LGPS CURRENT ISSUES

NEWS IN BRIEF

EQUITY PROTECTION

Whilst there have been significant gains in equity markets over the past year or so, the economic outlook remains uncertain. We have been actively engaged with a number of Funds in order to implement “Equity Protection” strategies to protect these gains and to ensure current contributions can at least be maintained at the next actuarial valuation. We’d be happy to discuss such strategies further with Funds requiring more details on the options available.

LANDMARK RULINGS ON SURVIVORS’ PENSIONS

Ruling on Same Sex Pension: On 12 July, the Supreme Court overturned a decision of the Court of Appeal in the case of Walker vs Innospec. The ruling has important implications for defined benefit schemes that have not fully equalised survivors’ pensions for civil partners or same-sex spouses. The Government is currently considering the impact on the public sector pension schemes but we do not expect any material impact on the LGPS.

Brewster Ruling On Survivor’s Pension: Following the Brewster ruling on survivor pensions earlier this year by the Supreme Court, we understand that LGPS funds in England and Wales will be reviewing cases during the relevant period mentioned to ascertain whether any potential claims may arise as a result of the judgement. For Mercer clients, our funding assumptions for proportions partnered used in the 2016 round of valuations included an allowance for ‘cohabiting spouses’ so results will be unaffected by the judgement. There may be one or two past cases that need to be reinstated, although we do not expect this to be material.

For the Scottish LGPS, it has been decided that this change should be applied to any case from 1 April 2009, and those potentially affected have been advised to contact their administering authority.

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- News in Brief
- Scheme Advisory Board and the Pensions Regulator Updates
- Other Developments on Regulations and Consultation
- Taxation Round Up
- LGPS Survey Results
- Dates To Remember
- Contacts

In August, a letter was sent to pension managers by DCLG setting out the implications on pension funds and the approach that they consider to be reasonable and this is set out here: http://lgpslibrary.org/assets/bulletins/2017/161App1.pdf.

NATIONAL INITIATIVES

- **Section 13 –** The section 13 data for LGPS Funds has been provided to the GAD and we will update funds once we hear anything further.
- **Cost Management 2016 -** The GAD is also using the section 13 data to do their cost management calculations and we await their findings in anticipation of potential action with effect from 1 April 2019. Funds should be mindful that current expectations are that the costs of the scheme will have increased (not least due to lack of 50:50 take-up), although we await more information.
- **Academies -** Prompted by the DfE, GAD are collecting some further information from actuaries under the umbrella of their s13 work. It is expected that the results will be reported on separately and prior to the main s13 report.

ARE YOU UP TO SPEED WITH MiFID II

As you will most likely be aware, under the EU Markets in Financial Instruments Directive (MiFID II) Local Authorities are automatically classed as a Retail investor. To allow continued access to the full range of vehicles and managers needed for investment strategies, local authorities should consider making use of the "opt-up" process to Professional investor status. The opt-up applies to relationships with all investment service providers. The SAB website (www.lgpsboard.org/index.php/mifidii-lgps) contains useful material setting out the background together with detail on the "opt-up" process (including documentation). This has been compiled following the FCA's policy statement issued in July on the implementation MiFID II (www.fca.org.uk/publication/policy/ps17-14.pdf).

ADDITIONAL VOLUNTARY CONTRIBUTIONS - A TIME TO REVIEW?

- **A time to review -** In accordance with its codes of practice, The Pensions Regulator requires an assessment against its 2016 DC Code in respect of money purchase AVCs. This also applies to LGPS AVCs and it can be surprising how different LGPS AVC arrangements are, even within the main provider's product. At the PLSA Local Authority conference earlier this year, the need to regularly review AVCs was frequently mentioned.
  Given this and the changes to legislation on money purchase AVCs (i.e. Freedom and Choice), Administering Authorities should consider whether it is now appropriate to conduct a review. Your usual Mercer consultant would be pleased to discuss this further with you.
- **Prudential –** on 31 May 2017, Prudential closed their Deposit fund to new AVC members (this will not impact on existing members). Whilst an alternative fund is available (M&G cash fund), this will impact on what LGPS funds currently offer as AVC arrangements to members and highlights the importance of regular reviews as mentioned above.

PUBLIC SECTOR PAY CAP

It is understood that Theresa May and Philip Hammond are drawing up plans to raise the public sector pay cap, which has limited pay rises to 1% per year since 2010. The initial indication is that they may prioritise areas such as nursing initially and that the increases may be staggered. However, if there are changes to the cap that is applied to LGPS staff, this will impact on pensionable salaries and ultimately will impact on the liabilities for LGPS Funds. In particular there will be an impact for those Funds where an allowance for the current cap (to 31 March 2020) has been allowed for in the latest funding valuation (and thus contribution outcomes). We will provide further comment on this in due course once further details are known.

EARLY RETIREMENT STRAIN COSTS

Given the delays to the Public Sector exit payment regulations being effected (as referenced below), it is unlikely that a standardised set of factors to calculate Early Retirement Costs (ERCs) across all LGPS Funds will be in place in the near future. This is, and always has been our preference for such calculations.

As a result of the delays, it is therefore appropriate for the factors currently underlying the calculation of Early Retirement Costs (ERCs) to be reviewed in light of the assumptions adopted at the 2016 actuarial valuation (for our English and Welsh clients). The factors were last reviewed in July 2014. We will shortly be communicating the results of our analysis to administering authorities, although it is likely that there will be a small increase to the cost factors, and thus early retirement costs emerging.

DCLG GUIDANCE IN RELATION TO INVESTMENT STRATEGY STATEMENTS

The guidance governs the investment strategy for the local government and permits ethical and social objections to a particular investment to be taken into account. However, the High Court has ruled that the original guidance from DCLG "Guidance on preparing and maintaining an investment strategy statement" was unlawful when it stated that administering authorities must not:

> ".... [use] pension policies to pursue boycotts, divestment and sanctions ["BDS"] against foreign nations and UK defence industries...other than where formal legal sanctions, embargoes and restrictions have been put in place by the Government" or "pursue policies that are contrary to UK foreign policy or UK defence policy".

This restriction operates even if an investment strategy with an element of boycott, divestment and sanction would not involve significant financial risk to the scheme and irrespective of member support. The guidance has since been updated to remove this statement; however, we understand that DCLG are planning to appeal this decision and we will provide an update on this in due course once the outcomes of any appeal are known.

CLIMATE CHANGE

Back in February, ClientEarth and ShareAction submitted a referral to the Pensions Regulator (TPR) highlighting varying standards across the LGPS in how funds were assessing and managing climate risk in investment decision-making. This was due to more than 80% of LGPS funds making no mention of climate risk in their latest Investment Strategy Statements. ClientEarth and ShareAction will continue to monitor funds and, where appropriate, may make further representations. We would therefore recommend that Funds review and update their Investment Strategy Statements as required.

OMBUDSMAN RULING

In March, the Pension Ombudsman ruled (PO-7277) that an LGPS could not withhold a convicted fraudster's pension rights under the regulations at the time (Regulation 74 of the 2008 Regulations). This ruling was on the basis that the reasons for leaving the original employment were wholly unconnected with the previous criminal conduct. The person did not leave employment in consequence of their criminal, negligent or fraudulent act and so the conditions of regulation 74 had not been satisfied.

SCHEME ADVISORY BOARD AND THE PENSIONS REGULATOR UPDATES

SCHEME ADVISORY BOARD

2016 Annual Report - The SAB issued its 4th Annual Report to coincide with Cllr Roger Phillips' address to the PLSA Local Authority Conference on 16th May. Key statistics emerging are; the scheme now has 5.3 million members, over 14,000 employers, assets of £217bn, and remains cashflow positive (including investment income).

Code of Transparency - The SAB has also launched its voluntary Code of Transparency for LGPS asset managers in order to help move towards investment fee transparency and consistency. Compliance will require managers to complete and submit a template to their LGPS Funds.

Local Pension Board Survey - The SAB recently issued a survey to all LGPS stakeholders in order to gather feedback on their experiences/views of their Local Pension Fund boards. This was provided to administering authorities and the closing date for survey responses is the **29th September 2017**.

Tier 3 employers - Following its work on academies, the Scheme Advisory Board is beginning a project on Tier 3 employers. This stream of work will be conducted in two concurrent phases; 1) The Board will be working with LGPS administering authorities to gather data regarding the number, membership, liabilities and covenants of these employers; and 2) separately the Board has commissioned further analysis to be carried out in this area. In order to facilitate the project, the Board is asking the actuarial advisers to provide details of each of these employers' funding positions and relevant supporting information, in a standardised format. The details of this are currently under discussion.

Consultation on Academies Objectives – Following the publication of PWC's report, the SAB is investigating the options available to LGPS funds to address issues associated with the policy objective to convert all schools to academies. The SAB has issued a very short consultation for Funds about the underlying principles for any review in this area. It will run from 17 July 2017 to **29 September 2017** and we would recommend funds respond to this if they have not already done so.

Consultation on a Cross Pool Information Forum – The SAB has agreed in principle that an elected member led Cross Pool Information Forum should be established to share and disseminate information on the pooling of LGPS assets. A consultation has been issued on the remit, membership and frequency of the proposed Forum and also seeks views on whether a one-off open session on progress towards pooling should be organised. The consultation is aimed at Chairs of LGPS pension committees and runs from 17 July 2017 to **29 September 2017** and we would recommend all LGPS funds respond to this, if they have not done so already.

NEWS FROM THE PENSIONS REGULATOR (TPR)

DATA SECURITY

The Pensions Regulator has again urged pension schemes to check their internal controls and the safety of scheme data in the wake of recent global ransomware attacks.

Ransomware attacks, which have targeted the UK's National Health Service among other organisations, can cripple IT systems and lead to demands for payment for access to be restored. The Regulator itself has admitted to being subject to a partially successful ransomware attack in December 2015, although it stresses that no data was compromised and it has successfully blocked over 40,000 attacks in the last three financial years. Even where attacks are unsuccessful, the increasing number of attempts to breach computer systems emphasises the scale of the problem being faced by organisations, including pension schemes.

Administering Authorities are responsible for the security of their scheme data, they are expected to ensure that their administrators and other providers have sufficient controls in place to keep data safe, and have plans in place for dealing with security breaches should they occur. In addition, the Regulator expects cyber security to be a key item on scheme risk registers.

As well as ensuring that their scheme data is protected against cyber attacks, Administering Authorities should also be taking a broader look at their data processes and procedures in light of the European Union's General Data Protection Regulation (GDPR). The GDPR will apply directly to all member states from 25 May 2018 and, as the UK is still expected to be part of the EU on this date, it must comply with the requirements.

The GDPR introduces more stringent requirements than the existing UK data protection legislation. For example, individuals will need to give clear and affirmative consent for their personal data to be processed, and there will be direct compliance obligations for data processors (such as scheme administrators), who will be liable for fines for non-compliance. The GDPR also emphasises accountability and transparency, and so those responsible for personal data will need to ensure that processes around data protection are explicit and documented.

If not already done so, Administering Authorities should, in conjunction with their legal advisers, begin reviewing current data protection processes and service provider contracts in order to be prepared for the changes.

PUBLICATIONS

The Pensions Regulator has recently released a number of publications, perhaps providing a taste of its new approach to regulation. There are already indications that the Regulator is acting faster and more robustly in cases that might previously have expected little attention. The regulatory regime is changing and attention to regulatory risk will need to increase.

THE REGULATOR'S FUTURE - The Regulator has been assessing the way in which it works and is considering medium to long-term changes in a project called "TPR Future". A short report on the first phase was published in July. The Regulator's priorities for change are summarised as follows:

1. **Clarifying its identity** – including its relationship with other regulators and improving how it engages
2. **Setting clear expectations** – the Regulator believes standards will be improved if its expectations and the results of non-compliance are clearer to all
3. **Improving regulatory oversight** – better use of data and intelligence to monitor compliance with the Regulator's clearer expectations, enabling it to undertake better-targeted and risk-based interventions

4. **Broadening the range of regulatory interventions** – the Regulator plans to draw from its full spectrum of powers, look for swifter and more frequent use of powers and, more publicly, to demonstrate “visible policing” that creates a deterrent to poor behaviour
5. **Being more efficient and effective** – including better management of casework and enhanced ability to adapt to fluctuating challenges.

The report provides a good indication that the Regulator will be seeking to demonstrate a more robust approach overall, including more use of its powers. To some extent, it plans for the current “educate, enable, enforce” regime to evolve into a “comply or explain” regime. An update on progress is expected in spring 2018.

FIRST FINE ISSUED TO AN LGPS FUND - TPR has fined an LGPS fund £1,000 for failing to submit basic information required by law. TPR issued the fine for failure to submit its 2016 scheme return. A regulatory intervention report published on 27 July 2017 outlines the case and action taken by TPR.

Scheme managers of public service schemes are expected to complete a scheme return which provides TPR with basic information about a scheme such as number of members and participating employers, contact details and information about its pension board. Depending on the nature and size of the scheme, trustees and managers are sent a scheme return notice at least once every three years.

PUBLIC SERVICE SURVEY 2016 - TPR has published the results of its public service governance and administration survey 2016. The survey covers a broad range of topics including but not limited to data quality, key processes, managing risk, the reporting of breaches, and many others. More focus will be given to record-keeping, internal controls and communications as part of this survey. We recommend that all Funds review this survey and consider whether it is appropriate to take further or different steps given its findings.

http://tpr.gov.uk/docs/public-service-research-summary-2017.pdf

OTHER DEVELOPMENTS ON REGULATIONS AND CONSULTATION

PENSION SCAMS CONSULTATION

The Government has published a response to its pension scams consultation, confirming that it intends to legislate for a ban on pensions cold calling "when Parliamentary time allows". The ban will extend to electronic communications, including emails and text messages. The Government also plans to introduce legislation - although not until late 2018 - to limit the circumstances in which an individual will have a statutory right to transfer their pension benefits. It will also make it harder for fraudsters to open pension schemes likely to be used for scam purposes. The Information Commissioner's Office will be responsible for enforcing the ban.

Mercer supports the Government's proposal to ban pension cold calling, albeit we believe that the ban is not a solution on its own. We also welcome the extension to cover other means of contacting an individual and hope the proposals will be wide enough to anticipate the evolution of scamming practices.

INDEXATION AND EQUALISATION OF GMPS

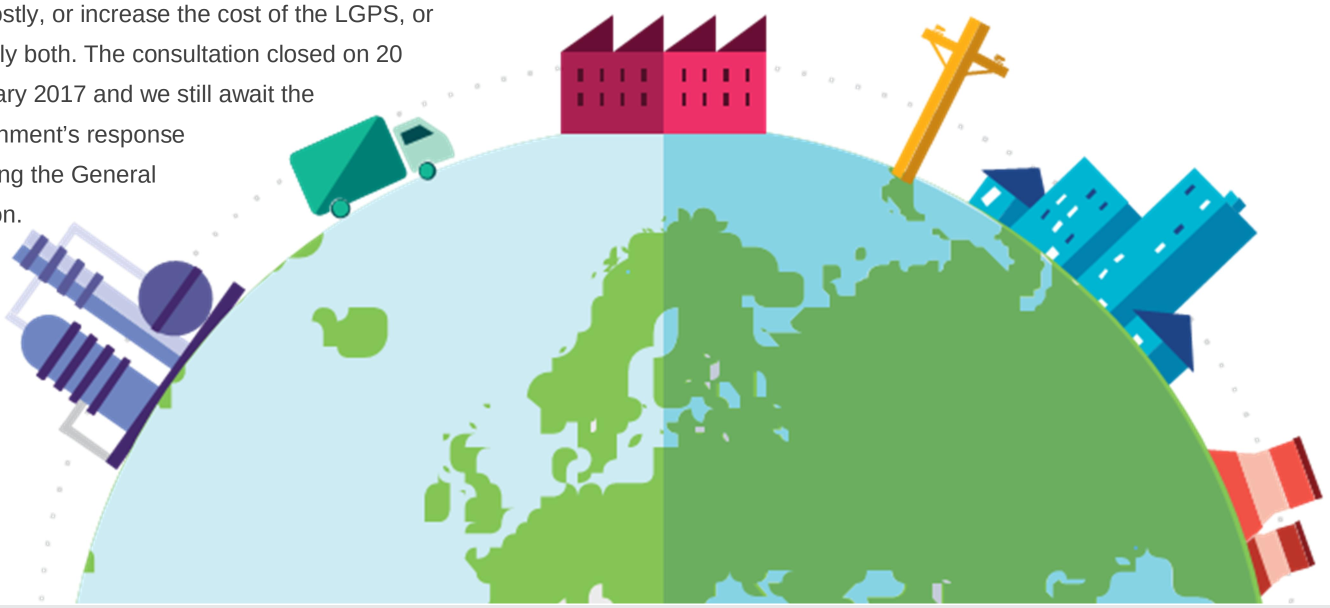
As reported in a previous current issues, the Government has consulted about equalisation and indexation of Guaranteed Minimum Pensions (GMPs) for public service scheme members who reach State Pension Age (SPA) after 5 December 2018.

The consultation addressed two issues simultaneously, namely:

- The equalisation of male and female GMPs accrued after 17 May 1990
- Historic commitments by previous Governments that all public sector workers will receive full indexation on their pensions (including GMPs)

Under all the consultation options, it seems that the burden of providing indexation on GMPs will now fall on the public service schemes themselves and all the associated employers in those schemes, whether public sector or not. This is because these increases will no longer be provided through the Additional State Pension (ASP) following recent changes to state pension provision.

The proposals are either administratively complex and costly, or increase the cost of the LGPS, or possibly both. The consultation closed on 20 February 2017 and we still await the Government's response following the General Election.



OTHER DEVELOPMENTS ON REGULATIONS AND CONSULTATION

- New Fair Deal - following the consultation carried out last year, further details and clarifications needed have been identified. We believe that a further consultation may be needed on an updated set of provisions to apply the principles of New Fair Deal to the LGPS, and expect to hear more in the near future.
- Exit payments and claw back provisions - Following on from our update in the previous edition, the General Election put a number of timetables on hold. We are expecting to hear more about both the cap and clawback regulations from the Government in due course.
- Plans for Single Financial Guidance Body - Free and impartial financial guidance to individuals is currently provided by three public services: The Money Advice Service, The Pensions Advisory Service and Pension Wise. However, the Government has consulted on plans to change this model with the creation of a single financial guidance body (SFGB).

  The Government is of the view that there are gaps, as well as duplication, in the guidance currently available, and that a SFGB would be better suited to respond to the different financial needs of consumers.

TAXATION ROUND UP

UPDATE ON AUTO-ENROLMENT EXEMPTIONS FOR MEMBERS WITH LIFETIME ALLOWANCE PROTECTION

Where an employee has a form of Lifetime Allowance protection, often this protection is lost if the employee continues accruing pension benefits. Therefore it is necessary to ensure that the employee who has opted out is not automatically re-enrolled into a pension scheme.

There is already a clear exemption for any of the ‘pre-2016’ protections (i.e. Enhanced Protection, Primary Protection, Fixed Protection 2012, Fixed Protection 2014 and/or Individual Protection 2014). That is the employer can already choose whether or not to automatically enrol (or re-enrol) those Jobholders who have one or more of these “pre-2016” LTA protections. However, the employer must have “reasonable grounds” to believe an employee has a tax protected status and any such employee retains the right to opt-in or request to join a pension scheme.

After the introduction of the 2016 LTA Protections, the DWP indicated that it was working with HMRC to extend the auto-enrolment exemptions to cover the new protections but the timescale was unclear. This exemption has now been introduced via regulations coming into force on 6 March 2017. Again, the employer must have “reasonable grounds” to believe an employee has a tax-protected status, such as a print out from the online HMRC protection system.

VOLUNTARY SCHEME PAYS – INDIVIDUALS WITH A TAPERED OR MONEY PURCHASE ANNUAL ALLOWANCE

Where an individual’s Pension Input Amount (‘PIA’) for a tax year exceeds the Annual Allowance (‘AA’) for that tax year, the individual will be liable for an AA tax charge, unless they have sufficient unused AA that they can carry-forward from the previous three tax years. Where a member has pension savings of more than the standard AA (i.e. £40,000) in a scheme and has an AA tax charge in excess of £2,000, the member can require the pension scheme to pay the AA tax charge on their behalf: a process known as Mandatory Scheme Pays. Where the individual does not meet all of the conditions for Mandatory Scheme Pays to apply, the scheme can still pay any Annual Allowance charge on the individual’s behalf, if the scheme and member agree to do so. This is a process known as Voluntary Scheme Pays.

If the member has an AA tax charge to pay as a result of them being impacted by the Money Purchase Annual Allowance (‘MPAA’) or the Tapered AA then the member may not qualify in full for Mandatory Scheme Pays. They might therefore want to fall back on the Voluntary Scheme Pays process to meet some/all of their 2016/17 tax charge, although in practice they may not be aware of all the details especially if their PIA is under £40,000.

Therefore, given that Funds are only required to issue pension savings statements to members after the end of a tax year (by 5 October) when pension savings exceed the standard AA of £40,000, it is possible that members with a PIA of between £10,000 and £40,000 and also are subject to the Tapered AA (likely to only be the top earning members) will need to request details of the PIA from Funds themselves.

Whilst Voluntary Scheme Pays operates in a similar way to Mandatory Scheme Pays (i.e. the scheme pays the AA tax on behalf of the member and benefits are reduced), there are some crucial differences that members (and Funds) should be aware of.

- Timing – For the members, the deadlines for Voluntary Scheme Pays tie in with the Self-Assessment Tax Return deadlines. Hence the Voluntary Scheme Pays process must be completed by 31 January following the end of the tax year (i.e. 31 January 2018 for the 2016/17 tax year). In order to avoid any interest charged on the AA tax charge due by the member, this must also be paid to HMRC on behalf of the member by the 31 January.

- Liability for the tax – The sole responsibility for the tax payment with Voluntary Scheme Pays is the member's, and there is no joint and several liability with the Scheme (unlike with Mandatory Scheme Pays).

ACTION

If Fund's have not done so already therefore, they should be looking to communicate the above to those members who may think they are eligible for Mandatory Scheme Pays for this tax year when in fact they may not be, if are subject to the Tapered AA. Funds should also look to review who receives an annual pension savings statement automatically and also ensure that current processes and timings are fit for purpose.

Should you wish to discuss any of the above further, Mercer's tax specialists would be happy to provide assistance and support in this area as required.

LGPS SURVEY RESULTS

LGPS SUMMER SURVEY - THE RESULTS ARE IN!

Over the summer we conducted a survey of those within the LGPS to obtain views on the current issues faced by Funds and also various holiday preferences. The results are now in and are summarised in this section along with supporting comments on what action Funds may look to take in certain areas.

ADMINISTRATION CHALLENGES

Case backlogs, increasing employer numbers, GDPR requirements, GMP reconciliations and of course, the day-to-day administration of the Fund. These are just some of the challenges currently facing administration teams at present. The majority of respondents to the survey confirmed that whilst all of the above do present challenges at present, dealing with case backlogs was the biggest challenge faced.

Mercer has, and continues to, assist Administering Authorities with meeting case backlogs and we would be happy to provide further details to Funds/administrators wanting to explore such options further.

RISK MANAGEMENT

It was no surprise that Data Quality, Managing Employers, Covenant Risk and Investment Risks all scored consistently (4 on average for each risk) when those surveyed were asked to rank them on a scale of 1-5 in terms of how critical they saw each risk over the next few years.

We would recommend that administering authorities look to consider and implement risk management policies in each of these areas and we'd be happy to liaise with authorities to consider the options available as required.

POOLING

The general expectation (65% of replies) is that there will be further compulsory pooling over the next 3 years now that the investment pools have been established.

ALTERNATIVE DELIVERY MODELS

Given the increasingly complex nature of outsourcings, 50% of respondents believe that it will be useful for managers and officers (and employer representatives) involved in commissioning services to benefit from additional information on all aspects of the process (rather than individual elements). Mercer can provide training to various stakeholders to assist their understanding in this area should Fund's wish to offer this.

MARKET OUTLOOK

The current uncertainties regarding the market outlook were evident in the responses provided to the survey with a 50/50 split between those who were very concerned and those who weren't really concerned about the impact of market movements (in particular the potential impact of Brexit) on funding positions and contribution outcomes.

Given the recent gains in equity markets, we have been actively engaged with a number of Funds in order to implement strategies to protect these gains to ensure current contributions can at least be maintained at the next actuarial valuation. We'd be happy to discuss such strategies further with other Funds that might wish to explore the options available.

CHANGES TO THE LGPS

Over the past few years, the one constant within the LGPS has been *change*, with the introduction of the new CARE Scheme, investment pooling etc. Such changes would seem to have influenced the responses provided to the survey. If they could change one thing about the LGPS, 60% of respondents would request that the Scheme be changed again to be made simpler, in particular from a regulatory perspective. A sample of the responses provided is shown below.

- “remove historical protections - after I’ve retired though.”
- “simplify into a single set of regulations applying to all members”
- “Simplification of regulations to ease admin workload”
- “Less Government interference”

EMPLOYER CONCERNS

Of all the various employer types participating in the LGPS, the group causing most concern at the moment would be Historic Admitted Bodies according to the survey with nearly 50% of the responses. One of the key drivers behind this outcome is likely to be the fact that the liabilities of such employers are not guaranteed by any other employer in the Fund and therefore pose risks to all other employers in the Fund should unfunded liabilities emerge on termination.

Although contribution outcomes from the 2016 actuarial valuations in England and Wales have only been recently agreed (and outcomes emerging from the Scottish 2017 valuations will be agreed in the coming months), we would urge administering authorities to continue to monitor certain employers during the inter-valuation periods in order that any issues regarding employer covenant can be identified and actioned prior to the next actuarial valuation. Mercer has specialist covenant advisors who are able to assist Funds in carrying out covenant assessments where required.

HOLIDAYS

Whether Brexit has an impact on holiday destinations going forwards remains to be seen but for the moment, the preferred destination this summer of those within the LGPS (over 50%) has been mainland Europe.

Whilst enjoying the sun (when it decides to appear in this country), 40% of respondents confirmed they would opt for a Magnum from the ice cream van, closely followed by 30% opting for a 99.

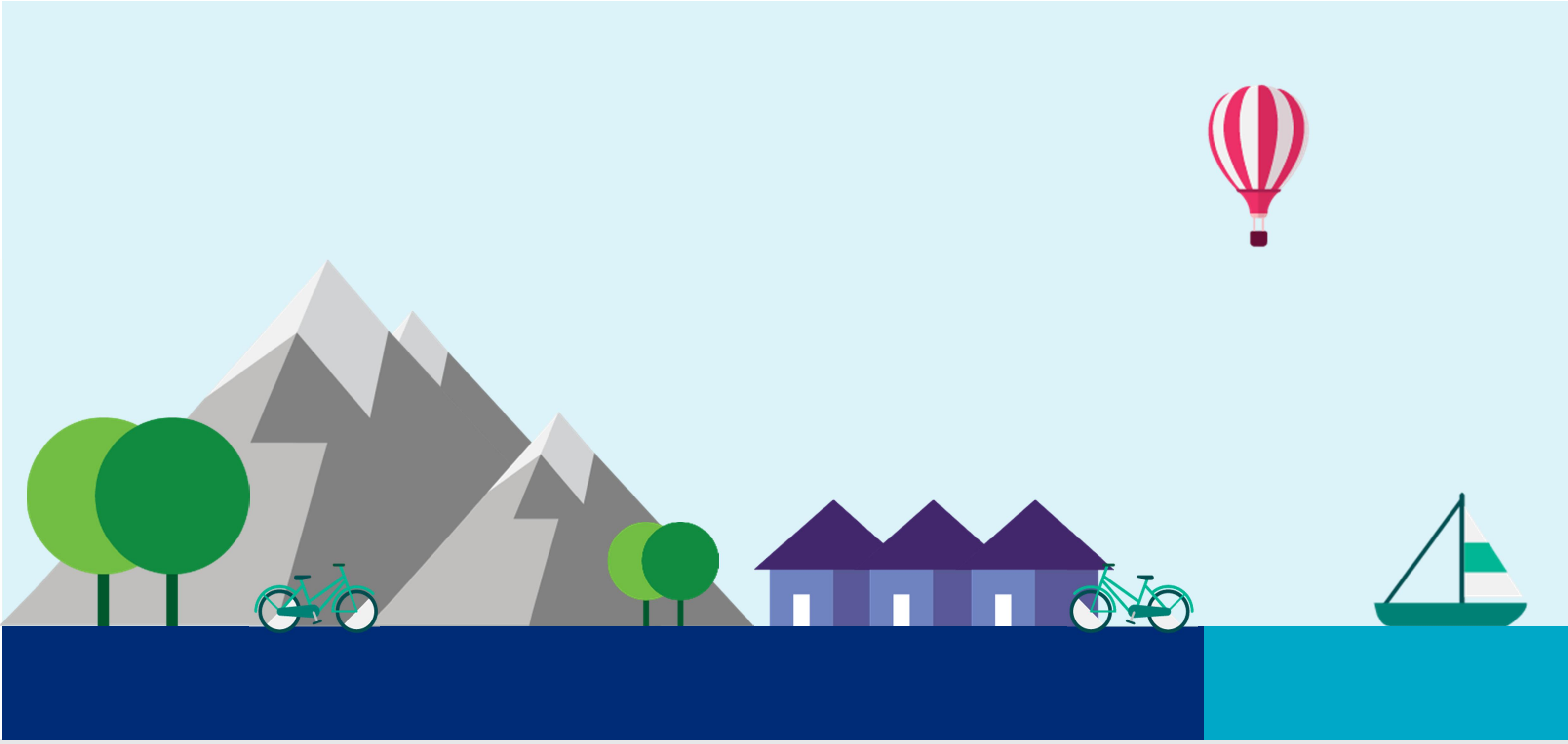
And finally, if money was no object then nearly 50% of those taking part in the survey chose New Zealand as their preferred destination (the Galapagos Islands being the other stand-out response to this question). It’s not clear though whether the favoured destination was due to a love of Rugby, the breathtaking scenery, family connections or simply being over 11,000 miles away from the LGPS!

Thanks to all those who took part in the survey.

As referred to above, we would be happy to assist Funds further with dealing with the issues commented on and so please speak to your usual Mercer consultant if you would like to discuss how we can help you.

DATES TO REMEMBER

DATE	ISSUE	THE LATEST
29 September 2017	SAB Consultations	Deadline for response to the Consultation on Academies Objectives and the Consultation on a Cross Pool Information Forum
1 October 2017	Auto Enrolment	From this date, employers of defined benefit pension schemes will no longer be able to postpone auto-enrolment of certain members.
November/December 2017 (date tbc)	Autumn Statement	The Chancellor is set to give the Autumn Budget 2017 at the end of November or the beginning of December, as the update on country's finances is switched from the Spring
3 January 2018	MiFID II	MiFID II becomes effective from this date.
31 March 2018	Actuarial Valuation	Deadline for the 2017 Scottish actuarial valuation exercises to have been formally signed off by the fund actuary.



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