

MEMORANDUM OF UNDERSTANDING REGARDING COMPLIANCE WITH DATA PROTECTION LAW

1 INTRODUCTION

- 1.1 The Local Government Pension Scheme (“**LGPS**”) in Scotland is an occupational pension scheme registered under section 153 of the Finance Act 2004 and governed by The Local Government Pension Scheme (Scotland) Regulations 2018 (SSI 2014/164) as amended (“**LGPS Regulations**”).
- 1.2 The City of Edinburgh Council (“**Administering Authority**”) is the administering authority of the Lothian Pension Fund (and the Scottish Homes Pension Fund, collectively the “**Fund**”), which it manages and administers in accordance with its statutory duties under the LGPS Regulations.
- 1.3 An employer employing employees who are eligible to be members of the LGPS will participate in the Fund as a “**Scheme Employer**” (as defined in schedule 2 of the LGPS Regulations). The Administering Authority and the Scheme Employer (together the “**Parties**”) are required to share personal data relating to the Scheme Employer’s current and former employees who participate in the Fund (the “**Members**”) and their dependants, in order for the Administering Authority to fulfil its statutory duties 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 and offer Members the option of paying additional voluntary contributions to one or more providers in accordance with the LGPS Regulations.
- 1.4 Scheme Employers are under a statutory obligation, as detailed in Regulation 75 of the LGPS Regulations, to provide certain personal data relating to its Members on an annual basis to the Administering Authority, including the Member’s name, gender, date of birth, national insurance number, pensionable pay, employer and employee pension contributions, details of any additional pension contributions and additional voluntary contributions.
- 1.5 This Memorandum of Understanding sets out:
- (a) the basis on which data will be shared between the Parties;
 - (b) the Administering Authority’s expectations of the Scheme Employer during its participation in the Fund;
- in order to comply with Data Protection Law, including the General Data Protection Regulation (2016/679) (“**GDPR**”).
- 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 GDPR 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 BASIS FOR PROCESSING AND DATA CONTROLLERS

2.1 The Parties each process personal data in accordance with Article 6(1)(c) of the GDPR, namely that it is necessary for compliance with their respective legal obligations, being

- (a) in respect of the Administering Authority, the statutory duties and powers set out in the legislation applicable to the LGPS in Scotland (referred to in paragraph 1.3 above); and
- (b) in respect of the Scheme Employer, the statutory obligation set out in Regulation 75 of the LGPS regulations (referred to in paragraph 1.4 above).

Each party may also process special category personal data (as defined in Data Protection Law) in accordance with Article 9(2)(g) of the GDPR, namely that processing is necessary for a reason of substantial public interest, being the administration of an occupational pension, as set out in Schedule 1(21) of the Data Protection Act 2018¹.

2.2 The Parties acknowledge that they will:

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

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

3 DATA SHARING

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

- (a) fairly and lawfully and in accordance with the data protection principles set out in Data Protection Law;
- (b) where there are lawful grounds for doing so; and

¹ See paragraph 7.3 regarding ill-health retirement applications where consent should be obtained. The use of such information does not clearly fall within the scope of the 'substantial public interest' legal basis otherwise relied upon for processing special category personal data.

- (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 In addition, the Scheme Employer will ensure the data it provides to the Administering Authority is accurate and that it is entitled to provide such data to the Administering Authority
- 3.3 Each Party will separately inform the Members (as required under Data Protection Law) of the respective purposes for which they will each process their personal data and provide all required information to ensure that the Members understand how their personal data will be processed in each case by the Administering Authority or Scheme Employer (as applicable). The Scheme Employer's privacy notice to Members will inform them that their personal data will be provided to the Administering Authority and a copy of that notice will be provided to the Administering Authority on request.
- 3.4 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; and
 - (c) carrying out of regular testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
- 3.5 Each Party undertakes to notify the other as soon as practicable if an error is discovered in the Members' personal data of which it is a data controller and which was received from or a copy of which has been provided to the other Party, to ensure that such other Party is then able to correct its own records. This will happen whether the error is discovered through existing data quality initiatives or is flagged up through some other route (such as the existence of errors being directly notified to the Administering Authority or Scheme Employer (as appropriate) by the Member (or the Member's dependants, spouse/civil partner) themselves).

4 TRANSFER OF MEMBERS' PERSONAL DATA

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

- (b) courier;
- (c) secure email;
- (d) SFTP link;
- (e) encrypted removable media;
- (f) access secure website (i.e. iConnect or any replacement system for information exchange); and
- (g) 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 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

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, 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 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 the Administering Authority of the details of a nominated person for GDPR compliance purposes.
- 7.3 As consent is required under the Access to Medical Reports Act 1988, the Administering Authority requires the Scheme Employer to confirm to the Administering Authority that when dealing with ill health early retirement applications for current employees, explicit Member consent has been received which gives consent to processing by both the Scheme Employer and the Administering Authority. In the absence of such consent, the Administering Authority may not be able to process the Member's application.²
- 7.4 The Scheme Employer acknowledges the financial penalties that can be imposed by the Information Commissioner's Office in relation to breaches of Data Protection Law and will inform the Administering Authority as soon as reasonably practical from the point that 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 60(8)(b) of the LGPS Regulations.

8 COMPLIANCE WITH THE MEMORANDUM OF UNDERSTANDING

Failure by the Scheme Employer to comply with the terms set out in this Memorandum of Understanding may result in the Administering Authority taking any or all of the following actions:

- (a) reporting the Scheme Employer's non-compliance to the Information Commissioner's Office; and/or
- (b) any other action which the Administering Authority deems appropriate and which is within its powers to do so.

9 REVIEW AND AMENDMENT OF MEMORANDUM OF UNDERSTANDING

The Administering Authority will review the Memorandum of Understanding from time to time. The Administering Authority reserves the right to amend the Memorandum of

² In relation to a Scheme Employer's active Members, the Administering Authority only needs to be informed of the outcome of any Scheme Employer's decision regarding an ill-health early retirement application (and any subsequent appeal), but not the underlying medical records. Suggested wording to be included in the ill-health early retirement application form: *In order to consider the ill-health early retirement application, [Scheme Employer] and Lothian Pension Fund may need to see the scheme member's health records, to assess which parts are relevant to the ill-health early retirement application. By signing this form, I authorise [Scheme Employer] and Lothian Pension Fund to process any relevant background information including health data contained in medical reports which they may request for the specific purpose of assisting a decision in respect of my ill-health early retirement application.*

Understanding at any time and will provide written notice to the Scheme Employer of any material amendments.