

## LOCAL GOVERNMENT PENSION SCHEME

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

1.4 Scheme Employers are required in accordance with the LGPS Regulations, the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations and the Pensions Administration Strategy to provide certain personal data. This includes Regulation 80 of the LGPS Regulations; to provide personal data relating to its Members on an annual basis to the Administering Authority, including the Member’s name, gender, date of birth, national insurance number, pensionable pay, employer and employee pension contributions, details of any additional pension contributions and additional voluntary contributions.

1.5 This Memorandum of Understanding sets out:

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

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

1.6 References to “Data Protection Law” in this Memorandum of Understanding mean the Data Protection Act 1998, the Data Protection Directive (95/46/EC), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) (as amended), the General Data Protection Regulation (2016/679) and all applicable laws and regulations relating to personal data and privacy which are enacted from time to time, including (where applicable) the guidance and codes of practice issued by the Information Commissioner’s Office and any other competent authority.

## 2 DATA CONTROLLERS

2.1 The Parties acknowledge that they will:

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

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

## 3 DATA SHARING

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

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

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

3.3 Each Party 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 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 the Administering Authorities secure administration portal - ERPF Online Services. In exceptional circumstances and only with prior agreement from the Administering Authority, personal data may be accepted via any of the following :

- (b) secure email, including GSCX accounts and password protected attachments
- (c) secure file transfer portal

**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** In ensuring that data is securely transferred both parties agree to maintain and keep up to date individual user login accounts to ensure the terms of access are adhered to and that access is required for the purposes of administering the Scheme. Where a third party administrator (such as an outsourced payroll) ceases to provide administration duties for a Scheme Employer the individual user accounts will remain active for a period of 30 days. Scheme Employers must instruct the Administering Authority if they require access to be granted for a different period of time and ensure that the relevant data sharing agreements are in place.

**4.4** 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 PARTNER)**

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, expects Scheme Employers participating in the Fund to comply with the responsibilities set out below in relation to Members' personal data.

7.2 The Scheme Employer will inform [comms@eastriding.gcsx.gov.uk](mailto:comms@eastriding.gcsx.gov.uk) at the Administering Authority of any appointed qualified person to fulfil the role of data protection officer ("DPO") together with their contact details. If the Scheme Employer has not appointed a DPO, the Scheme Employer will inform [comms@eastriding.gcsx.gov.uk](mailto:comms@eastriding.gcsx.gov.uk) at the Administering Authority of the details of a nominated person for GDPR compliance purposes.

7.3 The Scheme Employer will ensure that Members' health data is not shared with the Administering Authority when dealing with ill health early retirement applications for current employees, unless this data has been explicitly requested by the Administering Authority and Member consent has been received which gives consent to processing by both the Scheme Employer and the Administering Authority.

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

The Administering Authority will keep the Memorandum of Understanding under review and reserves the right to amend the Memorandum of Understanding at any time with immediate effect.