

# Pensions Board

23 January 2018

<b>Report title</b>	Regulatory Update Report 2018	
<b>Originating service</b>	Pension Services	
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## Recommendations for noting:

The Board is asked to note:

1. The top ten risks for West Midlands Pension Fund
2. The improved performance in the Fund's KPIs
3. The work of the Fund in preparation for GDPR
4. Update on the work of the Scheme Advisory Board (SAB) and the Pensions Regulator (TPR)
5. MiFID II classification update

## Recommendations for action:

The Board is recommended to:

1. Review and consider the Fund's draft GDPR policy
2. Provide their quarterly training hours to the Trustee Management Officer

## **1.0 Purpose**

- 1.1 To provide the Pensions Board with a Regulatory Update on the LGPS and to outline how the Fund is proposing to manage these.

## **2.0 Risk register**

- 2.1 Each quarter the Fund's compliance team reviews the top ten risks which are drawn from detailed risk registers separately maintained for each department of the Fund. The Risk register is an active document which is monitored monthly by the Fund's Senior Management Team to ensure it reflects the most recent activity of the Fund. The reporting period for risks is the most current quarter (September - December) as it is looked upon as both a reactive and proactive document to ensure new and/or changing risks are reviewed and managed early.
- 2.2 The Fund's risks are assessed using a 5 x 5 scoring matrix to decide how likely they are to occur and how much of an impact they would have. The scoring is based on 1 being the lowest impact or likelihood with 5 being the highest impact or likelihood of the risk occurring. The scores for both impact and likelihood are multiplied together to create an overall rating (scores 1-4 low rating (4 being an even rating of 2 for impact and 2 for likelihood), 4-12 medium rating (4 being a high impact and low likelihood or vice versa) and 15-25 high rating). The Fund scores each risk for both pre and post implementation of mitigating controls, this enables the Fund to identify any weaknesses in the controls and provide assurance that its risks are reduced as much as possible.
- 2.3 The top 10 risks for the latest quarter are highlighted in Appendix 1 together with the actions taken by the Fund to mitigate those risks.
- 2.4 Between April and December the Fund has undertaken work to monitor and assess the compliance of employers with the Pension Administration Strategy (PAS) in relation to the Annual Returns for 2017. This work has highlighted a number of employers who have failed to either meet the deadline for data, or who have caused an increase in work for the Fund due to the quality of their data (as outlined in the Data Quality report). The Fund is writing out to those employers who have underperformed and implementing, when necessary, the charges set out in the Pension Administration Strategy. However, this area of work has shown significant improvement from the 2016 Annual Return with more timely receipt of information and errors reducing by 11% overall.
- 2.5 There are no increases in risk noted in the register.

## **3.0 Key Performance Indicators**

- 3.1 The Fund has seen maintenance or improvement in all areas of KPI's with focus particularly on increasing performance on retirements and deferred member processes.
- 3.2 Processing of retirement benefit quotations in particular, has fallen behind the target performance level due to increase volumes and delays in confirmation and programming of calculation factors for retirements after 31 March 2017. Employees at the Fund have shared resource and worked flexibly across teams to ensure these processes are

completed within KPI. In December the KPI percentage increased from 17.39% in September to 89% in December.

- 3.3 The production of Active Benefit Statements KPI has been a key focus area for the Fund as it is a reflection of the Fund's performance on Data Quality and ability to meet member expectations as monitored by the Pension Regulator (TPR). This year the Fund has undertaken a detailed analysis of its performance in this area and is reporting that 79% of its active benefit statements have produced compared to last year's 82%.
- 3.4 There are a number of reasons for this reduction in the KPI, including the number of pension records under review by the Fund with active processes at the time the benefit calculation was run together with some employer errors in the quality of data held. In any case where a statement could not be issued a letter has been produced explaining why and the Fund is dealing with any member enquiries as they arise. The Fund continues to produce detailed analysis of its data and is working with employers to follow up their queries all of which will assist the Fund in its delivery of the Data Improvement Plans and increase the number of statements issued next year.
- 3.5 The overall performance of the Fund month on month and year to date shows continual improvement in service areas and the Fund has active measures in place to improve and reduce the risk of performance shortfalls in future. Data Quality and Employer Performance is a standing item on monthly Senior Management Team Meetings and is discussed quarterly at each Pensions Committee meeting.

#### **4.0 General Data Protection Regulation**

- 4.1 As previously reported to the Board, the Fund has been working with a number of LGPS Funds across the country in preparation for the changes to Data Protection in May 2018. The latest piece of work has seen the production of template documents for use by LGPS Funds which have been submitted to the LGA for review. The LGA have appointed Squire Patton Boggs to provide an overview and guidance note for LGPS on the key issues to consider when preparing for GDPR, the Fund assisted in drafting the questions to be addressed and have provided comments on the draft note back to the LGA. It is expected the LGA will release these as national templates by February.
- 4.2 In addition, the Fund has responded to the Information Commissioner's consultation on draft guidance for Data Controller and Data Processor contracts and we are waiting final publication of that guidance to enable us to review our existing data sharing agreements and third-party contracts. Work has already commenced on contacting our service providers to ensure they are preparing for GDPR with positive responses having been received.
- 4.3 Attached at Appendix Two is a copy of the Fund's GDPR Project Plan noting the steps taken to date and those to be completed. The Fund is on course to meet the May 2018 deadline for implementation and has already started to publish information on its website ready for the changes. Attached to the Project Plan are a number of policies already drafted which the Board are asked to consider and review.

- 4.4 The GDPR requires data controllers to ensure they hold accurate and up to date information, that it is held securely, and held for no longer than necessary. The Fund currently has circa 228,000 microfiche records held in cabinets in the Fund offices. Historically, the Fund has been undertaking a program of scanning fiches on to its UPM system for some time now however, work is still required and has recently stopped due to the current machine used by the Fund no longer being compliant with the Council's ICT Cyber Security Policy. Therefore, any required microfiche scanning is on hold pending a new machine/approach.
- 4.5 Having conducted research into the cost of a new machine and officer time to scan the fiches onto the system, it has been determined that a program of digitisation is the most beneficial solution taking into consideration cost and the requirements of GDPR, the Pensions Regulator and the impact on processing times. The Fund recently undertook a mini competition under a framework contract and have identified a potential supplier to undertake a 6 month scanning program to digitise all the Fund's microfiche in readiness for the May GDPR deadline.
- 4.6 The cost of this work has been competitively assessed and Pensions Committee approved the entering of a contract at its December meeting which will ensure the secure transferring of microfiche images to our member records and will ensure compliance by the Fund with GDPR to hold accurate data securely and ensure the quality of data held. The Fund are currently undertaking a pilot with circa 300 fiches to ensure the quality of scanned images meets the Fund's requirements with the full program commencing early January.

## **5.0 The Scheme Advisory Board**

### **Academisation Review**

- 5.1 We have previously reported that the Scheme Advisory Board is undertaking a review of Academies in the LGPS having commissioned Price Waterhouse Cooper (PWC) in their report "Options for Academies in the LGPS". The latest position from the SAB is that they continue to gather information and evidence from Funds before developing specific proposals and recommending outcomes to Ministers. The Fund will continue to monitor the progress of this work and provide updates as they are received.
- 5.2 In addition to the work around academies, and in support of its workplan, the SAB is also seeking to identify potential funding, legal and administrative issues and liabilities in connection with third tier employers related to admitted and scheduled bodies that do not benefit from local or national tax payer backing. As the Board is aware, the Fund has in place an employer covenant monitoring program to assess and manage convent risk. We will continue to monitor this work and will update the Board as further information is received.

### **Cost Management – 50/50 scheme**

- 5.3 As part of its work on the Cost Management review of the LGPS, the SAB also commissioned some research into the use of the 50/50 scheme by members as the

savings to the scheme from the 50/50 option appear to be significantly less than originally anticipated.

- 5.4 When first created, it was anticipated that the take up of the 50/50 scheme would be circa 10% of overall membership and was anticipated to be an alternative solution to opting out, in particular for low salary officers. The research found that 10% of those who had opted for 50/50 did so because of attaining the annual or lifetime allowance. The research also found that very few members knew about the 50/50 scheme with many saying they would have chosen it as an option over opting out if they had known.
- 5.5 The SAB proposes to revisit this topic with a focus on 2 areas  
1) costing  
2) communication.  
A further update will be presented once more information is received.

### **Retirement Factors**

- 5.6 As previously reported to the Board, the Fund this year suffered an impact on its processing timescales, most notably in the area of retirements, due to the late issuance of retirement factors. The SAB, in taking on board comments from LGPS Funds has written to the Minister on this subject requesting consideration be given to the timescales for issuance. We will update further on this subject once more information is known.

### **SAB Local Pension Board Survey**

- 5.7 The Board will recall the SAB issued a survey to assess the effectiveness of Local Pension Boards following their creation in 2015.
- 5.8 The survey was circulated to the Fund's Pension Committee and Local Pension Board.
- 5.9 Initial analysis of the results shows the WMPF Pension Board to be one of the largest in size with 6 employer and member representatives. It was also one of the first to meet following the creation in April 2015.
- 5.10 Further analysis of the outcomes of the survey are to be considered by the SAB shortly and we will update further on its outcomes once more information is received. In the meantime, the Fund continues to develop its training and knowledge program for Trustees and Pension Board to ensure the expectation of both the SAB and the TPR is met. The Board are asked to consider any training needs for the forthcoming year reflecting on the proposed workplan for the year.

### **SAB Key Performance Indicators**

- 5.11 The Board will recall last year the Fund participated in the pilot of the SAB KPI's in which we assessed our management, administration, funding and governance against a set of 14 indicators to determine our overall performance.

5.12 The results from that pilot were fed back to the SAB who have devised a workplan based on the outcomes and are proposing to work with GAD, DCLG and 'others' as they review the outcome from GAD section 13 of the 2016 Actuarial Valuation in preparation for 2019.

5.13 No further information has been published or sought from funds on the KPIs to date.

## **6.0 The Pensions Regulator**

6.1 In December, the Pensions Regulator issued its annual survey, the most comprehensive to date, to all LGPS Funds. The survey included questions on governance and administration including the production of Active Benefit Statements for which the Fund reported a 79% production for 2017, compared to 82% for 2016. The Fund continues to engage with the Regulator on this topic outlining the key work of the Fund in the area of Data Quality and Employer Performance.

6.2 Earlier this year, we saw the first fine issued to an employer by the Regulator for a failure to produce data information on time to enable the production of benefit statements. We believe the Regulator will continue to develop its enforcement actions in this area and are expecting more action by them over the coming year.

6.3 In anticipation of the Regulator's work, the Fund has begun to implement its data improvement plans aiming to improve the quality of data held by the Fund with the main aim of improving its production of benefit statements for 2018 and is currently recruiting for a new Regulatory Compliance Manager post to assist with this work.

6.4 In compliance with the Code of Practice on Good Governance the Board are required to undertake a minimum of 22 hours of training each year. Recently, the Regulator has updated its Trustee Toolkit with further modules relevant to the work of the LGPS. The Board are requested to report their training hours to the Fund's Governance Officer as part of their quarterly update.

## **7.0 MiFID II classification update**

7.1 In July 2017 the Financial Conduct Authority (FCA) released a secondary policy statement on the implementation and requirements of the Markets in Financial Instruments Directive II (MiFID II) which has identified the criteria to a lower threshold for the size of portfolio that a local authority has to have, which makes it easier for LGPS pension funds to opt-up to professional client status.

7.2 The Fund currently considers itself as a Professional Client under MiFID I rules, however under MiFID II the criteria for LGPS pension funds has changed and the Fund will automatically be considered as a Retail Client but are proposing to opt up to Professional status as noted in another report.

7.3 Following engagement between the FCA and LGPS funds, the FCA have amended the opt up process making it easier for Funds to opt up to Professional Client status. The opt up process allows the Fund to continue on with its existing investment activities with no impact. If the Fund were to be classified as a Retail Client without the opt up process, it

would be restricted on the types of assets it can invest and transact within due to the nature of the classification.

- 7.4 Retail Clients are deemed to be not as knowledgeable within the investment markets as Professional Clients and therefore are offered more protection against engaging in certain types of investment activity but are also restricted from certain assets or markets.
- 7.5 Over the last quarter the Fund has engaged with its Fund Managers to ensure it is “opted-up” to Professional Status by the January deadline. As at the date of reporting, the Fund is outstanding 11 requests. We are aware that some of those outstanding requests are with American private equity managers and it is unclear whether we are required to opt up in this category given Mifid II only applies to EU investments, however it is with the Fund Managers to determine.
- 7.6 The National Scheme Advisory Board is monitoring the progress of the opt-up process across the LGPS and has published on its website details of those funds who have achieved opted up status. The fund remains in contact with their representative updating them on our progress in this area.

## **8.0 Financial implications**

- 8.1 Failure by the Fund to adhere to regulatory requirements could result in fines being imposed on the Fund by either the Pensions Regulator or the Information Commissioner.
- 8.2 The cost of the microfiche contract will be funded from the Fund’s approved operating budget for 2017/18.
- 8.3 The budget for Trustee training is incorporated within the Fund’s administration budget.

## **9.0 Legal implications**

- 9.1 The need for effective risk management is reflected throughout guidance and regulation in the LGPS, notably in Regulation 7(2) of the *Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016*.
- 9.2 The Pensions Committee, as the body charged with governance of the administering authority’s pensions operations, takes the responsibility for ensuring that there is effective risk management over those operations.
- 9.3 The requirements for Trustee and Local Pension Board training are set out in the Regulator’s code of practice and CIPFA guidance. Trustees and Board members have a legal duty to ensure they have the required knowledge and skill to undertake their roles. Failure to adhere to these duties may result in challenge from external parties. There is also a possibility of intervention from the Pensions Regulator.

## **10.0 Equalities implications**

- 10.1 The Trustee Training Policy has been drafted in consideration of the Equalities Act and associated guidance.

## **11.0 Environmental implications**

11.1 This report contains no direct environmental implications.

## **12.0 Human resources implications**

12.1 The report contains no direct human resource implications.

## **13.0 Corporate Landlord**

13.1 There are no corporate landlord implications.

## **14.0 Schedule of background papers**

14.1 General Data Protection Regulations

<https://ico.org.uk/for-organisations/data-protection-reform/overview-of-the-gdpr/>

14.2 Pension Regulator's Toolkit

<https://trusteetoolkit.thepensionsregulator.gov.uk/>

14.2 Pension Regulator's Code of Practice

<http://www.thepensionsregulator.gov.uk/codes/code-governance-administration-public-service-pension-schemes.aspx>

14.3 Financial Conduct Authority Markets in Financial Instruments Directive II Implementation – Policy Statement II

<https://www.fca.org.uk/publication/policy/ps17-14.pdf>

14.4 Scheme Advisory Board

<http://www.lgpsboard.org>

## **15.0 Appendices**

15.1 Appendix 1

Top Ten Risks as noted on the Fund's risk register

15.2 Appendix 2

GDPR project plan

Appendix 2A

Data Protection Policy 2018

Appendix 2B

Privacy Impact Assessment

Appendix 2C

Information Incident Report Form