

WILTSHIRE COUNCIL

WILTSHIRE LOCAL PENSION BOARD
20 July 2016

SCHEME, LEGAL, REGULATORY AND FUND UPDATE

Purpose of the Report

1. This report introduces two scheme updates in respect of the Local Government Pension Scheme (LGPS). The Head of Pensions will also provide a verbal update at the Board meeting.
2. The first is to provide an update of a consultation on the LGPS amending regulations issued on 27 May 2016 from the Department of Communities and Local Government (DCLG). The closing date for responses is 20 August 2016 and the Wiltshire Pension Fund Committee has delegated the formal response to officers in consultation with the Chairman and Vice Chairman of the Wiltshire Pension Fund Committee.
3. The second is to provide a further update on the indemnity insurance issue for Members of the Local Pension Board.

Background

Amendment Regulations Consultation

4. The attached Wiltshire Fund Committee paper outlines the details of the LGPS amending regulations consultation issued on 27 May 2016. This is effectively a tidying up process to amend anomalies from the implementation of the reforms of the LGPS from 1 April 2014.
5. This latest Government consultation can be found at the following link:
<https://www.gov.uk/government/consultations/local-government-pension-scheme-regulations>
6. The attached paper included a proposed draft response to the consultation from the Wiltshire Pension Fund, with the final response to be finalised in conjunction with the Chairman and Vice Chairman of the Wiltshire Pension Fund Committee.

Indemnity Insurance for Local Pension Board Members

7. As reported at the last Board meeting, the Local Government Employers Associations (LGE) took counsel's opinion on the legal status of Local Pension Boards (see link below) to obtain a view on the legality of Fund's combining Pension Boards with their Committees:
http://www.lgpsboard.org/images/Guidance/Pension_Boards_opinion.pdf
8. The opinion concluded that the Local Pension Board isn't necessarily a Committee of the Council as the Public Service Pension Act 2013 under which the Board was formed isn't aligned with the Local Government Act 1972.

9. An issue arising from this relates to Clause 44 of the opinion which refers to insurance and states:-

(1) Given that a Pension Board is a creature of the 2013 Act and not a council committee, the council's indemnity insurance will not automatically cover the Pension Board's membership;

(2) There may nonetheless be circumstances in which the Pension Board's members would be potentially liable; and

(3) Therefore –

(i) The Council should extend its insurance, or

(ii) The Pension Board should procure its own insurance.

10. Officers have looked at the possibility of extending the Council's insurance. The insurers (Zurich Municipal) have reviewed this and formed a view they cannot identify any specific way in which a loss could be sustained, either as a Board or as individual. The Boards operate within the regulatory environment but it is difficult to envisage the Regulator bringing any form of action against them. They concluded that no other form of cover could be appropriate for the Local Pension Boards (for example, not Pensions Trustee Liability because the individuals are not acting as trustees).

11. Wiltshire Council legal team have also reviewed the current situation. They agree that it is difficult to envisage what liability Members could possibly incur given the Board's oversight role. If Members act within the Code of Conduct and Conflict of Interest policy (including acting in the best interests of the Fund and not exploiting their position for personal gain, etc) then the risk of any potential personal claim against them is extremely hard to identify. The only potential for any claim would be an act for personal gain or against the best interests of the Fund, in which case any insurance policy wouldn't cover their actions anyway. Please note that this advice was given to Wiltshire Pension Fund and should not be relied on by anyone else.

12. This is a matter for national concern and all administering authorities are waiting further direction from the Scheme Advisory Board (SAB). The expectation is further guidance will be issued in respect of this.

13. The current view from Wiltshire legal team is there is no need for immediate insurance cover for Members of the Board given the minimal risk and the Fund should await further guidance from SAB.

14. While the Fund awaits further guidance, it's also looking at alternative options. Some actuaries are exploring the potential for setting up a bespoke policy for their clients to provide a level of insurance cover. Another option that could be considered is for each member to arrange professional indemnity cover themselves and claim this back from the Administering Authority. However, the former option would administratively be a preferred option.

15. Officers will provide a further update at the next meeting.

Considerations for the Committee

16. To review the proposed draft response to the amendment regulations.

17. To note the current position on the indemnity insurance cover for members of the Local Pension Board and a further update will be provided to the meeting on 20 October 2016.

Legal Implications

18. There are no direct legal implications to the Fund from the proposed response to the consultation. The implications will be on the public service employers within the Fund who must ensure their contractors become admitted bodies of the Pension Fund to protect an employee's pension rights
19. Further legal advice and updates will be provided in relation to the indemnity insurance issue once further guidance has been issued by the SAB.

Risks Assessment

20. There are no direct increased risks from the consultation and its proposed response.
21. The indemnity risk is minimal based on the current legal view and that of the insurance providers. Work is on-going to establish the most cost-effective outcome to manage any perceived risk while further guidance for the SAB is pending.

Environmental Impact of the Proposal

22. There is no known environmental impact of this proposal.

Safeguarding Considerations/Public Health Implications/Equalities Impact

23. There are no known implications at this time.

Financial Implications

24. There are no direct financial implications from the amendment of these regulations.
25. There are currently no financial implications from the indemnity insurance update although there may be a potential cost to the Fund to provide future indemnity cover based on the outcome of any guidance.

Reason for Proposals

26. The Board requires an update to on the latest scheme developments.

Proposals

27. The Board is asked to note:
 - a) the proposed draft response outlined on the attached report on the LGPS amending regulations consultation; and
 - b) the latest position on the indemnity insurance issue for Local Pension Board Members.

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Treasurer to the Pension Fund

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Unpublished documents relied upon in the production of this report: