

Pensions Committee

2.00 p.m., Wednesday, 30 September 2015

Pension Fund Governance

Item number	5.8
Report number	
Executive/routine	
Wards	All

Executive summary

The purpose of this report is to seek approval for the appointment of three roles within the Fund's current governance arrangements, being (i) the Chairperson of the Pension Board (the "Board"), (ii) a replacement employer representative for the Audit Sub Committee, and (iii) the extension of the current Independent Professional Observer's contract for a further two years.

The report also aims to provide an update on the ongoing liability of the Pension Committee (the "Committee") and the Board members.

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Pension Fund Governance

Recommendations

- 1.1 That Committee invites the Board to raise any relevant matters or concerns which the Committee should consider.
- 1.2 The Committee note that Eric Adair continues as Chair of the Board until March 2016 and Simon Belfer replaces Eric Adair as the Board employer representative attending the Audit Sub Committee.
- 1.3 The Committee approves the continuation of the Independent Professional Observer's role, the extension of Sarah Smart's contract as the Fund's Independent Professional Observer for a further two years and the changes to the remit.
- 1.4 That the Committee notes the update to the legal advice received regarding the personal liability of Committee and Board members.
- 1.5 That the Committee notes the Scheme Advisory Board September bulletin.

Background

- 2.1 In June 2015 the Board held its first meeting. At the meeting the Board appointed a temporary Chair, Eric Adair an employer representative, with the expectation that they would agree a permanent Chair at their second meeting. In addition, they nominated Eric Adair and Catrina Warren as the employer and employee representatives at the Audit Sub Committee meetings.
- 2.2 As part of the 2012 governance review an Independent Professional Observer role was created to support the governance of the Fund. The initial contract was for a period of three years, but has the option to extend for a further two year period.
- 2.3 The Fund has undertaken to re-refresh it's legal advice on the personal liability of Committee and Board members, in light of the operation and role of the Board following the changes to the Fund's governance arrangements in April 2015

Pension Board (appointments)

- 3.1 The temporary Chair of the Board, Eric Adair has considered his position and has offered to continue in the role until March 2016 when the Chair will rotate and draw from the employee representatives on the Board. The Board have been consulted via e-mail and have unanimously agreed that they will formally ratify and approve this permanent appointment at their next meeting on 30 September 2015 (to be held in advance of the Pension Committee). As a result of this and in order to share the workload evenly throughout the employer representatives on the Board, Simon Belfer has offered to replace Eric as the employer representative on the Audit Sub Committee. This too was unanimously agreed by the Board via email and will be formally ratified at its next meeting.

The Committee is therefore requested to note these appointments.

Independent Professional Observer (extension)

- 3.2 The initial contract period for the Independent Professional Observer, Sarah Smart, ends in February 2016, although it can be extended for a further two years. The Fund has taken the opportunity to review the role and its usefulness. The review took place in August and September and gathered the views and feedback from those involved in the Funds governance, including:

- 3.2.1 a meeting with Sarah Smart to better understand her views and feedback regarding the role;
- 3.2.2 a governance survey to assess the Committee and Board's views on their training and knowledge;
- 3.2.3 an informal discussion session with Committee and Board members regarding the role of the Independent Professional Observer at the recent training event on 8 September.

- 3.3 The discussion concluded that the role of the Independent Professional Observer had been invaluable and that the pre-meeting support and training provided by the Observer was particularly helpful. As a result it represented a valuable addition to the Fund's governance arrangements. During the informal discussion the general view was that Sarah Smart had developed an excellent working relationship with the Committee, Board and executive team. This was supported by the recent survey results where all the respondents to the survey agreed that they felt comfortable asking Sarah questions in relation to governance matters.

- 3.4 The extension of the Independent Professional Observer's contract was discussed, with the following adjustments to the remit:

- 3.3.1 The observer will no longer attend Audit Sub Committee meetings
- 3.3.2 The observer will also no longer attend the pre-meeting Convenor briefings, however, she will continue to receive all draft Committee

papers at the same time as the Convenors and will provide detailed feedback on the papers (either by call, or by email, or both), ideally before the briefing meetings.

3.3.3 The observer will attend all Pension Committee meetings and hold pre-committee meeting surgeries each quarter for the Committee and Board.

3.5 Committee is asked to approve the continuation of the role of Professional Independent Advisor and to approve the extension of Sarah Smart's contract with the revised remit included as Appendix 1 (being drafted).

Personal Liability of Pensions Committee and Board Members

3.6 The Fund previously received legal advice from Eversheds LLP, in July 2012, around the personal liability of Committee members and the position was subsequently reported to the Committee at that time. Given the recent changes to the Fund's governance structure, including the introduction of the Board, the Fund has sought to refresh that advice to clarify the position for the members of the Board.

3.7 The updated advice received from Eversheds LLP concludes that the position on the personal liability of Board members is the same as that previously advised for the Committee members, whereby:

3.7.1 the risk of Board members incurring personal liability in relation to their actions on that body is low, provided that such members demonstrate that they have made reasonable decisions taking account of relevant factors and any advice given;

3.7.2 The risk of personal liability of Board members can be further reduced by ensuring that (i) the roles and responsibilities of those members is clearly established, (ii) any conflicts of interest are properly declared and managed, (iii) the members take a responsible approach to their training and development in this role, (iv) the members seek advice from Fund officers and externally where necessary and appropriate in the context, and (v) are subject to (and act within) an appropriate code of conduct. These matters are currently addressed in the Fund's existing governance arrangements and, in particular, within the constitution of the Board; and

3.7.3 it would be prudent to ensure that the members of the Board are covered by the City of Edinburgh Council's insurance arrangements or (if more appropriate) for separate insurance cover to be put in place. As the legal advice takes the view that the risk of personal liability of Board members is low, the Fund would envisage that the cost of putting in place such separate cover (if required) would likely be minimal.

- 3.8 The Fund will therefore investigate the City of Edinburgh Council's existing insurance arrangements and ensure that appropriate cover is already in place or put in place as regards the members of the Board.

Scheme Advisory Board Communication

- 3.9 The Scheme Advisory Board has issued their latest bulletin (see Appendix 2). The Committee are asked to note the bulletin.

Measures of success

- 4.1 The Fund is governed effectively with each Committee and Board member having a clear knowledge of their responsibilities and a fully functioning Board.
- 4.2 The Fund and Board members meet the required training and knowledge standards set out by the Pension Regulator.

Financial impact

- 5.1 The Fund may potentially incur additional insurance costs to cover the personal liability of Board members, but this is anticipated to be minimal and so absorbed within the approved budget.

Risk, policy, compliance and governance impact

- 6.1 Reducing the exposure for members of the Board and, indirectly, for the City of Edinburgh Council.
- 6.2 The extension of the Independent Professional Observer's role will continue to have a positive impact on the governance of the Fund.

Equalities impact

- 7.1 None.

Sustainability impact

- 8.1 None.

Consultation and engagement

- 9.1 The Board, comprising employer and member representatives, is integral to the governance of the Funds.

Background reading/external references

None.

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Links

Coalition pledges

Council outcomes CO26 - The Council engages with stakeholders and works in partnerships to improve services and deliver agreed

Single Outcome Agreement

Appendices Appendix 1 – Remit of Independent Professional Observer
Appendix 2 – Scheme Advisory Board bulletin Sept 2015

**Lothian Pension Fund (LPF)
Independent Professional Observer
Remit (revised September 2015)***

The scope of the Independent Professional Observer's role is to provide guidance to LPF's Pensions Committee (the "**Committee**") and Pension Board (the "**Board**") in the exercise of their respective duties in relation to the Lothian Pension Fund, Lothian Buses Pension Fund and Scottish Homes Pension Fund (the "**Funds**"), which shall include:

- attendance at all meetings of the Pensions Committee in Edinburgh;
- receiving and reviewing all draft Committee papers (for both the Pension Committee and the Audit Sub-Committee) at the same time as the Convenors and provide detailed feedback on the papers (either by call, or by email, or both);
- holding a pre-committee meeting (or "surgery") for the Committee and Board immediately prior to each quarterly Committee meeting;
- providing assistance to the Committee and Board in questioning and challenging professional advice and providing support in the areas highlighted;
- providing *ad-hoc* consultation with members of the Committee in between meetings to the extent that these are reasonably required by LPF or deemed to be necessary by SmartCats (whether through meetings, conference calls or correspondence, as appropriate to the circumstances); and
- participation in certain training events for the Committee and Board, involving no more than two half day sessions per year.

***Please note that this revised remit is subject to the final review and approval of Smart Cats/Sarah Smart.**



September 2015

BULLETIN

Work Plan

The Deputy First Minister has approved the Scheme Advisory Board's first work plan with some additional points of emphasis. The full revised work plan will shortly be available on the SAB web [page](#).

Pension Choice

The SAB has agreed guidance notes for employers on transfers from the SLGPS to Defined Contribution schemes as a result of the UK Government's pension changes. While as a Defined Benefit scheme the SLGPS is not directly affected, members could transfer their pension in order to realise a lump sum payment - although there are charges and tax implications of doing this. The guidance sets out the procedures that employers should follow.

Actuarial Valuation

The Government Actuary's Department made a presentation on their draft demographic assumptions to be used in the actuarial valuation of the scheme as at 31 March 2014. This is important as it influences the 'employer cost cap' that will be used to regulate the impact of future valuations on contributions and scheme benefits. The report also looked at changes in assumptions since 2013 that the current scheme was based on. There has been a small increase in cost due to improved life expectancy, but this is largely balanced out by a reduction in the cost of ill health retirement.

Data Collection

The SAB has agreed an initial set of common fund data across SLGPS funds to ensure greater transparency and consistency. This includes some basic data on investment costs, but the SAB will return to this issue in more detail in the work plan.

Fiduciary Duty

The application of fiduciary duty and public law duties to the SLGPS is topical in light of increased pressures to consider Environmental, Social and Governance (ESG) issues in investment. The SAB has given initial consideration to the issue and will be seeking further legal opinion on the Scots Law position.

Cessation Valuations and Impact on Community Admission Bodies

The SAB has considered representations from some Community Admission Bodies who are concerned that recent cessation valuations may place their organisations in jeopardy. The SAB is sympathetic to these concerns while recognising that it would be unreasonable to expect other employers to meet the cost of these payments. Funds have not changed the way they have dealt with this issue and have been prepared to be as flexible as possible by spreading the costs over a period of time. The SAB will recommend some messages that could be included in fund guidance.

For further information:

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