

REPORT FOR: Pension Board

Date of Meeting: 2 November 2016

Subject: Status of Pension Board / Insurance Arrangements

Responsible Officer: Dawn Calvert, Director of Finance

Exempt: No

Wards affected: All

Enclosures: The Need for Pension Board Liability Insurance (Aon Risk Solutions)

Section 1 - Summary

Summary

This report further advises the Board of its formal status and asks members to consider the insurance implications arising therefrom.

For information

Section 2 – Report

1. At the first meeting of the Board on 25 June 2015 members were advised that the Terms of Reference agreed by the Council stated that “All members of the Board are expected to act in accordance with the Code of Conduct for Councillors where applicable and the Pensions Regulator’s Code of Practice.”
2. At the same meeting the Board also received a report advising them of the Code of Conduct for Councillors and asking them to agree to abide by it. The consideration by the Board was minuted as follows:

Members of the Board made a number of comments during this item as follows:

- *the legal advice received explaining that Board Members should abide by the Councillors Code of Conduct was required before any formal agreement. This did not seem to accord with the information relating to the establishment of Pension Boards;*
- *practice on this issue seemed to vary nationally and this had not been a requirement for other members on different Pension Boards.*

The Treasury and Pension Fund Manager explained that his legal advice was that the Board were co-optees and that the Code of Conduct should apply.

The Chair asked that the issues raised be investigated and reported back to the Board before any further action.

3. The matter was further considered at the Board’s meeting on 2 November 2015 when the Council’s legal adviser, HB Public Law, advised that “The Code (The Council’s Code of Conduct for Councillors) is clear that it applies to co-opted members and appointed members.” The discussion of the Board was minuted as follows:

The Board received a report of the Director of Finance which set out additional advice from the Council’s legal adviser regarding the requirement for Board Members to sign up to and abide by the Council’s Code of Conduct.

An officer advised that Board Members would be subject to the protocol on co-optees and advisors as set out in the Council’s Constitution, and would therefore be required to disclose any pecuniary, non-pecuniary and conflicts of interests at Board meetings. He added that this requirement had been communicated to Board members at the time of their appointments and was also laid out in the Board’s Terms of Reference.

A member of the Board stated that, in his view, the statutory definition of a conflict of interest did not correspond with that in the Council’s Constitution and that disclosable pecuniary and non-pecuniary interests were not the correct test to apply to Board members’ interests and the Council’s Code of Conduct could not override existing legislation relating to the conduct of Board members.

Following further discussion, Board members indicated that they were agreeable to signing the Council’s Code of Conduct.

4. The consideration of these matters at the Board was clearly being replicated within other administering authorities to the extent that the Local Government Association instructed James Goudie QC to advise. In his advice of 7 December 2015, the introduction is as follows:

I am instructed to advise the Local Government Association (“the LGA”) on three, related, questions:-

- (1) The legal status of a Local Government Pension Scheme (“LGPS”) Pension Board;*
- (2) The legal relationship between such a Pension Board and the “scheme manager”; and*
- (3) The “conflict” described below.*

5. Both at Harrow’s Board meetings and outside, members have expressed concern as to the status of the Board and the insurance arrangements for the members. Mr Goudie comments on both these matters in paragraph 44 of his advice as follows:

As regards insurance:-

- (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.*

6. The Council has always understood that the Board is set up under the Public Service Pensions Act 2013. This is clear in paragraph 2 of the Terms of Reference with the responsibility of the Board described as “to assist the Administering Authority.....in ensuring the effective governance and administration of LGPS.” This was also made clear to the Council at its meeting on 13 November 2014.

7. It is accepted that the Board is not a Council committee and that it has no decision making functions. Notwithstanding this, for the sake of efficient administration it is considered appropriate to use as many of the Council’s processes as possible. In particular, the “Standards of conduct and conflicts of interest” paragraph of the Terms of Reference states:

All members of the Board are expected to act in accordance with the Code of Conduct for Councillors where applicable. In accordance with s5(5) Public Service Pension Act 2013, a Board member must not have a financial or other interest that could prejudice them in carrying out their Board duties. This does not include a financial or other interest arising merely by virtue of member of the LGPS.

This is seen as a pragmatic solution to the issues raised by the establishment of the Board as is the servicing of the Board in the same

way as that of Council committees. Whilst the Board does not have a budget of its own it receives an appropriate level of officer support and the advice of external advisers (eg Hymans Robertson) as it requests.

8. As regards insurance, the Council's Insurance Manager has been consulted and has advised: *that Harrow's existing insurance arrangements do not cover the Pension Board's membership, as the Board is not a Council committee. Notwithstanding this it is difficult to foresee how a claim could arise against the Board's membership given that it provides a scrutiny function and has no direct decision making authority. This view is held by the Council's insurers and the other boroughs within the Insurance London Consortium, who were also asked to consider the position. It has, however, recently come to our attention that a firm of insurance brokers is currently looking to develop a new insurance product specifically for Pension Boards. As soon as further information is made available in this regard the position will be reviewed.*
9. The "brokers" to whom the Insurance Manager refers are Aon Hewitt who, on 20 September 2016 wrote to the administering authorities as follows:

As many of you will have seen in our recent newsletter we have been working with our colleagues in Aon Risk Solutions to develop an insurance product that will provide cover for members of Pension Boards.

Many people are questioning whether Local Pension Boards need to be covered; our risk colleagues suggest that, while the risk may be considered remote, in their view there is an exposure as current Liability Policies do not provide any cover for Local Pension Boards. It is for that reason that they have developed a policy specifically for Local Pension Boards with an insurance provider (Chubb/Ace) and a summary sheet is attached [attached to this report] with a bit more information. My colleagues can obtain a premium quote for you if it would be helpful (and I would then leave you to liaise directly with them as any quotations and formalising a contract must be done in line with compliance requirements). If you require more information in relation to the Aon developed solution, please let me know and I can obtain a quotation/put you in touch with my colleagues at Aon Risk Solutions.

10. The Board are asked to consider whether they wish officers to obtain premium quotes as offered by Aon Hewitt.

Financial Implications

11. Any costs arising from the purchase of an insurance policy to cover the Board would be met from the Pension Fund.

Risk Management Implications

12. The report refers to risks potentially being run by the Pension Board and its members and discusses ways of alleviating them.

Equalities implications

13. There are no direct equalities implications arising from this report.

Council Priorities

14. The performance of the Pension Fund has a direct impact on the financial health of the Pension Fund which directly affects the level of employer contribution which then, in turn, affects the resources available for the Council's priorities

Section 3 - Statutory Officer Clearance

Name Dawn Calvert



Director of Finance

Date: 20 October 2016

Ward Councillors notified:

Not applicable as the report is relevant to all wards.

Section 4 - Contact Details

Contact: Ian Talbot, Treasury and Pension Fund Manager
0208 424 1450

Background Papers - None