

Version 1: valid from 25 May 2018

LOCAL GOVERNMENT PENSION SCHEME

Memorandum of Understanding regarding Compliance with Data Protection Law

1 INTRODUCTION

1.1 The Local Government Pension Scheme ("LGPS") in England and Wales is an occupational pension scheme registered under section 153 of the Finance Act 2004 and its rules are currently set out in The Local Government Pension Scheme Regulations 2013 (SI 2013/2356) as amended ("**LGPS Regulations**").

1.2 The LGPS is administered locally by administering authorities which are defined in Regulation 2 of the LGPS Regulations and listed in Part 1 of Schedule 3 of the LGPS Regulations.

1.3 Leicestershire County Council ("**Administering Authority**") is an administering authority under the LGPS Regulations. The Administering Authority manages and administers the Leicestershire County Council pension fund within the LGPS (the "**Fund**") in accordance with its statutory duty under Regulation 53 of the LGPS Regulations. Employers employing employees who are eligible to be members of the LGPS will participate in the Fund as a "**Scheme Employer**" (as defined in schedule 1 of the LGPS Regulations). The Administering Authority and the Scheme Employer (together the "**Parties**") are required to share personal data relating to the Scheme Employer's current and former employees who participate in the Fund (the "**Members**") and their dependants, in order for the Administering Authority to fulfil its statutory duties to manage and administer the Fund under Regulation 53 of the LGPS Regulations and provide the Members with benefits upon retirement, pay ill-health benefits, pay death grants, pay survivors' pensions to Members' spouses, civil partners and co-habiting partners, pay children's pensions upon the death of the Member, offer Members the option of paying additional voluntary contributions to one or more providers in accordance with Regulations 1 – 52 of the LGPS Regulations.

1.4 Scheme Employers are under a statutory obligation, as detailed in Regulation 80 of the LGPS Regulations, to provide certain personal data relating to its Members on an annual basis to the Administering Authority, including the Member's name, gender, date of birth, national insurance number, pensionable pay, employer and employee pension contributions, details of any additional pension contributions and additional voluntary contributions.

1.5 This Memorandum of Understanding sets out:

- (a) the basis on which data will be shared between the Parties;
- (b) the Administering Authority's expectations of the Scheme Employer during its participation in the Fund;

in order to comply with Data Protection Law, including the General Data Protection Regulation (2016/679) ("**GDPR**") which will have direct legal effect in the UK on and after 25 May 2018.

1.6 References to "**Data Protection Law**" in this Memorandum of Understanding mean the Data Protection Act 1998, the Data Protection Directive (95/46/EC), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic

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Communications (EC Directive) Regulations 2003 (SI 2426/2003) (as amended), the General Data Protection Regulation (2016/679) and all applicable laws and regulations relating to personal data and privacy which are enacted from time to time, including (where applicable) the guidance and codes of practice issued by the Information Commissioner's Office and any other competent authority.

2 DATA CONTROLLERS

2.1 The Parties acknowledge that they will:

- (a) not hold a pool of joint data;
- (b) be separate and independent data controllers in relation to the copies of the Members' personal data they respectively hold;
- (c) act as data controller in relation to personal data transferred to them;
- (d) each be responsible for complying with the requirements in Data Protection Law that are applicable to them as data controllers.

2.2 References to Members' personal data includes personal data relating to the Members' dependants (including children) and spouses/civil partners (where applicable).

3 DATA SHARING

3.1 The Parties confirm that they understand their respective obligations under Data Protection Law as data controllers and agree to only process personal data relating to the Members:

- (a) fairly and lawfully and in accordance with the data protection principles set out in Data Protection Law;
- (b) where there are lawful grounds for doing so; and
- (c) in accordance with Data Protection Law and best practice guidance (including the Data Sharing Code issued by the Information Commissioner's Office and updated from time to time).

3.2 Each Party will separately inform the Members (as required under Data Protection Law) of the respective purposes for which they will each process their personal data and provide all required information to ensure that the Members understand how their personal data will be processed in each case by the Administering Authority or Scheme Employer (as applicable). The Scheme Employer's privacy notice to Members will inform them that their personal data will be provided to the Administering Authority and a copy of that notice will be provided to the Administering Authority on request.

3.3 Each Party undertakes to notify the other as soon as practicable if an error is discovered in the Members' personal data of which it is a data controller and which was received from or a copy of which has been provided to the other Party, to ensure that such other Party is then able to correct its own records. This will happen whether the error is discovered through existing data quality initiatives or is flagged up through some other route (such as the existence of errors being directly notified to the Administering Authority or

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Scheme Employer (as appropriate) by the Member (or the Member's dependants, spouse/civil partner) themselves).

4 TRANSFER OF MEMBERS' PERSONAL DATA

4.1 The Parties agree that Members' personal data will only be transferred from one Party to the other via an acceptable method specified by the Administering Authority which may include any of the following:

- (a) Secure email.
- (b) The iConnect portal.
- (c) Any other method as agreed by both Parties.

4.2 Each Party will, when transferring the Members' personal data of which it is the data controller to the other Party, ensure that that data is secure during transit (whether physical or electronic).

4.3 If either the Administering Authority or the Scheme Employer appoints professional advisers, third party administrators or another entity which provides other services involving the transfer of Members' personal data, those third parties will be data processors or data controllers in their own right. The Administering Authority or the Scheme Employer (as applicable) will comply with its own obligations in accordance with Data Protection Law (in particular, by ensuring that any entity to which it transfers Members' personal data also complies with Data Protection Law) and shall ensure that that nothing in the terms of engagement between the Administering Authority or the Scheme Employer (as applicable) and such third party would contradict this Memorandum of Understanding.

5 RIGHTS OF MEMBERS (INCLUDING THE MEMBER'S DEPENDANTS, SPOUSES/CIVIL PARTNERS (WHERE APPLICABLE))

5.1 Each Party shall, in respect of the personal data of which it is a data controller, respond to any requests from Members to have access to any of their personal data or a complaint or enquiry relating to that Party's processing of the Members' personal data received by that Party in line with its own obligations under the Data Protection Law.

5.2 Each Party agrees to provide reasonable assistance to the other as is necessary to enable the other Party to comply with any such requests in respect of Members' personal data of which that Party is a data controller and to respond to any other queries or complaints from Members.

6 DATA SECURITY BREACHES AND REPORTING PROCEDURES

6.1 Each Party confirms that it understands its respective obligations under Data Protection Law in the event of any personal data breach, unauthorised or unlawful processing of, loss or destruction of or damage to any of the Members' personal data, including (where necessary) an obligation to notify the Information Commissioner's Office and/or the Member(s).

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7 RESPONSIBILITIES OF SCHEME EMPLOYERS

7.1 Notwithstanding the statutory obligations which apply to Scheme Employers under the LGPS Regulations and as a data controller under Data Protection Law, the Administering Authority, as Administering Authority for the Fund, expects Scheme Employers participating in the Fund to comply with the responsibilities set out below in relation to Members' personal data.

7.2 On request, the Scheme Employer will inform Ian Howe at the Administering Authority of any appointed qualified person to fulfil the role of data protection officer ("DPO") together with their contact details. If the Scheme Employer has not appointed a DPO, the Scheme Employer, on request, will inform Ian Howe at the Administering Authority of the details of a nominated person for GDPR compliance purposes.

7.3 The Scheme Employer will demonstrate to the Administering Authority's satisfaction when dealing with ill health early retirement applications for current employees that explicit Member consent has been received which gives consent to processing by both the Scheme Employer and the Administering Authority. In the absence of such consent, the Administering Authority may not be able to process the Member's application.¹ The Administering Authority only requires the Employer's fully completed and certified ill health certificate (completed by a registered IRMP), it does not require any supporting medical information, personal to the member.

7.4 The Scheme Employer acknowledges the financial penalties that can be imposed by the Information Commissioner's Office in relation to breaches of Data Protection Law and will inform the Administering Authority from the point that it becomes aware that the Scheme Employer may be liable to pay such a financial penalty. In the unlikely event of a breach the Scheme Employer further acknowledges that any liability it may have to pay a financial penalty to the Information Commissioner's Office may result in a revision of the rates and adjustments certificate in accordance with Regulation 62(7) of the LGPS Regulations.

8 REVIEW AND AMENDMENT OF MEMORANDUM OF UNDERSTANDING

The Administering Authority will review the Memorandum of Understanding from time to time. The Administering Authority reserves the right to amend the Memorandum of Understanding at any time and with immediate effect and will provide written notice to the Scheme Employer of such amendment.

¹ Consent is needed under the Access to Medical Reports Act 1988 in relation to health data. Consent for GDPR purposes needs to be fully informed, specific, unambiguous and freely given by way of a statement of clear affirmative action by the Member.

Fair Processing Notice

This notice tells you about why we (Leicestershire County Council, the Data Controller) need your information and how we will handle it.

What information do we need from you?

The types of personal data we hold and process about you can include:

- Contact details, including name, address, telephone numbers and email address.
- Identifying details, including date of birth, national insurance number and payroll reference numbers.
- Information that is used to calculate and assess eligibility for benefits, for example, length of service or membership and salary information.
- Information about your family, dependents or personal circumstances, for example, marital status and information relevant to the distribution and allocation of benefits payable on death.

Why do we need this?

We need this information in order to administer, manage and provide a Local Government Pension Service to you, including the provision of an online service.

(If you have registered for the Online Pension Service, you will also have provided your email address, which is held to allow notifications to be sent to you when updates have been made to your pension record, for example, when your annual pension statement is added)

Why are we allowed to process your information?

Data Protection law allows us to process your information within certain conditions. In this case we are using the legal obligation to administer the Pension Service as the lawful condition for us to do this.

We also need an appropriate lawful reason to process sensitive data. In this case we are processing your sensitive personal data because this is necessary as part of your employment.

Who will we share this with?

Sometimes we need to share your information with others. We will only do this when it is necessary in order to offer you this service, or if we are required to do so by law. We do not plan to share it with anyone else or use it for anything else. When it is necessary, we may disclose your personal information to the following organisations:

- (a) The Dept for Work and Pensions (for prevention/detection of fraud)
- (b) Other Local Government Pension Funds (for statutory reasons, i.e. where an automatic transfer of pension benefits from another local authority applies, or, in the event that a death grant has become payable, other local government pension funds would need to be aware of this as it may impact on any payments due from their fund.)
- (c) Faraday Tracing Bureau (for the purposes of mortality screening)
- (d) Hymans Robertson (Pension scheme actuaries, for statutory pension fund valuation exercises and TUPE transfers)
- (e) Club Vita, a subsidiary of Hymans Robertson (for the purposes of assessing mortality data)
- (f) KPMG, External Auditors (for the provision of an external audit of pension administration and data quality)
- (g) Civica (for the purposes of providing an online portal for scheme members)
- (h) South Yorkshire Pension Fund (they provide us with a facility to run reports on this data, this helps us in the administration of the scheme)
- (i) Any of our employees, officers, agents, suppliers or subcontractors, as is reasonably necessary for the purposes set out in this privacy notice, and as necessary :

- a. to the extent that we are required to do so by law;
- b. in connection with any ongoing or prospective legal proceedings;
- c. in order to establish, exercise or defend our legal rights (including providing information to others for the purposes of fraud prevention and reducing credit risk);
- d. to any person who we reasonably believe may apply to a court or other competent authority for disclosure of that personal information where, in our reasonable opinion, such court or authority would be reasonably likely to order disclosure of that personal information.

How will we keep it secure?

We will take all reasonable steps to prevent the loss, misuse or alteration of your personal information. Only the people who need to see your personal information will be allowed access to it. We will not send your information outside of the UK.

How long we will keep it for?

We will only keep this information for as long as necessary or as the law requires. For this service that would normally be one hundred years following the end of the tax year of leaving the Local Government Pension Scheme.

What if something changes?

If the information you provided changes or your circumstances change, please contact Leicestershire County Council Pension Section, County Hall, Glenfield, Leicester LE3 8RB. Tel: 0116 305 6944. Email: pensions@leics.gov.uk

If we need to change something like who we want to share this information with, we will contact you to let you know.

What are your rights?

You may request to see a copy of the personal information we hold about you. The law also provides you with other rights regarding your information including some around; correction of inaccurate data, objection to processing, moving your information to somewhere else, and in some cases, getting your information deleted.

If you are unhappy with the way your data is being handled or if you need to contact Leicestershire County Council's Data Protection Officer, please contact the Information Governance Team.

Email: informationgovernance@leics.gov.uk

If you are not satisfied with any response you may receive from us based on a complaint or concern about your personal information, you then have the option of contacting the Information Commissioners Office to take that complaint further. The Information Commissioners Office does like to see that you have raised a complaint with the Council first and received a response before contacting them. If you do wish to contact them, the address details can be found below:

The Information Commissioners Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF
 Telephone: 0303 123 1113 (local rate) or 01625 545 745 (national rate)
 Website: www.ico.org.uk Email: casework@ico.org.uk

LCC Retention Schedule - Corporate Resources (CR)

ref number (leave blank)	Set	Sub-set	Description / Scope Notes	Personal Data?	LCC classification level	Retention Trigger	Retention Period	Disposal Action /Method	Authority	Owner (Normally head of service)	Access Restricted	Shared (formal agreement)	Any other notes
	Pensions	All scheme leavers with no further liability between 1977 and 1989	Documents, paper such as birth certificates and marital status details that were needed to enable accurate pension benefit calculations to be performed.	yes	3	Starts at the date the member left the LGPS	100 years following year of leaving	destroy	1. The Pension Section receives regular claims from members/ex-members/spouses (current or future) for claims of payments/refunds/transfers out. This takes place on a daily basis. 2. HMRC require Pension Schemes to provide details of historic contracted out membership to ensure their records reconcile with Pension Funds in order to correctly calculate and pay State Pension increases (PI) and Pension Fund benefits. This includes previous members with no further liability in the scheme e.g. those who have had refunds or transfers out.	Ian Howe Pensions Manager	yes	no	Previous scheme members or their spouses/children can request details of their previous scheme membership. Enquiries can also be received from HMRC as well as the DWP pensions tracing service.
	Pensions	All scheme leavers with no further liability from 1990 onwards	Documents all electronic, such as birth certificates and marital status details that were needed to enable accurate pension benefit calculations to be performed.	yes	3	Starts at the date the member left the LGPS	100 years following year of leaving	destroy	1. The Pension Section receives regular claims from members/ex-members/spouses (current or future) for claims of payments/refunds/transfers out. This takes place on a daily basis. 2. HMRC require Pension Schemes to provide details of historic contracted out membership to ensure their records reconcile with Pension Funds in order to correctly calculate and pay State Pension increases (PI) and Pension Fund benefits. This includes previous members with no further liability in the scheme e.g. those who have had refunds or transfers out.	Ian Howe Pensions Manager	yes	no	Previous scheme members or their spouses/children can request details of their previous scheme membership. Enquiries can also be received from HMRC as well as the DWP pensions tracing service.

3 = Low risk

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