with increasing the NMPA to 57 for members without a PPA?

Yes. The increase in NMPA was enshrined in legislation by the Finance Act 2022, and it delivers the policy intention.

Q3. Do you have any views on the design of the regulations to incorporate this change?

If a member has a PPA in the LGPS it should apply to all their elements of their LGPS service. It is not unduly onerous to monitor this as administrators have access to the National Insurance database. This approach avoids members being forced to make complex and committal decisions about aggregating their membership.

Access for councillors and mayors

This proposal largely replicates Schedule 8 of 1997 regulations, which opened the LGPS to nominated councillors from 1 May 2003 until they first faced election after 31 March 2014. The proposed scheme is also a CARE scheme, but the revaluation will be based on CPI instead of RPI.

The key differences seem to be the new intention that;

- as far as possible, elected members should be treated the same as other members of the LGPS
- as far as possible, elected members should be treated in a way that is consistent with the LGPS in Scotland, Northern Ireland and pre-2014 England & Wales

The key principles are reminiscent of the 2003 scheme (Schedule 8 of the 1997 regulations) except for the new definition of pensionable pay, which automatically includes both the basic and special responsibility allowances.

- elected members will not be subject to auto-enrolment and, whilst each individual will have the right to join the scheme, elected members will need to assess whether they wish to do so
- an employer will not be allowed to award additional pension, make shared additional voluntary contributions or fund additional pension contributions to an elected member
- a new definition of pensionable pay will be used, to cover both basic allowances and special responsibility allowances paid to elected members
- elected members will pay employee contributions at the same rates as other members, using the same bandings applied to their pensionable pay
- a member will not be permitted to combine any LGPS membership they may have as an elected member with any other type of LGPS membership

- flexible retirement (where a member over the age of 55 can start to receive their pension whilst still working, if the member reduces hours or grade) will not be permitted for an elected member
- early access on redundancy will not be permitted for an elected member
- elected members will be permitted to transfer benefits in and out of the LGPS in the same way as other members, with the exception of final salary benefits
- early and late retirement will be permitted in the same way as for other members
- elected members will be in scope of forfeiture regulations
- elected members will have access to the 50:50 scheme
- elected members will have the same protections around Assumed Pensionable Pay as other members.

Q4. Do you agree with the proposal to give mayors access to the scheme?

Brent agrees with the principle of offering all elected members access to a defined benefits pension scheme. Mayors provide a vital public service - and the CARE scheme offers proportionate pension benefits for the contributions paid.

Q5. Do you agree with the proposal to give councillors access to the scheme?

Yes. Brent believes that admitting councillors advances engagement with the LGPS at a local level and promotes general awareness of the scheme. Councillors in Scotland, Wales and Northern Ireland already have access to the LGPS and restoring access in England brings consistency across the UK. Moreover, councillors who participate in the LGPS are likely to be more engaged with pension governance, especially if they hold roles on pension committees or boards.

Q6. Do you agree with the two principles of how the government plans to develop regulations?

Yes.

Q7. Do you have any specific comments on the draft regulations?

The Government Actuary's Department (GAD) anticipates these proposals costing £40-£45 million per year in England and the Government is not offering any additional funding. It would be helpful to know how much admitting mayors is expected to cost as it is likely to be disproportionately expensive and generate fewer benefits.

As these are new proposals, and considering already stretched Council budgets, the Government should consider providing additional funding to meet the extra cost. Brent thinks that the proposed timescales for introducing the new regulations are too optimistic and the software providers have warned that they do not have enough time to make their products compliant.

Academies

Multi academy trusts (MATs) may have academies in two or more administering authorities and there may be efficiency savings for the academy in consolidating in one administering authority. However, there is anecdotal evidence that some MATs prefer to consolidate in the administering authority with the lowest employer contribution rates leading to allegations of

“cherry picking” or “contribution shopping”. It is also important to note that consolidation can generate substantial professional fees and moving one or more large schools to a new administering authority may have a significant adverse effect on the ceding administering authority.

MHCLG has proposed the following tests to maximise savings and avoid adverse consequences.

- There must be a clear and evidenced value-for-money assessment in favour of the consolidation (such as to achieve administrative efficiencies that outweigh the cost of transfer and actuarial fees).
- There should be a pre-existing relationship with the administering authority that the MAT wishes to join or consolidate into (i.e. the MAT already has schools in that administering authority).
- All administering authorities involved should agree to the change.
- The receiving administering authority must be able to administer the transfer effectively.

This is not a significant change as a direction order is only avoided if all the parties agree and, otherwise, the aggrieved party can insist on a direction from the Secretary of State.

Q8. Do you agree with the proposal to establish the criteria above in legislation?

Establishing clear criteria is essential as there is a danger that motivated academies will try to suggest that there is agreement across the board even though one or more of the interested parties involved dissents.

Brent believes that each of the criteria to be considered should be given a clear weighting to establish an order of precedence and facilitate consistent decision making.

Q9. Do you have any views on how contribution rate shopping can be discouraged?

As a rule of thumb, individual academies should be required to participate in the fund of the administering authority within which their academy is situated by default.

In Brent’s view, the only exceptions should occur when there are no serious disadvantages to the exporting administering authority, there is a pre-existing relationship with the importing fund and there are clear and demonstrable non-financial advantages for the MAT to consolidate. The default should be that academies would only be allowed to migrate to the administering authority that already has the largest number of academies in the MAT, unless there are truly exceptional circumstances.

Employer’s pension contribution rates should be excluded from the value for money assessment. Brent thinks that consolidations driven by employer contribution rates should be referred to the Secretary of State for approval and it would expect these cases to be declined.

Q10. Are there any other criteria that should be included?

If the MAT cannot demonstrate significant efficiencies and savings that are not related to lower employer rates, the transfer should not go ahead unless both administering authorities agree.

A transfer should be carefully scrutinised if the MAT is looking to consolidate in an administering authority that is not in the geographical location of the largest number of academies.

The cash-flow impact on both the ceding and receiving administering authorities should be included in the criteria. This is particularly important as MATs tend to have more active members and when a large block of active members moves funds, the ceding AA may have to sell assets to replace the cash flow.

Q11. Do you have any other comments or considerations relating to establishing the criteria in legislation?

Clear and comprehensive guidance is mandatory.

What will happen to contracts that have been let by MATs; will they follow their letting authorities or remain in their existing funds?

If “deemed employer” is not adopted it may be disproportionately expensive to terminate admission agreements and arrange new ones in the new fund, but it would be counterintuitive for the original administering authority to retain small admission agreements after the letting authority (and guarantor) has migrated.

It should be made clear how new academies joining a MAT after a consolidation will be handled. It is our view that a separate assessment in line with the established criteria should be carried out.

Q12. Do you agree to the removal of the requirement to seek Secretary of State consent for standard direction order applications?

A qualified; yes, provided that the criteria and process on how assessments should be carried out are clearly defined.

Q13. What would be the most helpful information to include in guidance?

It is important to set out the weighting given to each of the main elements that would be taken into consideration if the Secretary of State was deliberating a directions order. Each element should be given a weighting to establish a clear order of precedence.

Guidance should cover the roles and responsibilities of MATs, ceding administering authorities, receiving administering authorities and DfE/MHCLG, including how disagreements should be handled.

Q14. Do you have any other comments or consideration on the removal of the requirement to seek SoS consent for standard order applications?

There should be a clear and unambiguous agreement to the proposed migration signed by all the key stakeholders. We also reiterate concerns about cash-flow impacts on the ceding administering authority where multi-fund MATs consolidate into a single fund; this should be explicitly recognised in guidance as a relevant consideration.

Proposal 2: Process for applications where criteria are not met

The narrative says the government supports applications for a Directions order where the benefits clearly outweigh the costs; however, it does not explain how this is weighed against its desire to avoid “cherry picking” as most applications concern MATs looking to consolidate in an administering authority with lower employer contribution rates.

The Government concedes that cash flow may be an issue for some administering authorities but it also important to note that two or three large schools migrating from one London borough to another administering authority might cause issues, notwithstanding that academies are ring fenced. A lot of confusion may have been sowed and considerable expense incurred before an academy realises that its past service liabilities will follow them.

The Government says that it would consider cashflow issues on a case-by-case basis; however, it gives no indication of how it will weigh this against potential efficiency savings for the MATs. Clear guidance is essential for a consistent approach.

Q15. Do you agree that non-standard applications will continue to require Secretary of State approval?

Yes, where the criteria are not fully met – for example, where one administering authority does not agree to the consolidation – it is appropriate that the SoS approves applications.

Q16. What would be the most helpful information to include in the guidance in relation to nonstandard applications that will require Secretary of State approval?

It would be helpful to know the weighting the Government wants us to apply to the various elements. Guidance should also define “non-standard” applications with examples and explain the process for submitting an application with the evidence required.

Q17. Do you have any further comments regarding the proposal?

Brent would urge prioritising the long-term health of pension funds above any short-term savings that academies may realise. If a pension fund is destabilised, the remedy will be disproportionately costly to remedy.

The principle that migrating MATs must have an existing relationship with the importing fund should be non-negotiable, unless all the interested parties agree otherwise.

New Fair Deal

Fair Deal was introduced in Central Government in 1999 and there were consultations about introducing it to Local Government in 2016 and 2019. The latest iteration introduces or develops three key concepts;

- **“Deemed employer”** has the meaning given by Part 4 of Schedule 2 in the 2013 Regulations. It has the effect that for specific groups of employees, their ‘Scheme employer’ is not their employer in employment law but is instead their deemed employer.
- **“Fair Deal employer”** means a Scheme employer listed in paragraphs 1 to 13 or 15 to 29 of Part 1, or in Part 2, of Schedule 2 in the 2013 Regulations, or a further education corporation or sixth form college corporation as per section 90 of the Further and Higher Education Act 1992. It has the effect of identifying the original employer of individuals who have since been outsourced.

- **“Relevant contractor”** means a contractor to whom an employee’s contract of employment is compulsorily transferred under regulation 4 of “The Transfer of Undertakings (Protection of Employment)” (TUPE) regulations from a Fair Deal employer (or a previous contractor). It has the effect of identifying the employer of protected transferees.

Q18. Do you agree that the option to offer broadly comparable schemes should be removed, except in exceptional circumstances, to align with the 2013 Fair Deal guidance?

Yes. The LGPS should be the default.

Q19. Are you aware of any other broadly comparable schemes that are currently in operation and have active members covered by the 2007 and/or 2012/2022 Directions? If so, please provide details of these.

We are aware of comparable schemes, but we believe that none of the contracts let in this administering authority operate them.

Q20. Do you agree with the proposals on deemed employer status and the removal of admission body option for service providers who deliver local government contracts?

Brent thinks that Deemed employer is a natural progression of pass through and offers greater certainty and additional savings. However, there may be an argument for retaining admission agreements for high-value long-term contracts with substantial numbers of transferees.

Q 21 Do you agree with the proposed definition of Fair Deal Employer?

Yes, but the regulations do not deliver the intention expressed in the consultation. Schedule 2 part 2 employers (e.g. voluntary aided schools etc.) are not covered in the draft regulations although the consultation suggests that they would be.

Q22 Do you agree with the definition of a protected transferee?

Yes, however, guidance is essential to clarify how “wholly or mainly” working on the outsourced service is to be interpreted, and what happens when working patterns change.

Q23. Do you agree with the proposal to allow the Fair Deal employer to provide protected transferee status for all staff working on a contract outsourced by a Fair Deal employer, which would enable Fair Deal employers and relevant contractors to avoid creating a two-tier workforce on outsourced contracts?

Brent agrees; however, it supports the default position set out in the draft regulations. New employees working on the outsourced service would only have access to the LGPS if the Fair Deal employer and the relevant contractor agree to it. If there is a consensus, then there should be a further requirement that any new members devote at least 50% of their time to the outsourced function.

Q24. Do you agree with the overall approach on responsibilities for relevant contractors and Fair Deal employers? If you do not, with which proposals do you disagree?

There need to be clearly defined responsibilities set out in focused and concise guidance. Contribution returns, leaver forms, opt-ins / opt-outs etcetera would have to be the responsibility of the contractor and their payroll provider.

It would be better if any discretions that potentially carry a cost are exercised by the fair deal employer (letting authority) who is responsible for guaranteeing the pension benefits. We think that Fair Deal employers should bear any costs relating to ill-health retirement, to avoid the contractor pricing it into the contract, although the risk could be mitigated if the administering authority exercises its right to approve the IRMP certifying the retirement under regulation 36(3).

Q25 Do you agree that option 1 should be applied to how agreements between protected transferees and relevant contractors should be treated in the case of subsequent outsourcings?

Brent strongly prefers Option 1, but it may be necessary to use option 3 in exceptional circumstances.

Q26. Do you agree with the approach to allow broadly comparable schemes to continue only in exceptional circumstances?

Yes, but the LGPS should be the norm.

Q27. Do you have any views on what the exceptional circumstances, where broadly comparable schemes may need to continue, could be?

There may be instances where large numbers of members leaving a scheme may challenge an otherwise solvent comparable scheme. However, there would have to be very good reasons to allow a comparable scheme to continue.

Q28. Do you agree with the proposed approach to inward transfers from broadly comparable schemes?

Brent agrees to the LGPS accepting transfers from broadly comparable schemes, but it has reservations about allowing them to be transferred on a final salary benefits basis as MHCLG has apparently suggested. Transfers should be accepted on a cost neutral basis, and Fair Deal employers should not be asked to accept liabilities that are difficult to quantify and complex to administer.

Q29. Do you agree with the approach of including a mechanism in the draft regulations that allows for staff to become protected transferees where there is an early re-negotiation of a service contract using the new Fair Deal regulations?

Yes.

Q30. Do you agree with the proposal that all staff (including those joining a contract after first outsourcing) would be eligible for protected transferee status, providing all relevant parties agree?

Yes, subject to all the parties agreeing and a requirement that new members must devote at least 50% of their time to the outsourced function. This proposal would enhance cashflow and mitigate the risk of a two-tier workforce.

Q31. Do you agree with the proposal for the draft regulations to come into force on the date the relevant SI is laid, with a 6-month transitional period during which there is the possibility to decide to not apply the new provisions?

Yes, Brent thinks that this is a sensible provision.

Q32. If you are an individual who is currently outsourced from a local authority and part of a final salary scheme, do you agree with the proposed updating of the 2007 and 2022 Directions to deem the LGPS as broadly comparable to or better than final salary schemes? Please give the reasons for your answer.

Not applicable.

Q33. Do you agree with the proposal to develop and publish statutory guidance and Scheme Advisory Board guidance to support with the implementation of the updated Fair Deal proposals?

Clear and comprehensive statutory guidance is essential for Fair Deal to work properly.

Q34. Are there any additional topics that you would like to be covered?

Where a contract is let to a large employer, there should be a requirement that the transferees devote at least 50% of their time to the outsourced function. Statutory guidance should stipulate what happens when working patterns change.

With analogy to pass through, there may be exceptional circumstances where large or high-value contracts are more suited to conventional admission agreements. However, the risk could be managed by the Deemed Employer referring any ill-health retirements to its IRMP and the risk of a careless employer spiking any final salary benefits is receding with the passage of time.

Q35. What impact do you think these proposals would have on members?

Brent sees the proposals as positive developments that will improve consistency of treatment, promote stability, avoid two-tier workforces and deliver substantial savings in professional fees.

Also, the proposals should be positive for members by ensuring continuity of LGPS membership when services are outsourced, reducing the risk of uncertainty where admission agreements are delayed.

Additionally, guidance needs to cover how, in the absence of admission agreements, parties should document local agreements on key issues (e.g. which staff are protected transferees, whether new joiners can access the LGPS, how ill health retirement costs are to be treated, who will undertake the employer responsibilities, the employer contribution rate payable etc.)

Q36. Do you support the proposal to bring all eligible individuals back into the LGPS, including those in broadly comparable final salary schemes? Please explain your reasons.

Brent supports bringing all eligible individuals back into the LGPS but any transfers-in from broadly equivalent scheme should only be accepted on a cost neutral basis. The LGPS should not "subsidise" transfers from underfunded or insolvent schemes or offer any complex "special arrangements".

Q37. On balance, do you agree with the proposals in this chapter?

On balance Brent supports the proposals, but it believes that the proposed timescales for introducing them are too optimistic.

Q38. Do you consider that there are any particular groups with protected characteristics who would either benefit or be disadvantaged by any of the proposals? If so, please provide relevant data or evidence.

Brent thinks that the proposals advance equality and are a key step towards eliminating two-tier workforces.

Q39. Do you agree to being contacted regarding your response if further engagement is needed?

Yes.