



## LOCAL GOVERNMENT PENSION SCHEME

### Memorandum of Understanding regarding Compliance with Data Protection Law

#### 1 INTRODUCTION

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

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

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

1.4 Scheme Employers are under a statutory obligation, as detailed in Regulation 80 of the LGPS Regulations, to provide certain personal data relating to their Members on a monthly and annual basis to the Administering Authority, including the Pay Reference Number, Post Number, National Insurance Number, Surname, Forenames (or Initials), Title, Gender, Date of Birth, Address, Postcode, Date Pensionable Service Started, Marital Status, Hours, Weeks, Pay, Basic Employee and Employer Contributions Paid, Additional Employee and Employer Contributions Paid, Date Left Pensionable Service, Reason Left Pensionable Service and Periods of Absence from Pensionable Service. This personal data is shared with Wandsworth Borough Council.<sup>1</sup>

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<sup>1</sup> The Scheme Employer is required to utilise the i-Connect interface specification and secure portal for the submission of this information.

1.5 This Memorandum of Understanding sets out:

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

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

1.6 References to "**Data Protection Law**" in this Memorandum of Understanding mean the Data Protection Act 2018, the Data Protection Directive (95/46/EC), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) (as amended), the General Data Protection Regulation (2016/679) and all applicable laws and regulations relating to personal data and privacy which are enacted from time to time, including (where applicable) the guidance and codes of practice issued by the Information Commissioner's Office and any other competent authority.

## **2 DATA CONTROLLERS**

2.1 The Parties acknowledge that they will:

- (a) be data controllers (either separate and independent or joint) in relation to the copies of the Members' personal data they respectively hold;
- (b) act as data controller in relation to personal data transferred to them;
- (c) each be responsible for complying with the requirements in Data Protection Law that are applicable to them as data controllers.

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

## **3 DATA SHARING**

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

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

3.2 Each Party will inform the Members (as required under Data Protection Law) of the respective purposes for which they will each process their personal data and provide all required information to ensure that the Members understand how their personal data will be processed in each case by the Administering Authority, Wandsworth Borough Council or Scheme Employer (as applicable).

The Scheme Employer's privacy notice to Members will inform them that their personal data will be provided to Wandsworth Borough Council and the Administering Authority and a copy of that notice will be provided to the Administering Authority or Wandsworth Borough Council on request<sup>2</sup>.

3.3 Each Party confirms that it understands its respective obligations under Data Protection Law, to ensure that the Members' personal data of which it is a data controller is kept and used securely at all times and to take such technical and organisational security measures against unauthorised and unlawful processing of, accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Members' personal data transmitted, stored or otherwise processed as may be required. Such measures will have due regard to the state of technological development and the cost of implementation of these measures, to ensure a level of security appropriate to the harm that might result from such processing and the nature, scope, context and purposes of processing the Members' personal data and the risk or likelihood and severity for the rights and freedoms of data subjects. Such measures will ensure:

- (a) the ongoing confidentiality, integrity, availability and resilience of processing the Members' personal data;
- (b) the ability to restore the availability and access to the Members' personal data in a timely manner in the event of a physical or technical incident;
- (c) carrying out of regular testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

3.4 Each Party undertakes to notify the others as soon as practicable if an error is discovered in the Members' personal data of which it is a data controller and which was received from or a copy of which has been provided to another Party, to ensure that such other Party is then able to correct its own records. This will happen whether the error is discovered through existing data quality initiatives or is flagged up through some other route (such as the existence of errors being directly notified to Wandsworth Borough Council and/or the Administering Authority or Scheme Employer (as appropriate) by the Member (or the Member's dependants, spouse/civil partner) themselves).

#### **4 TRANSFER OF MEMBERS' PERSONAL DATA**

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

- (a) Postal Service including courier;
- (b) Secure email;
- (c) SFTP link;
- (d) Secure electronic interface;
- (e) Encrypted removable media;

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<sup>2</sup> The Scheme Employer will provide a copy of its privacy notice to the Administering Authority (via the PSS) as and when requested.

- (f) Secure web delivery including i-Connect;
- (g) Other third party solution as agreed by the Parties.

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

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

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

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

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

## **6 DATA SECURITY BREACHES AND REPORTING PROCEDURES**

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

## **7 RESPONSIBILITIES OF SCHEME EMPLOYERS**

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

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

7.3 The Scheme Employer will demonstrate to the Administering Authority's satisfaction when dealing with ill health early retirement applications for current employees that explicit Member consent has been received which gives consent to processing by Wandsworth Borough Council, the Scheme Employer and the Administering Authority. In the absence of such consent, Wandsworth Borough Council may not be able to process the Member's application.

7.4 The Scheme Employer acknowledges the financial penalties that can be imposed by the Information Commissioner's Office in relation to breaches of Data Protection Law and it will inform Wandsworth Borough Council and the Administering Authority within 24 hours from the point it becomes aware that the Scheme Employer may be liable to pay such a financial penalty. The Scheme Employer further acknowledges that any liability it may have to pay a financial penalty to the Information Commissioner's Office may result in a revision of the rates and adjustments certificate in accordance with Regulation 62(7) of the LGPS Regulations.

## **8 COMPLIANCE WITH THE MEMORANDUM OF UNDERSTANDING**

8.1 Failure by the Scheme Employer to comply with the terms set out in this Memorandum of Understanding may result in the Administering Authority and/or Wandsworth Borough Council reporting the Scheme Employer's non-compliance to the Information Commissioner's Office.

## **9 REVIEW AND AMENDMENT OF MEMORANDUM OF UNDERSTANDING**

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

v2 March 2020