

<b>COMMITTEE:</b> <b>Pensions Committee</b>	<b>DATE:</b> <b>19 November 2014</b>	<b>CLASSIFICATION:</b> <b>Unrestricted</b>	<b>REPORT NO.</b>	<b>AGENDA NO.</b>
<b>REPORT OF:</b> <b>Acting Corporate Director of Resources</b>  <b>ORIGINATING OFFICER(S):</b> John Jones – Pensions Consultant Bola Tobun - Investment & Treasury Manager		<b>TITLE:</b> <b>LGPS - The structure and Governance Arrangements of the LBTH Pension Fund</b>  <b>Ward(s) affected: N/A</b>		
<b>Community Plan Theme</b>		<b>All</b>		
<b>Strategic Priority</b>		<b>One Tower Hamlets</b>		

## 1. SUMMARY

This report outlines the proposed changes to the structure and governance arrangements of Local Government Pension Schemes (LGPS) brought about by the Public Service Pensions Act 2013 and associated Regulations. Members are provided with options from which to determine their preference for the future governance structure of the LBTH Pension Fund to comply with the new regulations.

The report also recommends that powers be delegated to the Acting Corporate Director of Resources and his officers to develop a structure (in consultation with relevant parties including the chair and deputy chair of the Pensions Committee (PC)) to facilitate the new governance arrangements of the Fund. The outline structure will be brought back to a future PC meeting for approval.

## 2. RECOMMENDATIONS

Members of the Pensions Committee are asked to:

- To note the proposed changes in the Governance arrangements for LGPS Pension Funds with effect from 1 April 2015;
- To recommend to Full Council, the creation of Pensions Board for the Tower Hamlets Pension Fund as set out in this report;
- To delegate the creation of the proposed structure (in line with members preference) to The Corporate Director of Resources and his officers in consultation with legal and the chair/deputy chair of the PC.

## 3. REASON FOR DECISIONS

- 3.1 Following the Independent Public Service Pensions Committee report of 2011, the Public Service Pensions Act 2013 gave powers to the Secretary of State to introduce a number of far reaching changes to the administration of the LGPS.
- 3.2 A new local government pension scheme has been effective since 1 April 2014 and the LBTH Pension Fund has implemented the changes.
- 3.3 Aside from reform to the administration of the pension scheme, the 2013 Act also gives the Secretary of State power to implement changes to the governance arrangements introducing additional requirements alongside increased flexibility to the structure of the decision making bodies.

#### **4. BACKGROUND**

- 4.1 Over the past few years there have been major changes proposed by Government to the way Local Authority Pensions Funds are to be managed and pensions delivered to beneficiaries. This has been set against the background of rising costs associated with increasing longevity and a concern about the balance of cost sharing between taxpayer and beneficiaries. Major reforms have already been implemented in the administration of pensions and the introduction of a career average earnings scheme, and proposals to improve investment performance are currently the subject of a separate consultation process. Further proposals to improve scheme governance have also been issued and are the subject of this report.
- 4.2 The genesis of these changes was the “Hutton Report”. Government commissioned Lord Hutton to chair the Independent Public Service Pensions Commission to review public service pensions and to make recommendations on how they can be made sustainable and affordable in the long term, and fair to both public sector workers and the taxpayer. The recommendations made by Lord Hutton were accepted by the Government and were carried forward into the Public Service Pensions Act 2013 (“the 2013 Act”).
- 4.3 A key aim of the reform process is to raise the standard of management and administration of public service pension schemes and to achieve more effective representation of employer and employee interests in that process.
- 4.4 The Public Service Pensions Act 2013 included two main provisions to achieve this policy objective. Firstly, a requirement for responsible authorities such as DCLG to establish at national level a Scheme Advisory Board with responsibility to provide advice to the Department on the desirability of changes to the Scheme. And secondly, in cases where schemes like the Local Government Pension Scheme are subject to local administration, for scheme regulations to provide for the establishment of local pension boards to assist administering authorities with the effective and efficient management and administration of the scheme.
- 4.5 This report sets out how these changes will impact on the arrangements for managing the London Borough of Tower Hamlets Pension Fund.

#### **5. CURRENT ARRANGEMENTS**

- 5.1 The current arrangements for the management of the LBTH Fund have been in place for a considerable period of time and in line with the practice across most London Boroughs. LBTH is the administering authority for the Pension Fund, for the Council itself and a number of scheduled and admitted bodies. The Fund itself has now grown to c£1billion and is one of the largest in London with 18,667 members.
- 5.2 The Council has delegated the management of the Fund to the Pensions Committee comprising seven Councillors (representing the political balance of the authority) one admitted body and one trade union representatives. Pensions Committee members operate in a quasi-trustee capacity. In line with current best practice the Fund is advised by actuarial, investment consultant and independent adviser.

- 5.3 The Pensions Committee have in turn delegated responsibility as well as the implementation of its decision to the Acting Corporate Director of Resources and his officers who monitor activity, performance and oversee the administration and investment management duties of the Fund.

## **6. FUTURE PROPOSALS**

- 6.1 The proposals issued by Central Government in the form of two sets of draft regulations significantly change this arrangement and introduce new duties and responsibilities on local authorities as well as new bodies at a national level. The proposals are designed to improve and strengthen fund governance and decision making and reflect the arrangements in place for large corporate schemes. Whilst concerns have been raised about some aspects of the new arrangements, the deadline for implementation of 1 April 2015 means that LBTH now needs to put in place new arrangements to meet the new requirements.
- 6.2 At national level a Scheme Advisory Board will be established to advise the Secretary of State on the desirability of making changes to the LGPS, and to administering authorities (i.e. such as LBTH ) on the administration and management of the LGPS and funds locally. The Chair will be appointed by the Secretary of State and there will be further 2-12 members of this board.
- 6.3 At local level local pensions boards must be established to “assist” the local administering authority to secure compliance with LGPS regulations, and generally to ensure the efficient and effective governance of the LGPS.
- 6.4 The new arrangements also introduce a role for the Pensions Regulator for the explicit regulatory oversight of pension schemes whose role will be to issue Codes of Practice on the governance, standards of conduct and general practices expected of local government pension schemes. To date the Regulator has said that their role will be to educate and enable and will only enforce action in extreme cases when authorities may disregard statutory requirements. Nonetheless, this does introduce a fresh regulatory dimension for local authorities to take into account in future.
- 6.5 The new arrangements as they impact directly on LBTH are set out below.

## **7. THE SCHEME MANAGER**

- 7.1 The 2013 Act requires local authority funds to have a scheme manager to be the administering authority for the Fund. This will be Tower Hamlets Council and continues with the current arrangement. The Council will still have overall responsibility for the management of the Pension Fund and scheme, but this will in future be subject to a new Governance framework.
- 7.2 The scheme manager has ultimate responsibility for the administration and management of the scheme locally. The role of the scheme manager can be delegated by the Council to a Committee such as the Pensions Committee and it is recommend that this continues to be the case in future.

## **8. THE PENSIONS BOARD**

- 8.1 The requirement to establish a local Pensions Board represents a major change to the governance arrangements locally for Pension Fund management and administration. Section 5 of the Act requires that each Scheme Manager is advised and assisted by a pension board whose role

will be to help ensure compliance with the legislation in the governance and administration of the scheme, together with any role or function the fund chooses to grant to the board.

- 8.2 The Pension Board must consist of an equal number of employer and member representatives with the draft regulations requiring that there be a minimum number of four in total. The draft regulations also propose that in addition to any member and employer representatives, pension boards can also appoint “others” to sit provided the number of these “others” does not exceed the total number of employer and member representatives. The draft regulations have been amended in respect of elected members sitting on the pension’s board. The original proposal was that elected councillors could not sit as an employer or a member representative. However, the latest draft regulations permit elected members to sit on the Pensions Board providing they are not Members of the Pensions Committee itself. Elected councillors can also sit on the Board as “others” as part of the overall Board membership.
- 8.3 The Scheme Manager is responsible for ensuring that there is no conflict of interest arising from the appointment of Board members, and individual members have a duty to declare any interests to enable the Scheme Manager to identify such conflicts should they arise. At this stage further guidance is awaited on what this means in practice.
- 8.4 Board members must also meet the knowledge and understanding requirement through relevant training and education to be able to effectively discharge their duties, and the scheme manager will be responsible for ensuring this. This is a sensible and welcome requirement given the complexities in managing Pension Funds and will help strengthen scheme governance.
- 8.5 Officers have given consideration to how best to take forward these draft proposals given the short time available between now the effective implementation date of 1st April 2015. At the time of writing the final regulations and any accompanying guidance has not yet been issued, although it is expected that there will be no fundamental changes to the consultation documents.
- 8.6 It is suggested that at this stage the new Pensions Board is made up of 5 members to include 2 each of employer and employee representatives and an independent Chair. Such a group would meet the regulatory requirements of a minimum of 4 and provide for the appointment of someone of experience with knowledge and expertise of the LGPS and investment issues. A smaller group will be easier to set up and be up and running in the short time available before the implementation date next April 2015.
- 8.7 Both the employer and member representatives must have relevant experience and the capacity to represent employers/members on the Pensions Board. This is important to ensure that members of the new Pensions Board have the background and capacity to undertake their new duties. The process to identify and recruit these representatives should commence soon in order to have the new Board in place by April 2015.

## **9. JOINT SCHEME MANAGER AND PENSIONS BOARD**

- 9.1 The draft regulations do provide for the creation of a joint scheme manager and pensions board through one committee, which in practice could be the

Pensions Committee. On the face of it this has some attractions not east building on the existing Committee. However, any such arrangement must be approved in writing by the Secretary of State and could be subject to conditions. The Secretary of State can withdraw approval if such conditions are not met or if in his opinion such an arrangement is no longer appropriate. In practice, a combined body would be subject to two separate legal codes under both the Local Government Act 1972 and associated legislation, and the Public Service Pensions Act 2013.

9.2 A combined body might also have difficulty in ensuring that all members had both knowledge and understanding that is currently expected of elected members and the experience and capacity required of local pension board members. There could also be difficult and different issues about conferring voting rights and compliance with local government law on the political composition of committees.

9.3 Moreover, to promote good governance, two bodies should be established as each has a separate and distinct role to discharge. There could be a particular difficulty with conflicts of interest arising from self –regulation i.e. a Committee cannot effectively scrutinise and review itself. For all these reasons it is recommended that a separate Pensions Board be established.

## **10. COSTS**

10.1 The expenses associated with the setting up and running of the new Pensions Board and the contribution to the National Scheme Advisory Board will be met from the Pension Fund as part of the costs of administering the scheme. The Committee will need to consider whether members of the Board and the Board Chair will be remunerated and if so the basis of this. The Fund already employs an independent investment adviser and actuary and investment consultant and this may provide a reference point and context to consider this issue.

## **11. TERMS OF REFERENCE**

11.1 On the basis that the Committee agrees to establish a separate Pensions Board as recommended in this report detailed terms of reference will need to be drafted and agreed. It is proposed that work now commence on this and be the subject of a report to the next Committee meeting.

11.2 For clarification, the implementation date of 1 April 2015 means the date by which the new Pensions Board must be formally established under the Council's constitution and not when it must first meet. The latest consultation document proposes that the local pension board's constitution (around voting rights, sub-committees, payment of expenses etc.) will be left to local discretion as opposed to having to comply with the 1972 Local Government Act.

11.3 The framework for the future governance of the Tower Hamlets Fund would therefore include the main Pensions Committee and the new Pensions Board. The report to the next meeting would consider in more detail the range and responsibilities of these two bodies together with the frequency of meetings and reporting arrangements.

11.4 Issues to be considered would include whether the Pensions Board should meet on the same day as the Pensions Committee; whether the Board

Chair and Members attend the Pensions Committee; and how strengthening overall governance and the monitoring of pensions administration fits into this overall framework.

- 11.5 A key issue to be addressed will be the working relationship between the new Pensions Board and the existing Pensions Committee. There will need to be a shared understanding of respective roles and responsibilities and how the groups involved can best work constructively for the benefit of the Fund overall and minimising the potential for any conflict.

## **12. FINANCIAL IMPLICATIONS**

- 12.1 The Fund will be required to facilitate the operation of the new board and this will require additional resources. The cost will be met from the Fund's own resources and it is not proposed at this time to increase the staffing of the Fund but for the work to be absorbed within available resources.

## **13. COMMENTS OF THE CHIEF FINANCIAL OFFICER**

- 13.1. The comments of the Acting Corporate Director of Resources are incorporated in the report.

## **14. LEGAL COMMENTS**

- 14.1 As stated in the body of the report, the government has introduced wide-ranging changes to the administration and governance of the Local Government Pension Scheme. The changes were introduced by the Public Service Pensions Act 2013. There are currently draft regulations out for consultation – The Local Government Pension Scheme (Amendment) (Governance) Regulations 2014. The intention of the draft regulations is to ensure that the Local Government Pension Scheme is well managed at both national and local levels. The regulations also set out proposals for how the future costs of the scheme to employers and taxpayer will be controlled. The consultation period ends on the 21st November 2014.
- 14.2 Regulations 106 to 109 make provision for each administering authority to establish a local pension board to assist it to comply with its legal obligations relating to its pension scheme. A local authority that discharges its pension functions through a committee, can with the approval of the Secretary of State appoint the existing committee to be the local pension board. The regulations require the local pension board to be established by the 1st April 2015.
- 14.3 The effect of the proposed new regulations is set out within the body of the report. The substantive provisions for the purposes of making appointments to the local pension boards and the Scheme Advisory Board commence on the 1st January 2015, whilst all the provisions will come fully into force from the 1st April 2015. The proposed changes are brought about by legislative reform and so compliance with the new regulations is mandatory. Sanctions or other possible government intervention can be imposed on non-complying administrative authorities.
- 14.4 The Constitution does not provide the Pensions Committee with the power to create a Pensions Board. Full Council will need to make the decision on the recommendation of the Pensions Committee.
- 14.5 When deciding whether or not to proceed with the project, the Council must have due regard to the need to eliminate unlawful conduct under the

Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not (the public sector duty). Some form of equality analysis will be required which is proportionate to proposed projects and their potential impacts.

## **15. ONE TOWER HAMLETS CONSIDERATIONS**

- 15.1 The employer's contribution is a significant element of the Council's budget and consequently any improvement in investment performance will reduce the contribution and increase the funds available for other corporate priorities.
- 15.2 A viable pension scheme also represents an asset for the recruitment and retention of staff to deliver services to the residents.

## **16. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 16.1 There is no Sustainable Action for A Greener Environment implication arising from this report.

## **17. RISK MANAGEMENT IMPLICATIONS**

- 17.1 There are no major risks foreseen from the implementation of these regulations. The main challenges would be sourcing and training individuals to sit on the new Pension Board.
- 17.2 The rigorous robust management of LBTH Pension Fund results in better quicker and more effective decision making which can lead to better Fund performance and reduction in the contribution required from the Council towards the Fund.

## **18. CRIME AND DISORDER REDUCTION IMPLICATIONS**

- 18.1 There are no crime and disorder reduction implications arising from this report.

## **19. EFFICIENCY STATEMENT**

- 19.1 The monitoring arrangement for the Pension Fund and the work of the Pension Fund Investment Panel should ensure that the Fund optimises the use of its resources in achieving the best returns for the Council and members of the Fund.

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### **LOCAL GOVERNMENT ACT 1972 (AS AMENDED) SECTION 100D**

#### **LIST OF "BACKGROUND PAPERS" USED IN THE PREPARATION OF THIS REPORT**

##### ***Brief description of "background papers"***

*Hymans Robertson's Briefing notes, Hymans Robertson's quarterly reports and WM Quarterly Performance Review*

##### ***Name and telephone number of holder And address where open to inspection***

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