

To: Jeremy Hughes (Deputy Board Secretary, Local Government Pension Scheme Advisory Board)

From: Squire Patton Boggs (UK) LLP

Date: May 26, 2023

Subject: Advice in relation to the processing of LGPS member data

1 Background

- 1.1 The Local Government Pension Scheme ("**LGPS**") is a public service pension scheme, with individual LGPS funds administered by various administering authorities as specified in the Local Government Pension Scheme Regulations 2013. The LGPS Scheme Advisory Board ("**SAB**") is a body established under statute with the purposes of advising the Secretary of State responsible for the LGPS on the desirability of making changes to the scheme and advising administering authorities and local pension boards in relation to the effective and efficient administration and management of the scheme (and any connected scheme) and their individual funds.
- 1.2 In the context of performing its role and in order to collate information regarding the operation of the LGPS, the SAB collects member-related personal data from LGPS funds. To achieve this, the SAB conducts surveys, submits requests for specific information to responsible authorities and may share certain information received from LGPS funds with other governmental bodies.
- 1.3 The SAB may also in some circumstances commission the Government Actuary's Department ("**GAD**") to conduct analysis of experience across the LGPS. This involves the processing by GAD of scheme member personal data ("**SMPD**") that GAD has itself previously received directly from the relevant administering authority. GAD would have originally received this SMPD to enable GAD to carry out an actuarial valuation of the whole LGPS and provide an assessment of the cost of the LGPS for SAB in order for SAB to comply with its legal obligations under section 13 of the Public Services Pensions Act 2013 ("**PSPA**") and Regulation 116 of the Local Government Pension Scheme Regulations ("**LGPS Regs**").
- 1.4 However, concerns have been expressed by some LGPS funds in relation to their participation in this activity, in particular in relation to the lawfulness under applicable data protection laws of: (i) sharing SMPD with the SAB; and/or (ii) GAD processing SMPD provided by administering authorities for section 13 PSPA scheme valuation/cost cap purposes or for another purpose.
- 1.5 You have asked us to consider and advise you in relation to the specific questions posed in the briefing paper contained in Appendix 1 and which now form the basis of this advice.
- 1.6 Further information about the scope of this advice is set out at the end of this paper.

2 Assumptions

- 2.1 In preparing our advice we have applied the following assumptions:

- (a) The SAB, the GAD and the responsible administering authorities for LGPS funds will each act as an independent data controller in the context of their processing SMPD (given that they are each responsible for determining how SMPD will be processed for the relevant purpose). We have not carried out any further analysis as to whether there is any risk that the GAD may in fact act as a data processor or a joint controller of the SAB. We would be happy to consider this if required;
- (b) the personal data transferred from LGPS funds to the SAB (or to GAD and to be processed for one of the purposes discussed in this advice) does not include special category personal data (as defined in Article 9 UK GDPR) or personal data related to the commission of criminal offences;
- (c) the information to be provided by the GAD to the SAB will be constituted by an anonymised dataset produced by the GAD based on SMPD collected by the GAD directly from administering authorities;
- (d) where references are made to the privacy notice currently provided to LGPS members by administering authorities, such references relate to the Local Government Association Template Full Privacy Notice for LGPS Funds (made available online at: [Guides and sample documents \(lgpsregs.org\)](https://www.lgpa.org.uk/guides-and-sample-documents/lgpsregs.org) and included at Annex 1) which we assume has been provided to members in this form, subject to population; and
- (e) the conducting of statistical analysis will not involve automated decision-making (including profiling) having legal or similar effects on individuals.

3 Executive summary

- 3.1 The imposition of compliance obligations under data protection law depends on which entity is conducting the processing activity in question and whether that processing involves SMPD.
- 3.2 As data controllers, administering authorities are under lawful basis obligations under the UK GDPR when transferring SMPD to the GAD or the SAB and when anonymising SMPD for statistical purposes, but not when transferring anonymised information to the GAD or the SAB. However, administering authorities may have a legitimate concern from a fiduciary perspective in understanding and being comfortable with how GAD and SAB might use SMPD (or anonymised data generated from SMPD) originating from their fund. This could be addressed by a data sharing agreement between SAB and administering authorities.
- 3.3 As data controllers, under the UK GDPR the GAD and the SAB will each carry lawful basis obligations in relation to the receipt and processing of SMPD, but not for the receipt and processing of anonymised information.
- 3.4 Where SMPD is being used for statistical purposes, then it should always be anonymised at the earliest available opportunity in any event.
- 3.5 Where an administering authority, the GAD or the SAB processes SMPD (including when anonymising SMPD) for the purposes described in Appendix 1, then the lawful basis obligations are likely to apply in a similar fashion. In our view, each entity is likely to be capable of validly processing SMPD for the purposes described in Appendix 1, either: (i) on the basis that it is necessary to perform their respective public tasks; or (ii) (for any activities described in Appendix 1 that fall outside that basis), in reliance on

the legitimate interests basis (though a legitimate interests assessment should be undertaken in that case).

- 3.6 Where SMPD is collected for the purpose of performing public tasks then it is legally permissible for the same data to be subsequently processed for the purpose of conducting statistical analysis and no individual consents are required in this respect.
- 3.7 Since no material concerns with lawful basis were identified, in our view administering authorities, the GAD and the SAB can lawfully share and use SMPD for statistical purposes in the manner described in Appendix 1, provided processing is proportionate and subject to additional compliance controls, as appropriate. (Note in particular the comment in paragraph 3.4 above that SMPD processed for statistical purposes should be anonymised at the earliest available opportunity.)
- 3.8 We would however recommend that, with respect only to transfers of SMPD from administering authorities to the SAB, the template privacy notice for issue by administering authorities is revised to specifically include the SAB as a recipient and the general category of “*government bodies*” is broadened to include public bodies. Administering authorities will need to consider how to bring such a change to the attention of fund members – at the very least it should be published on the fund’s website but additional positive notification (e.g. in a newsletter, by email or in pensioner pay slips) would be advisable. If administering authorities expect in practice to transfer SMPD to the SAB (rather than GAD using only information previously received for section 13 valuation purposes or administering authorities transferring the anonymised results of their own statistical analysis to SAB), then they may consider it proportionate to reissue the revised privacy notice in hard copy to all members. We recommend that privacy notices are updated and members notified prior to receipt by the SAB of any SMPD.
- 3.9 Although we were not specifically asked whether SAB needs to issue its own privacy notice, were it to receive SMPD directly, or be responsible for a processor processing SMPD on its behalf, then there would be an obligation to do so (unless impossible or involving disproportionate effort). If SAB only receives anonymised information and GAD acts as an independent data controller when determining how to process SMPD for the purposes of its engagement with SAB then no separate privacy notice should be required to be issued by SAB (though that would not affect any obligations that GAD itself may have to provide an appropriate privacy notice to address its own processing activities; we note that there is a link to GAD’s privacy notice in the proposal included as part of Appendix 1).

4 Analysis

4.1 ***Does the SAB’s intention to make evidence-based recommendations to the scheme’s responsible authority represent a lawful basis for the collection and processing of personal data collected from LGPS funds and what impediments apply in this context?***

The SAB must identify a lawful basis under Article 6 UK GDPR before processing (including collecting) any SMPD. This presents an exhaustive number of options, of which potentially relevant candidates are discussed below. It should however be noted that lawful basis requirements will apply only to the SAB where personal data is involved; where the SAB receives information that has already been anonymised by another controller (for example, by the administering authority or the GAD), then that party assumes responsibility for determining the lawful basis for anonymising any SMPD within the raw dataset and, since the information then received by the SAB technically contains no SMPD, the UK GDPR does not apply and the SAB has no lawful basis obligations.

(a) Consent – Article 6(1)(a) UK GDPR

The use of consent as a lawful basis of processing SMPD tends to be limited to reliance on Article 9(2)(a) UK GDPR where the processing of special category personal data relating to health is required. Since under UK GDPR requirements consent must be specific, this means that it is generally non-transferrable and must be granular in terms of the processing activities that are envisaged. As a result, any existing consents do not typically apply to third party activities and arranging to integrate an opt-in would require considerable cooperation and effort. In addition, since consents expire over time, retention of the raw data would be practically unworkable. Therefore, we do not recommend consent is relied upon as a lawful basis unless absolutely necessary.

(b) Contractual necessity - Article 6(1)(b) UK GDPR

In order for this to apply, the processing in question would have to pass the necessity threshold in relation to the performance of a contract with the data subject. As such and given that the preparation of statistical data will not generally be necessary in order to perform obligations owed under the contract, the collection of personal data for statistical analysis purposes will generally be incapable of passing that threshold.

In addition, since this basis only applies in the context of a contract between the data controller and the individual, it also cannot be relied on by third parties, except where that third party is processing the information when acting as a data processor on behalf of the data controller. Consequently, since the contractual relationship will sit between the relevant scheme members and administering authorities, the SAB would not be able to rely on that relationship in order to process SMPD.

(c) Legal obligation - Article 6(1)(c) UK GDPR

The legal obligation basis applies where the processing of personal data must be performed in order to comply with the law. While Article 6(3) UK GDPR requires that the obligation in question must be established under UK domestic law, this will also apply where the requirement in question is reflected in a regulatory regime with a statutory basis. Recitals 41 and 45 UK GDPR confirm that this does not have to be an explicit statutory function, provided application of the law is foreseeable.

Accordingly, while the legal obligation basis does have the capability to extend beyond positive obligations contained in black letter law, there is overlap with the public tasks basis (discussed below) which in our view offers a more flexible framework for the SAB's proposed use of SMPD. In particular, the discretionary nature of the SAB's advisory role is likely to mean that the specific processing of SMPD would be perceived less as something falling within the scope of legal obligations and would be better argued to sit under the umbrella of public tasks.

(d) Public tasks - Article 6(1)(e) UK GDPR

This basis applies to processing by any controller that is exercising official authority or carrying out a specific task in the public interest. The scope of this is relatively broad in that it includes the use of discretionary powers, provided that the processing is a proportionate way of achieving the purpose. In addition, to the extent official authority must be "*laid down in law*", Recitals 41 and 45 UK GDPR confirm that this does not have to be an explicit statutory function

and so, provided application of the law is clear and foreseeable, pursuit of an overall purpose to perform a public task or exercise official authority will suffice. It should however be noted that use of this basis is mutually exclusive with the legitimate interest basis (discussed below).

While section 8 of the Data Protection 2018 provides a list of functions that are covered by this basis (including statutory functions and activities supporting or promoting democratic engagement), this list is non-exhaustive and qualification as a “public authority” is not a prerequisite. To illustrate this, guidance issued by the Information Commissioner’s Office (“ICO”) in this context gives the example of private water companies which, despite not technically falling within the definition of a “public authority”, are nevertheless to be regarded as carrying out public functions.

Under section 7 of the PSPA, the SAB has a broad remit of providing the responsible authority (i.e. DLUHC) with advice regarding the desirability of changes to the relevant scheme and any other scheme which is connected with it, provided that the related scheme is not an injury or compensation scheme. A person to whom advice is given by the SAB is legally obliged to have regard to that advice. In addition, under Regulation 110 of the LGPS Regs (as amended), the SAB also has statutory functions in providing advice both to the Secretary of State (at DLUHC) in relation to the desirability of making changes to the scheme and to the administering authorities / local pension boards in relation to the effective and efficient administration of the scheme (and any connected scheme and their pension funds). Taken together, these roles are clearly indicative of considerable discretion in how the tasks involved are performed and the nature of that discretion is highlighted by Regulation 110(5) of the LGPS Regs which clearly states that the SAB shall have the power *“to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions”*.

As such, given the breadth of this basis and while the exact parameters are to some extent open to interpretation, we would agree that the SAB’s statutory functions and related tasks do include the discretionary collection of SMPD and it is not a legal requirement for the scope of that activity to be explicitly defined in the statutory functions designated. It is also arguable that the effective provision of advice to administering authorities and / or the Secretary of State regarding the operation of pension funds could reasonably be expected to include the processing of SMPD.

The ICO guidance confirms that, where the public tasks basis does apply to the collection activity, it can also be relied upon to transfer personal data to another data controller, although the recipient controller would not be able to rely on public tasks performed by the SAB as the legal basis for the recipient’s own processing, and vice versa. This means that, while the SAB could conceivably rely on the performance of public tasks in order to collect and transfer SMPD, the administering authority would still need to establish its own lawful basis for participating in the transfer activity, as would any onward recipients (such as the GAD).

Finally, and as a continuation of the expansive approach taken in this context, Articles 5(1)(b) and 6(4) UK GDPR and the ICO guidance together identify that further processing may be compatible with the original purpose in certain circumstances, including where that further processing is conducted for statistical purposes. This in turn means that, provided collection of raw SMPD can be regarded as falling within the SAB’s public tasks (e.g. valuation data required by GAD, acting on behalf of SAB, under Regulations 116 of the LGPS Regs for the SAB cost cap mechanism), further use of the same datasets for statistical purposes does not require a separate lawful basis to be established. The only other caveat in this context applies

by virtue of Article 89(1) UK GDPR, which requires that where statistical purposes can be fulfilled by processing which does not permit or no longer permits the identification of individuals, then those purposes should be pursued in that manner. We understand from the briefing note in Appendix 1 that this requirement would be satisfied as SMPD processed for statistical purposes is anonymised.

(Note: To the extent that administering authorities also have statutory duties under the Equality Act 2010 (as discussed in more detail below), those duties will feed into both the performance of "public tasks" and the assessment of legitimate interests. Furthermore, since the GAD's role also originates from duties codified in the PSPA and the LGPS Regs, the GAD's processing of SMPD pursuant to its being commissioned by the SAB is also likely to fall within the performance of its own public tasks.

(e) Legitimate interests - Article 6(1)(f) UK GDPR

The legitimate interest basis applies in the context of interests pursued by the data controller but also those of third parties. As discussed above, this basis is mutually exclusive with the public tasks basis and cannot apply to processing conducted by a public authority in the performance of its statutory tasks. There is also a balancing act involved in relying on this basis in order to ensure that the interests pursued are not outweighed by the risk to individuals and as a result a Legitimate Interest Assessment should be performed and retained. However, that assessment would allow for a range of interests (including the wider public benefit) to be taken into account.

The ICO guidance on legitimate interests confirms that it is possible to rely upon legitimate interests in order to lawfully disclose personal data to a third party. While the guidance goes on to indicate that consideration should be given to the purpose of collection, the nature of intended processing and relative necessity, a key aspect is whether individuals would have any expectation of the processing in question and whether they would be likely to object. This does to some extent relate to the transparency information provided to fund members in privacy notices, but also involves an assessment of general expectations.

As such, to the extent the processing of SMPD falls outside of the public tasks basis (which we think is unlikely), there is scope for legitimate interests to apply. Valid use of this basis does involve consideration of a number of factors, although taking those factors into account it seems plausible that a number of legitimate interests do arise in the context of the use case described. The application of additional safeguards, such as strengthening privacy notices and / or entering into a data sharing agreement with relevant funds, would also help to strengthen the case here.

4.2 *Are LGPS funds required to identify a separate lawful basis for the processing in question and, if so, what lawful basis is considered to be appropriate?*

Where the SAB receives SMPD directly from the GAD in circumstances where that data is already under GAD's control, then administering authorities are not under any lawful basis obligations in relation to that transfer relationship; in that scenario, administering authorities would only be subject to lawful basis requirements for the initial transfer of SMPD to the GAD. Following the onward transfer and upon receipt by the GAD in its capacity as a separate and independent data controller, the GAD would have sole responsibility for determining the lawful basis for any onward transfers to the SAB and the general analysis of lawful basis requirements above would apply both to GAD and SAB.

Where SMPD is provided directly by administering authorities to the SAB then, by analogy to private pensions (where the relevant fund would not generally be involved in processing any personal data and those activities are instead undertaken by the trustee of the fund) and taking into account Article 53(2) of the Local Government Pension Scheme Regulations 2013 (as amended) which designates the administering authority as holding responsibility for management and administration of the scheme, our view is that the funds themselves serve merely as repository vehicles rather than data controllers with the administering authority of each LGPS fund instead acting as the data controller of SMPD for the relevant fund (regardless of whether certain administrative tasks are subcontracted to a third party data processor). As such, a lawful basis must then be established for each processing activity conducted by the administering authority, including in relation to onward transfers of SMPD to the SAB. Equally, the SAB is responsible for determining its own basis for the receipt and processing of the data, which may in some cases involve demonstrating a different lawful basis for different activities involving the same data.

Administering authorities will therefore be faced with the same options vis-à-vis lawful bases as those discussed above, which are finite in nature. However, there may be some overlap between the lawful bases relied upon by the SAB and the administering authority; to the extent the transfer of data to the SAB does not fall within the administering authority's own public tasks but receipt of that data does fall within the SAB's public tasks, then aiding achievement of the SAB's public tasks could be taken into account by the administering authority as part of the authority's own legitimate interest assessment.

Legal obligation - Article 6(1)(c) UK GDPR

In order for the administering authority to make out this basis, it would need to identify a legal obligation to provide the information requested to the SAB. However, while there are a number of obligations on administering authorities to take certain actions (including to provide valuation data to GAD as the appointed scheme actuary for the LGPS-wide valuation report on request) and, as discussed above, there is some latitude with respect to how this basis applies in practice, it is in our view unclear that administering authorities are able to point to any specific statutory obligation to provide SMPD to the SAB when requested for the purposes envisaged in Appendix 1. In addition, where administering authorities do benefit from the ability to exercise statutory discretion, then it would in our view be more appropriate for related activities to be included within the pursuit of public tasks.

Public tasks - Article 6(1)(e) UK GDPR

As scheme managers of their individual LGPS fund, the administering authorities do perform public tasks and have a general statutory obligation under Article 53(2) of the LGPS Regs to effectively manage and administer their own fund. For the reasons discussed above, the scope of discretion attached to this is open to interpretation, although to the extent that discretion is accepted to include conducting statistical analysis (including transferring SMPD to a third party data controller for that purpose) for the benefit of supporting the SAB in its role of advising the Secretary of State as to the desirability of making improvements to the scheme and/or fulfilling administering authorities' own obligations under the Equality Act 2010 to reduce inequality of outcome for LGPS fund members arising from socio-economic disadvantage, then it is arguable that activity falls within the public tasks pursued by the administering authority.

Legitimate interests – Article 6(1)(f) UK GDPR

In terms of the application of this basis, the same conditions as described above would apply and it would ultimately be for the administering authority to determine, based on the Legitimate Interest Assessment conducted, whether the interests pursued outweighed the risks to affected individuals.

However, subject to the precise wording of the privacy notices provided to scheme members, we would argue that this should not be insurmountable. In particular, we would suggest there is a logical basis to the assumption that, for those members participating in a public pension scheme, the sharing of certain information with public authorities will be within their reasonable contemplation. Furthermore, a number of pursuable interests are capable of being identified (including the interests of the SAB in performing its public tasks) with potentially limited risk to the individuals concerned. Any limited risk to individuals could also then be mitigated in different ways, for example by the execution of appropriate data sharing agreements and/or the application of additional security measures (such as pseudonymisation) when preparing and transmitting the data in question.

4.3 *In relation to the current privacy notice provided to LGPS members, would we advise that this needs additional content and would a data sharing agreement between the SAB and relevant LGPS funds be required?*

Privacy notice

With regard to the privacy notice and from the perspective of administering authorities, to be compliant with transparency obligations under Articles 13 and 14 UK GDPR the notice must include the following:

(a) A description of the purposes of processing:

The notice currently includes specific reference to the processing of SMPD for the purposes of "statistical and financial modelling". While additional information could be added here to elaborate on what the purpose and design of that modelling would be, we do not consider that the current non-inclusion of that degree of granularity is fatal to the baseline compliance position in this respect.

(b) Identification of the lawful basis of processing:

Performance of legal obligations, public tasks and the pursuit of legitimate interests are all currently included and so, subject to further comments made below, there is no impediment to processing in this context.

(c) Where applicable, details of the legitimate interests pursued:

The notice does include some examples of the legitimate interests pursued, including "administering and managing the fund", although does not explicitly identify the interest of conducting statistical analysis.

However, we would make the following observations in this respect:

- (i) There is an argument that administration and management of the fund by implication includes the generation and use of statistical data, to the extent such data is being used by for that purpose; and
- (ii) Given that the public task and legitimate interest bases are mutually exclusive, omission of more detailed information here isn't necessarily technically incorrect. In particular, if the administering authority considers transfers of relevant SMPD to the SAB to fall within the authority's public tasks, then it cannot rely on legitimate interest

for the same activity and so should not then include statistical analysis as an interest that is being pursued in that context.

(d) Identification of the recipients or categories of recipients:

While it is best practice to specifically name recipients, strictly speaking that is not legally required. However, in the interests of best practice the notice currently includes a table of recipients, divided between data controllers and data processors.

With respect to data controllers, the notice includes the following relevant recipients:

- (i) the LGPS national insurance database;
- (ii) other LGPS administering authorities; and
- (iii) the GAD.

However, the notice does not currently include the SAB. Consequently and perhaps conversely, being more prescriptive in this respect has arguably created a potential deficiency in terms of the arrangements described, because individuals have not been informed that SMPD may be shared with the SAB (although the same is not true of the GAD). An argument could be made that the SAB still falls within the generic category of "*our advisers*" or within the broader wording later in the template notice which refers to the transfer of data to "*government bodies*" (which we have suggested could benefit from being expanded), but given the granularity of the approach otherwise adopted, in our view this may introduce a degree of inconsistency for transparency purposes.

Guidance issued by the ICO is not particularly instructive here. Transparency guidance issued by the European Data Protection Board and adopted by the ICO prior to Brexit ([ARTICLE29 - Guidelines on Transparency under Regulation 2016/679 \(wp260rev.01\) \(europa.eu\)](#)) does however provide some information regarding the obligations that apply in this context. In particular, the guidance suggests that an enlargement of the categories of recipients is indicative of a fundamental change. As such and while the wording used is not entirely unambiguous, the suggestion is that the addition of recipients could constitute a substantive or material change which must then be reflected in the revised notice terms. In context, doing this would also represent conformity with best practice and the approach taken in the remainder of the notice, thus eliminating any allegation of differential treatment. On that basis, revision of the notice to include an explicit reference to the SAB would in our view be advisable.

(Note: we understand SMPD would only be transferred to the Local Government Association ("**LGA**") in its capacity as secretary to the SAB; however, the same analysis would apply if SMPD is transferred to the LGA on its own account and a reference to the LGA should also be included.)

Data sharing agreement

The position here depends on whether the SAB and each of the relevant administering authorities could be properly regarded as acting as joint data controllers (i.e. by jointly determining the purposes and means of processing SMPD). Where this is the case, then under Article 26 UK GDPR it is legally required for joint controllers to enter into an arrangement which allocates their respective

responsibilities, reflecting their roles and relationship with affected individuals. Failure to do this when required can result in the imposition of enforcement action by the ICO, including potentially the application of an administrative fine under Article 83(4)(a) UK GDPR.

In contrast, where data controllers share personal data in their capacity as independent data controllers, then strictly speaking there is no legal requirement mandating that an agreement be entered into between them. However, the ICO has issued a statutory Data Sharing Code of Practice ([Data sharing: a code of practice | ICO](#)) which includes various best practice recommendations for the content of data sharing agreements between data controllers. Beyond being best practice, this raises two additional implications being that:

- (a) failure to enter into appropriate contractual terms to govern the data sharing relationship could have an adverse impact on overall accountability obligations under Articles 5(2) and 24(1) UK GDPR; and
- (b) failure to comply with the Code of Practice is admissible as evidence in the context of any proceedings that are brought on the premise of substantive non-compliance.

A detailed review of the processing activities envisaged would be needed in order to determine what the exact nature of the sharing relationship is (although in a pensions context being joint data controllers is less common) and accordingly whether entry into appropriate data sharing agreements is strictly mandatory. However, regardless of that analysis, doing so would denote best practice.

4.4 *If the current LGPS member privacy notice is updated, is there a requirement for funds to reissue it to all scheme members?*

In any case where the amendment of content within the privacy notice constitutes a material or substantive change (and we consider the ICO would likely consider the addition of a new recipient of SMPD as material), the regulatory guidance indicates that those changes must be communicated in such a way that they will actually be noticed. The data controller cannot rely on references in the notice requiring individuals to regularly check for updates. There is potentially a question as to whether every individual would be affected by this and accordingly whether it would represent a material change for every member, although the provision of a revised version to selected members is likely to be undesirable for a number of reasons, not least due to the practical arrangements that would be involved.

In terms of how notification of changes should be effected in practice, this can be done by issuing a communication which enables access to the revised notice (rather than delivery of the revised notice itself). The regulatory guidance indicates that this must be done by way of an appropriate modality; typically that would be approached through issuing an email notification describing the update and providing a link to the revised notice, although in a pensions context it may be the case that (in particular due to the age of some members and technical constraints) the correct modality in the circumstances would be including a notice in a pay slip (for pensioners) or a member newsletter, or perhaps hard copy letter enclosing a copy of the revised notice. Administering authorities will need to consider their own circumstances (including whether SMPD will in practice be transferred to SAB) to determine what is transparent and proportionate.

In terms of the timing of the update, the UK GDPR is silent on this point. The only explicit exception to this is where a new purpose of processing is being included, in which case information must be notified prior to commencement of that further processing. Here, it is a new recipient of data rather than a new purpose that would be included. However, the regulatory guidance indicates that, in relation to material

changes, notice should again be provided before the change takes effect. It would, therefore, be preferable for administering authorities to update their fund's privacy notice before sharing SMPD with the SAB if they consider that is required.

(Note: while we have not been asked and have not sought to advise on the use of additional privacy notices by SAB and/or GAD themselves, where the SAB and/or GAD do process SMPD, then each should provide their own privacy notice pursuant to Article 14 UK GDPR. The only applicable exemption in this context will be where provision of the information is impossible or would involve disproportionate effort.)

4.5 What advice would we give in relation to the balance struck between the need for data to inform SAB proposals and privacy concerns?

Anonymous data

Where personal data is processed for statistical purposes, under Article 89(1) UK GDPR the position is that wherever possible those purposes should be pursued in a manner that does not enable identification of individuals. This means that in the first instance and unless personal data is specifically needed in order to conduct the analysis, anonymous information should be used.

Unfortunately, "anonymous information" is not explicitly defined in data protection law, although Recital 26 to the UK GDPR describes such information as *"information which does not relate to an identified or identifiable natural person or to personal data rendered anonymous in such a manner that the data subject is not or no longer identifiable"*. The ICO draft guidance on anonymisation, pseudonymisation and privacy enhancing technologies ([anonymisation-intro-and-first-chapter.pdf \(ico.org.uk\)](#)) which reflects the wording of the Recital, indicates that whether an individual is identifiable in fact involves application of the "reasonably likely" test. The guidance also confirms that the same information can be personal data in the hands of one party and anonymous information in the hands of another. Accordingly, it is certainly possible that information constituting SMPD in the hands of an administering authority or the GAD is anonymous information when processed by the SAB.

However, this isn't always straightforward in practice. The ICO accepts that there is a spectrum of identifiability involving consideration of a number of factors and, as a result, recommends that an identifiability assessment is undertaken with all objective factors taken into account to determine whether there are means that are reasonably likely to be used to identify an individual. A useful litmus test in this context is referred to as the "motivated intruder" test i.e. whether an intruder that was motivated to attempt it could achieve identification of an individual, and the answer to this is likely to be indicative of whether data can be properly considered to be anonymous.

(Note: this draft guidance was under formal consultation which closed on 31 December 2022 and has not yet been released as a final version although is expected to be approved in the same or substantially the same form.)

We understand from the GAD Proposal forming part of Appendix 1 that, whilst GAD receives SMPD for its scheme valuation report, the intention is that the data-set used for statistical purposes will only contain anonymised data. Arguably, therefore, it will not be SMPD in any event.

Personal data

Where personal data is processed then the UK GDPR applies to that processing. The principle of proportionality is a core legal principle of EU law that is embedded in the UK GDPR. This is reflected in a number of places in the regulation and means that there should generally always be an assessment of whether the result pursued is capable of being achieved by less intrusive means. In other words, the minimum amount of personal data for the relevant purpose should be collected and processed. This is also true of statistical analysis, as discussed above.

However, this type of assessment arises specifically in two further scenarios relevant to the analysis here. The first is where public tasks are being performed and thought must be given to whether the processing activities being conducted are objectively capable of being expected. The second is where the legitimate interest basis is being relied upon and thought must be given to whether the processing activities being conducted are subjectively capable of being expected by the individuals concerned. In our view this results in a differential on the weight of the burden being imposed, with greater emphasis being placed on this balance in the context of legitimate interests. Given that legitimate interests is also the most flexible basis and therefore more susceptible to abuse, we would argue that this isn't inconsistent with the risk-based approach taken by the ICO. As discussed above, to the extent legitimate interests are relied upon, then a Legitimate Interest Assessment should be performed and retained on record.

Where there is to be specific consideration of proportionality in the context of a lawful basis for processing personal data, then entry into a data sharing agreement will generally mitigate the risks involved and, beyond being able to address how particular obligations will be addressed, will also typically act as evidence in favour of accountability. On balance and on the assumption that the same template could be recycled for use with different funds, we would suggest that the SAB considers developing a pro forma data sharing agreement that can be used for such purposes.

Beyond technical compliance implications arising under the UK GDPR, it is worth mentioning that the UK National Data Strategy ([National Data Strategy - GOV.UK \(www.gov.uk\)](https://www.gov.uk/national-data-strategy)) is intended to create and enhance efficiencies in how data is used on a national scale. Of the key objectives stated, driving the delivery of better policy and public services and creating a fairer society are both included and would appear to be objectives which are consistent with the SAB's own objectives in this case.

4.6 *If it is inappropriate for member pension data to be shared with the SAB, would it be lawful for funds to process individual-level pensions data themselves and provide the SAB with their own analysis?*

In the hypothetical scenario that it was not appropriate for SMPD to be provided to the SAB, in our view there would be nothing in principle preventing administering authorities from themselves conducting statistical analysis and providing the results to the SAB.

The process of conducting the analysis involves the processing of SMPD but provided relevant compliance requirements are met in that regard, then there is nothing to prohibit this. Indeed, most data controllers will use the raw data collected to conduct statistical analysis. As discussed above, in our view there is no impediment on lawful basis and relevant provisions of the privacy notice are already materially compliant for the activity in question.

By virtue of consisting of aggregated data, the results of statistical analysis are generally anonymous and as such cannot be classified as personal data. Where this is the case, then provision of the results

to the SAB would not constitute a transfer or other processing of personal data, meaning that the UK GDPR no longer applies.

Although we do not think there is any legal impediment to SAB engaging GAD to process a limited dataset of valuation SMPD for the purposes of the statistical analysis envisaged by Appendix 1, for administering authorities who cannot be persuaded that is an acceptable use of their fund's SMPD, this alternative may provide a practical workaround.

4.7 *In relation specifically to the gender pensions gap, would we agree that the public sector equality duty provides a lawful reason for commissioning the analysis from GAD as described?*

In terms of the lawful basis of processing being relied upon by administering authorities in the context of providing Gender Pensions Gap SMPD to the GAD, we would not expect this to be based on consent in any event, as based on the briefing note appears to have been suggested by administering authorities. As discussed above, due to the availability of other bases and the highly undesirable nature of relying on individual consent, this generally means that consent will not be a viable option in the context of processing SMPD. In our view there are other lawful bases that apply and as discussed above those bases are capable of covering onward transfers to a third party recipient (in this case being the GAD).

The Gender Pay Gap Information Regulations 2017 introduced an obligation on certain employers to collate and publish gender-related pay discrepancy information and therefore to process personal data in that context. While we agree that this would amount to a legal obligation on those employers for the purposes of lawful basis requirements under the UK GDPR, we would not consider that to be capable of extending to the SAB or the GAD (who are not employers of LGPS fund members). For the reasons discussed above, the legal obligation basis is also in our view generally less likely to apply in relation to the use cases being pursued.

However given that, as discussed above, the SAB has a broad discretionary remit when advising administering authorities in relation to the LGPS, when combined with the existence of the public sector duty under section 1 of the Equality Act 2010 and the allocation of gender as a protected characteristic under section 4 of that Act, we would suggest that this falls within the SAB's public tasks and general remit of advising the DHLUC and administering authorities in relation to scheme management and the reduction of inequality resulting from socio-economic disadvantage. Failing that, were it the case that this activity did not fall within public tasks being performed, then legitimate interests would likely still apply, not least due to the considerable public benefit involved.

In terms of the purposes of processing, the processing of SMPD in order to conduct statistical analysis is included within the template privacy notice along with receipt of the data by the GAD, and so it's not immediately apparent to us that there should be a compliance concern here, unless the template privacy notice has been amended to remove that language. The GAD's own privacy notice ([Privacy Notice External \(publishing.service.gov.uk\)](#)) also specifically identifies the processing of SMPD for statistical analysis purposes and indicates that, while statistical data may be shared with other governmental bodies, this is done in a fashion which ensures that no individuals are capable of being identified.

In addition, where the public task basis applies then it is not legally required for a separate lawful basis to be established in order to process the same data for statistical purposes. We understand in the main when carrying out statistical analysis GAD would be processing SMPD already provided for scheme valuation purposes. However, even where SMPD is being transferred to the GAD specifically for the purpose of conducting statistical analysis, then in our view the processing activity (i.e. the act of transferring the data to the GAD) is still being conducted for the purpose of statistical analysis. As such,

it is not then clear to us that this would in any event represent a departure from the stated purposes of processing.

4.8 ***Is there a way that the SAB could swiftly resolve any disagreements in interpretation between the various parties involved, for example by appointing a single legal advisor to act as arbiter?***

This is a possibility, although to be contractually enforceable would need to be included within agreed terms, potentially as part of a template data sharing agreement entered into with administering authorities. However, while alternative dispute mechanisms are relatively common in a commercial context, they are then subject to commercial negotiation. In order to be effective as a single solution, it would need all parties to agree those terms so the SAB could not insist on a single legal adviser acting as an arbiter.

Accordingly, as a concept we see this as something that is certainly possible in principle but foresee that difficulty may be encountered when looking to uniformly agree the surrounding terms with the other parties involved.

5 Conclusions

We would summarise our conclusions as follows:

- 5.1 While the act of anonymising SMPD does itself constitute the processing of personal data, where the SAB receives anonymous information either from administering authorities or the GAD then the UK GDPR does not apply to the processing of that anonymous information (provided that it is truly anonymous) and the SAB therefore has no obligations under data protection law in that regard.
- 5.2 Where SMPD is processed in order to conduct statistical analysis, it should still be anonymised at the earliest available opportunity, taking into account the objectives pursued, so that identifiability of individuals does not continue to be possible for any longer than is necessary.
- 5.3 Administering authorities have a lawful basis to conduct statistical analysis using SMPD that has been collected and, on the basis of the template privacy notice, are not jeopardised by any material transparency failures in that regard and are likely to be capable of providing the results of the analysis to third parties without needing to consider any additional compliance implications arising under applicable data protection laws.
- 5.4 Administering authorities have a lawful basis to provide raw SMPD to the GAD for the purposes of statistical analysis being conducted by the GAD and no revision of the existing privacy notice is required in this respect. The GAD has its own lawful basis obligations in relation to the conducting of statistical analysis using SMPD (including that previously provided for section 13 valuation purposes) and should consider whether the current wording included within its own privacy notice is adequate in relation to the processing being undertaken. (Note: since we are not instructed to advise the GAD, specific consideration of the GAD's position in this respect is beyond the scope of this advice).
- 5.5 Administering authorities have a lawful basis to provide raw SMPD to the SAB for the purposes of statistical analysis being conducted by the SAB but should both revise the current privacy notice to include the SAB as a recipient and consider entry into a data sharing agreement with the SAB.

- 5.6 The GAD is responsible for determining the lawful basis of transferring SMPD within its control to the SAB. No material concerns have been identified in relation to the lawful basis relied upon by the GAD for such purposes.
- 5.7 The SAB has its own lawful basis in relation to the receipt of SMPD and the conducting of statistical analysis using SMPD. The SAB should issue its own privacy notice in relation to the processing of SMPD if it receives SMPD directly.
- 5.8 Revision of the privacy notice to include the SAB as a named recipient should occur and be addressed prior to the receipt of SMPD by the SAB. Adding a new recipient of SMPD is likely to be considered a material change and should be proactively brought to the attention of LGPS fund members. Administering authorities will need to consider how to do so in a proportionate way for their own circumstances.

Squire Patton Boggs (UK) LLP
26 May 2023

Scope of this advice

This advice has been prepared for the Local Government Association in its capacity as secretary to the LGPS Scheme Advisory Board. We understand that copies may be provided to Local Government Pension Scheme administering authorities in England and Wales and Scotland. This advice will need to be considered by administering authorities in accordance with their own specific circumstances. Accordingly we accept no liability to administering authorities unless we provide formal advice specific to that authority.

This advice is not advice to other connected or stakeholder parties, their auditors or other advisers, or other third parties ("Third Parties"). Other than as noted in the paragraph above, no part of this advice note may be passed on to Third Parties without our written agreement but, if it is so passed, we accept no responsibility, and will have no liability in contract, tort or otherwise, to those Third Parties in relation to this advice note.

This advice has been prepared based on an understanding of the law (including taking into account the data sharing guidance issued by the Information Commissioner) as at the date of issue. In particular, the Information Commissioner may issue further guidance which may be relevant and case law is still developing in this area. Accordingly, it is possible that this advice will need to be updated if the law changes or guidance is revised. However, we will only do so if the Local Government Association specifically give us written instructions to do so.

We have not considered or advised on any tax or commercial implications that administering authorities may wish to consider in conjunction with this advice.

APPENDIX 1

LGA BRIEFING NOTE AND QUESTIONS

Data Protection Issues - background

The Scheme Advisory Board (SAB) has previously carried out a number of surveys and requests for information from LGPS funds. Recently we have come across some push-back from funds about the lawfulness of information processing and data requests which we have contacted them about. The challenge from funds is that while they want to be helpful, they need to be satisfied that the data they have a lawful basis for sharing personal data with the SAB.

This has arisen in two particular areas which raise related but slightly separate issues.

The first is where we have conducted surveys of funds, where we have asked for data. In one case that was a survey asking for numbers and some demographic information about members who have opted out of the scheme. This was in response to concerns that the cost of living crisis was leading to a significant rise in opt outs (something which has been seen in other public sector schemes).

Another area where funds have flagged concern, is where we have commissioned the Government Actuary's Department (GAD) to use the data that has been submitted to them by funds for scheme valuation and cost control management purposes, and where we would like GAD to also undertake a Gender Pensions Gap analysis of that data. In this latter case, the funds' concerns are around the lawfulness of processing the data which they provided for one purpose, for a different purpose without seeking further consent from the underlying data subjects.

The LGA has provided LGPS funds with a template full privacy notice which they can adapt. The privacy notice informs scheme members and beneficiaries how their data may be used and when it will be shared with third parties. While there is no specific reference to the Scheme Advisory Board in that draft, the purposes for which data is used and the type of body that the Board is, do seem consistent with the non-exhaustive list of examples with whom administering authorities may share data.

The legal basis of SAB's requests

The statutory function of the SAB is to "provide advice to the Secretary of State on the desirability of making changes to the Scheme" and to provide "advice to administering authorities and local pension boards in relation to the effective and efficient administration and management of the Scheme" (Reg 110 of the 2013 LGPS Regulations). In order to do that, the Secretariat consider that we need to have accurate and up-to-date information about the scheme on which to base our recommendations.

The request for data on opt-outs was discussed and approved by the Board following questions raised about opt-out rates by the member representatives there. The data we asked for from each fund for each member opting out included: the date the member opted out, their date of birth, gender and salary. We did not ask for the member's employer and so believe that it would be almost impossible for an individual to be identified (and so didn't meet the ICO definition of "personal data" which requires someone to be identifiable "by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person").

We are aware that other Scheme Advisory Boards have been provided the equivalent data from their administrators (most are centrally administered so no survey was needed, the data was just taken from their system).

We did not consider that the information asked for would breach GDPR requirements as individuals should not be identifiable and we did not intend to disclose any of the data received to third parties – we would only share our over-arching analysis.

Where funds raised concerns, we offered them the option to further depersonalise the data (e.g. by changing date of birth to year only, or rounding salaries) and said that we were very happy to receive it in any form that they were comfortable to provide.

The Equality Act 2010 Part 1, section 1 states “An authority must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.” For the purposes of this Act, “authority” includes LGPS administering authorities and DLUHC as the scheme’s responsible authority. The Board understands that “function” should include the provision of the LGPS pensions function.

This Equality Act was amended by the 2017 Gender Pay Gap Information Regulations which put a requirement on employers with more than 250 employees to publish differences in pay between men and women with the purpose to identify instances where inequalities exist. There is a clear and obvious link between pension and pay equality. However, we do not expect that to be a complete explanation of different pension incomes at retirement. For example, there are likely to be other variables which impact on pension benefit accrual, such as the cumulative effect of lower than expected pay, the impact of career breaks on career progression and different opt-out rates during cost of living squeezes as well as different phases of individuals’ careers.

The Board has therefore commissioned GAD to carry out an analysis of gender pension differences using the data that they have collected from funds already for scheme valuation and cost control mechanism purposes. The full detail of the commission and GAD’s proposal is at Annex B.

The Government Actuary’s Department considers it has a legal basis to undertake the gender pensions analysis and does not feel they need any further authorisation to use the data it holds for this purpose (either from the administering authorities or the data subjects).

Questions

1. Do you agree that SAB’s desire to make evidence-based recommendations to the scheme’s responsible authority is a potentially lawful reason for the collection and processing of information from LGPS funds? Are there any impediments to the Board’s suggested lawful reasons for processing which you think are likely to apply?
2. Do funds themselves need to identify a separate, lawful basis for providing this data, or is the SAB’s purpose sufficient to justify their participation? If so, what would you say is the lawful purpose that is foreseen in the current LGPS member privacy notice (Annex A)?
3. Would you suggest that it would be helpful to add anything to the current privacy notice, for example to explicitly state that it covers the provision of information to the Board? Or would a data sharing agreement with funds be needed?
4. If the privacy notice is updated, is there a requirement for funds to reissue it to all scheme members?
5. What guidance would you offer about the balance that we should strike between the need for data to inform Board proposals and privacy concerns? For example, do we need to ensure that all data requests are fully anonymised (and what would that mean practically) or could we have a data collection agreement with funds that would allow personal data to be shared?

6. If it is not appropriate for individuals' pensions data to be shared with SAB, is it lawful for funds to process individual-level pensions data themselves and provide the SAB with their own analysis (which we would then be able to aggregate)?
7. On the specific example of the gender pensions gap, would you agree that the public sector equality duty provides a lawful reason for commissioning the analysis from GAD which is annexed?
8. Is there a way we could swiftly resolve any disagreements in interpretation between the various parties (SAB, funds, GAD, actuaries) on data protection issues? E.g., could we agree for a single legal adviser to be an arbiter.

ANNEX 1

TEMPLATE LGPS PRIVACY NOTICE

FULL PRIVACY NOTICE

for the members [and beneficiaries] of the [-]

This privacy notice is for members [and beneficiaries] of the [-] (the "Fund"). It has been prepared by [-] (the "Administering Authority", or "we") in its capacity as the administering authority of the Fund. This privacy notice describes how we collect and use personal data in accordance with data protection legislation.

This privacy notice will also be made available on [online] / [on the Fund's website] at the following link:

[Insert link to relevant area of website]

It is important that you read this privacy notice together with any other privacy notice or fair processing policy we may provide on specific occasions when we are collecting or processing personal data about you so that you are fully aware of how and why we are using your data. This privacy notice replaces any general privacy notice we may have previously issued and supplements any other notices and privacy policies we issue that are specific to particular data collection / processing activities.

Why we are providing this notice to you

As the Administering Authority of the Fund we hold certain information about you and from which you can be identified ("personal data") which we use to administer the Fund and to pay benefits from it. In line with data protection legislation, we are required to give you specified information about the personal data we hold about you, how we use it, your rights in relation to it and the safeguards that are in place to protect it. This notice is designed to give you that information.

The technical bit

The Administering Authority holds personal data about you, in its capacity as a controller, for the proper handling of all matters relating to the Fund, including its administration and management. This includes the need to process your data to contact you, to calculate, secure and pay your benefits, for statistical and financial modelling and for reference purposes (for example, when we assess how much money is needed to provide members' and beneficiaries' benefits and how that money should be invested), and to manage liabilities and administer the Fund generally. Further information about how we use your personal data is provided below.

The legal basis for our use of your personal data will usually be that we need to process your personal data to satisfy our legal obligations as the Administering Authority of the Fund.

However, where that legal basis does not apply then the legal basis for our use of your personal data will be one or more of the following:

- a) we need to process your personal data to carry out a task in the public interest or in the exercise of official authority in our capacity as a public body; [and/or]
- b) [we need to process your personal data for the legitimate interests of administering and managing the Fund and liabilities under it, calculating, securing and paying benefits and performing our obligations and exercising any rights, duties and discretions the Administering Authority has in relation to the Fund][./; and/or]
- c) [because we need to process your personal data to meet our contractual obligations to you in relation to the Fund (for example, under an agreement that you will pay additional voluntary contributions to the Fund), or to take steps, at your request, before entering into a contract].

What personal data we hold, and how we obtain it

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 employee and membership numbers.
- Information that is used to calculate and assess eligibility for benefits, for example, length of service or membership and salary information.
- Financial information relevant to the calculation or payment of benefits, for example, bank account and tax details.
- Information about your family, dependants or personal circumstances, for example, marital status and information relevant to the distribution and allocation of benefits payable on death.
- Information about your health, for example, to assess eligibility for benefits payable on ill health, or where your health is relevant to a claim for benefits following the death of a member of the Fund.
- Information about a criminal conviction if this has resulted in you owing money to your employer or the Fund and the employer or the Fund may be reimbursed from your benefits.

We obtain some of this personal data directly from you. We may also obtain data (for example, salary information) from your current or past employer(s) or companies that succeeded them in business, from a member of the Fund (where you are or could be a beneficiary of the Fund as a consequence of that person's membership of the Fund) and from a variety of other sources including public databases (such as the Register of Births, Deaths and Marriages), our advisers and government or regulatory bodies, including those in the list of organisations that we may share your personal data with set out below.

Where we obtain information concerning certain "special categories" of particularly sensitive data, such as health information, extra protections apply under the data protection legislation. We will only process your personal data falling within one of the special categories with your consent, unless we can lawfully process this data for another reason permitted by that legislation. You have the right to withdraw your consent to the processing at any time by notifying the Administering Authority in writing. However, if you do not give consent, or subsequently withdraw it, the Administering Authority may not be able to process

the relevant information to make decisions based on it, including decisions regarding the payment of your benefits.

Where you have provided us with personal data about other individuals, such as family members, dependants or potential beneficiaries under the Fund, please ensure that those individuals are aware of the information contained within this notice.

How we will use your personal data

We will use this data to deal with all matters relating to the Fund, including its administration and management. This can include the processing of your personal data for all or any of the following purposes:

- To contact you.
- To assess eligibility for, calculate and provide you (and, if you are a member of the Fund, your beneficiaries upon your death) with benefits.
- To identify your potential or actual benefit options and, where relevant, implement those options.
- [To allow alternative ways of delivering your benefits, for example, through the use of insurance products and transfers to or mergers with other pension arrangements.]
- For statistical and financial modelling and reference purposes (for example, when we assess how much money is needed to provide members' and beneficiaries' benefits and how that money should be invested).
- To assess and, if appropriate, action a request you make to transfer your benefits out of the Fund.
- To comply with our legal and regulatory obligations as the administering authority of the Fund.
- To address queries from members and other beneficiaries and to respond to any actual or potential disputes concerning the Fund.
- The management of the Fund's liabilities, including the entering into of insurance arrangements and selection of Fund investments.
- In connection with the sale, merger or corporate reorganisation of or transfer of a business by the employers that participate in the Fund and their group companies.

Organisations that we may share your personal data with

From time to time we will share your personal data with advisers and service providers so that they can help us carry out our duties, rights and discretions in relation to the Fund. Some of those organisations will simply process your personal data on our behalf and in accordance with our instructions; they are referred to as processors. Other organisations will be responsible to you directly for their use of personal data that we share with them; they are referred to as controllers. The controllers may be obliged under the data protection legislation to provide you with additional information regarding the personal data they hold about you and how and why they process that data. Further information may be provided to you in a separate notice or may be obtained from the advisers and service providers direct, for example via their websites.

Whenever one of our advisers or service providers acts as a joint controller with us in respect of your personal data, because we jointly determine the purposes and means of processing it, we will agree with them how we are each going to meet our respective and

collective obligations under the data protection legislation. If you would like more information about how such an arrangement works please contact us using the contact details below.

The organisations that we may share your personal data with may include the following advisers and service providers:

Processors	Controllers
<ul style="list-style-type: none"> • Administrator – (currently [-]) • [Third party administrators – (currently [-])] • Accountants – (currently [-]) • Communications adviser – (currently [-]) • Tracing bureaus for mortality screening and locating members and beneficiaries – (currently [-]) • Overseas payments provider to transmit payments to Fund members and beneficiaries with non-UK accounts – (currently [-]) • Printing companies – (currently [-]) • Pensions software provider – (currently [-]) • Suppliers of IT, document production and distribution services 	<ul style="list-style-type: none"> • Actuarial consultant – (currently [-]) • Fund benefit consultant – (currently [-]) • Investment adviser – (currently [-]) • [Additional Voluntary Contribution providers – (currently [-])] • Legal adviser – (currently [-]) • Fund Actuary – (currently [-]) • Statutory auditor – (currently [-]) • External auditor – (currently [-]) • Internal auditor – (currently [-]) • Insurance companies in connection with ill health benefits – (currently [-]) • LGPS National Insurance database – (South Yorkshire Pensions Authority) • Administering authorities of other LGPS funds (or their agents, such as third party administrators) where you have been a member of another LGPS fund and the information is needed to determine the benefits to which you or your dependants are entitled • The Department for Work and Pensions • The Government Actuary's Department • The Cabinet Office – for the purposes of the National Fraud Initiative • HMRC • The Courts of England and Wales – for the purpose of processing pension sharing orders on divorce

Where we make Fund investments or seek to provide benefits for members and beneficiaries in other ways, such as through the use of insurance, then we may also need to share personal data with providers of investments, insurers and other pension scheme operators.

From time to time we may provide some of your data to your employer and their relevant subsidiaries (and potential purchasers of their businesses) and advisers for the purposes of enabling those entities to understand the liabilities and obligations of the employer regarding the Fund. Your employer would generally be a controller of the personal data shared with it in those circumstances. For example, where your employment is engaged in providing

services subject to an outsourcing arrangement, the Administering Authority may provide information about your pension benefits to your employer and to potential bidders for that contract when it ends or is renewed.

Where requested or if we consider that it is reasonably required, we may also provide your data to government bodies and dispute resolution and law enforcement organisations, including those listed above, the Pensions Regulator, the Pensions Ombudsman and Her Majesty's Revenue and Customs (HMRC). They may then use the data to carry out their functions.

The organisations referred to in the paragraphs above may use the personal data to perform their functions in relation to the Fund as well as for statistical and financial modelling (such as calculating expected average benefit costs and mortality rates) and planning, business administration and regulatory purposes. They may also pass the data to other third parties (for example, insurers may pass personal data to other insurance companies for the purpose of obtaining reinsurance), to the extent they consider the information is reasonably required for a legitimate purpose.

[We do not use your personal data for marketing purposes and will not share this data with anyone for the purpose of marketing to you or any beneficiary.]

Transferring information outside the UK

In some cases recipients of your personal data may be outside the UK. As such, your personal data may be transferred outside the UK to a jurisdiction that may not offer an adequate level of protection as is required by the UK Government.

If this occurs, additional safeguards must be implemented with a view to protecting your personal data in accordance with applicable laws. Please use the contact details below if you want more information about the safeguards that are currently in place.

How long we keep your personal data

We will only keep your personal data for as long as we need to in order to fulfil the purpose(s) for which it was collected and for so long afterwards as we consider may be required to deal with any questions or complaints that we may receive about our administration of the Fund, unless we elect to retain your data for a longer period to comply with our legal and regulatory obligations. In practice, this means that your personal data will be retained for the greater of:

- such period as you (or any beneficiary who receives benefits after your death) are entitled to benefits from the Fund and for a period of **[15 years]** after those benefits stop being paid. For the same reason, your personal data may also need to be retained where you have received a transfer, or refund, from the Fund in respect of your benefit entitlement;[or]
- **[100 years from a member's date of birth]; [or]**
- **[100 years from the date of birth of any beneficiary who received benefits from the Fund after the member's death].**

Your rights

You have a right to access and obtain a copy of the personal data that the Administering Authority holds about you and to ask the Administering Authority to correct your personal data if there are any errors or it is out of date or incomplete. In very limited circumstances, you may also have a right to ask the Administering Authority to restrict the processing of your personal data, or to transfer or (in extremely limited circumstances, such as where your personal data is no longer needed for the purpose for which it is being processed) erase your personal data. You should note that we are not obliged to erase your personal data if we need to process it for the purposes of administering the Fund.

In certain circumstances you have the right to object to the processing of your personal data; for example, you have the right to object to processing of your personal data which is based on the public interest or legitimate interests identified in the section above headed "*The technical bit*", or where processing is for direct marketing purposes.

You can obtain further information about your rights from the Information Commissioner's Office at www.ico.org.uk or via its telephone helpline (0303 123 1113).

If you wish to exercise any of these rights or have any queries or concerns regarding the processing of your personal data, please contact the Fund Administrator as indicated below. You also have the right to lodge a complaint in relation to this privacy notice or the Administering Authority's processing activities with the Information Commissioner's Office which you can do through the website above or their telephone helpline.

As explained in the section above headed "*How we will use your personal data*", one of the reasons we collect and hold your personal data is to administer your Fund benefits. If you do not provide the information we request, or ask that the personal data we already hold is deleted or that the processing of the personal data be restricted, this may affect our ability to administer your benefits, including the payment of benefits from the Fund. In some cases it could mean the Administering Authority is unable to put your pension into payment or has to stop your pension (if already in payment).

Updates

We may update this notice periodically. Where we do this we will inform members [and beneficiaries] of the changes and the date on which the changes take effect.

Contacting us

Please contact the Fund administrator  for further information.

Data Protection Officer

You may also contact our data protection officer  for further information.

ANNEX 2

GAD PROPOSAL

PART 1

Gender pension gap – GAD data and analysis cost estimates

16 November 2022

We understand that Local Government Pension Scheme Advisory Board (“SAB”) wishes to build a rounded understanding of how pension income and total pension pot size in the Local Government Pension Scheme (“LGPS”), are impacted by gender (“the gender pension gap”). This includes understanding the extent to which the gender pension gap is the cumulative effect of lower-than-expected pay and other pattern of employment factors.

This note provides the cost estimates requested by the SAB at the meeting of its Cost Management, Benefit Design and Administration Committee (“CMBDA”) meeting on 12 September 2022. The request is set out in the agenda for the meeting in paper D, paragraph 9 onwards. Earlier sections of the paper provide additional context to this. The specific work cost estimates were requested for together with our high-level cost estimates are set out below:

Paper D Para.	Description	Cost estimate (All costs are exclusive of VAT.)
9	Sharing data Share a dataset for further analysis based on the 2020 valuation data including: <ul style="list-style-type: none"> • Average CARE pension • Average pension in payment • Average survivor benefits 	Total £3,000
10	Gender pay gap data report Analysis of how pension income and total pension pot size are impacted by gender including regression	Preparing data £8,000 Analysis of data £16,000 Adjusted for GAD’s investment in development x 50% Total £12,000
11	Other analysis options Other proposals for relevant analysis	Total up to £36,000
	Total	Up to £51,000

The remainder of this note:

- Explains our cost estimates above in more detail
- Highlights relevant information in forthcoming GAD valuation reports

Finlaison House
15-17 Furnival Street
London
EC4A 1AB
020 7211 2601
www.gov.uk/gad

Sharing data

We hold data detailed the membership of the LGPS on 31 March 2020 and changes in status of members for the four years prior to that date. Similarly, we hold earlier data in relation to 31 March 2016. This data was collected to conduct an actuarial valuation of the LGPS and to provide renewed evidence for developing government policy on the scheme. The data is clearly relevant for exploring the extent of inequalities of benefit outcomes between males and females.

The LGPS membership data we hold includes personal information. That is any information describing or relating to an identified or identifiable individual. [GAD policy](#) for sharing data with other bodies is that we ensure no individual can be identified in such data. This includes sharing data for research purposes, which would apply to sharing a relevant dataset with SAB for investigating gender pension gap.

- We propose to do this by providing a grouped dataset similar in layout to the salary data shared with SAB in November 2021
- Expected cost: £3,000 thousand

Information in the GAD 2020 valuation reports

The valuation reports contain extensive information about the membership of the LGPS, including breakdowns by gender. They will be a useful point of reference for SAB's considerations. The draft versions of two of these reports will be shared with SAB this year. The assumptions report as part of the papers for the CMBDA meeting on 21 November 2022, and the membership data report later in 2022. Content which may be relevant, including limitations is set out below:

Membership data report

- Overall summary of scheme data
- Distribution of amounts of actual salary for active male and female members plus averages

- Distribution of amounts of deferred pension for male and female members plus averages
- Distribution of amounts of pension in payment for male and female members plus averages
- Details of the processing of data for the purpose of the scheme cost control valuation

Assumptions report

- Analysis of mortality by age, male/female, and normal/ill health pension
- Analysis of rate of leaving service by age and male/female
- Analysis of pay increases by age and male/female

Limitations

- The limitations set out in both of these reports on data and sharing would equally apply to any data shared with SAB and to any analysis of gender pension gap conducted by GAD.

Gender pay gap data report

Proposed Approach

To support SAB in building a rounded understanding of the pension gender gap we propose analysis in several stages from illustrative summaries to more targeted analysis.

We anticipate that SAB may wish to be selective in deciding how to move forward with our proposed approach. We have tried to support this in this note by presenting our proposals and cost estimates in blocks to help SAB understand the implications of proceeding with individual elements of our proposals. (The table at the front of this note summarises these costs.)

Costs include setting out results of analysis in explanatory reports with appropriate review and any other quality assurance needed to ensure that SAB receive high quality analysis which supports their consideration of the gender pension gap. All costs quoted are exclusive of VAT.

Preparing data [Expected cost: £8,000; Adjusted for GAD's investment = £4,000]

- As set out in our membership data report, we have processed this data as needed an actuarial valuation of the LGPS. We would need to review the

appropriateness of that processing for conducting a gender pension gap analysis. This is expected to include:

- Reviewing adjustments to data
- Reviewing which data are used
- Further processing to prepare data relating to areas of SAB interest for analysis. For example further development around current part time proportion for currently contributing members (“actives”).

Our short report will explain the preparation of data and any features not covered by the valuation data report sufficient for SAB to understand the data and analysis. How the data was collected, its completeness, and its veracity may mean that specific fields are not available for all records.

Analysis of data [Expected cost £16,000; Adjusted for GAD’s investment = £8,000]

We propose analysis in several stages. The first stage will focus on summarisation of data, with regression (stipulated in SAB’s paper) used to as a general tool to explore and provide additional insight into the patterns that emerge. Analysis will be set out in concise reports highlighting notable features, relevant context, and suggesting next steps to aid SAB in its considerations.

Again SAB may wish to take a selective approach in deciding how to move forward.

- Create summary statistics and charts by gender for different breakdowns of interest
This will provide the SAB with a broader headline understanding of the patterns of pension entitlement in the scheme by gender beyond those included in the GAD membership data report. This will draw on the areas of data prepared as set out in the preceding section of this note.
 - Examples of the breakdowns for males and females we propose to explore include:
 - Summary of distributions of pension and pay amounts
 - Summary of distributions of pension amounts broken down by factors SAB wish to investigate including current pay, length of service, current part time proportion and age
 - Summary of distributions of pension amounts for different tranches of benefits (Pre-2008, 2008-2014, post 2014). This is proposed to give an initial insight whether different periods of accrual have contributed differently to the gender pension gap
 - Expected cost £9,000

- Regression analysis of the overall pension amount against gender and other factors

Where available we will use data amount of accrued or in payment to examine the extent to which gender pension differences are explained by:

- Most recent level of pay
- Length of service
- Part-time proportion (both current and historic)
- Category of employer
- Expected cost £7,000

Other analysis options [Expected cost up to £30,000]

- Separate analysis for component tranches of pension [Expected cost £6,000]

- CARE pension accrued – Current part-time proportion only
- Pre-2014 pension – Historic part-time proportion only

- Career pattern analysis [Expected cost £5,000]

The membership data collected by GAD does not include a full career history, only service totals. We propose to analyse pension amounts for actives relative to qualifying and reckonable service. These variables will capture the different cumulative effect of part time working and career breaks for males and females. This analysis will give SAB an initial understanding of their impact on pension benefits in advance obtaining further analysis.

- Geographic analysis [Expected cost £5,000]

Summary of distributions of pension amounts broken down by statistical regions. Patterns may vary over England and Wales, and this breakdown may be helpful to SAB in informing further investigation. Additionally it may aid ready comparison with available local data.

- Employer category Analysis [Expected cost £5,000]

Summary of distributions of pension amounts broken down by category of employer using data from review of local fund valuations. Patterns may vary between local authority, academy, other national body and private LGPS employers, and this breakdown may be helpful to SAB in informing further investigation.

- Analysis of divorce and ex-partner benefits [Expected cost £3,000]

The details of pension credit members, both in payment and deferred, are the principle divorce settlements data we hold. The majority of divorces are for opposite-sex marriages. Comparing both of the distributions of pension credits for males and distribution of deferred or in payment pension for females and vice versa will provide an initial measure of whether there may be significant differences in divorce settlements between males and females.

- Analysis of purchased benefits [Expected cost £2,000]

The membership data collected by GAD does not include AVCs, but does include additional scheme benefits purchased on election by member or employer contributions. Thought they only cover a minority of members and are not a significant component of overall scheme benefits, a breakdown would illustrate any male / female differences.

- Repeat of regression analysis for 2016 valuation data [Expected cost £5,000 to £10,000] We would recommend that this is included to give SAB further insight into the progression over time of identified patterns (in addition to that from looking at patterns for different tranches of benefit). This is likely to be helpful to SAB in deciding on priorities for further investigation or action. Level of costs dependant on which 2020 data analysis is repeated.

- Mortality analysis [Expected cost £5,000]

SAB's paper requested the impact of gender on "total pension pot size". As the LGPS is a defined benefit scheme, we propose instead to examine the mortality rates experienced by males and females as a proxy for the length of time benefits are received. While this data is focussed on the oldest member cohorts, it is the same data used to inform the scheme valuation assumptions for future mortality. Extending our valuation mortality experience analysis will provide an initial view of the relationship between level of pension income and life expectancy and the extent to which this is different for males and females.

PART 2

Cost Management, Benefit Design and Administration Committee

Meeting of the 12th September 2022

Item 8 Paper D

Gender Pensions Gap

Issue – To consider and agree the approach to developing a Gender Pensions Gap Report for LGPS

Background

1. The Equality Act 2010 Part 1, section 1 states “An authority must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.” This Act was amended by the 2017 Gender Pay Gap Information Regulations which put a requirement on employers with more than 250 employees to publish differences in pay between men and women with the purpose to identify instances where inequalities exist.
2. Following a recommendation from the previous CMBDA meeting on 16 May, the Scheme Advisory Board took the following action:

“The Board ... agreed that the committee Secretariat should scope work to analyse the gender pensions/pay gap in the scheme.”

Consideration

3. There is a clear and obvious link between pension and pay equality. Analysis by the LGA in 2018 across local government indicates that there was a mean gender pay gap of 6.8% and a median gap of 5%. This compares favourably to the economy as a whole, where the mean gap is 12% and the median is 9.7%.
4. However, we do not expect that to be a complete explanation of different pension incomes at retirement. For example, there are likely to be other variables which impact on pension benefit accrual, such as:
 - The cumulative effect of lower than expected pay;
 - Career breaks and their effect on career progression (very important in relation to final salary benefits);
 - Possibly different approaches between men and women as to making up of lost contributions, or making extra payments (use of AVCs);
 - Opt out rates and 50/50 for men and women may be different due to the different impact of life events (e.g. maternity leave, career breaks, going part-time, divorce); and

- Extent to which Pension Credits are awarded on divorce.¹
5. Concerning opt out rates, data only exist for those who have vested benefits in the scheme. That will include some of those who have opted out, but the data does not distinguish members who are still in local government service but have opted out, and deferred members who have left local government service altogether. Although analysis could be conducted with the current data, that data would need to be supplemented by further data from employers, or would need to be qualified in that any difference in opt out rates between genders may also be explained by differences in those leaving scheme employment.
 6. There are further complicating factors linked to gender and equality which the committee might wish to consider in its analysis which will also impact on pension outcomes including:
 - Life expectancy, which is longer for women,
 - Care needs and rates of disability, which are greater for women compared to men in old age; and
 - The impact of socio-economic health inequalities on life expectancy.
 7. In addition to gender, recent analysis by the Public Policy Institute indicates that those from Pakistani, Bangladeshi, black and other minority ethnic groups also suffer poorer retirement outcomes than the majority of white savers. The PPI indicate that there are insufficient disaggregated data available to allow for greater breakdown analysis. They also flag a number of characteristics and experiences which would be useful to survey to better understand how employment and pensions decisions are made by different groups.
 8. The Committee is invited to consider how it can review opt out rates. With extra scrutiny and interest in this due to the current cost of living crisis, it is important that the Committee has an evidence-based approach to any recommendations on how to protect members through this time. It is recommended that the Secretariat bring a paper to the next Committee meeting on this

Recommendations

9. Commission GAD to provide a cost estimate to produce the relevant data set based on the most recent valuation for further analysis including:
 - Average values of CARE pots for male and female LGPS members,
 - Pensions in payment for men and women; and
 - Survivor benefits for men and women.

10. Commission GAD to provide a cost estimate to undertake regression analysis on the LGPS data which would indicate the degree to which pension income and total pension pot size is impacted by gender.
11. Decide whether there are other factors that ought to be included in the scope of the GAD data and analysis commission, including:
 - Career breaks and their effect on career progression in the LGPS;
 - Differences in AVC's between men and women;
 - The impact of divorce on pension outcomes; and
 - The impact of life expectancy in the LGPS on pension income and total pension size.
12. Begin to scope, as a secondary project not to start until 2023-24, how we could start collection and analysis of other protected characteristics by scheme employers. If the SAB agrees, the Secretariat could bring this into the 2023/24 workplan. That is likely to require extra funding (for GAD costs) and potentially additional resourcing also, and hence potentially a commensurate levy uplift. The Secretariat could potentially limit those costs by aligning or partnering with the PPI. In exchange for sharing the dataset from GAD, they might be willing to jointly conduct surveys for analysis of pension inequalities between different groups within the Scheme.
13. If, once this work has been done, the Committee feels that it has proved valuable, then it could also explore whether it is feasible for funds to do their own equality gap analysis as a part of their annual or valuation reports.
14. That the Secretariat bring a paper to the next Committee meeting on how to better monitor and analyse opt outs in the Scheme in a timely manner.