

Report to: Pension Board

Date of meeting: 1 June 2021

By: Chief Finance Officer

Title: Governance Report

Purpose: To provide an update on various governance workstreams completed and changes effecting the LGPS and Fund

RECOMMENDATIONS

The Pension Board is recommended to:

- 1) Note a change in the wording of the Internal Dispute Resolution Policy
 - 2) Note and comment on a new Risk Management policy
 - 3) Note the potential change in The Pension Regulator (TPR) expectations
 - 4) Note and comment on the new approach to request for fees to be waived due to financial hardship
 - 5) Note and comment on the revised Governance and Compliance Statement
 - 6) Approve the drafting of an annual report of the Pension Board to be considered at the next Pension Board meeting.
 - 7) Note the update on the McCloud Working Group
 - 8) Note developments on the SAB Good Governance project
 - 9) Note the update on AVC's
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1. Background

1.1 This report is brought to the Pension Board to provide an update on the steps being taken to adopt good practice and ensure compliance with regulatory requirements for the East Sussex Pension Fund (the Fund or ESPF).

1.2 This report outlines a number of changes to Pension Fund Policy which will be taken to Pension Committee on 22 June 2021 for approval.

2. Internal Dispute Resolution Procedure (IDRP)

2.1 The Fund's Officers have been undertaking a review of current documentation being used, including policies and procedures. As part of this review it was identified the wording of the IDRP differs from that used in primary legislation when discussing who is able to raise a complaint.

2.2 It is not believed that the current wording has led to any of our stakeholders being disadvantaged. However, for future clarity, the IDRP could be adapted to mirror the wording in Pensions Act 1995.

2.3 It is recommended that the new wording be adopted in order to clearly demonstrate the Fund's IDRP is consistent with legislative requirements. The new wording can be found in **Appendix 1** to this document in red on page 4.

3. Risk Management policy

3.1 The Fund has in place a risk register which is made available to the Pension Committee and Pension Board at each of their quarterly meetings. This allows the risk register to be reviewed, the appropriateness of the risks identified, and the mitigating actions considered.

3.2 Risks are currently identified and reviewed in an ad hoc manner; the process not being supported by a formal policy. Adopting such a policy will clarify the roles and responsibilities of all those associated with the Fund – including Officers, Suppliers and Pension Committee members. Adopting a formal policy will bring a consistent approach to the identification of risks.

3.3 It is recommended that the Pension Committee agree the adoption of the new risk management policy at their meeting on 22 June 2021, which can be found in **Appendix 2** to this document.

4. Regulatory change

4.1 The Pensions Regulator (TPR) has launched a consultation regarding merging the various Codes of Practice it has published. This will be done in several stages. Code 14, which covers public service pension schemes, will be included in the first stage. The Chair of the Pension Board has responded to the consultation; a copy is included in **Appendix 3**.

4.2 Whilst we do not yet know what changes will be made to TPR's expectations, it appears it may be looking for schemes to have a distinct Business Continuity Plan to the host authority. This will require the Fund to develop a greater understanding of the mitigations in place surrounding Business Continuity already in place and those surrounding cyber resilience. Once the consultation is complete the new Code of Practice would need to be laid before Parliament, meaning any new document will not be created in the near future. Developments are to be monitored with work being undertaken in the year ahead to establish a compliant position as soon as possible.

4.3 Some of the wording used in the new Code of Practice is likely to change; with the scheme managers and trustees of private occupational schemes being referred to collectively as the governing body. It is understood the reason for this change is allow TPR to discuss issues which cover a range a scheme types within the same document. The new Code is intended to be a single, modular, Code which can be used by all scheme types; meaning much of the content will not be relevant to the Fund.

4.4 The Department for Work and Pensions (DWP) launched a consultation on new regulations regarding pension transfers. This includes scheme managers and trustees having additional power to prevent transfers from occurring. Details of the consultation can be found at [Pension scams: empowering trustees and protecting members consultation - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/pension-scams-empowering-trustees-and-protecting-members-consultation). Officers are reviewing the information in the consultation, a response for which has to be submitted by 10 June 2021.

5. Financial hardship policy

5.1 It is not uncommon for the Fund to receive requests for information to which the person making the request does not have an automatic entitlement, without charge. Examples could include a pensioner requiring a transfer valuation in the case of a divorce, or an active member requiring a second transfer quote within a 12-month period. During 2021, a small number of Pension Fund members have approached the Fund stating they are unable to pay the fee for the information on the grounds of financial hardship. There is currently no policy to enable the review of financial hardship to negate the charge, as a result Officers believe it would be valuable to establish a clear process for future use.

5.2 By developing a process Officers can be clear about the definition of financial hardship and how this can be evidenced. It will allow for transparent decision making, evidencing compliance

with the Public Service Equality Duty. A clear and codified policy will also allow the Fund to demonstrate the needs of all its stakeholders are being considered.

5.3 The draft financial hardship policy is included in **Appendix 4** of this report for comment.

6. Governance and Compliance Statement

6.1 Local Government Pension Scheme (LGPS) funds are required to publish and keep under review a Governance and Compliance Statement. Regulation 55 of the LGPS Regulations 2013 prescribes the content of the governance compliance statement. The governance compliance statement should outline the overall governance structure in place including whether the authority delegates its LGPS functions to a committee or officer. If delegation has taken place the report should then lay out the terms, structure and operational procedures of the delegation; the frequency of meetings; whether any such committee includes representation of scheme members or employers and whether these representatives have voting rights; the extent delegation complies with statutory guidance; details relating to the Local Pension Board.

6.2 The Governance and Compliance Statement must be kept under review and updated following material change. The Fund must consult persons it considers appropriate and publish the statement.

6.3 In addition to the details within the regulation, the Chartered Institute of Public Finance and Accountancy (CIPFA) require the Governance and Compliance Statement to be included in the annual report. CIPFA's guidance for LGPS Funds preparing the annual report suggests the Statement should include the overall governance structure in place including, in addition to the regulations, application of how the CIPFA knowledge and Skills Framework has been applied; how oversight of the asset pool takes place and; policies and procedures for managing conflicts of interest.

6.4 As a result of the Good Governance review which concluded in 2020 there have been several changes to the last approved statement in September 2019.

6.5 The main changes include reference to the Terms of Reference included within the report; commentary on the conflicts of interest policy; alignment of content across the Committee and Board and; more detail on operational application of the committees.

6.6 The revised Governance and Compliance Statement is included in **Appendix 5** for discussion.

7. Annual Report of the Pension Board

7.1 While updating the appendix for Terms of Reference within the revised Governance and Compliance Statement, officers identified that the requirement for the Pension Board to create an annual report to be shared with the scheme manager has not yet been completed. The annual report of the Board should outline the work of the Pension Board throughout the scheme year to inform interested parties about the work undertaken by the Board and assist the board in reviewing its effectiveness and identifying improvements in future operations. This report should be shared with the Pension Committee once complete.

7.2 Officers recommend that the Chair in liaison with officers prepare a draft report for review and discussion at the next Pension Board.

8. McCloud Working Group

8.1 A second meeting of the McCloud Working Group took place on 22 April 2021. Attended by:

- Lynda Walker (Local Pension Board)
- Sian Kunert (Head of Pensions)
- Paul Punter (Head of Pensions Administration)
- Dave Kellond (Compliance & Local Improvement Partner)
- Michael Burton (Pensions Manager – Governance & Compliance)
- Tim Hillman (Pensions Manager - Employer Engagement)
- Peter Riedel (Senior Benefits & Governance Consultant, Hymans)
- Susan McKenzie (Project Manager, Hymans)

8.2 The McCloud Working Group is responsible for overseeing the implementation of the McCloud ruling in the Fund within a prescribed timeframe and addressing any gaps and barriers preventing progress and ultimately delivery of the project. The Working Group will:

- oversee the McCloud project, drive the delivery and receive project updates;
- tackle employer related issues that become or continue to be a barrier to the effective collection and use of data; and
- be aware of and manage dependencies across third parties.

8.3 The Group further discussed the data gathering processes required for implementation of the possible scheme remedies required to the statutory underpin in response to the McCloud judgement. A decision was taken to make the relevant data requests of employers by the end of May 2021, with deadline of 31 August 2021. Therefore, allowing employers sufficient time to collate the requisite data.

8.4 A decision in principle was made by the Working Group to request data for all employees, not just those identified in scope in the initial Hymans report.

8.5 The Pension Manager for Employer Engagement and the Compliance and Local Improvement Partner will meet in May 2021 to agree the specific format and timing of the request to employers.

8.6 Following publication of the Government response to the consultation to the transitional arrangements to the 2015 schemes in relation to the wider public sector pension schemes, a further publication is expected relating specifically to the Local Government Pension Scheme.

9. Good Governance Project

9.1 The Scheme Advisory Board (SAB) begun working on the Good Governance Project with its appointment of Hymans Robertson in January 2019 to examine the effectiveness of current LGPS governance models and consider alternatives or enhancements to existing models to strengthen LGPS governance going forward. The origins of the project can be tracked back further to the Shadow Scheme Board which was established to assist in the design of the new 2014 scheme to consult on proposals to separate the pensions function from administering

authorities to resolve perceived conflicts of interest of elected members acting in the best interest of the local authority rather than scheme members whom the responsibility and fiduciary responsibility of the fund sits.

9.2 The SAB Good Governance project started with a Phase 1 report in July 2019 which considered the effectiveness of current LGPS governance models and consider alternatives to strengthen LGPS governance in the future recognising that the LGPS had dramatically evolved over the last decade with the complexity of scheme benefits and regulation, local government funding cuts, pooling of investments, oversight role of the Pensions Regulator and introduction of Local Pension Boards. The results from the phase 1 project suggested that greater ring fencing of the Pension Fund and improved practice was the most appropriate way forward rather than separating the Pension Fund from the Local Authority body or other alternative models. In addition, the report set out a number of proposals for consideration to reflect best practice within the industry.

9.3 From the July 2019 report the SAB then agreed that two working groups would be established to take forward Phase 2 of the project, one to explore ways in which the improvements in the standards of governance and administration could be achieved and the second to examine how these improved standards could be independently monitored and measured.

9.4 In November 2019 the project produced its phase 2 report. It has been envisaged that all proposals within the phase 2 report will be enacted through new statutory governance guidance. One of the key areas of change proposed within the report to improve accountability of fund governance was the proposal that each administering authority must have a single named officer who is responsible for the delivery of the pension function who is suitably qualified and experienced with the capacity to assume the role.

9.5 Other key recommendations out of the report were the requirement for a conflicts of interest policy; the production of a policy on representation and engagement of scheme members and scheme employers within the governance of the fund; increased requirements in knowledge and skills of all those involved in the pension fund, including committees and S151 officers; existence of an administration strategy and Key Performance Indicators (KPI's); inclusion of the Committee in its business planning process.

9.6 As a result of the November 2019 phase 2 report the Pension Committee approved at its meeting in November 2019 to undertake an early project to review its governance structure in line with the recommendations. This project was carried out in the latter part of 2019 and implementation of recommendations from the consultants on this project was completed with the approval of a conflicts of interest policy at the November 2020 meeting.

9.7 The major changes implemented through the Fund's Governance review project were:

- new defined terms of reference for the Pensions Committee (approved June 2020)
- new defined terms of reference for the Pensions Board (approved June 2020)
- Revised officer delegations to incorporate Pension Fund management (approved June 2020)
- Production of a Communication Strategy (approved June 2020)
- Creation of a Breaches Policy and log (approved June 2020)

- Pension Fund Team structure, including the creation of a Head of Pensions in line with SAB proposals as a single named officer who is responsible for the delivery of the pension function (approved September 2020)
- Reviewed Administration Strategy (approved September 2020)
- Pension administration service standard agreement (approved September 2020)
- Conflicts of interest policy and log (approved November 2020)

9.8 Since the November 2019 SAB phase 2 report the SAB published its phase 3 report in February 2021. The phase 3 report provides more details as to how LGPS funds should approach the previous recommendations.

9.9 Within the recommendations for the Fund's Governance Review project there are longer term priorities to carry out a review of the effectiveness of the revised Pension Fund governance, a review of risk management and the success of implementing the recommendations once there has been sufficient time for these to embed in.

9.10 All of the recommendations in the SAB Good Governance project still require new statutory governance guidance from the Ministry of Housing Communities and Local Government (MHCLG) to effectively implement the proposals. The Fund is currently awaiting this guidance to ensure the changes it has implemented are fully compliant to then consider further changes to the Fund's governance.

10. Additional Voluntary Contributions AVC's

10.1 The LGPS Regulations allow an active member to enter into arrangements to pay additional voluntary contributions (AVCs) or to contribute to shared cost additional voluntary contribution arrangements (SCAVCs) on top of their LGPS pension. It is for the Administering Authority to enter into an agreement with a suitable provider, that is approved under the Finance Act 2004, and registered under Pensions Act 2004 (Reg 17(2) LGPS13). For the members of the Fund the provider for AVC's is Prudential. The market value for the ESPF members AVC assets was reported as £22m as at March 2020.

10.2 During 2021 the Fund started to receive a handful of complaints relating to the service provision by the Prudential. The key issues with service delivery include late contribution investing; long waits on the helpline; lack of responses to written requests; and delayed claim settlements on deaths, transfers and retirements.

10.3 Prudential have been a key player in the LGPS AVC market for a number of years and are the provider for the majority of LGPS funds with coverage of 72 funds. Other main LGPS providers are Standard life and Scottish Widows, although some new providers are starting to access this market.

10.4 Officers have since met with Prudential to understand and resolve the service delivery issues. Prudential apologised for the poor service delivery and highlighted the change in back office service supplier and systems in late 2020 leading to many of the problems. The Prudential gave the Fund reassurance explaining an increase in staffing numbers to resolve the backlogs in

work. The Prudential advised that telephone lines are still however busy and this would likely continue until the end of June.

10.5 The Fund has a duty to offer an AVC and as the policyholder it should review whether it is still appropriate. Fund Officers would like to propose a detailed review of the AVC offering to members to ensure our members are receiving value for money in their AVCs, that the funds are appropriately managed and that a suitable suite of investment options are available. Fund officers suggest waiting to complete a review until the Prudential have had time to implement the service improvements.

11. Conclusion

11.1 The Pension Board is recommended to note the: -

- amendment to the IDRPs;
- implementation of the Risk Management Policy;
- development of the Financial Hardship Policy;
- revisions to the Governance and Compliance Statement
- possibility of changes to TPR's Codes of Practice
- update of the McCloud working group
- developments on the SAB Good Governance project
- update on AVC's

11.2 The Pension Board is asked to approve the drafting of an annual report for discussion at the next Board meeting.

IAN GUTSELL
Chief Finance Officer

Contact Officer: Sian Kunert, Head of Pensions
Tel. No. 07701394423
Email: sian.kunert@eastsussex.gov.uk