

Report to: Pension Board

Date: 4 February 2019

By: Chief Finance Officer

Title of report: Review of the East Sussex Pension Board

Purpose of report: To provide an on update on the Board key activities and to consider future appointment of Pension Board representatives in compliance Pension Board terms of reference.

RECOMMENDATIONS

The Board is recommended to note:

- 1. The commencement of Pension Board representative's appointment process for a new 4 year terms of office; and**
 - 2. The commencement of the Independent Chair appointment process.**
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1. Background

1.1 The Local Government Pension Scheme (LGPS) (Amendment) (Governance) Regulations 2015 require each Administering Authority to establish a Local Pension Board for the purposes of "assisting" the Scheme Manager (East Sussex County Council). The East Sussex Pension Board was established in April 2015 under the provisions of Section 5 of the Public Service Pensions Act 2013 and regulation 106 of the LGPS Regulations 2013 (as amended).

1.2 The Governance Committee and Full Council agreed the establishment of the Pension Board and its terms of reference. The County Council agreed to delegate authority to the Governance Committee to -

- a. determine the selection process for appointment to the Pension Board;
- b. appointment process and removal of representatives on the Pension Board.

1.3 Regulation 106 specifies that each Administering Authority should establish its own Local Pension Board with responsibility for assisting the Administering Authority as set out below:

- a. securing compliance with the scheme regulations and other legislation relating to the governance and administration of the scheme and any statutory pension scheme that is connected with it;
- b. securing compliance with requirements imposed in relation to the scheme and any connected scheme by the Pensions Regulator;
- c. such other matters as the LGPS scheme regulations may specify.
- d. must have regard to the desirability of securing the effective and efficient governance and administration of the LGPS scheme.

1.4 In addition, the regulatory powers of the Pensions Regulator (tPR) were extended under section 17 and Schedule 4 of the 2013 Act to cover some aspects of public service pension schemes, including the LGPS. The launch of tPR's 21st century trusteeship campaign marks a significant step forward in the level of and approach to the regulator's engagement with pension schemes on governance and trusteeship.

2 East Sussex Pension Board

2.1 The regulations requirement is that the Pension Board membership must include an equal number of employers and employee representatives, which must not be less than 4 in total. **Regulation 107** was amended to allow elected members, i.e. ESCC members to become members of a local pension board. However, **Regulation 107(3)** qualifies this provision by not allowing elected members or officers of ESCC (an administering authority) who are responsible for the discharge of any function under the Principal 2013 Regulations to become a member of the local pension board. Additional members can be added to this board, for example three other people (including an Independent Chair) could be appointed if only 4 employer and employee representatives were appointed but these additional members must not form the majority.

2.2 The East Sussex Pension Board consist of 3 employer representatives; 3 scheme member representatives and a non-voting independent Chair as shown below –

	Representing	Organisation	Board Members	Years on Board
1	Employer	University of Brighton	Sue McHugh	4
2	Employer	Wealden District Council	Cllr. Brian Redman	4
3	Employer	Brighton & Hove C. C.	Cllr. Cllr Kevin Allen	4
4	Scheme Members	UNISON	Angie Embury	4
5	Scheme Members	GMB	Rezia Amin	0.5
6	Scheme Members	Pensioners representative	Diana Pogson	1
7	Independent Chair	-	Richard Harbord	4

2.3 The Pension Board has a monitoring, assisting and reviewing roles and it could be seen as being a critical friend. As such, the general approach of the Pension Board is to seek assurances with evidence from the Pension Fund that the Fund is meeting its objectives, producing the required statements and managing risks so as to achieve the overall objectives as set out above.

2.4 The Board has a legal responsibility to "assist the scheme manager" in securing compliance with its obligations, however it does not have decision making powers for areas of administration and governance of the scheme. The Board is expected to work closely with Pension Officers to ensure that those responsibilities are met. A key part of the Board's role is also ensuring that the Pension Regulator's requirements are met, many of which are focused on efficient and effective administration.

2.5 The Board meetings were scheduled to take place in advance of the Pension Committee meetings to provide the Board with the opportunity to review, discuss, and comment on the Committee agenda and fund policies. In so doing, the Pension Board has been helping to manage the reputational risk of the Pension Fund, and of the Administering Authority, which is more critical now that the LGPS in England and Wales has the Ministry of Housing, Communities and Local Government (MHCLG) and The Pensions Regulator (TPR) as regulators.

2.6 The establishment and initial meetings of the Pension Board coincided with the period of possibly the greatest pressure on Pension Officers, with the Administering Authority having to respond to the MHCLG on the critical consultation documents regarding the proposed pooling of LGPS investments, and also on revised Investment and Management of Funds Regulations. Given the pressure on the Administering Authority, the Pension Board has been able to assist with the Fund decision to be part of the ACCESS Pool.

2.7 The key work of the Pension Board has been about improving Fund governance through refreshing and drafting policy documentation and in ensuring compliance with the Pension Regulator's code of practice. Pension Board have undertaken some significant pieces of work since inception including:

- Monitoring and reviewing of the Pension Committee meetings agenda;
- Development of a policy to Report Breaches of the Law;
- Development of a refreshed Communication Strategy;
- Annual review of the investment managers fees;
- Supporting the development of an Administration Strategy;

- Monitoring and reviewing progress with regard to the LGPS pooling;
- Monitoring and reviewing the triennial actuarial valuation conducted by Hymans Robertson;
- Monitoring and reviewing administration of the Fund, etc.

2.8 There is a budget for the Pension Board within the overall budget of the Pension Fund for travelling and training expenses relating to Scheme Member and Employer representatives, as are the annual salary and expenses of the Independent Chair. The Pension Board is mindful of delivering value for money without compromising the functionality of the Pension Board.

3. Terms of Reference

3.1 The Pension Board operates under Terms of Reference which were agreed by East Sussex County Council (attached as Appendix 1 below) that set out how the Board has been constituted and operates on a day to day basis, which include: Objectives of the Pension Board; Management and operation; Membership; Term of office; Standards of Conduct, etc. Extracts from the terms of reference are that –

- *The term of office for Board members shall be 4 years or such time as resolved by the Governance Committee. The Governance Committee may agree an extension to terms of office up to a further 2 years after which there shall be a further appointment process. Reappointment of existing members is permitted.*
- *The Independent Chair will be the independent member appointed for a term of 4 years by Governance Committee or such time as resolved by the Governance Committee.*

4. Future Board Membership Appointment - Proposal

4.1 The methodology for appointing employer and member representatives is not prescribed by the Regulations. It is therefore up to the Scheme Manager (ESCC) discretion to establish an appropriate process. In accordance with Regulation 107 of the LGPS Regulations 2014, a Local Pension Board must include an equal number of employer and member representatives with a minimum requirement of no less than four in total. In considering the size of the East Sussex Pension Board, the Council has taken into consideration number of factors including:

- The size of the Council's existing Pension Fund governing arrangement and decision making process;
- The number of scheme members, number and size of employers within the Fund and collective arrangements in place for them to make decisions or provide input in relation to Fund matters;
- The direct and indirect cost of establishing and operating the Board.

4.2 Taking into consideration the expiration of the Board members 4 years term on 31st March 2019, and in line with the Pension Board Terms of Reference, it is proposed that –

- The 4 years term of office for existing Board members will be ending on 31st March 2019, which will be followed with the commencement of a new appointment process.
- The Independent Chair four years term of office be ended on 31st March 2019, and the position is re-filled by seeking nominations through advertisement in local newspapers and on ESPF website.
- The Independent Chairman annual allowance to be determined by the Scheme Manager. The Chair will be entitled to claim travel and subsistence allowances for the Pension Board business (including attending training) at rates contained in the Scheme of Members' Allowances within the East Sussex Council's Constitution.

5. Conclusion and recommendations

5.1 The Board is requested to note the Board key activities and the proposal as set-out in para 4.2 of this report.

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Local Member(s): All

Background Documents –
None

Constitution and terms of reference of the East Sussex Pension Board

1. Introduction

- 1.1 The Public Service Pensions Act 2013 requires the establishment of a Pension Board with the responsibility for “assisting the Scheme Manager” in securing compliance with all relevant pensions law, regulations and directions – as well as the relevant Pension Regulator’s codes of practice. This role is one of providing assurance in and governance of the scheme administration.
- 1.2 The *scheme manager (East Sussex County Council – ESCC) will provide the necessary input into the Pension Board to support the Board to deliver on its assurance responsibilities. This may require their attendance at meetings at the request of the Board.
- 1.3 The terms of reference, membership of the Pension Board and any variations thereof are determined by the Scheme Manager, i.e. ESCC.

2. Objectives of the Pension Board

- 2.1 To help to ensure that the East Sussex Pension Fund (ESPF) is managed and administered effectively and efficiently and complies with the code of practice on the governance and administration of public service pension schemes issued by the Pension Regulator.
- 2.2 To provide assistance to East Sussex County Council as the LGPS Scheme Manager in securing compliance with:
 - LGPS Regulations and any other legislation relating to the governance and administration of the LGPS
 - requirements imposed in relation to the LGPS by the Pensions Regulator
 - the agreed investment strategy
 - any other matters as the LGPS regulations may specify.
- 2.3 To assist with securing effective and efficient governance and administration of the LGPS for the East Sussex Pension Fund by:
 - Seeking assurance that due process is followed with regard to Pension Committee, and any identified issues raised by Board members.
 - Retaining an overview of LGPS policy and strategy and business plan timetable.
 - Making representations and recommendations to the Pension Committee as appropriate.
 - Considering and, as required, responding to any Government / Responsible Authority performance data concerning the local fund.
- 2.4. The role of the Board will be oversight of these matters and not decision making.

3. Management and operation of the Pension Board

3.1 The Pension Board shall:

- meet at least 4 times per year
- have the power to establish sub committees or panels as required
- agree a programme of training and development for its members.
- provide the Scheme Manager (ESCC) with such information as it requires to ensure that any member of the Pension Board or person to be appointed to the Pension Board does not have a conflict of interest.
- ensure it effectively and efficiently complies with the code of practice on the governance and administration of public service pension schemes issued by the Pension Regulator.
- consider any issue raised by any Board Member in connection with the Board's work.
- produce an annual report outlining the work of the Board throughout the scheme year, which will help to -
 - inform all interested parties about the work undertaken by the Panel
 - assist the panel in reviewing its effectiveness and identifying improvements in its future operations.
- help to ensure that decisions made by ESCC are fully legally compliant, including consideration of cases that have been referred to the Pension Regulator and/or the Pension Ombudsman; recommending changes to processes, training and/or guidance where necessary;
- monitor administrative processes and supporting continuous improvements;
- ensure the scheme administrator supports employers to communicate the benefits of the LGPS Pension Scheme to scheme members and potential new members.

4. Membership - composition of the Pension Board

4.1 The Pension Board shall consist of:

- a) **3 employer representatives** - employer representatives that can offer the breadth of employer representation for the ESPF. (Regulation 107 of the Pension Act permits elected members to sit on a local pension board. However, under Regulation 107(3), elected members or officers of ESCC (as the Scheme Manager), who are responsible for the discharge of any function under the Principal 2013 Regulations, may not sit on the Pension Board.)
- b) **3 scheme member representatives** - member representatives nominated to ensure a broad representation of scheme membership (active, deferred, and pensioners).
- c) **1 Independent Chair**

4.2 The Pension Board shall be chaired by an Independent Chair.

5. Appointment of members of the Pension Board

5.1 The appointment process has been approved by the Governance committee

5.2 All appointments to the Board shall be by the Governance Committee under delegated authority from the County Council, including the Independent Chair and Vice Chair.

6. Term of office

6.1 The term of office for Board members shall be 4 years or such time as resolved by the Governance Committee. The Governance Committee may agree an extension to terms of office up to a further 2 years after which there shall be a further appointment process. Reappointment of existing members is permitted.

6.2 A Board member who wishes to resign shall submit their resignation in writing to the Pension Board Chair. A suitable notice period must be given, of at least 1 month, to enable a replacement member to be found.

6.3 The role of the Pension Board members requires the highest standards of conduct and the Code of Conduct of the East Sussex County Council will apply to the Board's members. The County Council's Standards Committee will monitor and act in relation to the application of the Code.

6.4 Poor performance will result in corrective action being taken, and in exceptional circumstances the removal of the Board member, which will be in accordance with the Code of Conduct of the East Sussex County Council.

7. Independent Chair

7.1 The Independent Chair will be the independent member appointed for a term of 4 years by Governance Committee or such time as resolved by the Governance Committee. A job description approved by the Committee will be used to identify the candidate best suited to the role.

7.2 It will be the role of the Chair to -

- Settle with officers the agenda for a meeting of the Board
- Manage the meetings to ensure that the business of the meeting is completed
- Ensure that all members of the Board show due respect for process and that all views are fully heard and considered
- Strive as far as possible to achieve a consensus as an outcome
- Ensure that the actions and rationale for decisions taken are clear and properly recorded.

7.3 Removal of the independent chair will be in accordance with the Code of Conduct of the East Sussex County Council and the County Council's Standards Committee decision.

8. Support arrangements

8.1 ESCC will provide secretariat, administrative and professional support to the Pension Board and as such will ensure that:

- meetings are timetabled for at least four times per year
- adequate facilities are available to hold meetings
- an annual schedule of meetings is produced
- suitable arrangements are in place to hold additional meetings if required papers are distributed 7 days before each meeting except in exceptional circumstances
- minutes of each meeting are normally circulated 7 working days following each meeting.

9. Expert advice and information

- 9.1 The Board will have access to professional advice and support provided by officers of East Sussex Pension Fund and, via them and where appropriate, advisers to the East Sussex Pension Fund.
- 9.2 Insofar as it relates to its role, the Pension Board may also:
- request information and reports from the Pension Committee or any other body or officer responsible for the management of the Fund
 - examine decisions made or actions taken by the Pension Committee or any other body or officer responsible for the management of the Fund.
 - access independent professional advice from actuaries, other independent advisers, and investment managers as required, where there are major decisions, i.e., investment strategy, triennial valuation, etc.,
 - access to professional advice regarding non major decisions will require the approval of the Pension Committee for additional resources.

10. Knowledge and Skills

- 10.1 Board members will be required to have the 'capacity' to carry out their duties and to demonstrate a high level of knowledge and of their role and understanding of:
- the scheme rules
 - the schemes administration policies
 - the Public Service Pensions Act (i.e. being conversant with pension matters relating to their role).
- 10.2 A programme of updates and training events will be organised. Board members will be encouraged to undertake a personal training needs analysis or other means of identifying any gaps in skills, competencies and knowledge relating to Pension Board matters.

11. Minutes

- 11.1 The minutes and any consideration of the Pension Board shall be submitted to the Pension Committee.

12. Standards of Conduct

- 12.1 The main elements of East Sussex County Council's Code of Conduct shall apply to Board members.

13. Access to the Public and Publication of Pension Board information

- 13.1 Members of the public may attend the Board meeting and receive papers, which will be made public in accordance with the Access to Information Rules in East Sussex County Council's Constitution.
- 13.2 Up-to-date information will be posted on the East Sussex Pension Fund website showing:

- Names and information of the Pension Board members
- How the scheme members and employers are represented on the Pension Board
- Responsibilities of the Pension Board as a whole
- Full terms of reference and policies of the Pension Board and how it operates.

14. Expense reimbursement, remuneration and allowances

14.1 All Pension Board members will be entitled to claim travel and subsistence allowances for attending meetings relating to Pension Board business (including attending training) at rates contained in the Members' Allowances Scheme in the East Sussex Council's Constitution. The Chair's remuneration will be agreed on appointment. All costs will be recharged to the Pension Fund.

15. Accountability

15.1 The Pension Board collectively and members individually are accountable to the Scheme Manager (ESCC), the Pensions Regulator, and the National Scheme Advisory Board. The National Scheme Advisory Board will advise the Responsible Authority (in the case of the LGPS the DCLG) and the Scheme Manager (in this case East Sussex County Council). The Pensions Regulator will report to the Responsible Authority (again, DCLG) but will also be a point of escalation for whistle blowing or similar issues.

15.2 In addition the Pension Board will continue to provide regular updates to the Pension Committee governance process. ESPF officers will be responsible for the contractual arrangements.

16. Decision Making Process

16.1 Employer representatives and scheme member representatives have voting rights albeit the Board is expected to operate on a consensus basis.

16.2 In the event of an equal number of votes being cast for or against a proposal there shall be no casting vote but the proposal shall be considered to have been rejected. The scheme manager shall be alerted when a decision is reached in this manner.

17. Attendance and quorum

17.1 Four of the voting members of the Pension Board shall represent the quorum for Board meetings to discharge business. The Chair or Vice Chair must be present for any meeting to proceed.

17.2 Advisors and co-opted persons do not count towards the quorum.

17.3 No alternate representation or substitution is allowed in the event that a member is unable to attend a meeting of the Board, due to skill requirements and level of training required.

18. Conflicts of Interest

18.1 The Public Service Pensions Act 2013 requires that members of the Pension Board do not have conflicts of interests. As such all members of the Pension Board will be required to declare any interests and any potential conflicts of interest in line with legal requirements in the Public Service Pensions Act 2013 and the Pension

Regulator's code. These declarations are required as part of the appointment process, as well as at regular intervals throughout a member's tenure.