



Special Advisory Group

5 November 2014

Report title	Local Government Pension Schemes Governance Reforms 2014	
Cabinet member with lead responsibility	N/A	
Key decision	No	
In forward plan	No	
Wards affected	All	
Accountable director	Geik Drever, Director of Pensions	
Originating service	Pensions	
Accountable employee(s)	Rachel Howe,	Head of Governance 01902 552091 Rachel.howe@wolverhampton.gov.uk
Report has been considered by	Constitution Review Group	14 October 2014
	Pensions Committee	10 December 2014
	Standards Committee	8 January 2015

Recommendation(s) for action or decision:

The Group is recommended to support revisions to the Constitution for consideration by the Pensions Committee, Standards Committee and agreement by Council, specifically:

1. Those amendments required to the constitution under the Public Service Pensions Act 2013
2. Those amendments which are ancillary to those required under the Public Service Pensions Act 2013
3. Those amendments requested in order to facilitate good governance and efficient operation of the West Midlands Pension Fund

1.0 Purpose

- 1.1 To provide an update on the work undertaken by the West Midlands Pension Fund in seeking its compliance with legislative changes.
- 1.2 To outline proposed amendments to the Council's Constitution which are required to comply with legislation, are ancillary to those functions and those which provide good governance.

2.0 Background

- 2.1 The Public Service Pensions Act 2013 ('The 2013 Act') brought about a significant number of reforms to local government pension schemes including the way they are governed.
- 2.2 Previously the governance of these schemes was dictated by local government legislation with the Pensions Committee being formulated under S101 of the Local Government Act 1972.
- 2.3 In their current formats, the delegations to Pensions Committee and the Director of Pensions are outlined in pages 91 and 150 of the Council's constitution. These delegations are very light and do not match the detail provided in the terms of reference for other committees but do devolve all responsibility for pensions to these posts.
- 2.4 Due to the changes required under the 2013 Act it is proposed to amend the delegations and to clarify the Committee's terms of reference so as to bring them in line with the other committees.
- 2.5 Consultation on these changes has been undertaken with the Pension Committee and with the District Chief Executives/Finance Officers.

3.0 Amendments

- 3.1 Under the 2013 Act the function of managing and administering pensions remains a S101 function and therefore the current Pensions Committee can remain.
- 3.2 Discussions with the Governance Review Working Party, created by Pensions Committee in June 2014, suggest an amendment to the formation of the Committee in the reduction of numbers. It is proposed to reduce the number by two elected councillors instead appointing those to the Pensions Board. September committee agreed the new structure. This therefore needs amending in the Pension Committee's Terms of Reference.
- 3.3 Further, the 2013 Act requires Administering Authorities to create a Pensions Board whose role will be to assist the decision-making pensions committee. The Act further prescribes how this board is to be formed. Therefore the constitution needs to be amended in order to reflect this legislative requirement.

- 3.4 In considering the role of the Pensions Board, draft terms of reference were produced from recommendations of the Governance Review Working Party and were approved by September Pensions Committee. These are proposed to be inserted into the Council's constitution immediately after the Terms of Reference for Pensions Committee.
- 3.5 It is important to note that these terms of references have been drafted in accordance with current understanding. We have at the time of writing, just received a second round of consultation on the draft regulations together with a consultation on the draft statutory guidance. These do not alter our understanding of the requirements but do provide more detail on the proposed remit of the Pensions Board. The Guidance in particular highlights a number of policies to be drafted to support the legislative requirements and the Fund will be working on these as part of the implementation process going forward.
- 3.6 Pending the final regulations and guidance it is not anticipated that our understanding will change significantly however it is suggested that any amendments to the terms of reference be delegated to Pensions Committee and the Council's monitoring officer to approve and amend the constitution should this be required after Full Council's approval to these amendments in January. Any such delegation will be included in the report to Full Council.
- 3.7 As well as meeting the legislative requirement, there is a duty to ensure that members of the Fund are able to understand the terms of reference and know what processes are in place for the Fund to manage their pension appropriately. These are amendments that extend beyond that required of the legislation and which are inserted for matters of clarity, good governance, efficient operation and to meet the Fund's responsibility to its members.
- 3.8 As such the constitution has been amended to ensure consistency. "West Midlands Metropolitan Authorities Pension fund" has been amended to "West Midlands Pension Fund" and the legislation referring to Pensions has been updated to reflect the Public Service Pensions Act 2013.
- 3.9 In addition the proposed amendments include some additional delegations to the Director of Pensions. These additional amendments are in acknowledgment of the specialised role of the Director of Pensions in managing a £10 billion West Midlands Fund and the additional responsibilities of managing the Integrated Transport Authority Fund together with the staffing difficulties faced (both in recruitment and retention), the reactive nature of the work of the Fund in managing money and resources in-house, together with the ongoing uncertainty of the final regulations yet to be published.
- 3.10 A 'track changed' version of the sections relevant to the significant amendments is attached as Appendix One.

4.0 Financial implications

- 4.1 There are implications with regards the resourcing of these changes however it is felt that this will be picked up as part of ongoing workloads and do not directly impact overall.
- 4.2 The proposed changes to the constitution will further clarify the financial governance and procedural rules that underpin the Fund's ability to operate effectively and efficiently.

5.0 Legal implications

- 5.1 The 2013 Act requires local government pension schemes to have established the Pensions Board by 1 April 2015, that is to have amended their constitutions. Further, Section 37 of the Local Government Act 2000 requires local authorities to have in place a constitution detailing the governance of the authority including those with decision making powers and responsibilities. Failure to adhere to these requirements exposes the Council to significant challenge and potential interference from the Secretary of State.

6.0 Equalities implications

- 6.1 There are no equalities implications

7.0 Environmental implications

- 7.1 There are no environmental implications

8.0 Human resources implications

- 8.1 There are no Human Resources implications

9.0 Corporate landlord implications

- 9.1 There are no corporate landlord implications

10.0 Schedule of background papers

- 10.1 Pension Committee 25 June 2014 Governance Reform report
<http://wolverhampton.moderngov.co.uk>
- 10.2 Pension Committee 24 September 2014 Governance Reform update report
<http://wolverhampton.moderngov.co.uk>
- 10.3 Public Service Pensions Act 2013
<http://www.legislation.gov.uk/ukpga/2013/25/contents/enacted>

Article 11 - JOINT ARRANGEMENTS

11.1 Arrangements to Promote Wellbeing

The Cabinet, in order to promote the economic, social or environmental well-being of its area may:

- a. enter into arrangements or agreements with any person or body;
- b. co-operate with, or facilitate or co-ordinate the activities of, any person or body;
and
- c. exercise on behalf of that person or body any functions of that person or body.

11.2 Joint Arrangements

- a. The Council may establish joint arrangements with one or more local authorities to exercise functions which are not Cabinet functions in any of the participating authorities, or advise the Council. Such arrangements may involve the appointment of a Joint Committee with these other local authorities.
- b. The Cabinet may establish joint arrangements with one or more local authorities to exercise functions which are Cabinet functions. Such arrangements may involve the appointment of joint committees with these other local authorities.

Except as set out below the Cabinet may only appoint Cabinet Members to a Joint Committee and those Councillors need not reflect the political composition of the Council as a whole.

The Cabinet may appoint Councillors to a Joint Committee from outside the Cabinet in the following circumstances:

- the Joint Committee has functions for only part of the area of the authority and that area is smaller than two fifth of the authority by areas or population. In such cases the Cabinet may appoint to the Joint Committee any Councillor who is a Councillor for a Ward which is wholly or partly contained within the area;
 - the Joint Committee is discharging a function in relation to five or more authorities;
 - the function which the Joint Committee is discharging is a function which is required by statute to be discharged by a Joint Committee;
 - political balance requirements do not apply to such appointments.
- c. Details of any joint arrangements including delegations to Joint Committees will be found in the Council's scheme of delegations in Appendix 1 of this Constitution.

11.3 Access to Information

The Access to Information Rules in Appendix 2 apply to Joint Arrangements.

11.4 Delegation to and from Other Local Authorities

- a. The Council may delegate functions to another local authority or, in certain circumstances, the Cabinet of another local authority.
- b. The Cabinet may delegate Cabinet functions to another local authority or the Cabinet of another local authority in certain circumstances.
- c. The decision whether or not to accept such a delegation from another local authority shall be reserved to the Council meeting **except where it relates to pensions when it shall be reserved to Pensions Committee.**

DELEGATIONS/RESPONSIBILITIES FOR FUNCTIONS

10. DELEGATIONS TO THE PENSIONS COMMITTEE

10.1 To exercise all those functions of Wolverhampton City Council which are required to be performed by it in its role as Administering Authority for the Local Government Pension Scheme under the Public Service Pensions Act 2013 (and any associated legislation) adhering to the principles required by the Code of Practice issued by the Pensions Regulator.

10.2 Under Section 4 of the Public Service Pensions Act 2013 the Scheme Manager for the Administering Authority shall be the Pensions Committee.
The Administering Authority shall at Full Council every year approve the delegation of Scheme Manager under Section 101 of the Local Government Act 1972 to the Pensions Committee and appoint representatives to sit on the Committee for that year.

10.3 To exercise all the general powers and duties of the Council granted to the Cabinet and Cabinet Panels and Regulatory or other Committees provided that those parts of the Council's Financial Procedure Rules and Contracts Procedure Rules which relate to the acquisition and disposal of land. Fund Investment transactions, custody of assets, appointment of advisors, approval of expenditure and their related activities, shall not apply in relation to such acquisitions and disposals and expenditure in connection with the Pension Fund.

10.4 To ensure that equality issues are addressed in the development of policies and the provision of services and are appropriately monitored.

10.5 To ensure that consideration is given to the impact which the Committee's policies and provision of services have with regard to environmental matters.

10.6 PENSION COMMITTEE TERMS OF REFERENCE

10.6.1 The Council's financial procedure rules, contract procedure rules and internal financial limits concerning procurement do not relate to the Pensions Committee who, by delegation from Council, has authority to enter into contracts, procure services, purchase goods and manage financial investment through the internal controls of the West Midlands Pension Fund and in compliance with all applicable legislation.

10.6.2 The Pensions Committee may call upon the pension board to seek advice on matters to be discussed at the committee meeting. Where such advice is sought it must be considered as part of the decision making process.

10.6.3 Any reference within the Council's constitution that refers to Council or Cabinet and includes powers relevant to the work of the Pensions Committee should be read to include Pensions Committee, including the setting of the Budget and Policy framework of the Fund.

10.6.4 The Pensions Committee shall adhere to the Standing Orders of Wolverhampton City Council and all matters of due process so far as they do not conflict with the preceding delegation.

10.6.5 Membership

10.6.5.1 The membership of the Pensions Committee shall consist of 8 Wolverhampton City Council members, 1 Elected Member from each of the 6 District Councils and 4 trade union representatives.

10.6.5.2 The quorum is 9

10.6.5.3 A substitution for any person appointed to the Pension Committee shall follow the Council's procedure

10.6.5.4 The term of office for a person appointed to the Committee shall be for a period no shorter than one year and no longer than eight years or their term of office (where the person is an elected Councillor, whichever is the shortest). Nomination to the committee shall take a 4 year rotation with one third nominations received in year 1 and one third nominations received in year 3, and so on. This is to ensure a consistency of knowledge within the committee and to assist with the development of knowledge and experience.

10.6.5.5 Should an elected Councillor no longer be a member of their authority, their appointment on the Committee shall cease and a further nomination will be sought from that authority.

10.6.5.6 The Committee shall meet a minimum of quarterly

10.6.5.7 All persons appointed to the Committee will adhere to the Committee's code of conduct

10.6.5.8 In compliance with the legislative requirements of knowledge and understanding, person's appointed to the Committee are expected to make themselves available to attend committee meetings. Person's appointed who fail to attend 3 or more events (to include committees and training) will be asked to leave the committee and a replacement sought from their nominating body unless there are exceptional reasons for their failure to attend. Such reasons to be considered by the committee.

10.6.6 Chairing the committee

10.6.6.1 It will be the first business of the Committee at its annual meeting to nominate a Chair who will sit for the term of one year.

10.6.6.2 In the event of a tie of votes of any business to be conducted, the Chair will have the casting vote. In the circumstances where the vote is to appoint a new Chair, the outgoing Chair will have the casting vote in the event of a tie.

10.6.7 Duties

10.6.7.1 To act as the Scheme Manager for the Administering Authority in the management and administration of the local government pension scheme for the West Midlands.

10.6.7.2 To adhere to the principles set out in the Codes of Practice issued by the Pensions Regulator and undertake it's duties in compliance with the obligations imposed on it.

10.6.7.3 To provide independent assurance to members of the fund of the adequacy of the risk management framework and the associated control environment, responsible for the fund's financial and non-financial performance to the extent that it affects the fund's exposure to risk.

10.6.7.4 To administer all aspects of the West Midlands Pension Fund on behalf of Wolverhampton City Council.

10.6.7.5 To determine staffing structures, changes to vacant posts or the establishment of new posts and to receive reports on matters of staffing and employment of officers within the Fund.

10.6.7.6 To ensure that equality issues are addressed in the development of policies and the provision of services and are appropriately monitored.

10.6.7.7 To communicate with members of the fund keeping accurate records and publishing information as required about the fund and its work.

10.6.8 Training

In compliance with the requirements of the Public Service Pensions Act 2013 persons appointed to the Committee shall undertake at least 3 training session per year. The first training session will be organised within 28 days of their appointment to the Committee with subsequent training scheduled after 3 months of appointment and after 9 months of appointment.

10.7 Investment Advisory Sub-Committee

Under Section 101 the Pensions Committee has delegated responsibility for Investments to the Investment Advisory Sub-Committee.

All persons appointed to the Sub-Committee will adhere to the Committee's Code of Conduct.

10.7.1 Membership

- 10.7.1.1 The membership of the Sub committee shall be drawn from the Pensions Committee in proportionate numbers
- 10.7.1.2 The quorum shall be 5
- 10.7.1.3 The substitute for any persons appointed to the Sub Committee shall follow the Council's procedure
- 10.7.1.4 The Sub Committee shall meet a minimum of quarterly
- 10.7.1.5 In compliance with the legislative requirements of knowledge and understanding, person's appointed to the Committee are expected to make themselves available to attend committee meetings. Person's appointed who fail to attend 3 or more events (to include committees and training) will be asked to leave the committee and a replacement sought from their nominating body unless there are exceptional reasons for their failure to attend. Such reasons to be considered by the committee.

10.7.2 Chair

- 10.7.2.1 It will be the first business of the Sub Committee at its annual review to nominate a Chair who will sit for the term of one year.
- 10.7.2.2 In the event of a tie of votes of any business to be conducted, the Chair will have the casting vote. In the circumstances where the vote is to appoint a new Chair, the outgoing Chair will have the casting vote in the event of a tie.

10.7.3 Role

- 10.7.3.1 To advise on the establishing of policies in relation to investment management including the appointment and approval of terms of reference of independent advisers to the Fund.
- 10.7.3.2 To monitor investment activity and the performance of the Fund.
- 10.7.3.3 To oversee the administrative and investment management functions of the Pension Fund.

10.8 DELEGATIONS TO THE PENSION BOARD

- 10.8.1 The Pension Board is to conduct the duties imposed on it under Section 5 of the 2013 Act and associated legislation.
- 10.8.2 To adhere to the Codes of Practice issued by the Pension Regulator.

10.8.3 To assist the Pension Committee, as Scheme Manager, in securing compliance with the legislation relating to the governance of the fund.

10.8.4 Undertake any other duties imposed by the Pension Committee from time to time.

10.8.5 The Pension Board is not a decision making body.

10.8.6 The Pension Board is not a scrutiny function.

10.8.7 The Pension Board will be collectively and individually accountable to the Pensions Committee.

10.8.1 Pension Board Terms of Reference

10.8.1.1 All persons appointed to the Board will adhere to the Committee's Code of Conduct and undertake training as required to ensure they meet the legislative requirement to have the knowledge and understanding required of them to undertake their role.

10.8.1.2 While not a formal committee of Council, meetings of the pension board will be formal occasions to be minuted adhering to the due process and rules of procedure so far as such do not make the business of the board unviable. Business to be conducted by the Pension Board shall be noted on a formal Agenda at least five working days in advance of the meeting. Additional business may be added to the Agenda at a later date with the consent of the Chair. Business not noted on the Agenda may only be considered at the meeting if agreed by majority vote. This is to ensure all information is available and has been read and understood by pension board members.

10.8.1.3 The Pensions Board shall meet a minimum of twice yearly on a bi-annual basis. The ability to call additional meetings rests with the board and with pensions committee, such additional meetings to meet the minimum quorum requirement.

10.8.1.4 Persons appointed to the pensions board have the same right of access to information and documents to be considered as elected members as outlined in the The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 and the The Openness of Local Government Bodies Regulations 2014. Save as all other provisions of these regulations do not apply to the pension board.

10.8.2 Membership

10.8.2.1 The Pensions Board consists of 12 persons made up of 5 employer and 5 member representatives in equal proportion plus 2 Wolverhampton City Council Elected Members. The employer and member representatives will hold the majority.

10.8.2.2 The quorum is 7

- 10.8.2.3 Substitutions for the Pension Board shall be available by representative group not by individual board member. Substitutions will be sought as part of the appointing process. Where substitutions are required to attend the pension board meetings, formal notice of their attendance should be provided to the Fund at least two working days in advance of the meeting to afford the opportunity of papers to be circulated and read.
- 10.8.2.3 The term of office for a person appointed to the Pension Board shall be for a period no shorter than one year and no longer than two rotations of nominations or their term of office (where the person is an elected Councillor, whichever is the shortest). Nomination to the Pension Board shall take a 4 year rotation with one third nominations received in year 2 and one third nominations received in year 4, and so on. Such rotation not to fall in the same year as Pension Committee rotation. This is to ensure a consistency of knowledge within the Pension Board and to assist with the development of knowledge and experience.
- 10.8.2.4 Nominations to the pensions board will be sought from the nominating body group on each occasion as the rotation for appointment arises. Where more than one nomination is received interviews for the vacant position will be held by the Director of Pensions, the Chair of Pensions Committee and one other.
- 10.8.2.5 Person's appointed to the Pensions Board are expected to make themselves available to attend meetings. Person's appointed who fail to attend 3 or more events (to include meetings and training) will be asked to leave the Board and a replacement sought from their nominating body unless there are exceptional reasons for their failure to attend. Such reasons to be considered by the pensions board.
- 10.8.2.6 Other than by ceasing to be eligible to sit on the pensions board (to include failure to attend meetings), a person appointed to the pensions board may only be removed from the position during their term of office by majority vote of the pensions board.
- 10.8.2.7 A person appointed to the pensions board may retire their position at any time. In such cases a nomination will be sought from their nominating body.
- 10.8.2.8 The pensions board may take the advice of persons not appointed to the board, such persons may attend meetings of the pension board upon invitation from the chair. The chair not to unreasonably withhold such invitation where requested to invite such persons by the board members.

10.8.3 Chairing the Board

10.8.3.1 It shall be the first business of the Board at its annual meeting to nominate a Chair and a Vice-Chair for that year

10.8.3.2 In the event of a tie of votes of any business to be conducted, the Chair will have the casting vote. In circumstances where the vote is to appoint a new Chairman, the outgoing Chair will have the casting vote in the event of a tie.

10.8.4 Information

10.8.4.1 Information relating to the work of the pension board (including any relevant minutes) will be published on the fund's website, save where such information is confidential or exempt under Schedule 12A.

10.8.4.2 Information detailing the pensions boards terms of reference shall be published on the fund's website together with the any vacancies as they arise.

G Delegations to the Director of Pensions Services

Function	Limits or restriction on delegation
<p>West Midlands Pension Fund</p>	
<p>G1 The administrative management of matters in connection with the Council's role as administering authority for the West Midlands Pension Fund.</p>	<p>In accordance with the statutory provisions and any determinations of the Pensions Committee.</p>
<p>G2 The investment and general management of the Fund in accordance with the Pensions Committee's investment strategy set out in its policy statement.</p>	<p>Consultation to take place with the Chairman of the Investment Advisory Sub-Committee prior to any major investment decision if it is possible to do so.</p>
<p>G3 To provide services to the West Midlands Integrated Transport Authority Pension Fund.</p>	<p>In accordance with the agreement between the Council and the ITA.</p>
<p>G4 The general delegations to Strategic Directors as they relate to the Council's role as administering body and to the following</p> <p>4.1 Financial Administration</p> <p>4.2 Contracts and tendering</p> <p>4.3 Management of Human Resources</p> <p>4.4 Day to day administration and operational management</p> <p>4.5 Management of operational land and premises used for service delivery</p>	<p>In accordance with the Fund's Financial Procedure Rules</p> <p>In accordance with the Fund's Contract Procedure Rules</p> <p>In accordance with the Fund's employee and staffing schedule and only for Fund staff</p> <p>In accordance with the Constitution and any specific restrictions or limitations imposed.</p> <p>In accordance with the Fund's financial and contract procedure rules</p>

4.6 Compliance with the Health and Safety at Work etc Act 1974 and the Regulatory Reform (Fire Safety) Order 2005.

In accordance with the Council's Health and Safety policies and procedures.

4.7 Compliance with the Council's equal opportunities policy and relevant legislation

In accordance with the Council's equal opportunities policies and procedures.

4.8 Compliance with the Human Rights Act 1998

4.9 Compliance with the Data Protection Act and the Freedom of Information Act 2000.

4.10 To maintain written delegations for employee responsibility for their Business Units.