

CITY OF
WOLVERHAMPTON
COUNCIL

Pensions Board

21 January 2020

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

The Board is asked to note:

1. An update on the Fund's annual General Data Protection Regulation (GDPR) assurance work.
2. The quarterly risk register, including the movement of risks and the actions taken to mitigate any impact.
3. The quarterly compliance monitoring.
4. An update on emerging changes within the Regulatory Environment applicable to the LGPS and wider pensions industry
5. Update on the West Midlands' Local Government Pension Scheme (LGPS) Pension Fund Merger

1.0 Purpose

- 1.1 To provide the Local Pensions Board with an update on the work of the Fund to deliver a well governed scheme.

2.0 GDPR Annual Assurance

- 2.1 Further to the changes in Data Protection Legislation brought in under the GDPR and Data Protection Act 2018, the Fund has been continuing a program of review and development in the protection and good management of members' personal data. 18 months on from when the changes took effect, the Fund continues to monitor compliance with the requirements of the legislation and through its program of annual review, is able to provide a high level of assurance on its ongoing compliance.

2.2 Data Sharing Agreements with Service Providers

Following the changes in May 2018, the Fund developed and issued new version data sharing agreements to all of its service providers where personal data is exchanged. The data sharing agreement includes an annual assurance statement from the suppliers of their ongoing compliance with the data protection legislation. The Fund is currently contacting its suppliers to obtain the latest annual assurance of compliance in the protection of data. Those who fail to respond, or who are unable to satisfy the assurance requirements (developed in line with the ICO Checklist for data processors) risk having their service contract with the Fund terminated or restricted until such assurance can be provided.

2.3 Data Privacy Impact Assessments (DPIA)

These are required to be completed when a new project or process is developed which requires the use of personal data or a change to how that personal data is being used. As a statutory pension scheme, the Fund is not required to conduct a DPIA for its processing of personal data, however to ensure best practice and the good management of data movement, the Fund undertook DPIA's for all of its main processing activity. No risk to data has been identified.

DPIAs have been conducted for all projects and programmes undertaken by the Fund in the last 12 months, with no risk to data having been highlighted.

2.4 Data Champions

Previously referred to as the Fund's "Data Angels", the Fund has appointed individual team members who have been provided with extra training and development in data protection to enable 'grass root' monitoring of data processing activity across the Fund's service areas and to highlight areas of development in data protection compliance. This quarter the Fund has delivered a refresh of training to our Data Champions with a clear outline of their roles in leading data management for their service area. Over the last year, working with service area leads, the Fund's Governance team have reviewed and developed a number of changes to processing activities including the management of third-party requests for member data (e.g. transfer out requests), which also helps

strengthen the Fund's ability to protect members from fraud and scam activity, an ongoing area of focus for the Pensions Regulator.

3.0 Risk Register

- 3.1 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 down from detailed risk registers that are separately maintained for each service area of the Fund. The risk register is a live document that is regularly monitored to ensure it reflects the most recent activity of the Fund. Due to the postponement of the December Committee date, the Fund's risk register has been updated and monitored for the period July to December.
- 3.2 This period, the highest risk on the horizon is in relation to the McCloud and Sargeant cases, noting the potential for impact for both the Fund and for Fund employers and our collective ability to obtain information and the potential need to re-assess benefits in payment to reflect any remedy imposed, once agreed for the LGPS. Employer engagement and ensuring good working relationships will be a key action to mitigate impact on members and limit implications for delivering to members.
- 3.3 This period, the Fund has therefore increased the risk score for potential change in the governance of the LGPS and the scheme rules which determine pension benefits, further impacted by the uncertain outcome of the McCloud remedy and its potential impact on administration teams. In addition, the current political climate of Brexit and the General Election had increased the potential for uncertainty in the global markets and investment performance.

4.0 Compliance Monitoring

4.1 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 when the execution is not actioned.

This quarter the Fund is reporting three late trades and two failed trades, this is a 70% improvement from last quarter when the Fund reported 17 failed trades. Further information on the management of trades was provided to Board by HSBC at the training event in November.

The above reported trades resulted in no financial detriment.

Contributions

The Finance team continue to engage with employers to ensure contributions are received monthly in line with The Pension Regulators (TPR) guidelines. The procedures for monthly reconciliation of contributions continue to develop and embed within the employer monthly return process. This period the KPIs for contributions are slightly higher than reported to Board in July, this is due to the reconciliation exercise undertaken noting the contributions received against those expected.

4.2 Governance and Operations

Information Governance

This quarter the Fund has received 7 Freedom Of Information (FOI) requests, as per the previous quarter the majority of requests are interested in the Fund's investment holdings and performance. One request was actioned outside the statutory reporting deadline due to the need to obtain information from third parties where the Fund does not hold the information in the format requested and requires 'building' from statistical analysis of information supplied by our investment managers. The Fund informed the requestor of this delay and is in the process of reviewing its process for FOI in conjunction with the Council's Information Governance Team to ensure timely reporting for these requests from the Fund's third parties.

This quarter the Fund has recorded 19 data protection breaches, one less than the previous quarter. The Fund continues to raise awareness of Data Protection among its employees and closely monitor the reasons for breaches in order to identify and implement improvements to working practises.

Regulatory Compliance

As reported to Board in October the Fund is continuing to develop its assurance programme linked to various statutory requirements placed on LGPS.

As part of its assurance programme the Fund undertakes an annual self-assessment against the Pensions Regulator's, Code of Practise no. 14 – Governance and administration of public service pension schemes. The Fund's existing controls are being reviewed alongside both the legal requirements and practical guidelines included within the code of practice, to identify gaps and areas of non-compliance.

Where gaps are identified action-plans are being established and agreed with Senior Management and Subject Matter Expert's, to ensure ongoing compliance with the Code. The implementation of recommendations included in action-plans is being monitored to ensure completion. Where gaps in compliance are identified, new controls are introduced, or changes are made to existing controls which will be fed into the Fund's control framework and reflected within the Fund's risk registers and supporting risk maps.

This quarter, self-assessments against three areas of the Code of Practise; Knowledge and Understanding, Conflicts of Interest and Publishing Information have been completed. Whilst no breaches in legal requirements have been identified, a number of recommendations to enhance existing controls and increase compliance with the

practical guidelines included within the Code of Practice have been made. These include, enhancements to Pensions Board and Committee member's induction and training procedures; including the introduction of a handbook and newsletter for Board and Committee members, implementation of training needs analysis for Pensions Board and Committee, finalising the Fund's Conflicts of Interest policy and procedures and a review of the information published on the Fund's website. Progress against these recommendations and an update on the self-assessment will be reported to the Board in April 2020 in readiness for implementation in the 2020/21 democratic year.

In conjunction with monitoring the Fund's compliance of current codes of practice and published guidance, the Fund is also monitoring the outcomes from active national initiatives, such as the Good Governance Review, ensuring that any recommendations made from current review, are able to pre-empt and address potential forthcoming changes and compliance requirements in the management and administration of the Fund.

5.0 Business continuity testing

5.1 As part of the good management of the Fund, it has in place a business continuity plan (BCP) which seeks to ensure the continued delivery of service to the Fund's members in the event of an emergency or where the Funds premises are inaccessible/unavailable. The Fund's BCP consists of individual team plans which identify key persons for the continuity of service as well as a minimum level of resource to ensure key actions are undertaken. Priority by service area is dependent on key times during the month/year when certain service areas are critical (e.g. Payroll runs) those service areas are given priority second site workspace with all others able to work from home or are able to be flexible on location.

5.2 Cyber Risk

Another key focus of the BCP is reviewing and monitoring the Fund's approach to ensuring cyber resilience. It is expected that TPR will want to see good management of cyber risk as part of its focus of work for 2020, with an expectation on Fund's having their own Cyber Management Policy, separate from that of the Administering Authority. As the provider of the Fund's IT systems, we are working closely with the Council's ICTS security team to ensure cyber security is at the centre of all system development work and their experience in managing cyber resilience will be key to the Fund's development of their own policy and Cyber Management Strategy.

6.0 Regulatory Update

6.1 Good governance review

As reported to Board in October, the Scheme Advisory Board (SAB) invited Hymans Robertson to assist in taking forward the next stage of the good governance project. Two working groups were established, the first (the standards and Outcomes Workstream) were asked to focus on clearly identifying the outcomes and standards the

SAB wishes to see achieved by Funds under the proposed approach and how these outcomes should be evidenced. The second working group (Compliance and Improvement Workstream) were asked to focus on establishing a compliance regime that will assess each Fund against the framework.

A series of recommendations covering five areas; Guidance, Conflicts of Interest, Representation, Knowledge and Understanding, Service Delivery for the LGPS function and Compliance and Improvement, have been put forward by the two working groups for the SAB to consider, and accept before the project moves onto phase 3 following the issuance of the phase 2 report (which includes detailed implementation proposals, and the changes needed to the statutory governance guidance to implement those). The next phase of the project will include drafting required changes to guidance, establishing an independent governance review provider framework and identifying KPI's which LGPS Funds can use to report their performance.

6.2 Statutory Guidance

As outlined above, one outcome from the Good Governance review is the issuance of new statutory guidance in the management and governance of LGPS Funds. It is envisaged that under the new guidance Funds will be required to produce an enhanced Governance and Compliance statement which will act as a summary, evidencing the Fund's position on all areas of governance and compliance, it is expected this will be further enhanced through a bi-annual independent governance accreditation or charter mark. Where a Fund is non-compliant in certain areas the statement will provide information with an accompanying improvement plan regarding the steps being taken in order to address areas of non-compliance.

6.3 Responsible Investment Guidance

At the meeting of the Scheme Advisory Board on the 6th November, approval was given for the first part of guidance on responsible investment (RI) to be published for consultation until the 11 January 2020. The aim of this first part of RI guidance is to assist and help investment decision makers identify the parameters of operation within scheme regulations, statutory guidance, fiduciary duty and the general public law and the scope for integrating Environment Social and Governance (ESG) policies as part of investment strategy statements. The Fund will be responding to the consultation noting the significant steps already taken by WMPF to integrate RI into its investment approach in both selection and stewardship together with the launch of its climate change strategy and framework earlier in the year.

6.4 Competition Market Authority (CMA) Order

On the 10 June 2019, CMA published an Order placing new obligations on service providers and pension schemes with regard to Fiduciary Management and Investment Consultancy Services which would have meant the need for LGPS to formally review and tender contracts for these services and investments with wholly owner pool companies.

Following a number of challenges to this approach the Scheme Advisory Board took forward the concerns of the LGPS working with CMA to clarify the position with regards the LGPS. As a result, it has been confirmed that this element of the Order does not apply to LGPS Funds with an update being implemented through regulations due to be published next year.

An element which is expected to apply is a new requirement to formally set and review objectives for investment advisors. The Fund reviewed and established provider requirements as part of a review of investment advisory contracts during early 2019. Following the CMA Order and guidance issued by TPR in relation to regulations issued by the Department for Work and Pensions (not directly applicable to LGPS but in anticipation that Ministry of Housing, Communities & Local Government (MHCLG) will shortly follow), the Fund has discussed and developed a framework of objectives and performance measures with advisers appointed to the Investment Advisory Panel, together with the Investment Consultant and Risk Adviser, with a framework developing for investment managers who also carry out advisory services for the Fund.

6.5 Pensions Regulator

As part of the Regulator's clearer, quicker, tougher campaign it has been working to develop clarity on its expectations in the management of pension schemes through the development of a single code of practice.

Currently the Regulator, develops and oversees the implementation of around 56 codes of practice which govern a variety of pension schemes (public sector, private sector DB and DC). To assist in its management and to develop clarity on expectation, the Regulator has been formulating a single code of practice due to be issued for consultation early next year highlighting their focus to develop the supervisory regime across all UK pension schemes.

7.0 Fund Merger

- 7.1 The Government Actuary's review of local LGPS actuarial valuations carried out in 2016-17 led to a recommendation to the MHCLG in September 2018 that the West Midlands Combined Authority (WMCA) as Administering Authority for the West Midlands Integrated Transport Authority Pension Fund (WMITA PF) develop a plan to address the employer-risk inherent within the closed Fund. Noting the historic delegation in place with Wolverhampton City Council for the management and administration of WMITA PF, the two Authorities entered into discussions for the merger of the 2 Funds formally submitting a joint application to MHCLG in May 2019
- 7.2 MHCLG published a Merger consultation in July 2019, together with draft Regulations and draft Secretary of State Direction (Appendix B), outlining the proposed terms and structure of a merger. The Fund, in consultation with our stakeholders (Actuary, External Audit and the two employers admitted to the WMITA PF) submitted a response to the consultation in September 2019.

7.3 The Regulations effecting the merger were adopted into law on 8 November 2019, with effect from 1 April 2019 to coincide with the start of the financial year and start of the triennial valuation period.

7.4 In summary the regulations;

- Transfer the LGPS Administering Authority responsibilities from the WMCA to the City of Wolverhampton Council as Administering Authority for the Fund.
- Require both administering authorities to publish a statement of the assets and liabilities of their respective pension funds immediately prior to the merger, within three months of the Regulations coming into force
- Novate all legal and contractual arrangements WMCA held in relation to its role as Administering Authority to Wolverhampton Council.
- Transfer all assets and liabilities of the WMITA PF to WMPF, now administered by the City of Wolverhampton Council

7.5 The Fund is currently working with its partners to implement and effect the merger.

8.0 Financial implications

8.1 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.

8.2 Failure by the Fund to meet statutory requirements of effective governance and administration could result in fines imposed by TPR.

9.0 Legal implications

9.1 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.

10.0 Equalities implications

10.1 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.

11.0 Environmental implications

11.1 There are no implications.

12.0 Human resources implications

12.1 There are no implications.

13.0 Corporate landlord implications

13.1 There are no implications.

14.0 Schedule of background papers

14.1 Updates on the Regulatory Environment, including the work of the Scheme Advisory Board can be found on the SAB website
www.lgpsboard.org

14.2 Phase 2 of the Good Governance Review
<https://www.hymans.co.uk/insights/research-and-publications/publication/good-governance-in-the-lgps-phase-2-report/>

15.0 Schedule of Appendices

15.1 Appendix A: Risk register key risks.

15.2 Appendix B: Secretary of State Declaration.