

Pension Board

Meeting held on Thursday, 16 January 2020 at 2.00 pm in F10, Town Hall, Katharine Street, Croydon CR0 1NX

MINUTES

Present: Michael Ellsmore (Chair);
Co-optees: Richard Elliott, Teresa Fritz, Daniel Pyke and David Whickman
Councillor Jerry Fitzpatrick

Also Present: Councillor Simon Brew, Yvette Hopley and Andrew Pelling. Co-opted Members Gill Driver and Peter Howard.
Nigel Cook (Head of Pensions and Treasury) and Victoria Richardson (Head of HR and Finance Service Centre). The following officers attended for the item from the Secretary to the LGP Scheme Advisory Board: Claire Agbaba (Pensions Team Leader), Matthew Hallett (Pension Fund Investment Manager), Alison Fisher (Pensions Administrator) and Ian Talbot (Pension Fund Investment Manager).

Apologies: Ava Payne

PART A

1/20 Minutes of the Previous Meeting

The minutes of the meeting held on 17 October 2019 were agreed as an accurate record.

With regard to item 43/19, the Independent Chair of the Pension Board noted that the Governance Review Report had not yet gone to the Pension Committee for its consideration. However, reassurance was provided by the Chair of the Pension Committee (who was in attendance at the meeting) that an additional meeting of the Committee was scheduled for 11 February 2020 to specifically receive a report on how the Pension Committee planned to respond to the Governance Review. The Independent Chair of the Pension Board welcomed this update and noted that the work of the review had been ongoing for more than a year and that with 11 out of the 80 requirements on the dashboard not being met, he was sure the review would be of interest to the Committee.

The Head of Pensions and Treasury committed to provide a remuneration strategy for Board Members at the Board's meeting in April 2020.

2/20 Disclosure of Interests

There were no disclosures of interests.

3/20 Urgent Business (if any)

There were no items of urgent business.

4/20 Presentation from Bob Holloway, Secretary to the LGP Scheme Advisory Board

The Members of the Pension Board welcomed Bob Holloway, Secretary to the LGP Scheme Advisory Board. Mr Holloway began his presentation by providing some context and background highlighting that he had worked within the Local Government Pension Scheme (LGPS) for some 35 years and that this was a very technical and complex area.

Following the 2010 General Election and the formation of the Coalition Government there had been a complete review of public sector pension schemes. This had been undertaken by Lord John Hutton of Furness resulting in 26 recommendations that had in the main been accepted. Mr Holloway highlighted that Lord Hutton's key recommendations were:

- to establish a Scheme Advisory Board with responsibility to recommend changes to the responsible authority; and
- for every scheme to set up a Pension Board. These were recommended to assist the Scheme Manager/Administrating Authority. The role of Pension Boards was set out in regulations in 2013 mirroring the recommendations of the review and established their role in scrutiny (compliance checking) and assisting the Administering Authority to improve the effectiveness of the administration and governance of the scheme.

Mr Holloway provided the Board with an overview of compliance within statutory regulation. It was highlighted that there is a legal duty to abide by the code of practice published by the Pensions Regulator. It was noted that the code of practice was being rewritten with a modular approach being produced. The importance of the code was stressed; Board Members needed knowledge and understanding of the scheme in addition to public sector pensions and how they operate.

It was noted that the Pensions Regulator could fine individuals and Boards for non-compliance against the code. This was reflected in the increased desire by Boards and their Members to have indemnity insurance. Mr Holloway acknowledged that it would be unusual for individuals to be subject to a fine by the Regulator. Additionally, The Head of Pensions and Treasury confirmed that indemnity insurance was in place for the Croydon Pension Board and its Members.

It was acknowledged that it was likely Boards would not always be happy with actions taken by the Administering Authority. However, whilst they had the opportunity to whistleblow this was described as a last resort. Other options for resolution included informal discussions and engaging with the Monitoring Officer and/or Section 151 officer.

If a Board was not satisfied then there would be a need to look at the formal powers to report. Mr Holloway acknowledged that there was a lack of clarity

on what constitutes a formal or material breach with no definition being available. He advised that Boards should record every breach in order to establish an audit trail and to document why a breach had not been reported should this become necessary. It was noted that the Pensions Regulator was as interested in processes and record keeping as the outcome arrived at in any given scenario.

The Independent Chair of the Board noted the difficulty of determining what constituted a material breach; the Board was in large part dependent on the advice of officers who had loyalty to their employer making it difficult for Boards to obtain independent advice. It was confirmed that a register of breaches was in place.

Mr Holloway emphasised the fiduciary duty of Councillors on the Pension Committee. It was stressed that the focus should be on the duty of care but to whom this should be applied was more difficult to determine with the Council, its employees, council tax payers and electors all vying for pre-eminence. There was also a lack of clarity on who could be the ultimate guarantor of the Fund.

In response to a question from a Member of the Pension Board regarding what would happen should the Pension Fund no longer have access to sufficient funds, Mr Holloway stressed that as a statutory scheme there would have to be a final guarantor. Legal opinion was yet to determine the final guarantor as there was nothing in law to state that this would be guaranteed by the Government. It was noted that should an authority run out of funds, its functions would have to continue for example through the formation of another local entity or the Government exercising its rights to send in Commissioners.

Board Members asked about the treatment of orphaned liabilities with Mr Holloway agreeing that these would fall on the Fund with the Government's response to the consultation on these issues awaited.

Replicating the levy to the Pension Protection Fund in the private sector was suggested by a Board Member as a possibility for third tier employers. Mr Holloway agreed that there was the possibility of establishing a lifeboat fund rather than orphaned liabilities being picked up by the Fund. However, it was noted that LGPS was not a member of the Pension Protection Fund because it was a statutory scheme and guaranteed.

A Pension Committee Member asked for an update on the McCloud Case and its likely ramifications for the LGPS. Mr Holloway explained that whilst there was protection in law against discrimination it was permitted for pensions to discriminate on grounds of age as long as this was done objectively. In principle discrimination in pensions was undertaken in order not to give any detriment to those close to retirement age as it was difficult to change financial planning at the last minute. However, transitional protection offered to some employees when changes were made to public sector pension schemes was subject to legal challenge by the Fire Brigade Union and the Police with the case being won on the grounds of equality of benefits. As a

result it was likely that the same approach would have to be applied to all who were active members of the scheme in April 2012. It was highlighted that the ramifications of the court's decision would take time to unfold. The Independent Chair of the Pension Board noted that it would have to be accepted that it was going to cost more to deliver the scheme.

The Chair of the Pension Committee asked for clarification regarding any legislative initiatives coming forward that might affect the scheme. Mr Holloway thought it likely that the new Government would undertake to continue with the Pension Bill to increase the powers of the Pensions Regulator. Judgement was also awaited on whether a pension fund could boycott nations in their entirety and/ or the UK defence industry. It was thought that the outcome of this judgment might need to be reflected in legislation and guidance.

Lastly, Mr Holloway noted that as part of his remit he would continue to collect data from triennial valuations and to annually publish a national list of the results. This had shown in 2016 that funding was improving with some having 110% funding.

In closing, Mr Holloway gave an open offer to return to the Pension Board to provide more formal training on specific issues and noted that he was trying to establish a network of local pension boards.

RESOLVED: The Independent Chair offered his thanks to Mr Holloway and thanked the Members of the Pension Committee for their attendance.

5/20 Key Performance Indicators for the Period Ended 31 October 2019

The report was introduced by the Head of HR and Finance Service Centre. It was noted that calculation of benefits in cases of death and retired members remained 100% against target. A report was also provided on successful recruitment with three positions having been filled: pensions team leader, pensions administrator and pensions governance team manager. There remained three vacancies in the team to be filled.

Work was continuing to put in place an external provider to clear the backlog of deferred benefits. Internal approval has been gained to use the national framework to appoint an external provider. Tender documents had been drafted and were with lawyers. It was anticipated that the tender would be live by the end of January 2020 and the external provider in place by the end of Spring 2020. The Independent Chair of the Board welcomed this progress but anticipated that it would be some time before the benefit of this would be seen on the backlog of deferred cases. It was made clear that new deferred cases were being maintained (100% against target) so that the backlog was not growing.

In response to a question from the Board Member, the Head of HR and Finance Service Centre committed to provide figures on the number of members accessing their annual pension statements online.

The Independent Chair of the Pension Board reported that he had written to the Director of Finance, Insurance and Risk (and Section 151 Officer) and had received a positive response regarding recruitment and resourcing. The Head of HR and Finance Service Centre noted that additional resourcing would be required to deal with the impact of the McCloud case. Mr Holloway explained that it was not known when the ruling on the McCloud case was likely to be implemented for the LGPS. Pension Board Members noted that the McCloud Case judgement would need to be applied to those who had left the scheme since April 2012 which may be problematic in terms of having up-to-date contact information.

A Pension Board Member highlighted that the Pensions and Lifetime Savings Association was a representative on the dashboard coordination committee and aimed to feed into the Government consultation. This provided Croydon with an opportunity to contribute. It was noted that the Pension Board Member was concerned that the LGPS wasn't being heard as part of this consultation. Mr Holloway concurred as the Local Government Association hadn't been invited to contribute. Action was being taken to try and rectify this situation.

RESOLVED: the Board agreed that a report on the pension's dashboard should be provided to its meeting in April 2020. Additionally that in the future, the Key Performance Indicators report should include three months of trend data to allow Board Members to undertake a better analysis.

6/20 Review of Risk Register

The Head of Pensions and Treasury highlighted that there were three changes to the Risk Register:

- Changes to US foreign policy but to a large extent the market was becoming inured to this and building this into its pricing;
- The funding strategy statement which was a component part of triennial valuation and was a work in progress. This was an essential part of considering what had to be done to meet liabilities; and
- The risk on cybercrime with a paper on this coming to the Board at its meeting in April 2020.

A Pension Board Member highlighted the risk of academies not paying their contributions. Whilst it was known that this was being addressed by the Pensions Regulator it was questioned if there was enough knowledge of which academies were in arrears. This was thought of greater importance because the Fund would act as the guarantor. It was agreed that the Board would be provided with a list of those in arrears.

The Head of Pensions and Treasury explained that in effect the issue of academies being in arrears had resolved itself over the three year cycle. Academy trusts were in arrears based on a disagreement with the methodology used to calculate the level of their payments. A court case had been initiated and whilst the Pension Ombudsman wanted to examine this issue this was yet to happen. However, this would in effect start all over again

with the triennial valuation taking place and the actuary advising on the payments required to close the gap over a 22 year period. This made the court case less relevant to the main Scheme employer. However, it also meant that these Academies had missed out on the growth that had been achieved over the last three years. The Head of Pensions and Treasury expressed his concern that these Academies may not have adequate reserves in place to address the deficit. A Pension Board Member asked for clarification on whether this was reportable as a breach. There was a desire expressed to ensure that the Board be seen to have done all that was reasonable in the circumstances.

7/20 Good Governance in the LGPS - Scheme Advisory Board

The report was introduced by the Head of Pensions and Treasury and described as a roadmap of activity being undertaken or awaiting action.

The Independent Chair of the Board highlighted the guidance on needing to treat the Fund as separate from the Council. The Chair of the Pension Committee asked if the Chair of the Board had felt misinformed at the last meeting. The Independent Chair explained that it had seemed as if the Council's freeze on recruitment was being applied to the administration of the Fund. However, the Head of HR and Finance Service Centre explained that as soon as it had been explained the recruitment was for the Pension Fund, it had been actioned without delay.

A Pension Board Member asked when the anticipated new guidance on conflicts of interests would be forthcoming. Mr Holloway explained the process that was being undertaken to provide this but wasn't able to provide any detail on timings.

The Independent Chair of the Pension Board noted Appendix B to the report (Croydon's compliance against the Scheme Advisory Board Recommendations) and recommended it would be of interest to the Pension Committee.

8/20 Local Pension Board Training Plan

The Independent Chair of the Pension Board noted the thoroughness of the report and the reassurance provided by all the training and other activity that was happening. It was noted that the Board would take training on cyber security at its April 2020 meeting. The interest of the Pensions Regulator in cyber security was noted.

Pension Board Members noted two potential sources of high quality relevant training: the Centre for Public Administration and Management and the Pensions Policy Institute. The latter was highlighted as providing discounts for members and training thought suitable for new staff.

It was noted that the triennial valuation would come to the Board's meeting in April 2020 which would provide a further opportunity for training.

9/20 Scheme Advisory Board Responsible Investment Guidance Consultation

The report was introduced by the Head of Pensions and Treasury.

Pension Board Members noted that the new guidance would lead to a lot more detail on funding decisions than had previously been the case. There was agreement with the need to be more open on what was being considered in taking decisions. Additionally, that research had shown that Environment, Social and Governance (ESG) Policies were proving successful in gaining engagement with pensions especially from those who were younger.

The Head of Pensions and Treasury described how a pause had been placed on developing a more detailed ESG Policy because of lack of a clarity on the relationship with London CIV. The dynamic was different and it was no longer clear what sits with the Fund as opposed to London CIV. This was highlighting the importance of the governance of the CIV. Mr Holloway cautioned against allowing the CIV to dictate on ESG policy.

The Chair of the Pension Committee asked Mr Holloway if he was aware of other local authority funds finding it difficult when approaching the London CIV as it didn't have the products in place that were being sought. Rather, funds were having to wait for the desired products to become available as they were no longer able to act independently.

Mr Holloway advised that it was the role of the Shareholder Committee to ensure that the London CIV develop desired products. However, the Chair of the Pension Committee noted that the role of the Shareholder Committee was to find products in which there was interest from several funds and that this forced funds to act with others. This did not address the situation where there was not a critical mass for some products. This was causing frustration.

10/20 The Pensions Regulator: Governance and administration risks in public service pension schemes

The Head of Pensions and Treasury introduced the report noting that this had been provided previously but was included in the agenda for the meeting to provide context for the Board's discussions.

In response to concern expressed by a Pension Board Member regarding the difficulties faced in recruiting key persons, Mr Holloway noted that good governance could mitigate the effect; having good procedures and policies in place would provide protection against the loss of key personnel.

11/20 London CIV

The item was introduced by the Head of Pensions and Treasury who suggested it was good for the Board to continue to have oversight of the London CIV and its operation. It was highlighted that it was important for the Fund to consider carefully all investments but that it was a Government

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requirement that investments be made through the CIV. It was noted that the CIV would have benefitted from being more transparent in how investment decisions were made. It was suggested that the CIV needed to respond more to the demand of stakeholders, based on the principle of commonality. There was also concern about the CIV's staff retention.

Mr Holloway stressed that the fund operators were the share owners and that it was not the intention that the pool operators should make investment decisions. It was intended that the Scheme Advisory Board would meet with Chairs to remind them where responsibility lay. Mr Holloway advised that the Pensions Regulator did not have any remit over pooling authorities.

The Head of Pensions and Treasury tabled a paper at the meeting providing Members with a staffing update from the London CIV. An update on the products being developed by the CIV and latest fund that had been launched was being developed to share with the Board.

12/20 Property Transfer

The Head of Pensions and Treasury updated the Board that a report on the Property Asset Transfer had been provided to the Pension Committee.

13/20 Exclusion of the Press and Public

This item was not required at the meeting.

The meeting ended at 4.00 pm

Signed:

Date: