

CIPFA Legal Update

12 July 2016

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Legal Update

Agenda

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- Investment pooling
- MIFID II update
- EU update
- Case law update
- New Fair Deal

Investment Pooling

An update

Investment Pooling

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- Key dates/events
- Government's requirements
- Pools



Investment Pooling

Key dates/events

- Summer 2015 – Summer Budget Government asked LGPS funds to put forward proposals to pool investments to reduce costs significantly while maintaining overall performance.
- Project Pool report published
 - November 2015 – Government published investment reform criteria and guidance
- 19 February 2016 – Deadline for initial proposals
- 15 July 2016 – Deadline for refined and completed submissions
- Assessment against Govt criteria
- Implementation

Investment Pooling

Government's criteria

- Scale
- Savings
- Governance
- Access to infrastructure



Investment pooling

Pools

- London CIV
- GMPF/WYPF/MPF
(aka Northern Powerhouse)
- Midlands (aka Central)
- South West (aka Brunel)
- ACCESS
- Wales
- Border to Coast
- Lancs/LPFA
(aka Loc Pensions Partnership)



MIFID II

Reforms

MIFID II

Reforms

- MIFID II to replace MIFID I (EU:2007)
- Currently, LGPS administering authorities are classed as “professional clients” and can invest in complex strategies i.e. hedge funds, ACS.
- Under MIFID II, LGPS authorities will be classified as “retail investors”, unless they “opt-up” to professional client status.
- Re-classification will mean that there will be more restrictions on the types of products they can invest in.
- The aim of MIFID II is to protect local authorities from risky investment options/poor decision making.



MIFID II

How to opt-up

In order to opt-up, the investment firm would need to undertake an assessment that the LGPS authority:

- is capable of making their own investment decisions; and
- understand the risks involved.

In addition, the authority would have to satisfy 2 of the following:

- they have carried out transactions in “significant size” at an average of 10 per quarter over the previous 4 quarters;
- their portfolio exceeds EUR 500,000;
- they work, or have worked, in the financial sector for at least one year in a professional position which required knowledge of the transactions or services envisaged.

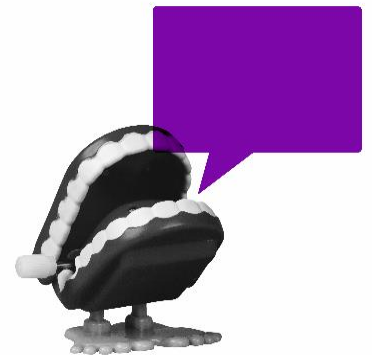
MIFID II

Changes to the opt-up criteria

March 2015, FCA published consultation paper:

- preference to strengthen quantitative element of opt-up criteria;
- LA to meet 3/3 and increase portfolio to 20m Euro; or
- meet large undertaking test already used for professionals.

DCLG & FCA discussions – 3 Jan 2018.... **BUT** Brexit.



EU: what's around the corner?

EU

What's around the corner?

- Current state of play on IORP II Directive
- Tougher data protection rules on the way



EU: what's around the corner

IORP II – current state of play

IORP II Directive finalised **30 June 2016**

Points resolved include:

- Future role of lay trustees
- Cross-border – only if actives (not beneficiaries) abroad
- 100% funding for cross-border schemes – deficit recovery plans
- Solvency provisions in initial draft dropped
- EIOPA's "holistic balance sheet"
- Pension benefit statements
- Timeframe: 24 months **BUT** Brexit

EU: what's around the corner

Looking ahead: tougher new data protection rules

- New **General Data Protection Regulation** adopted
- Will come into force on 25 May 2018
- Directly applicable under UK law

Some significant changes – (e.g.):

- New obligations on **data processors** (e.g. administrators)
- Wider territorial scope
- Enhanced rights for data subjects
- Tougher rules around individual consent
- Higher fines – up to **greater** of 4% of annual global turnover for preceding FY or €20 million
- Need to consider implications for existing processes/service agreements

Case law update

Case law update

Mather (PO-5291)

- Member received annual benefit statements which contained incorrect figures
- Administrators had wrongly included a period of service
- Member complained as pension due significantly lower than quote
- Ombudsman upheld complaint - reliance on the figures to her detriment
- A crucial factor in the Ombudsman's decision was the wording in the benefit statement which was not true
- Trustees should avoid giving assurances in benefit statements

New Fair Deal

New Fair Deal

NFD 2013: Who does it apply to?

- Compulsory transfers from public sector
- Central government departments and agencies
- NHS.

New Fair Deal

Who is not covered by 2013 NFD?

- Local and other best value authorities (they are covered by Best Value Direction)
- Further and higher education
- Social housing
- Other parts of public sector

New Fair Deal

Consultation

- Consultation to extend New Fair Deal Principles so that they will apply where Local Authority staff are compulsorily transferred to private sector employer.
- Proposals create new category of employee - '**protected transferee**'; and
- New category of admission body - '**protected transferee employer**'.
- Contractors on 1st transfer will be **required** to participate in LGPS (no more BCS).
- Contractors on retenders where employees are already in a broadly comparable pension scheme, will not be required to participate in LGPS (no mandatory bulk transfer), although could seek LGPS admission.
- Adds to rather than replaces existing admitted body provisions.
- HE, FE and PCCs excluded.
- Best Value to be revoked in due course.
- Consultation closes 20 August 2016.

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