

Tower Hamlets Council LGPS Scheme

PENSIONS BOARD

Friday, 20 November 2015 at 10.00 a.m.

Room C1, Town Hall, Mulberry Place, 5 Clove Crescent, London E14
2BG

This meeting is open to the public to attend.

Members:

Chair: To be appointed

Vice-Chair: To be elected

David Stephen Thompson, (Representing Retired/Deferred Pension Fund Members)

Vacancy, (Representing Active Admitted/Statutory Bodies Pension Fund Members)

Councillor Dave Chesterton, (Representing Pension Fund Employers)

Andrew Crompton, (Representing Admitted Bodies Employers)

Minesh Jani, (Representing Pension Fund Employers)

Deputies

None currently appointed

Contact for further enquiries:

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Web: <http://www.towerhamlets.gov.uk/committees>

Scan this code
to your mobile
phone to view
Committee
website.

1. APOLOGIES

2. DECLARATIONS OF DISCLOSABLE PECUNIARY INTEREST

To note any declarations of interest made by Members, including those restricting Members from voting on the questions detailed in Section 106 of the Local Government Finance Act, 1992. See attached note from the Monitoring Officer.

3. UNRESTRICTED MINUTES

To confirm as a correct record of the proceedings the unrestricted minutes of the meeting of the Pensions Board held on 1 October 2015.

4. TERMS OF REFERENCE

To note the Board's terms of reference.

5. SUBMISSIONS FROM FUND MEMBERS

To consider any written submissions from Fund Members/Stakeholders.

(Submissions must be received by the Clerk to the meeting no later than 5.00p.m. on the day before the meeting.)

6. REPORTS FOR CONSIDERATION

6.1 LGPS - Current Developments and Update (Pages 25 - 58)

To receive an update on the following: Pooling, London CIV, MiFID II, Fossil Fuel and Scheme Advisory Board Work

7. PENSIONS COMMITTEE AGENDA FOR THE FORTHCOMING MEETING

Summary (Page 59)
Reports to follow.

8. KNOWLEDGE AND SKILLS AUDIT

9. DATE OF NEXT MEETING

To note the date of the next Pension Board

The next meeting will be held at Friday, 4 March 2016, Room C1, Town Hall, Mulberry Place, 5 Clove Crescent, London E14 2BG

Agenda Item 2

DECLARATIONS OF INTERESTS - NOTE FROM THE MONITORING OFFICER

This note is for guidance only. For further details please consult the Members' Code of Conduct at Part 5.1 of the Council's Constitution.

Please note that the question of whether a Member has an interest in any matter, and whether or not that interest is a Disclosable Pecuniary Interest, is for that Member to decide. Advice is available from officers as listed below but they cannot make the decision for the Member. If in doubt as to the nature of an interest it is advisable to seek advice **prior** to attending a meeting.

Interests and Disclosable Pecuniary Interests (DPIs)

You have an interest in any business of the authority where that business relates to or is likely to affect any of the persons, bodies or matters listed in section 4.1 (a) of the Code of Conduct; and might reasonably be regarded as affecting the well-being or financial position of yourself, a member of your family or a person with whom you have a close association, to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the ward affected.

You must notify the Monitoring Officer in writing of any such interest, for inclusion in the Register of Members' Interests which is available for public inspection and on the Council's Website.

Once you have recorded an interest in the Register, you are not then required to declare that interest at each meeting where the business is discussed, unless the interest is a Disclosable Pecuniary Interest (DPI).

A DPI is defined in Regulations as a pecuniary interest of any of the descriptions listed at **Appendix A** overleaf. Please note that a Member's DPIs include his/her own relevant interests and also those of his/her spouse or civil partner; or a person with whom the Member is living as husband and wife; or a person with whom the Member is living as if they were civil partners; if the Member is aware that that other person has the interest.

Effect of a Disclosable Pecuniary Interest on participation at meetings

Where you have a DPI in any business of the Council you must, unless you have obtained a dispensation from the authority's Monitoring Officer following consideration by the Dispensations Sub-Committee of the Standards Advisory Committee:-

- not seek to improperly influence a decision about that business; and
- not exercise executive functions in relation to that business.

If you are present at a meeting where that business is discussed, you must:-

- Disclose to the meeting the existence and nature of the interest at the start of the meeting or when the interest becomes apparent, if later; and
- Leave the room (including any public viewing area) for the duration of consideration and decision on the item and not seek to influence the debate or decision

When declaring a DPI, Members should specify the nature of the interest and the agenda item to which the interest relates. This procedure is designed to assist the public's understanding of the meeting and to enable a full record to be made in the minutes of the meeting.

Where you have a DPI in any business of the authority which is not included in the Member's register of interests and you attend a meeting of the authority at which the business is considered, in addition to disclosing the interest to that meeting, you must also within 28 days notify the Monitoring Officer of the interest for inclusion in the Register.

Further advice

For further advice please contact:-

John Williams, Service Head, Democratic Services, 020 7364 4204

APPENDIX A: Definition of a Disclosable Pecuniary Interest

(Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, Reg 2 and Schedule)

Subject	Prescribed description
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	<p>Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by the Member in carrying out duties as a member, or towards the election expenses of the Member.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p>
Contracts	<p>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority—</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	<p>Any tenancy where (to the Member's knowledge)—</p> <p>(a) the landlord is the relevant authority; and</p> <p>(b) the tenant is a body in which the relevant person has a beneficial interest.</p>
Securities	<p>Any beneficial interest in securities of a body where—</p> <p>(a) that body (to the Member's knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>(b) either—</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>

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LONDON BOROUGH OF TOWER HAMLETS

MINUTES OF THE PENSIONS BOARD

HELD AT 9.30 A.M. ON THURSDAY, 1 OCTOBER 2015

**ROOM C1, 1ST FLOOR, TOWN HALL, MULBERRY PLACE, 5 CLOVE
CRESCENT, LONDON E14 2BG**

Board Members Present:

Minesh Jani (Chair) (Head of Audit and Risk Management,
Resources)
Councillor Dave Chesterton (Member)
David Thompson (Member)

Officers Present:

Anant Dodia – (Pensions Manager)
Kevin Miles – (Chief Accountant, Resources)
Bola Tobun – (Investments and Treasury Manager, Resources)

1. APPOINTMENT OF CHAIR FOR THE DURATION OF THE MEETING

Councillor Dave Chesterton proposed and Mr David Thompson seconded that Minesh Jani be appointed Chair for the duration of the meeting. There being no other nominations, it was

AGREED

that Minesh Jani be appointed Chair of the duration of the meeting.

2. APOLOGIES FOR ABSENCE

Apologies for absence were received from Andrew Crompton.

Unfilled Appointments

It was noted that the following Pensions Board positions had yet to be appointed:

- Independent Chair,
- Board Member Representing Active Pension Fund Members,
- Board Member Representing Active Admitted Bodies Representatives of the Fund

3. DECLARATIONS OF DISCLOSABLE PECUNIARY INTEREST

No declarations of disclosable pecuniary interests were made.

4. MINUTES OF THE PREVIOUS MEETING

The notes of the meeting held on 28 July 2015 were considered by the Board. It was noted that, because the meeting was inquorate, the proceedings had been discharged on an informal basis.

Having considered the informal notes, Members

AGREED

1. that the notes of the meeting held on 28 July 2015 be approved as an accurate record of proceedings and
2. that the recommendations of the informal meeting be formally ratified.

Matters Arising:

Board Members noted the following:

- The Board's preferred meeting time for all future meetings was 10.00 am
- That the Board's Terms of Reference be reprinted and circulated with each agenda
- That the Council's initial £50,000 contribution towards London CIV want to ensure that Tower Hamlets LGPS could participate and receive VFM returns.

5. PETITIONS

No requests submit petitions to the Board were received

Discussion of Submissions and Requests from Fund Members

The Board discussed and came to a view that it was desirable that Fund members and stakeholders should be able to raise any issues of concern with Board Members. The Board then requested that:

- this agenda item be retitled 'Submissions' and
- that Fund members and stakeholders be informed that they may send their written submissions to the clerk at any time before 5.00 pm on the day prior to the date meeting.
- that the facility be suitably advertised to fund members and stakeholders via internet mechanisms such as the Council's intranet website and admitted bodies intranet websites.

Ms Tobun, Investments and Treasury Manager informed the Board that a Pension Fund micro-site was being developed in conjunction with the Council's IT service. Other suitable mechanisms would also be sought to notify fund members of this amenity.

6. REPORTS FOR CONSIDERATION

6.1 Pensions Committee Meeting Papers 17 September 2015

The Board considered the agenda and papers that had been presented to the Pensions Committee on 17 September 2015 and discussed the following matters:

Pensions Committee Minutes 24 February 2015:

The Board:

- Requested (Concerning minute 4.1) that the gains of the Fund be confirmed
- Requested that a summary of the Fund's performance be provided to the Board annually, to contain a high-level overview of performance
- Requested (Concerning minute 4.2) that information be provided relating to what measures were being taken to ensure accountability in relation to payments made to London CIV. Ms Tobun advised that the £50,000 requested by London CIV from all authorities participating in the scheme was towards setting up costs and for the recruitment of financial experts. The Board was concerned that the CIV should be accountable and Members were informed that the London CIV had established an advisory panel which would help the decision making of the CIV. Additionally:
 - LBTH Councillor Harrison was a member of this body.
 - London CIV have employed some professionals (Eversheds) to monitor contributions to the fund and transparency. Mr Thompson noted that the board should also monitor the processes of the CIV as it would be receiving monies from LBTH pension fund. Mr Miles, Chief Accountant informed the Board that regular reports on the progress of London CIV were being made to the Pensions Committee. However because of the nature of this organisation and the numbers of local authorities participating in the London CIV. a degree of trust concerning its function would have to be exercised.
- Enquired whether there a paper setting out how the CIV will operate was available and asked whether such a paper had been made available to the Pension Committee? Ms Tobun informed the Board that she was presently preparing a briefing for Pensions Committee on this matter. The Board asked that a copy of this paper be made available at its next meeting:

Action by: B Tobun, Investments and Treasury Manager

- Cautioned against duplicating the work of the Pensions Committee.
- Was concerned that the resolution at minute 4.2 did not address the key concerns raised regarding the CIV Joint Committee relating to accountability. The Board was informed that Ms Tobun would circulate the private minute relating to this item to the Pensions Board

Action by: B Tobun, Investments and Treasury Manager

- Asked for assurances that the concerns around accountability had been addressed as there was no evidence to indicate this in the minute. Ms Tobun informed the Board that the concerns referred to related to the CIV Joint Committee and not to the Council's own Pensions Committee.
- Notwithstanding Councillor Chesterton asked that these concerns be reported back to the Pensions Committee asking the Pensions Committee to ensure that their minutes are properly concluded, addressing all matters discussed in the agenda item.

Action by: B Tobun, Investments and Treasury Manager

- Noted (Concerning minute 4.5) that it was important that the Board was able to view the KPIs listed. It was also important that Pension Committee monitored the KPIs.

Pensions Committee Minutes 23 July 2015:

The Board:

- Noted (concerning minute 5.3) that the minutes did not resolve the underperformance reported. Councillor Chesterton requested that the following recommendation be made to the Pensions Committee:
 - that it review the underperforming investment managers.
 Ms Tobun clarified that the item concerned an annual review of the pension fund performance presented by WM Company and the reported figures were relative and set in the context of other local authorities for whom WM Company provided services. Councillor Chesterton noted the explanation and asked that the minutes be written such that they might be scrutinised more easily.

Pensions Committee 17 September 2015 - Item 4.1:

Mr Dodia, Pensions Manager introduced the report.

He:

- advised that it was the first of a new monitoring themes which would provide quarterly information on the performance of the pensions administration service, based on key performance indicators. Two further KPI's "death benefit/Administration benefit statements" and "new joiners" later would be introduced and reported from quarter two.
- noted that since the introduction of the new LGPS, pension funds were required to issue benefits statements annually by August. This is had proved difficult for most local authorities to achieve and therefore the Local Government Association had made representations to the Regulator. A response was presently awaited.

In response to Board Members' questions the following information was provided:

- eight of the 12 KPIs were presently being reported and the remainder would be introduced incrementally by April 2016 quarter 4.

- KPIs were set by officers on the basis of regulations and best practice amongst local authorities.
- Because it was obligatory to comply with the regulator's requirements deadlines must be observed. This was especially at the end of year two of the new pension scheme.

The Board noted its discussion of this item and recommended that the Pension Committee should receive an action plan as part of its regular reporting to ensure that the risk of a non-compliance in year two was monitored and mitigating measures implemented in a timely manner should they be necessary.

Action by: A Dodia Pensions Manager

Pensions Committee 17 September 2015 - Item 4.2:

The Board considered the pension fund investment performance review for quarter ending 30 June 2015.

The Board:

- noted the underperformance of Schroders
- contrasted the role of the Pensions Committee which was to monitor the performance of managers and note under/poor performance where necessary with the function of the Pensions Board which was to monitor how the Committee discharged its role.
- further noted, that although Board Members were able to examine Pensions Committee, they were not able to view what actions the Committee had taken regarding matters presented to them.
- considered what mechanisms could be implemented in order to rectify the above matter and decided that its schedule of meetings should be revised to enable Board Members not only to review the papers of previous Pensions Committees meeting but also the accompanying minutes.

The Board noted its discussion of this item and recommended that the schedule of Pension Board meetings be amended to enable Pensions Committee Reports and Committee's responses to be monitored.

Pensions Committee 17 September 2015 - Item 4.3:

The Board considered the training and development for Members report

The Board:

- noted that the Pensions Committee had adopted the training policy.

In response to Board Members' questions the following information was provided:

- concerning how many hours the training to an appropriate level would comprise, the Board was informed that there had been challenges in delivering the required training because of a lack of member availability. However, 40 minute training sessions had been

incorporated into each of the Pensions Committee's standard meetings.

The Board noted its discussion of this item and recommended that officers take all necessary steps to ensure that training of Pensions Committee members was fit the purpose.

Action by: B Tobun, Investments and Treasury Manager

This concluded the business of the Pensions Committee on 17 September 2015.

RESOLVED

1. That the discussion and review of the minutes of the Pensions Committee meetings held on 24 February 2015 and 23rd of July 2015 be noted
2. That the discussions and review of the Pensions Committee agenda for the meeting held on 17 September 2015 be noted
3. That the actions arising from the review of minutes and agenda items be undertaken and carried out appropriately by the support officer.

6.2 Training and Development For Members

The Investment and Treasury Manager introduced the report which set out requirements and proposals for a training and development programme of members of the Pensions Board

The Board noted:

- that training was a requirement in order to fulfil its remit. Members enquired which of the criteria had been fulfilled via the training delivered in September and Ms Tobun advised that the Board had received a general spectrum legislative and governance framework training but no in-depth matters had been covered.
- it was not necessary to complete all competencies during the course of a year. She requested feedback on the training delivered to enable tailored training to be delivered which would meet competency requirements.
- that it was necessary to focus on the degree to which Pensions Committee Members had been trained and asked for a report on the training completed by these members in the last two years
- its own training expectations and for a report on what training should be undertaken and a timetable for this.

RESOLVED

1. That the training and development framework for members of the Pensions Board be approved as set out in the report.

2. That a report be brought on training completed by Pensions Committee members in the last two years.
3. That a report be brought on a programme of Pensions Board member training and a timetable.

6.3 Pensions Board Work Plan for 2015/16

The Investment and Treasury Manager introduced the report which outlined an indicative work plan for the Board to pursue for the remainder of the municipal year.

The Board reviewed the proposed topics and the following matters were raised:

- It was necessary that Pensions Committee receive reports and information around risk management of the Fund.
- The Board requested that their reports/papers be presented in an alternative style/format to that used by Council's committees to emphasise the independence of the Board from the Council.
- The Board agreed to revise its schedule of dates:

RESOLVED

1. That the work plan 2015/16 be approved
2. That reports to the Board be presented in an alternative style to Council papers
3. That the dates of the remaining meetings in the municipal cycle be amended to the following:
 - 20th of November 2015 at 10.00am
 - 4th March 2016 at 10.00am

7. ANY OTHER ITEM THE CHAIR CONSIDERS TO BE URGENT

7.1 WM League Table - the Fund and Managers' Positions

A copy of "Local Authority Quarterly League Tables March - June 2016" were tabled.

Members inspected the league tables were informed by the Chief Accountant that the report indicated active managers had outperformed tracking managers which went against the views of some commentators who advocated tracing managers above active managers. He cautioned that these performance tables could be mislead committees as asset allocation is the most significant factor for the investment strategy (i.e. how much should be in equities, property, etc). A fund manager who is performing above their peers in an investment type showing no growth will not be as good for the fund than a manager slightly below the benchmark in an asset category increasing in value. He recommended caution in taking an simplistic approach to manager monitoring.

The Board requested a report be brought to the next meeting addressing the topic of performance league table and strategies for investment manager monitoring.

7.2 Pensions Board Independent Chair

The position of independent chair of the Pensions Board had yet to be appointed. The Board heard that an approach had been made to the Director of Resources to place advertisement for the role and this had been supported.

A member enquired whether a Chair would be in post by the next meeting and was informed that the enquiry would be referred to the Corporate Director Resources.

The Board was informed that, since its first meeting, the terms of reference had been revised in connection to the recruitment to this position to ensure that a person with expertise can be properly recruited.

The meeting ended at 11.00 a.m.

In the Chair, Minesh Jani
Pensions Board

LOCAL PENSION BOARD OF LONDON BOROUGH OF TOWER HAMLETS TERMS OF REFERENCE

Introduction

1. This document sets out the terms of reference of the Local Pension Board of [LONDON BOROUGH OF TOWER HAMLETS] (the 'Administering Authority') a scheme manager as defined under Section 4 of the Public Service Pensions Act 2013. The Local Pension Board (hereafter referred to as 'the Board') is established in accordance with Section 5 of that Act and under regulation 106 of the Local Government Pension Scheme Regulations 2013 (as amended).
2. The Board is established by the Administering Authority and operates independently of the Committee. Relevant information about its creation and operation are contained in these Terms of Reference.
3. The Board is not a committee constituted under Section 101 of the Local Government Act 1972 and therefore no general duties, responsibilities or powers assigned to such committees or to any sub-committees or officers under the constitution, standing orders or scheme of delegation of the Administering Authority apply to the Board unless expressly included in this document.
4. Except where approval has been granted under regulation 106(2) of the Regulations the Board shall be constituted separately from any committee or sub-committee constituted under Section 101 of the Local Government Act 1972 with delegated authority to execute the function of the Administering Authority.

Interpretation

5. The following terms have the meanings as outlined below:

'the Act'	The Public Service Pensions Act 2013.
'the Code'	means the Pension Regulator's Code of Practice No 14 governance and administration of public service pension schemes.
'the Committee'	means the committee who has delegated decision making powers for the Fund in accordance with Section 101 of the Local Government Act 1972 (i.e. the Pensions Committee at LBTH).
'the Fund'	means the Fund managed and administered by the Administering Authority.
'the Guidance'	means the guidance on the creation and operation of local pension boards issued by the Shadow Scheme Advisory Board.

'the Regulations'	means the Local Government Pension Scheme Regulations 2013 (as amended from time to time), the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (as amended from time to time) including any earlier regulations as defined in these regulations to the extent they remain applicable and the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009 (as amended from time to time).
'Relevant legislation'	means relevant overriding legislation as well as the Pension Regulator's Codes of Practice as they apply to the Administering Authority and the Board notwithstanding that the Codes of Practice are not legislation.
'the Scheme'	means the Local Government Pension Scheme in England and Wales.

Statement of purpose

6. The purpose of the Board is to assist¹ the Administering Authority in its role as a scheme manager of the Scheme. Such assistance is to:
- (a) secure compliance with the Regulations, any other legislation relating to the governance and administration of the Scheme, and requirements imposed by the Pensions Regulator in relation to the Scheme and;
 - (b) to ensure the effective and efficient governance and administration of the Scheme.

Duties of the Board

7. The Board should at all times act in a reasonable manner in the conduct of its purpose. In support of this duty Board members should be subject to and abide by the code of conduct for Board members².

Establishment

The Board is established on [01 APRIL 2014] subsequent to approval by [FULL COUNCIL] on [26 NOVEMBER 2014]. (subject to the agreement of the Pensions Committee on 24 February 2015).

¹ Please see paragraph 3.28 of the Guidance for more information on what assisting the Administering Authority means.

² See paragraphs 7.9 to 7.11 of the Guidance for more information on a Code of Conduct for Boards.

8. As stated above, the Pensions Board is not explicitly bound by the rules governing Committees established under Section 101 of the Local Government Act 1972, however, for consistency and best practice, the Pensions Board will, where practicable and subject to specific rules set out in these Terms of Reference, operate in the same way as the Council's other Committees as set out in the Constitution. This includes:
- Rules 6 - 10, 17.3, 17.6 and 18 to 25 of the Council Procedure Rules (Part 4 – Rules of Procedures) relating to :
 - Notice and summons to meetings
 - Chair of meeting (except in relation to casting votes)
 - Quorum
 - Duration of meetings
 - Cancellation of meetings
 - Voting (certain rules)
 - Minutes
 - Petitions
 - Record of Attendance
 - Exclusion of the Public
 - Members' Conduct
 - Disturbance by Public
 - Suspension of Amendment of Council Procedure Rules
 - Access to Information Procedure Rules (Part 4.2 of the Constitution)
 - Code of Conduct for Members (Part 5.1 of the Constitution) – with specific reference to registering and disclosing interests.
 - Members' Allowance Scheme (Part 6 of the Constitution) – with particular reference to allowances and expenses payable.

Membership

9. The Board shall consist of [SIX] voting members, as follows:

[THREE] Member Representatives; and

[THREE] Employer Representatives.

10. There shall be an equal number of Member and Employer Representatives.

11. There shall also be [ONE] other representatives who is not entitled to vote.

Member representatives

12. Member representatives shall either be scheme members³ or have capacity to represent scheme members of the Fund.

13. Member representatives should be able to demonstrate their capacity⁴ to attend and complete the necessary preparation for meetings and participate in training as required.

³ Active, deferred or pensioner members

⁴ See paragraphs 5.16 to 5.20 of the Guidance which outlines what 'capacity' in this context means.

14. Substitutes [SHALL] be appointed. Where appointed substitutes should be named and must undertake the same training as full members.
15. A total of [THREE] member representatives shall be appointed⁵ from the following sources:
 - a) [ONE] member representative shall be appointed by the recognised trade unions representing employees who are scheme members of the Fund.
 - b) [ONE] member representative shall be appointed by [ADMITTED BODIES FORUM] where that body is independent of the Administering Authority and open to and representative of all scheme members of the Fund.
 - c) [ONE] member representative shall be appointed following a transparent recruitment process which should be open to all pensioners and be approved by the Administering Authority.

Employer representatives

16. Employer representatives shall be office holders or senior employees of employers of the Fund or have experience of representing scheme employers in a similar capacity. No officer or elected member of the Administering Authority who is responsible for the discharge of any function of the Administering Authority under the Regulations may serve as a member of the Board.
17. Employer representatives should be able to demonstrate their capacity⁶ to attend and complete the necessary preparation for meetings and participate in training as required.
18. Substitutes [SHALL] be appointed. Where appointed substitutes should be named and must undertake the same training as full members.
19. A total of [THREE] employer representatives shall be appointed⁷ to the Board from the following sources:
 - a) [ONE ELECTED MEMBER] employer representatives shall be appointed by [FULL COUNCIL] to and representative of all employers in the Fund.
 - b) [ONE] employer representatives shall be appointed following a transparent recruitment process which should be open to all employers in the Fund and be approved by the Administering Authority.

⁵ See paragraphs 5.25 to 5.28 of the Guidance for further information on the process for appointing member representatives.

⁶ See paragraphs 5.16 to 5.20 of the Guidance which outlines what 'capacity' in this context means.

⁷ See paragraphs 5.25 to 5.28 of the Guidance for further information on the process for appointing employer representatives.

- c) [ONE] employer representatives shall be appointed by the Administering Authority where all employers will have been asked to submit their interest in undertaking the role of employer representative on the Board.

Other members⁸

20. [ONE] other member shall be appointed to the Board by the agreement of both the Administering Authority and the Board to act as an Independent Chair.

21. Other members do not have voting rights on the Board.

Appointment of chair

22. Subject to the meeting arrangements in paragraphs 35 to 37 below a chair shall be appointed for the Board as set out below:

- a) *An independent chair to be appointed by the Administering Authority but shall count as an 'other' member under paragraphs 20-21 above. In this respect the term independent means having no pre-existing employment, financial or other material interest in either the Administering Authority or any scheme employer in the Fund or not being a member of the Fund.*

Duties of chair

23. The chair of the Board:

- (a) Shall ensure the Board delivers its purpose as set out in these Terms of Reference,
- (b) Shall ensure that meetings are productive and effective and that opportunity is provided for the views of all members to be expressed and considered, and
- (c) Shall seek to reach consensus and ensure that decisions are properly put to a vote when it cannot be reached. Instances of a failure to reach a consensus position will be recorded and published.

Notification of appointments

24. When appointments to the Board have been made the Administering Authority shall publish the name of Board members, the process followed in the appointment together with the way in which the appointments support the effective delivery of the purpose of the Board.

Terms of Office⁹

⁸ When considering whether to have other members on the Board regard should be given to the advice provided in paragraphs 5.21 to 5.24 of the Guidance.

25. The term of office for Board members is [FOUR] years.
26. Extensions to terms of office may be made by the Administering Authority with the agreement of the Board.
27. A Board member may be appointed for further terms of office using the methods set out in paragraphs 15 and 19.
28. Board membership may be terminated prior to the end of the term of office due to:
 - (a) A member representative appointed on the basis of their membership of the scheme no longer being a scheme member in the Fund¹⁰.
 - (b) A member representative no longer being a scheme member or a representative of the body on which their appointment relied.
 - (c) An employer representative no longer holding the office or employment or being a member of the body on which their appointment relied.
 - (d) A Board member no longer being able to demonstrate to [LONDON BOROUGH OF TOWER HAMLETS] their capacity to attend and prepare for meetings or to participate in required training.
 - (e) The representative being withdrawn by the nominating body and a replacement identified.
 - (f) A Board member has a conflict of interest which cannot be managed in accordance with the Board's conflict policy.
 - (g) A Board member who is an elected member becomes a member of the Pensions Committee.
 - (h) A Board member who is an officer of the Administering Authority becomes responsible for the discharge of any function of the Administering Authority under the Regulations.

Conflicts of interest¹¹

29. All members of the Board must declare to the Administering Authority on appointment and at any such time as their circumstances change, any potential conflict of interest arising as a result of their position on the Board.
30. A conflict of interest is defined as a financial or other interest which is likely to prejudice a person's exercise of functions as a member of the Board. It does not include a financial or other interest arising merely by virtue of that person being a member of the Scheme.
31. On appointment to the Board and following any subsequent declaration of potential conflict by a Board member, the Administering Authority shall ensure

⁹ See paragraphs 5.29 and 5.30 of the Guidance which outlines points to consider when setting out the term of office for Board members. In particular consideration should be given to allowing members to retire on a rolling basis to ensure experience is retained.

¹⁰ This includes active, deferred and pensioner members.

¹¹ See section 7 of the Guidance for more information on Conflicts of Interest.

that any potential conflict is effectively managed in line with both the internal procedures of the Board's conflicts policy and the requirements of the Code.

Knowledge and understanding (including Training)¹²

32. Knowledge and understanding must be considered in light of the role of the Board to assist the Administering Authority in line with the requirements outlined in paragraph 6 above. The Board shall establish and maintain a Knowledge and Understanding Policy and Framework to address the knowledge and understanding requirements that apply to Board members under the Act. That policy and framework shall set out the degree of knowledge and understanding required as well as how knowledge and understanding is acquired, reviewed and updated.
33. Board members shall attend and participate in training arranged in order to meet and maintain the requirements set out in the Board's knowledge and understanding policy and framework.
34. Board members shall participate in such personal training needs analysis or other processes that are put in place in order to ensure that they maintain the required level of knowledge and understanding to carry out their role on the Board.

Meetings

35. The Board shall as a minimum meet [FOUR] times¹³ each year.
36. Meetings shall normally take place between the hours of [09:00] and [21:00] at [LBTH TOWNHALL].
37. The chair of the Board with the consent of the Board membership may call additional meetings. Urgent business of the Board between meetings may, in exceptional circumstances, be conducted via communications between members of the Board including telephone conferencing and e-mails.

Quorum

38. A meeting is only quorate when at least one person of each member and employer representatives are present including an independent chair. Or 50% of both member and employer representatives are present.
39. A meeting that becomes inquorate may continue but any decisions will be non-binding.

¹² See section 6 of the Guidance for more information on Knowledge and Understanding.

¹³ See 5.35.11 in Guidance for more advice on the number of meetings to hold each year.

Board administration

40. The Chair shall agree with [AN OFFICER FROM DEMOCRATIC SERVICES] (the 'Board Secretary') an agenda prior to each Board meeting.
41. The agenda and supporting papers will be issued at least [SEVEN] working days (where practicable) in advance of the meeting except in the case of matters of urgency.
42. Draft minutes of each meeting including all actions and agreements will be recorded and published within [TWENTY - ONE] working days of the meeting. These draft minutes will be subject to formal agreement by the Board at their next meeting. Any decisions made by the Board should be noted in the minutes and in addition where the Board was unable to reach a decision such occasions should also be noted in the minutes.

Where necessary any information considered exempt as specified in Part 1 of Schedule 12A of the Local Government Act 1972 or considered confidential for the purposes of Section 100A(2) of that Act and/or they represent data covered by the Data Protection Act 1998 shall be included in a Part II minute that is not made available to the public.

43. The Board Secretary, in consultation with [Investment & Treasury Manager] shall support Board members in maintaining their knowledge and understanding as determined in the Board's Knowledge and Understanding Policy and Framework and other guidance or legislation.
44. The Board Secretary shall arrange such advice as is required by the Board subject to such conditions as are listed in these Terms of Reference for the use of the budget set for the Board.
45. The Board Secretary shall ensure an attendance record is maintained along with advising the Administering Authority on allowances and expenses to be paid under these terms.
46. The Board Secretary shall liaise with the Administering Authority on the requirements of the Board, including advanced notice for officers to attend and arranging dates and times of Board meetings.

Public access to Board meetings and information

47. The Board meetings will be open to the general public (unless there is an exemption under relevant legislation which would preclude part (or all) of the meeting from being open to the general public).
48. The following will be entitled to attend Board meetings in an observer capacity:
 - (a) *Members of the Pensions Committee,*
 - (b) *Any person requested to attend by the Board.*

Any attendees will be permitted to speak at the discretion of the Chair.

49. In accordance with the Act the Administering Authority shall publish information about the Board to include:

- (a) The names of Board members and their contact details.
- (b) The representation of employers and members on the Board.
- (c) The role of the Board.
- (d) These Terms of Reference.

50. The Administering Authority shall also publish other information about the Board including:

- (a) Agendas and minutes
- (b) Training and attendance logs
- (c) An annual report on the work of the Board to be included in the Fund's own annual report.

51. All or some of this information may be published using the following means or other means as considered appropriate from time to time:

- (a) On the Fund's website.
- (b) As part of the Fund's Annual Report.
- (c) As part of the Governance Compliance Statement.

52. Information may be excluded on the grounds that it would either involve the likely disclosure of exempt information as specified in Part 1 of Schedule 12A of the Local Government Act 1972 or it being confidential for the purposes of Section 100A(2) of that Act and/or they represent data covered by the Data Protection Act 1998.

Expenses and allowances¹⁴

53. The Administering Authority [SHALL] meet the expenses of Board members in line with the Administering Authority's policy on expenses as set out in the Members Allowances Scheme

Budget

54. The Board is to be provided with adequate resources to fulfil its role. In doing so the budget for the Board will be met from the Fund and determined by:

- a) *The Board will seek approval from the Corporate Director of Resources for any expenditure it wishes to make.*

¹⁴ Provision for the payment of expenses and allowances is a decision to be made locally by each Administering Authority. Full consideration should be given to information in Guidance - see section 9 and paragraphs 5.18 and 5.35.17 for more information. Administering authorities should aim to ensure that no Board member is either better or worse off as a result of fulfilling their duties as a member of the Board.

Core functions¹⁵

55. The first core function of the Board is to assist¹⁶ the Administering Authority in securing compliance with the Regulations, any other legislation relating to the governance and administration of the Scheme, and requirements imposed by the Pensions Regulator in relation to the Scheme. Within this extent of this core function the Board may determine the areas it wishes to consider including but not restricted to:

- a) *Review regular compliance monitoring reports which shall include reports to and decisions made under the Regulations by the Committee.*
- b) *Review management, administrative and governance processes and procedures in order to ensure they remain compliant with the Regulations, relevant legislation and in particular the Code.*
- c) *Review the compliance of scheme employers with their duties under the Regulations and relevant legislation.*
- d) *Assist with the development of and continually review such documentation as is required by the Regulations including Governance Compliance Statement, Funding Strategy Statement and Statement of Investment Principles.*
- e) *Assist with the development of and continually review scheme member and employer communications as required by the Regulations and relevant legislation.*
- f) *Monitor complaints and performance on the administration and governance of the scheme.*
- g) *Assist with the application of the Internal Dispute Resolution Process.*
- h) *Review the complete and proper exercise of Pensions Ombudsman cases.*
- i) *Review the implementation of revised policies and procedures following changes to the Scheme.*
- j) *Review the arrangements for the training of Board members and those elected members and officers with delegated responsibilities for the management and administration of the Scheme.*
- k) *Review the complete and proper exercise of employer and administering authority discretions.*
- l) *Review the outcome of internal and external audit reports.*
- m) *Review draft accounts and Fund annual report.*
- n) *Review the compliance of particular cases, projects or process on request of the Committee.*
- o) *Any other area within the statement of purpose (i.e. assisting the Administering Authority) the Board deems appropriate.*

56. The second core function of the Board is to ensure the effective and efficient governance and administration of the Scheme. Within this extent of this core

¹⁵ In determining the role of the Board, further information can be found in paragraphs 3.27 to 3.29 of the Guidance.

¹⁶ Please see paragraph 3.28 of the Guidance for more information on what assisting the Administering Authority means.

function the Board may determine the areas it wishes to consider including but not restricted to:

- a) *Assist with the development of improved customer services.*
- b) *Monitor performance of administration, governance and investments against key performance targets and indicators.*
- c) *Review the effectiveness of processes for the appointment of advisors and suppliers to the Administering Authority.*
- d) *Monitor investment costs including custodian and transaction costs.*
- e) *Monitor internal and external audit reports.*
- f) *Review the risk register as it relates to the scheme manager function of the authority.*
- g) *Assist with the development of improved management, administration and governance structures and policies.*
- h) *Review the outcome of actuarial reporting and valuations.*
- i) *Assist in the development and monitoring of process improvements on request of Committee.*
- j) *Assist in the development of asset voting and engagement processes and compliance with the UK Stewardship Code.*
- k) *Any other area within the statement of purpose (i.e. ensuring effective and efficient governance of the scheme) the Board deems appropriate.*

57. In support of its core functions the Board may make a request for information to the Committee with regard to any aspect of the Administering Authority's function. Any such request should be reasonably complied with in both scope and timing.

58. In support of its core functions the Board may make recommendations to the Committee which should be considered and a response made to the Board on the outcome within a reasonable period of time.

Reporting¹⁷

59. The Board should in the first instance report its requests, recommendations or concerns to the Committee. In support of this any member of the Board may attend a Committee meeting as an observer.

60. Requests and recommendations should be reported under the provisions of paragraphs 59 and 60 above.

61. The Board should report any concerns over a decision made by the Committee to the Committee subject to the agreement of at least 50% of voting Board members provided that all voting members are present. If not all voting members are present then the agreement should be of all voting members who are present, where the meeting remains quorate.

62. On receipt of a report under paragraph 63 above the Committee should, within a reasonable period, consider and respond to the Board.

¹⁷ See section 8 of the Guidance for more information on Reporting.

- 63. Where the Board is not satisfied with the response received it may request that a notice of its concern be placed on the website and in the Fund's annual report.
- 64. Where the Board is satisfied that there has been a breach of regulation which has been reported to the Committee under paragraph 63 and has not been rectified within a reasonable period of time it is under an obligation to escalate the breach.
- 65. The appropriate internal route for escalation is to the Monitoring Officer and/or Acting Corporate Director of Resources, the Section 151 Officer.
- 66. The Board may report concerns to the LGPS Scheme Advisory Board for consideration subsequent to, but not instead of, using the appropriate internal route for escalation.
- 67. Board members are also subject to the requirements to report breaches of law under the Act and the Code [and the whistleblowing provisions set out in the Administering Authority's whistle blowing policy].

Review of terms of reference


- 68. These Terms of Reference shall be reviewed on each material change to those parts of the Regulations covering local pension boards and at least every [THREE] years.
- 69. These Terms of Reference were [adopted on [01 APRIL 2015]].

.....
Signed on behalf of the Administering Authority

.....
Signed on behalf of the Board

Published 24 February 2015

Agenda Item 6.1

Non-Executive Report of the: PENSIONS BOARD 20 November 2015	 TOWER HAMLETS
Report of: Zena Cooke, Corporate Director of Resources	Classification: Unrestricted
LGPS – current Developments and Update (Pooling, London CIV, MiFID II, Fossil Fuel and Scheme Advisory Board Work)	

Originating Officer(s)	Bola Tobun, Investment and Treasury Manager
Wards affected	All

Summary

This report covers a range of relevant pension's related issues for the Board to be aware including changes to pensions saving and future consultation on pooling of investments in the LGPS.

The attached report covers:

1. Pooling of investments in the LGPS
2. MiFID II Impact on LGPS and Local Authorities
3. Fossil Fuel Divestment Campaign
4. Scheme Advisory Board work on separation of Pension Funds

Recommendations:

Members of the Pensions Board are asked to:

- Note the contents of the report.

1. REASONS FOR THE DECISIONS

1.1 No decision required

2. ALTERNATIVE OPTIONS

2.1 No alternative as this is for information and update.

3. DETAILS OF REPORT

3.1 Pooling of investments in the LGPS

3.1.1 The Chancellor announced that a consultation on the pooling of investments for the LGPS would take place in his July budget update:

“Local Government Pension Scheme pooled investments – The government will work with Local Government Pension Scheme administering authorities to ensure that they pool investments to significantly reduce costs, while maintaining overall investment performance. The government will invite local authorities to come forward with their own proposals to meet common criteria for delivering savings. A consultation to be published later this year will set out those detailed criteria as well as backstop legislation which will ensure that those administering authorities that do not come forward with sufficiently ambitious proposals are required to pool investments.”

3.1.2 The Chancellor followed this up with a speech at the Conservative Party Conference “We are going to find new ways to fund British infrastructure that drives our productivity.... At the moment we have 89 local government pension funds with 89 sets of fees and costs. It’s expensive, and they invest little or nothing in our infrastructure. So I can tell you today we are going to work with councils to create half a dozen British wealth funds spread across the country.”

- He said this plan would save “hundreds of millions in cost, and crucially they will invest billions in the infrastructure of their regions.”
- Further information published on the U.K. government website said that small local pension funds “lack the expertise to invest in infrastructure.” Of the £180 billion of assets in these plans, only 0.5% is invested in infrastructure projects. Countries with larger pooled public pension funds invest up to 8% in infrastructure, and 17% in housing and infrastructure, according to the website.

3.1.3 Whilst officials from DCLG have stressed that there is no specific cost saving target, the figure of £660m continues to be referenced by ministers. Also officials are keen to point out that government does understand the fiduciary responsibilities of the LGPS in ensuring that investments are made for the right investment return and risk reasons rather than just to fund UK infrastructure and that there is not expected to be any compulsory for the funds to invest in infrastructure.

3.1.4 The consultation on pooling is expected to be issued in November, but the government has made it clear that it is looking at the LGPS coming forward

with proposals for pooling of investments with pool sizes of between £25-30bn and for 5-6 pools.

3.1.5 The consultation is expected to cover:

- Legislative changes circulated in draft to give the Secretary of State increased powers;
- Proposed changes in the investment regulations;
- Acceptable criteria for pooling;
- Back stop measures for recalcitrant schemes.

3.1.6 At the time of writing, nothing had been formally announced on timeframes, although the expected timeline is set out below:

Government to commission and receive independent advice	Oct 2015
Consultation (and the backstop enforcement regulation)	Early Nov 2015
Consultation response from all stakeholders (expectation is for 12-week response period)	Early Feb 2016
Draft Regulations	Published March 2016 Effective date April 2016
Creation of asset pools (phased in over three years)	April 2019
Transition of assets for those funds not meeting the requirements	Unknown

3.1.7 There are no plans to formally consult on the criteria for pooling, although the government has made it clear in discussions on the pooling objectives that the four key criteria are:

- Scale (£25-30bn pool target);
- Cost Savings;
- Governance;
- Infrastructure

3.1.8 Whilst the government has expressed a preference for regional pooling, it has emphasised that it is willing to consider alternative proposals. It has made it clear that it is looking for local government to come forward with suitable proposals for consideration. Government has publicly acknowledged the advance already made in this area made by some Funds, and indicated that it is its intention is to build on that progress. Following the budget statement, the Lancashire/LPFA, the London CIV and the LGPS National Frameworks have all stated that Government has individually reaffirmed to them that their initiatives are consistent with the objectives for fee savings through scale economies. Indeed the London CIV is referenced by government as a model for others to consider although it has indicated that it is perhaps concerned about the voluntary nature of the arrangements with London Funds retaining options around which assets to pool in the CIV. It is clear that the government sees that the Administering Authority should retain the asset allocation decision for the individual funds but that they expect the choice of investment managers to be made by the investment pool itself.

- 3.1.9 As might be expected, following the government announcement and follow up discussions with government departments, the majority of LGPS Funds are now considering options for pooling and collaboration with others. To a certain extent with the London CIV already in progress, most London funds have stood aside with discussions with funds outside of London, seeing the CIV as their pooled vehicle to take their funds forwards into pooling.
- 3.1.10 One major project being assisted by Hymans Robertson is Project 'POOL' a collaboration of metropolitan and county authorities which is looking at a range of options to come forward with proposals for government during the consultation period. This includes consideration of regional pools along with pools run along asset class lines and also an in-house investment option. Other projects include one for Wales which would amount to around £10bn of assets, but is expected to be acceptable despite its relatively small size. The South-West is also looking at options for a pool in the region along the lines of previous framework agreements.
- 3.1.11 Three pension funds have also reported to be in talks to launch an investment partnership comprising East Riding, Surrey and Cumbria. These are just an indication of some of the discussions underway between the 89 funds in England and Wales. Whilst it is not expected to be available for the Board meeting on the 20th November, should the consultation be issued by the time of the meeting a further update will be provided to the Board.

3.2 London CIV

- 3.2.1 The London CIV** continues to make progress and the Financial Conduct Authority (FCA) authorised the company as an Alternative Investment Fund Manager on 15 October 2015. The Company's entry in the FCA register can be found here:

https://register.fca.org.uk/ShPo_FirmDetailsPage?id=001b000000sD6OtAAK

- 3.2.2 The application for Fund authorisation was submitted to the FCA on 15 October and it is hoped to have the authorisation confirmed by the middle of November. The FCA is treating the application as a priority and, while no promises will be made, they have indicated that best efforts will be made to meet the desired timetable. If the FCA authorise the Fund in line with the ideal timeline it should be possible to launch the CIV's first sub-fund before the end of the year. On the assumption that the first fund will be launched as planned the aim is to open the remaining eight sub-funds in the first quarter of 2016. Detailed fund information has been sent to all the boroughs that are invested in the same or similar mandates with the relevant Fund Managers and each borough has been asked to give feedback about their intention to transition to the CIV or not. If all boroughs do transition the CIV will have in excess of £6bn under management by the end of this financial year.
- 3.2.3 Regulatory Capital: with the adoption of the revised Articles and the signing of the Shareholders Agreement it has been possible to issue share subscription letters to each borough for the B shares that will generate the required regulatory capital. The London Borough of Tower Hamlets Pension Fund in accordance with the Committee's decision will pay the regulatory capital to the CIV.

- 3.2.4 The Investment Advisory Committee (IAC) has now been established and is working on a range of options for consideration by the Sectoral Joint Committee with papers at the recent meeting on Infrastructure.
- 3.2.5 Working groups have been established to come forward with proposals on ethical tracker funds, options for fixed interest, further work on infrastructure, private rented sector and social housing.
- 3.2.6 The London Collective Investment Vehicle (CIV) is entering its final implementation phase, the Fund has been asked to make the final investment decision to invest in sub-funds proposed for the CIV launch in November 2015.
- 3.2.7 Four managers have now been identified as offering potential opportunities for the launch of the CIV. These managers will provide the CIV with 9 sub-funds, covering just over £6bn of Borough assets and providing early opportunity to 20 boroughs. The sub-funds will consist of 6 'passive' equity sub-funds covering £4.2bn of assets, 2 Active Global Equity mandates covering £1.6bn and 1 Diversified Growth (or multi-asset) Fund covering just over £300m.
- 3.2.8 20 boroughs are currently invested in one or more of these mandates and LBTH is one of them. Those boroughs that do not have an exact match across for launch are able to invest in these sub-funds from the outset at the reduced Asset Management Company (AMC) rate that the CIV has negotiated with managers.
- 3.2.9 There are a number of other managers with whom discussions are still ongoing, but these are currently being viewed as 'post-launch' (phase 2, spring 2016) opportunities.
- 3.2.9 LBTH Pension Fund is one of the London LGPS Funds with direct links to the launch sub-funds. An indication was given to London CIV by the s151 officer having consulted with the Chair and Vice Chair of the Pensions Committee, that the Fund would transfer the current holdings with one of the two global equity managers to the CIV and to hold on transferring the UK Equity mandate to the CIV pending more desirable negotiation entry terms for this mandate.

3.3 National LGPS Frameworks

- 3.3.1 The Fund Officer is now working closely with a number of other authorities to develop national procurement frameworks, with the work of the group being recognised at the recent LGC Investment Awards.
- 3.3.2 Current frameworks under development include the re-letting of the actuarial and investment consultancy frameworks as they are nearing the end of the 4 year framework lifespan for the original frameworks. In addition the Environmental, Social, Governance (ESG) Framework is currently being developed and it is anticipated that this framework will be available for call off by early summer 2016. This is likely to offer a number of lots, which funds will be able to call off including voting services, governance overlay and research work.

3.4 MiFID II Impact on LGPS and Local Authorities

- 3.4.1 The first Markets in Financial Instruments Directive was adopted in April 2004 and came into force in November 2007. Its aim was to improve the competitiveness of EU financial markets by creating a single market for investment services and activities, and ensuring a high degree of harmonised protection for investors in financial instruments, such as shares, bonds, derivatives and various structured products. Under the current regulations LGPS funds are classified as professional investors enabling them to undertake transactions in a wide range of investments including complex ones such as hedge funds, private equity and property.
- 3.4.2 MiFID II is a wide-ranging EU regulation designed to improve investor protection and make financial markets safer and more transparent. It replaces MiFID and comes into effect on 3 January 2017 for all investment firms. It imposes more stringent transaction reporting and fee and charges disclosure rules on investment managers, and enforces better product governance to ensure that products are only sold to suitable investors. Retail investors can buy investments traded on public markets. But restrictions apply to complex and sophisticated investments, including those covered under the Alternative Investment Fund Managers directive (AIFMD), which includes hedge funds, private equity, property, and commodities. Under MiFID II local authorities will be classified as retail investors and because of the relationship of the local authority as the Administering Authority of the Pension Fund, the follow through is that LGPS Funds will also be classified as retail investors. In the private sector, company pension funds are primarily separate legal entities with trustee status and will therefore be unaffected by these changes.
- 3.4.3 Under MiFID II, all financial services firms such as banks, brokers, advisers and fund managers will have to treat LGPS funds in the same way they do individuals and small businesses. That includes ensuring that investment products are suitable for the customer's needs, and that all the risks and features have been fully explained. Whilst recognising that this is appropriate for retail investors it also involves lots more documentation and administration for both the firm and the client, to prove to the regulator that all the steps have been taken, and as evidence in case of alleged mis-selling. Further under MiFID II, asset managers are not allowed to sell investments such as hedge funds, property and private equity to retail clients because of their complex nature.
- 3.4.4 LGPS Funds will be able to go through an election process to be upgraded to professional clients but it will take time and will be onerous as they will have to prove to each asset manager that they meet the strict qualitative and quantitative criteria. These include showing the requisite experience, expertise and knowledge so the funds are capable of making their own investment decisions. Although managers carry the regulatory risk, it is the funds that will have to collate the information to prove they are professional clients.
- 3.4.5 The qualitative criteria under MiFID II are that Funds will have to demonstrate an 'adequate assessment of the expertise, experience and knowledge of the client that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making his own investment decisions and understanding the risks involved' This

assessment 'should be performed in relation to the person authorised to carry out transactions on its behalf.'

3.4.6 The quantitative criteria - (2 of the following 3 must be satisfied):

- the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters;
- the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds EUR 500,000;
- the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.

3.4.7 The Local Government Association (LGA), DCLG, the Investment Association along with LGPS Funds are currently lobbying the Financial Conduct Authority to try to find ways of lessening the impact on local authorities and in particular LGPS Funds of the new European Directive. In addition it is hoped that transition arrangements can be put in place to ensure that Funds aren't forced into a fire-sale of current holdings once the directive comes into force in January 2017. A copy of the LGA paper issued to raise awareness of the issue to local authorities is attached as an appendix to this report for information. It is anticipated that the FCA will issue a consultation on the introduction of MiFID II and its impact on local authorities in early 2016. The FCA also presented to the London CIV Sectoral Joint Committee, which the Vice Chair of Pensions Committee attends outlining the issues for the Committee. A copy of the presentation given to the CIV is attached for information and sets out clearly the timeline of the introduction of the Directive and the issues arising.

3.4.8 With the move to pooling of local authority investments, the introduction of MiFID II could impact on how some of these vehicles are set up and the status that they would attract. The London CIV which the London Borough of Tower Hamlets Pension Fund has supported will meet the criteria of a professional investor given its FCA status as an authorised contractual scheme. However, whilst the London CIV will be classified as a Professional Investor it is unclear at this stage whether the CIV will have to undertake the same level of due diligence with its LGPS clients as a fund manager would do. In addition it is unclear whether some of the structure which could be put forward under the pooling consultation by LGPS funds would fall into the classification of professional investors.

3.4.9 At this stage the contents of this report are for information only, but to make the Committee aware of the potential ramifications of the new EU directive and to note that the Fund may face additional scrutiny and resource requirements if it is to be able to meet the professional classification. It should also be noted that this could also impact on the Council's treasury function.

3.5 Fossil Fuel Divestment Campaign

- 3.5.1 Over the past six months the debate on responsible investment has been in large part due to the growing movement regarding climate change and the associated fossil fuel divestment campaign.
- 3.5.2 Responsible investment is about managing risks and identifying opportunities. This can be achieved via the following vehicles:
- Sustainable investment – This involves considering the financial impact of environmental, social and governance (ESG) factors on investments.
 - Stewardship and governance – This concerns investors acting as responsible and active owners, through considered voting of shares, and engaging with company management when required.
- 3.5.3 Trustees have a fiduciary duty to act in the best interests of their members, as well as acting prudently, responsibly and honestly. Within the context of these duties, which include controlling risks, they must aim to achieve the best realistic return over the long term. And for London Borough of Tower Hamlets Pension Fund this means:
- to ensure the long-term solvency of the Fund
 - to ensure that sufficient funds are available to meet all benefits as they fall due for payment
 - not to restrain unnecessarily the investment strategy of the Fund so that the Council can seek to maximise investment returns (and hence minimise the cost of the benefits) for an appropriate level of risk.
- 3.5.4 The London Borough of Tower Hamlets Pension Fund (the Fund) is a member of the Local Authority Pension Fund Forum (LAPFF).
- 3.5.5 LAPFF does not support divestment from fossil fuel companies but considers active engagement with companies producing fossil fuels as a productive approach to effecting change. The approach of direct and collaborative engagement contrasts with blanket divestment. Once an asset owner divests, their ability to influence both the short and longterm direction of individual companies and the national and international energy sector is severely curtailed.
- 3.5.6 LAPFF's engagement strategy is to push for an orderly carbon transition by requiring companies to identify and tackle carbon risks in their business models. Therefore we can say the Fund was one of the prime movers/supporters of the strategic resilience shareholder resolutions put to BP and Shell's 2015 AGMs. These resolutions were unique in that they were supported by the boards and galvanised investor support and built on a history of previous engagement with resources companies on carbon asset risk. The Fund also votes on resolutions at global AGMs seeking transparency and disclosure of climate risks and setting emission reduction targets. In this manner our view is directly communicated to individual boards.
- 3.5.7 It should be noted that the Fund does have an increasing level of investment in renewable and low carbon energy production and will continue to make such investments where the risk/return profile fits the pension fund's investment strategy.

- 3.5.8 The LAPFF has long been concerned about climate and carbon-related risks to the underlying investment portfolios of member funds and has been engaging with companies and on public policy since 2002 to address the many risks related to climate change.
- 3.5.9 The LAPFF's engagement strategy is to ask companies to identify and tackle carbon risks in their business models. In doing so, the Forum supports an orderly transition requiring companies to identify and tackle carbon risks in their business models.
- 3.5.10 For coal, oil and gas companies, particular attention is given to carbon asset risk, by promoting a low carbon transition. For oil and gas companies, the focus should be on value at risk, particularly from high cost projects and support can be given to returning capital to investors where appropriate.
- 3.5.11 An example of engagement is the coordination undertaken with member funds to co-file and support shareholder resolutions to both the BP and Shell 2015 AGMs on strategic resilience for 2035 and beyond. The resolutions ask the companies to report on their operational emissions management; asset portfolio resilience to the International Energy Agency (IEA)'s scenarios; low-carbon energy research and development and investment strategies; relevant strategic key performance indicators and executive incentives; and public policy positions relating to climate change.
- 3.5.12 LAPFF also works in cooperation with other investors and organisations to maximise the voice of asset owners including through its membership of the Aiming for An Investor Coalition, through collaborative engagement with the Investor Network on Climate Risk and as a signatory to the Principles for Responsible Investment.
- 3.5.13 The Principles for Responsible Investment were developed by an international group of institutional investors reflecting the increasing relevance of environmental, social and corporate governance issues to investment practices. The process was convened by the United Nations Secretary-General.
- 3.5.14 These principles are based on the belief that as institutional investors, they have a duty to act in the best long-term interests of their beneficiaries. In this fiduciary role, they believe that environmental, social, and corporate governance (ESG) issues can affect the performance of investment portfolios (to varying degrees across companies, sectors, regions, asset classes and through time). They also recognise that applying these Principles may better align investors with broader objectives of society. Therefore, where consistent with their fiduciary responsibilities, they commit to the following:
- Principle 1: To incorporate ESG issues into investment analysis and decision-making processes.
 - Principle 2: To be active owners and incorporate ESG issues into our ownership policies and practices.
 - Principle 3: To seek appropriate disclosure on ESG issues by the entities in which they invest.

- Principle 4: To promote acceptance and implementation of the Principles within the investment industry.
- Principle 5: We will work together to enhance our effectiveness in implementing the Principles
- Principle 6: To report on activities and progress towards implementing the Principles.

3.5.15 The Forum has also supported resolutions encouraging Chevron and Exxon to set carbon reduction targets and at Chevron to reduce capital expenditure on high cost, unconventional projects and increase the amount authorised for distribution to shareholders in the form of dividends as a climate risk hedging mechanism.

3.5.16 Encouraging appropriate regulatory frameworks is also crucial. A recent example is the LAPFF's participation in correspondence from global asset owners and managers to the G7 leaders urging stronger action by major industrial nations on emissions, and climate action. As set out in the Forum's Statement on Climate Change, LAPFF members are interested in investment opportunities afforded by a low-carbon future which increase asset diversification and provide long-term returns. LAPFF will continue to engage with companies on aligning their business models with a 2°C scenario, to push for an orderly carbon transition and to file and support relevant shareholder resolutions to companies.

3.6 Scheme Advisory Board – Separation of Pension Funds

3.6.1 The National LGPS Scheme Advisory Board was formally set up on 1st April 2015 having operated in shadow form for over a year. The purpose of the Board is to encourage best practice, increase transparency and coordinate technical and standards issues. It will consider items passed to it from the Department of Communities and Local Government ("DCLG"), the Board's sub-committees and other stakeholders as well as items formulated within the Board. Recommendations may be passed to the DCLG or other bodies. It is also likely that it will have a liaison role with the Pensions Regulator. Guidance and standards may be formulated for local scheme managers and pension boards.

3.6.2 In June this year, the Board sought bids from advisors to look at options for separation of host authority and pension fund with a report to be delivered to the Board September 2015 setting out positives and negatives and cost implications from a range of options. A link to the notice for the invitation to bid can be found here:

http://www.lgpsboard.org/images/PDF/BoardJune2015/OfS_Instructions_for_bids.pdf

3.6.3 The options for reform that the Board were asking to be considered were:
1. **Option 1** - Stronger role for Section 151 Officer within a distinct entity of the host authority

- Separation of financial statements and audit arrangements
- Pension fund-specific annual governance statement
- Specific delegations or require a senior officer to lead the function

- Group the responsibility for all LGPS related activities within one function.
2. **Option 2** – Joint Committee of two or more administering authorities
- Delegation of full scheme manager function and all decision making to a section 102(5) joint committee
 - Employment of staff and contractual issues dealt with through lead authority or wholly owned company
 - Ownership of assets unchanged
 - Consideration be given to enshrining the structure in legislation in the form of a combined authority
3. **Option 3** - LGPS complete separation of the pension fund from the authority
- DCLG or Treasury to create single purpose Pensions Bodies
 - Remove decision making from elected members
- 3.6.4 KPMG was appointed to undertake the work looking into the options for separation and due to report back to the Board September 2015. At this stage there is no indication of how they might approach this work or the likely outcome or recommendations to the Board, but clearly if any of these recommendations are put forward to DCLG and then consulted upon, they could again have far reaching implications for the LGPS and administering authorities.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

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

5. LEGAL COMMENTS

There are no immediate legal implications arising from this report. However due consideration will need to be given to the issues that will arise from:

the proposed pooling of pension fund investments once the consultation is underway;

the introduction of the 2nd Markets in Financial Instruments Directive which comes into effect on the 3rd January 2017;

the report being prepared by KPMG into the options for separation of host authority and pension fund which the Pensions Scheme Advisory Board has called for.

When deciding whether or not to proceed with a 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 don't (the public sector duty).

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 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.
- 6.2 A viable pension scheme also represents an asset for the recruitment and retention of staff to deliver services to the residents.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 To have an efficient, cost reduction platform for investment management of the Fund by pooling and collaborating is considered to be a good decision which can result in greater cost savings to the fund.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

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

9. RISK MANAGEMENT IMPLICATIONS

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

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

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

Linked Reports, Appendices and Background Documents

Linked Report

- NONE

Appendices

- NONE

Local Government Act, 1972 Section 100D (As amended)

List of "Background Papers" used in the preparation of this report

- NONE

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The Markets in Financial Instruments Directive (MiFID II) and its impact on LGPS investments

Why be concerned?

1. It is our understanding that under MiFID II local authorities will be defaulted to retail client status - currently they are professional clients. There will be the opportunity to elect for professional client status.

What does that mean for me as an LGPS administering authority?

2. As a retail client your authority could be faced with a much reduced pool of asset managers and consultants willing to provide services, many may not deal with retail clients at all.
3. Those managers who are willing to deal with you will offer a restricted range of products and due to the extra compliance checks and reporting required for retail clients those products could cost more. First estimates are that up to 50% of LGPS assets may be affected.
4. If when the directive comes into force (January 2017) you hold assets in products outside of the scope of those available to retail clients you may find that the manager will eject you from that product resulting in a 'fire sale' of assets. This could be mitigated if FCA were to provide some form of transition period or 'grandparenting' - allowing you to retain products purchased as a professional investor for a period of time.

How can I elect for professional status?

5. The process will be similar to that in MiFID I (see ANNEX 1) although there may be some changes to the criteria. Effectively you will have to demonstrate to each manager you use that you meet the qualitative and quantitative criteria as set out below
6. The qualitative criteria - an 'adequate assessment of the expertise, experience and knowledge of the client that gives reasonable assurance, in light of the nature of the

transactions or services envisaged, that the client is capable of making his own investment decisions and understanding the risks involved'

This assessment 'should be performed in relation to the person authorised to carry out transactions on its behalf.'

7. The quantitative criteria - (2 of the following 3 must be satisfied)

- the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters;
- the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds EUR 500,000;
- the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged

How long will it take for an election to be completed?

8. Depending on how the actual criteria look when published in 2016 it could be a matter of weeks. However as each manager will have to assess each of its LGPS clients this cannot be able to be done all at once. Therefore it may be that some form of managed election process across the whole of the LGPS will be needed. For example if a significant number of authorities wait until very late 2016 to elect then don't be surprised if the process is not completed by the January 2017 implementation date.
9. There is a duty on elected professional clients to keep firms informed about any change that could affect that status. Such changes could result in the process having to be repeated and depending on the nature of the change the danger that the authority could be reverted back to retail client status.

What's the timeline?

February 2015: Feedback Statement on dealing commission regime and potential changes under MiFID II

March 2015: FCA Discussion Paper and ongoing dialogue in areas where we have policy choices to make

Summer 2015: EU legislation on MiFID II implementing measures is adopted and formal approval process begins

December 2015: Consultation on implementing MiFID II requirements

Early 2016: EU legislation on MiFID II implementing measures is finalised and published

June 2016: FCA Policy Statement (rules) on implementation of MiFID II

3 January 2017: MiFID II rules come into effect for all investment firms

What should I do?

10. Make your committee aware of the issue as soon as possible.
11. Discuss the implications with your asset managers, find out if they will they still deal with you as a retail client and what assets will be affected.
12. Prepare for an assessment against the qualitative and quantitative criteria - what evidence would you put forward to back up your election for professional status? In particular assess who will be judged against the qualitative criteria and if necessary be prepared to amend your delegations appropriately.

What are LGA doing?

13. We are in discussions with the FCA, DCLG and the Investment Association (IA) to find ways to lessen the impact on LGPS authorities, in particular we are:
 - Investigating with DCLG and HMT the potential impact on pooling arrangements and in particular any impact on the potential for infrastructure investment via pools
 - Discussing the election process under MiFID II with FCA to see if there are changes that could make the process smoother for local authorities in relation to their pensions functions
 - Attempting to achieve a period of transition to avoid a forced sale of assets for those authorities who have not completed the election to professional status by January 2017

- Discussing with IA the possibility of standard documentation and process for election to professional status

LGA Pensions Team

16th October 2015

ANNEX 1

Extract from FCA New Conduct of Business Sourcebook Chapter 3 Client categorisation

ELECTIVE PROFESSIONAL CLIENTS

3.5.3

A firm may treat a client as an elective professional client if it complies with (1) and (3) and, where applicable, (2):

(1) the firm undertakes an adequate assessment of the expertise, experience and knowledge of the client that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making his own investment decisions and understanding the risks involved (the "qualitative test");

(2) in relation to MiFID or equivalent third country business in the course of that assessment, at least two of the following criteria are satisfied:

(a) the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters;

(b) the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds EUR 500,000;

(c) the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged; (the "quantitative test"); and

(3) the following procedure is followed:

(a) the client must state in writing to the firm that it wishes to be treated as a professional client either generally or in respect of a particular service or transaction or type of transaction or product;

(b) the firm must give the client a clear written warning of the protections and investor compensation rights the client may lose;

and

(c) the client must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections.

[Note: first, second, third and fifth paragraphs of section II.1 and first paragraph of section II.2 of annex II to MiFID]

3.5.4

If the client is an entity, the qualitative test should be performed in relation to the person authorised to carry out transactions on its behalf.

[Note: fourth paragraph of section II.1 of annex II to MiFID]

3.5.5

The fitness test applied to managers and directors of entities licensed under directives in the financial field is an example of the assessment of expertise and knowledge involved in the qualitative test.

[Note: fourth paragraph of section II.1 of annex II to MiFID]

3.5.6

Before deciding to accept a request for re-categorisation as an elective professional client a firm must take all reasonable steps to ensure that the client requesting to be treated as an elective professional client satisfies the qualitative test and, where applicable, the quantitative test.

[Note: second paragraph of section II.2 of annex II to MiFID]

3.5.7

An elective professional client should not be presumed to possess market knowledge and experience comparable to a per se professional client

[Note: second paragraph of section II.1 of annex II to MiFID]

3.5.8

Professional client are responsible for keeping the firm informed about any change that could affect their current categorisation.

[Note: fourth paragraph of section II.2 of annex II to MiFID]

3.5.9

(1) If a firm becomes aware that a client no longer fulfils the initial conditions that made it eligible for categorisation as an elective professional client , the firm must take the appropriate action.

(2) Where the appropriate action involves re-categorising that client as a retail client, the firm must notify that client of its new categorisation.

[Note: fourth paragraph of section II.2 of annex II to MiFID and article 28(1) of the MiFID implementing Directive]

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MiFID II Client Categorisation Regime

Local authorities & the Local Government Pension Scheme (“LGPS”)

Agenda

- Timeline
- MiFID II & the Client categorisation regime
- Why retail and what is the practical impact?
- FCA's Role
- Opting-up regime – current criteria
- Desired outcomes (1) – Local authorities
- Desired outcomes (2) - what about the LGPS?
- Benefits of retail client status

Timeline

- **June 2014:** MiFID II published in Official Journal
- **2015 – 2016:** FCA stakeholder engagement
March 2015: FCA Discussion Paper Published (*including treatment of Local authorities*)
- **Early 2016:** FCA Consultation Paper on Conduct Matters
- **Q2 2016:** FCA Policy Statement
- **July 2016:** Transposition deadline
- **3 January 2017:** MiFID II applies

MiFID II & Client Categorisation Regime

- Improving investor protection
- Retained key principles of regime
- Local authorities re-categorised as retail
 - BUT can “opt-up” to professional status
- Decision taken during L1 process

Why retail and what practical impact?

- Why? To increase protection for all clients, especially Local authorities
- Retail clients vs. professional clients
- Firms will need retail permissions
- Marketing restrictions for alternative investment funds (professional-only)

FCA's Role

- FCA has **no discretion** to change default retail categorisation
- But we can...
- Design alternative/additional criteria to current quantitative criteria for opting-up

Opting-up Regime - Current Criteria

- Retail clients can opt-up if they meet specific criteria – COBS 3.5.3R
- This consists of:
 - (i) a qualitative test**
 - (ii) a quantitative test;** and the
 - (iii) requirement** to follow a **specific procedure**

Desired Outcome (1) - Local authorities

- FCA intends to exercise discretion
- Why? To protect smaller, less sophisticated Local authorities
- Proportionate thresholds– flexible approach to opting-up

Desired Outcome (2): What about LGPS?

- LGPS Administering authorities not legally separate from Local authorities
So...
- FCA required to apply retail categorisation
- Flexible opt-up conditions

Benefits of Retail Client Status

- Local authorities will benefit from full suite of MiFID's regulatory protections
- Additional disclosures/information (e.g. costs & charges)
- Suitability & appropriateness assessments – wider scope in MiFID II

Questions or Comments?

- All welcome.

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Agenda Item 7

Proposed Agenda for Pensions Committee 25 November 2015

1. Training – The Pensions Regulator (TPR)
 - i) Conflict of Interest
 - ii) Knowledge and Skills (report)
2. Market & Economic Outlook (verbal report)
3. Performance Monitoring Update
4. Update on Fixed Income Investment (pink paper report)
5. LGPS Update
 - i) Pooling
 - ii) MiFID
 - iii) Fossil Fuel
 - iv) Scheme Advisory Board Work
6. London CIV Update
7. Pension Fund Audit report 2014/15
8. Pension Fund Annual Report & Account 2014/15
9. Knowledge & Skills Audit (verbal report)

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