

Pensions Committee

25 September 2019

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| Report title | Legal and Compliance Update | |
| Originating service | Pension Services | |
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Recommendations for noting:

The Committee is asked to note:

1. The quarterly risk register, including the movement of risks and the actions taken to mitigate any impact.
2. The quarterly compliance monitoring.
3. The outcomes from the initial work undertaken by Hymans Robertson for the Scheme Advisory Board on the Good Governance Review.
4. The outcomes from the Pensions Regulator's public service and administration survey 2018.

1.0 Purpose

1.1 To provide Committee with an update on the work of the Fund to deliver a well governed scheme.

2.0 Risk Register

2.1 The Fund’s risk register has been compiled to represent all known and perceived risks across all service areas of the Fund. Each quarter, the Fund’s compliance team, in conjunction with Senior Managers and Risk Owners, review the key risks which are drawn from detailed risk registers that are separately maintained for each service area of the Fund. The risk register is an active document that is regularly monitored to ensure it reflects the most recent activity of the Fund. The reporting period for risks is the most current quarter (April to June), this monitoring is looked upon as both a reactive and proactive process to ensure emerging risks are identified quickly and action taken to address, as required.

2.2 The Fund’s full risk register this quarter contains 53 risks, a reduction of 3 from the previous reported quarter. Of those 53, 15 are rated Red and are noted as Key Risks, 36 Amber and 2 Green. In assessing risks, the Fund undertakes a 5x5 matrix assessment as follows:

| | | | | | | |
|--------|---|-------------|----|----|----|----|
| Impact | 5 | 5 | 10 | 15 | 20 | 25 |
| | 4 | 4 | 8 | 12 | 16 | 20 |
| | 3 | 3 | 6 | 9 | 12 | 15 |
| | 2 | 2 | 4 | 6 | 8 | 10 |
| | 1 | 1 | 2 | 3 | 4 | 5 |
| | | 1 | 2 | 3 | 4 | 5 |
| | | Probability | | | | |

2.3 Movement this Quarter:

- There has been a significant increase in the Brexit uncertainty risk following recent changes in Central Government and the impending withdrawal date.
- A new risk has also been added following the recent judgement in the McCloud court case and the uncertainty of future changes to the scheme rules and benefit calculations which has previously been reported to Committee.
- A new risk has been added drawing out the current demands and potential impact on Fund resource in light of anticipated scheme changes, together with the ongoing workload generated by the development of and transition to investment pooling.
- Seven risks have reduced in rating, including the risk highlighted last quarter concerning the potential change in Committee and Local Pension Board membership. Following the cycle of inductions for all members, this risk has reduced four points and is now considered a low Amber risk.

2.4 Following this review, the key risks of the Fund and their controls are noted in Appendix A.

3.0 Compliance Monitoring

3.1 Finance and Investments

Trades

The Fund continues to monitor late and failed trades. Late trades relate to instructions on stocks which were not executed at the time requested but executed at a later period with no detriment to the Fund. A failed trade is where the execution on stocks was not actioned.

For the period April to June the number of late trades was 1 for the full quarter, this is an improvement on the January to March quarter of 7. The KPI's from the custodian have been provided for the fund against peer group comparisons. For April, WMPF had no late trades against per group of 3.7%. May had no late trades against peer group of 2.0% and June had 1 late trade with a peer group of 2.3% (WMPF 1.3%). For this period, the Fund did not suffer any loss or detriment as a result of the late trade which occurred following a late instruction.

For the period April to June, the number of failed trades was 15, this is an improvement on the January to March quarter of 22. The KPI's from the custodian have been provided regarding the late trades against Peer group as follows, April had 9 late trades (WMPF 9.00% / Peer 4.7%), May had 2 Failed trades (WMPF 1.7%/ Peer group 4.3%) and June had 4 Failed trades (WMPF 5.1% / 4.9% Peer group).

To support the Fund's work on monitoring the trade actions, the Fund's Senior Compliance Officer is meeting with the Custodian later this month to understand the process for actioning requests and the reasons why certain actions may fail or be applied late, this is in addition to the ongoing dialogue and current escalation process the Fund has with the custodian.

For all actions there was no recorded detriment to the Fund.

Contributions

The Finance team continue to engage with employers to ensure contributions are received monthly in line with TPR guidelines. The procedures for monthly reconciliation of contributions continue to develop and embed within the employer monthly return process.

During the sample month of June, the number of employers with late payments was 33. The Finance and Employer Services teams continue to work with employers in line with the Employer Engagement Roadmap.

3.2 Governance and Operations

Freedom of Information Requests

This quarter the Fund has received 8 FOI requests with the majority interested in the Fund's investment holdings and performance. One request related to contract values. All requests were actioned in line with the statutory timescales.

Data Protection Requests

This quarter the Fund has recorded 20 data protection breaches, an increase of 5 from last quarter. The Fund attributes this increase to a heightened awareness amongst employees following the annual refresher training on GDPR delivered by the Fund's Governance Officer throughout May and June and is not, at this time, concerned with the increase in reporting, the increase is reflective of trends across the Council.

Regulatory Compliance

The Fund continues to develop its assurance programme linked to the various statutory requirements placed on LGPS Funds by our governing bodies. The Assurance Framework links the Fund's risk register, Key Performance Indicators and corporate priorities providing a suite of data from which the Fund can assess its compliance and anticipate challenges to performance and delivery. In line with this, the Fund's breach reporting process will be fed from the outcomes of the assurance testing, the first of these updated reports will be presented to December's committee.

National Regulation and Governance

McCloud

On 27 June 2019 the Supreme Court denied the Government's request for an appeal in the McCloud and Sargeant cases previously reported to Committee. This now means that the court ruling, which found the proposed changes to public sector schemes were unlawful, remains upheld with the matter being referred to the employment tribunal for a detailed decision and for remedy. The next stage in this process could mean a further delay of outcome for 12-months while the tribunal assesses the required rectification and amendment to the scheme rules as appropriate.

It is anticipated that any remedy would be backdated to the commencement of the existing scheme rules in April 2015. This obviously has a potential impact for members who may have received their pension benefits after this date based on the new scheme rules, which may need to be recompensed in light of any amendments coming out of the Tribunal together with the potential impact on the setting of employer contributions as we move into the 2019 valuation.

In light of this outcome, MHCLG wrote to the Scheme Advisory Board (SAB) advising LGPS Funds to discuss the treatment of McCloud with their actuary and disclose clearly in their funding strategy statement the approach taken, the Fund is currently engaging with its actuary on this process with further detail contained in the Funding and 2019 Actuarial Valuation Update report presented to Committee. Further updates on this case will be provided on the SAB website.

3.3 Statutory Compliance – Annual Benefit Statements

Committee will recall that in November 2018, the Fund self-reported to the Pensions Regulator (tPR) our inability to produce annual benefit statements for active members of the West Midlands Pension Fund. This inability was linked to gaps in data held by the Fund as well as the performance of employers in delivering timely monthly files together with the quality of those files. In 2018, the Fund was only able to produce active benefit statements for 52% of its active membership by the 31 August deadline, increasing to 79% at the end of the rolling programme of production in March 2019.

Following a programme of focussed data management and engagement with employers this year, 85% of active benefit statements (ABS) were produced by 31 August 2019. Following analysis of those members for whom the Fund is unable to produce a statement, the Fund is engaging with employers to complete data records required and will be undertaking a further ABS production run later in the year.

For our deferred members, the Fund has met last year's production figure of 99.7% for deferred benefit statements. All benefit statements have been published on members' individual pensions portal accounts. For those members who have requested paper copy statements, these were sent out by the Fund by 31 August 2019.

In line with the expectations of the Pensions Regulator, the Fund is reporting its 2019 delivery of annual benefit statements. Timely employer monthly submissions and responses to data improvement plans to date have aided improvement over the last year, with work ongoing and still to do to continue to identify and address the cases where the Fund is still unable to issue a statement. Delays in notification and information required to process leaver benefits are the main reason for non-issue, with the Fund lacking salary and contribution details to complete and update member records.

Gaps in data submissions and persistent queries are being monitored and managed in accordance with the fund's Pension Administration Strategy and associated Employer Roadmap.

4.0 Good governance Review

4.1 As reported to Committee in June, the Scheme Advisory Board (SAB) appointed Hymans Robertson to look at a range of options which may support governance arrangements for individual Funds within the LGPS. In July, Hymans released a report of their findings which they presented to SAB for consideration.

4.2 Key proposals from Hymans' work and engagement with LGPS Stakeholders recommended

- i) An outcomes-based approach to LGPS governance with minimum standards rather than a prescribed governance model. Their findings noted that the governance structure is not the only benefit (and detriment) to good governance with similar governance models delivering different results within the LGPS.

- ii) Critical features of the outcomes-based model are recommended to include
 - a) robust conflict management, including clarity on roles and responsibilities for decision-making
 - b) assurance on sufficiency of administration and other resources (quantity and competency) and appropriate budget.
 - c) explanation of policy on employer and scheme member engagement including touch-points and representation within the governance framework
 - d) regular independent review of governance – it is recommended that an enhanced governance compliance statement is used to explain how the required outcomes will be delivered.
- iii) Enhanced training requirements for officers and decision-making bodies
- iv) Updated, relevant guidance together with better sign posting, acknowledging the different bodies' responsible for issuing guidance and ensuring it is reflective of the roles of regulators, oversight and implementation bodies

4.3 Following receipt of the report, the SAB has invited the Hymans Robertson project team to assist in taking forward the next stage of the good governance project. Two working groups will be established, one to focus on defining good governance outcomes and the guidance needed to clearly set them out and the other to focus on options for the independent assessment of outcomes and mechanisms to improve the delivery of those outcomes. Both groups will comprise a wide range of scheme stakeholders to ensure a full range of views and options are considered. The aim is for an options report to be ready for the Board's consideration when it meets in November.

5.0 The Pension Regulator's Survey

- 5.1 The Pension Regulator (TPR) has responsibility for oversight of LGPS Funds' management and administration processes together with enforcement powers for non-compliance with statutory duty.
- 5.2 Since assuming responsibility for public sector schemes, TPR has issued its public service governance and administration survey on an annual basis to inform its understanding of the practices in place across the public sector schemes, including Funds within the LGPS. The survey is anonymous by default and does not inform any direct enforcement or action taken by the Regulator, however the outcomes are used to inform and shape regulatory approach and priorities.
- 5.3 The outcomes from this year's survey has identified 4 key risks for TPR within the LGPS
 - i) Governance – in the knowledge and understanding requirements of decision-making bodies as well as the frequency of meetings and the topics presented.
 - ii) Record keeping – to include good data management and expectations for Funds moving to monthly electronic collection
 - iii) Member communications – including the production of annual benefit statements and the accuracy of information contained within
 - iv) Cyber security- and the protection of members from potential fraud and scam providers as well as the overriding duty required under Data Protection Act 2018.

5.4 The survey notes and outlines the roles of the Local Pension Boards in delivering good governance and administration with oversight of the above risks reported on a regular basis to each meeting of the Board. It is expected that tPR will be issuing their latest survey towards the end of the year.

6.0 Financial implications

6.1 Poor management of the Fund's assets can result in detrimental investment returns. Effective monitoring of the management arrangements is required to ensure the Fund is well placed to ensure the delivery of its investment strategy.

6.2 Failure by the Fund to meet statutory requirements of effective governance and administration could result in fines imposed by the Pensions Regulator.

7.0 Legal implications

7.1 Changes to legislation and statutory guidance are detailed in the report. Failure by the Fund to comply with legislation and/or statutory guidance can result in enforcement action and fine from both the Pension Regulator and the Courts via judicial review.

8.0 Equalities implications

8.1 There are currently no equalities implications contained within this report, an equality impact assessment will be undertaken where new policies are adopted following change in regulation/statutory guidance.

9.0 Environmental implications

9.1 There are no implications

10.0 Human resources implications

10.1 There are no implications

11.0 Corporate landlord implications

11.1 There are no implications

12.0 Schedule of background papers

12.1 TPR governance and administration survey
<https://www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/public-service-research-summary-2019.ashx>

12.2 Outcomes from SAB Good governance Review
<https://www.lgpsboard.org/images/PDF/GGreport.pdf>

12.3 Scheme Advisory Board Updates
www.LGPSBoard.org

13.0 Schedule of Appendices

13.1 Appendix A: Risk register key risks