PENSION BOARD

MINUTES of a meeting of the Pension Board held at County Hall, Lewes on 12 May 2016.

PRESENT	Richard Harbord (Chair) Councillor Kevin Allen, Angie Embury, Sue McHugh and Councillor Brian Redman
ALSO PRESENT	Marion Kelly, Chief Finance Officer Brian Smith, Regional Operations Manager Ola Owolabi, Head of Accounts and Pensions Jason Bailey, Pension Services Manager John Shepherd, Finance Manager (Pension Fund) Claire Lee, Senior Democratic Services Adviser Harvey Winder, Democratic Services Officer

1 MINUTES

1.1 The Board agreed the minutes of the 4 February 2016 meeting.

2 APOLOGIES FOR ABSENCE

2.1 Apologies for absence were received from Tony Watson and David Zwirek.

2.2 The Board Members offered Tony Watson their best wishes for his swift recovery

3 PENSION COMMITTEE AGENDA

3.1. This item was introduced by Ola Owolabi (OO).

3.2. In reference to **Item 6: LGPS pooling draft submission,** The Chair said it was clear that governance was the key issue facing the ACCESS group. He said that the Government appeared to expect that administrating authorities would transfer their funds to a pooled fund and take no further part in the process. However, this would likely frustrate Local Government Pension Schemes (LGPS) wanting to monitor and take action on the performance of their fund.

3.3. The Chair observed that it was disappointing that the Government had undertaken this exercise for the purpose of making savings, but these were unlikely to be realised for over 15 years and the pool would initially be a net cost to its members; there seemed to have been no reason for this apparent failure to realise savings.

3.4. Sue McHugh (SM) asked whether ACCESS was a separate legal entity, or a collective of individual organisations. OO said that the Government had dictated that the participating administrating authorities would need to create a legally separate organisation regulated by the Financial Conduct Authority (FCA) that would select investment managers on their behalf. ACCESS authorities are in the process of agreeing the legal structure of their investment pool before 15 July 2016. Marion Kelly (MK) added that the FCA regulations for the recruitment of board members would apply to ACCESS so it was unlikely that elected members would be able to sit on the board.

3.5. Councillor Kevin Allen (KA) asked whether Marcus Jones MP had responded to the letter from ACCESS highlighting the concern around the lack of democratic accountability of the pooled funds. OO said that the Department of Communities and Local Government (DCLG) has responded verbally to the Chairs of ACCESS Group and would be meeting with representatives on 12 May 2016 to discuss the structure of the pooled fund, the role of the FCA, and the role of members – further meetings were planned in the coming weeks. MK explained that administering authorities had lobbied the Government extensively over this issue.

3.6. The Chair said he had heard that there may be some delay to the 15 July 2016 submission deadline due to the increasing concerns about the lack of involvement of elected members in the pooled funds, in particular whether this was in contravention of the fiduciary duties of elected members towards their electorate. He observed that there was the potential for conflict if some elected members of participating authorities were satisfied with the performance of the pooled funds and others were not. MK said that some unions had planned to use EU legal directives to challenge the decision to pool funds.

3.7. Angie Embury (AE) said that UNISON had been providing information to its members on the issues around the governance of the new pool structures; she offered to circulate relevant documents to the rest of the Board. AE added that UNISON had provided significant training to its members on this matter; The Chair agreed that UNISON appeared to have taken the issue of pension fund pooling seriously.

3.8. The Chair said that it was increasingly apparent that very little of the pooled funds would be invested into infrastructure – as originally envisaged – because they did not offer the best return on investment, and there would not be a continuous stream of new projects to invest in.

3.9. The Chair asked, in relation to **Item 7: Quarterly performance report**, whether the administering authority was happy with the overall return on funds. MK explained that it was important that the performance of the investment managers was in line with the benchmark. Because ESPF was one of the best funded pension funds, one of its key investment strategies was to ensure that no unnecessary risk was taken, so it is hard to compare benchmarks with other funds that may feel they need to take more risk and prioritise additional growth.

3.10. The Chair queried whether the administrating authority was satisfied that the benchmarks for individual fund managers were reasonably challenging for the fund managers. MK explained that benchmarks are set during the procurement process based on advice by Hymans Robertson using absolute return investment managers as an example. Over the past five years, the sector as well as the administrating authority has developed a greater understanding of what benchmarks are appropriate; however, many investment managers have been managing ESPF portfolios for many years and it is difficult to adjust their benchmarks midway through their contracts. However, MK agreed a conversation about that would be very helpful.

3.11. SM expressed concern that employer contribution rates to the ESPF from 2017 may be adversely affected by the triannual evaluation taking place during a period of market volatility. MK said that increases in the contribution from employers due to market volatility re smoothed by having a stabilisation mechanism (to cap employer contribution rates). Hymans Robertson was performing scenario planning that would demonstrate what the outcomes for the fund would be based on different assumptions for the new triannual period starting in 2017. These potential outcomes will be presented to employers at the Employer Forum in November 2016. MK added that for any pension fund the ultimate aim was to have sufficient available cash to pay scheme members' pensions when they fall due.

3.12. In reference to **Item 9: Reporting breaches policy and procedure**, the Chair asked what constituted a 'material breach'. MK said that officers refer to the Pension Regulator's guidance on a regular basis to see what it considers to be a material breach; the Regulator also recommends that, if in doubt, you should report a breach.

3.13. Jason Bailey (JB) added that small employers being unable to pay member and employer contributions on time were a significant cause of breaches; in some cases, small employers had ended up three years in arrears. MK reassured the Board that – whilst there were sometimes late payments – the administrating authority had a strong relationship with its employers and would be very aware of any potential financial difficulties that they faced.

3.14. Councillor Brian Redman (BR) asked, in reference to **Item 10: Discretionary policy statement**, what the purpose was of collecting discretionary policy statements from employers. MK said that it was a LGPS regulation that they be collected by the administering authority, but it was worthwhile doing so as the administrating authority wanted to be assured that employers have the correct discretionary policies in place (e.g., early retirement on compassionate grounds) and that they are bearing the costs of them.

3.15. Referring to **Item 12: External Audit Plan for 2015/16**, the Chair commented that a materiality of £27m seemed very high. MK assured the Board that this was just the level at which the accounts would have to be changed, and that any significant errors beneath that level would be reported to the Pension Board (and other appropriate bodies) in the interests of transparency. OO added that the £27m need not be a single error but could be the acumulation of individual errors; he was confident that the threshold would not be reached either way.

3.16. The Board RESOLVED to note this report.

4 EXTERNAL ASSURANCE REPORT FROM THIRD PARTIES

4.1 This item was introduced by Ola Owolabi (OO).

4.2 OO confirmed that Newton had submitted their external assurance report.

4.3 The Pension Board were reassured to see that ESPF was given full assurance by Internal Audit.

4.4 The Board RESOLVED to note this report.

5 DRAFT PENSION FUND ANNUAL REPORT - 2015/16

5.1 This item was introduced by Ola Owolabi (OO).

5.2 OO explained that the external auditors had asked this year for the Pension Fund Annual Report to include the fees paid to an investment manager every time they make a transaction, in addition to their annual management fees. For this reason, it appeared that management fees had increased by over £3m. OO assured the Board that there had been little to no increase in management fees and officers were in discussions with the external auditors to allow them to provide a similar breakdown for last year’s fee, but this was complicated by the fact that the 2014/15 account has already been signed off – a note would also be added to the accounts to explain the discrepancy. John Shepherd (JS) added that officers welcomed this additional transparency.

5.3 MK explained that management fees can be higher if, as in the ESPF, the administrating authority had selected some boutique managers who were expected to either provide significant returns for the fund or, in the case of Newton, protect it during times of market volatility.

5.4 The Chair asked whether the fact that a few employers in the scheme had made late contributions was a cause for concern. MK said that there were no concerns.

5.5 AE asked why the number of scheme members appeared to fluctuate from month to month. OO explained that this was due to other admission bodies leaving and joining the scheme, for example, contractors, the figure has generally increased overall as more services are contracted out by local authorities and more schools become academies. Other employers may leave the scheme as they no longer have any scheme members receiving a pension. JB added that academies were separate employers and as more schools became academies, the number of employers would increase.

5.6 The Board RESOLVED to note this report.

6 INTERNAL DISPUTE RESOLUTION PROCEDURE (IDRP)

6.1 This item was introduced by Ola Owolabi (OO).

6.2 In response to a question by The Chair, JB explained that the internal dispute resolution procedure (IDRP) is most often triggered due to disputes between scheme members and employers about retirement due to ill health – typically over the issue of what tier of payment the scheme member will receive when retiring due to ill health. The judgement about the extent of the scheme member's ill health is made by a medical professional, but the employer may override this judgement.

6.3 JB said that the legislation governing IDRP states that the employer must nominate someone internally to hear the complaint at the first stage, and the second stage must be heard by someone from the administrating authority. If the dispute is between the administrating authority and a scheme member, then the second stage is escalated to the monitoring officer of the administrating authority. Disputes may then be raised with the ombudsman; however, most disputes are resolved informally.

6.4 The Board RESOLVED to note this report.

7 PENSION FUND ADMISSION AGREEMENT TEMPLATE

7.1. This item was introduced by Ola Owolabi (OO).

7.2. OO confirmed that there are no material changes contained within the new admission agreement template. JB added that the Government had recently increased employees' rights to stay in a LGPS following a TUPE transfer to a contractor; this is expected to increase the number of employers joining the scheme via an admission agreement.

7.3. BR sought reassurance that the administrative authority checked the solvency of new employers. OO assured the Board that due diligence was applied – background checks were carried out to determine if the employer was financially sound, and guarantees and bonds were sought to protect the fund from any future financial issues that the employer may experience. MK added that this process involved a considerable investment in time from both the pensions and legal officers.

7.4. BR asked whether academies would pose a financial risk to the fund if they became financially insolvent. MK said that Government guidance was unclear, but Hymans Robertson's advice was that they were effectively guaranteed by the Government – although a test case is likely to come before the courts soon. JB added that the National Pension Board had been raising this issue of underwriting with the Government.

7.5. BR queried whether an insurance agreement could be put in place before admitting academies to the pension scheme, as is the case for voluntary organisations. MK said that this was not possible because academies were classified as 'scheduled bodies' and as such could not be excluded from the scheme.

7.6. BR asked whether there was a risk to the fund from academies (and other employers) offering generous discretionary bonuses to members and then becoming insolvent. JB said that legislation made it clear that any cost implications for discretions had to be made up front by the employers and that these choices were fairly limited.

7.7. The Board RESOLVED to note this report.

8a OFFICERS' REPORT - BUSINESS OPERATIONS

8a.1. This item was introduced by Brian Smith (BS).

8a.2. AE asked why scheme members had not yet received the newsletter (attached as appendix 1). JB explained that a letter was about to be sent to scheme members alerting them to the newsletter (amongst other things).

8a.3. AE asked why the newsletter had not yet been distributed if the changes to National Insurance contributions explained in the newsletter had come into force on 1 April 2016. JB explained that it was a legal responsibility of the employers to alert their scheme members to the changes; the newsletter was an opportunity for the administrating authority to remind scheme members about the changes. AE said that UNISON representatives had not received notification from Brighton & Hove City Council as far as she was aware. BR said that Wealden District Council had contacted all scheme members individually by letter.

8a.4. The Board recognised that the administrating authority was limited by what it could do to alert scheme members to the changes. JB currently had a list of contacts from each of the employers who he emailed information to, but this relied on the individual then passing information to the scheme members, or confirming to him who in their organisation should be doing this. The new pension administration software contained a module to capture scheme members' emails which would increase the ability to contact scheme members directly.

8a.5. The Board agreed that it could not effectively conduct its role of assisting the Pension Committee without more information on the performance of the Pension Administration Service. JB explained that the previously reported Key Performance Indicators (KPIs) had been developed for a contractor and were both somewhat arbitrary and not customer focussed. BS said that Business Operations was conducting an in-house review of all of its services to redevelop its KPIs so that they were customer focussed. This process would involve consultation with stakeholders – including the Pension Board, employers, and scheme members – in order to inform the KPIs.

8a.6 BR asked whether it was necessary to set the risk tolerance level so high for GMP, and thus incur such a high cost for a detailed evaluation of the fund. JB said that HM Treasury had now issued guidance on the recommended tolerance level for local authorities, and going against that level would run the risk of challenge when scheme members are written to in December 2018 with their final settlement.

8a.7. The Board RESOLVED to request:

1) a report on the proposed new KPIs for Pension Administration at its August meeting;
2) that the current KPI quarterly performance report is circulated to the Board via email; and
3) that the Business Operations report continues to include the existing KPI quarterly performance report until the new KPIs are developed;

8b OFFICERS' REPORT - GENERAL UPDATE

8b.1. This item was introduced by Ola Owolabi (OO).

8b.2. The Board RESOLVED to note this report.

9 PENSION BOARD FORWARD PLAN 2016/17

9.1. This item was introduced by Ola Owolabi (OO).

9.2 OO agreed to send a link to Members for the Pension Regulator Training Toolkit.

9.3 The Board RESOLVED to add to the agenda of the next meeting:

- A progress report on the triannual valuation;
- A report outlining the proposed new pension administration KPIs;
- A report outlining the itinerary for the next employers' forum in November 2016.

The meeting ended at 12.23 pm.

Richard Harbord
Chair