



Committee Report

ISLE OF WIGHT COUNCIL

Meeting	ISLE OF WIGHT PENSION FUND COMMITTEE
Date	14 FEBRUARY 2024
Title	BREACHES LOG
Report of	PENSION FUND MANAGER

Executive Summary

1. In accordance with the fund's Policy for recording and reporting breaches of the law, this report presents the record of potential breaches of the law identified since the last meeting of the committee.
2. The committee is asked to confirm the treatment of the potential breach.

Recommendation

3. That the ongoing failure of the Isle of Wight Council to nominate a councillor as employer representative to the Local Pension Board be noted.
4. That the treatment of the potential breach as proposed by the Local Pension Board at its meeting on 12 December 2023, to not report to the Pensions Regulator, and report in full to the Pension Fund Committee be confirmed.
5. That a report be prepared for Full Council on 20 March 2024, recommending an amendment to the terms of reference of the Local Pension Board to read that the employer representative "*may be* an elected member of the council".
6. That the breach will not be reported to the Pensions Regulator, based on the agreed next steps for resolution in paragraph 5 above.
7. That a further report will be provided to the Local Pension Board at its meeting on 6 March 2024.

Background

8. The Local Pension Board for the Isle of Wight Council Pension Fund is required by the Public Service Pensions Act 2013 (PSPA13) and the Local Government Pension Scheme Regulations 2013 (as amended) (LGPS Regulations) to have equal number of scheme member and employer representatives, with a minimum of two from each category.
9. The terms of reference for the board, included within the council's constitution, state that there shall be a minimum of two and a maximum of four from each category, and an independent chairperson, without voting rights. The current agreed membership of the board is three scheme member representatives and three employer representatives.
10. The terms of reference state that "*one of the employer representatives shall be an elected member of the council*", one "*... will be selected for nomination by the other employers of the Fund...*" and the third will "*...be sought from the council...*".
11. Following the resignation of the former elected member employer representative from the Local Pension Board at the full council meeting on 23 May 2023, there has been a vacancy for the elected member representative.
12. Successive Full Council meetings held in July 2023, September 2023 and November 2023 have failed to make an appointment, despite emails being sent to all councillors from Democratic Services staff, and emails being sent to political group leaders by the Pension Fund Manager.
13. While this has resulted in an unequal representation of employers and scheme members on the Local Pension Board, the minimum requirement of at least four members (two from each category) has not been breached, following the appointment of the council's other nominated representative in early November 2023, and the board has been able to carry out its functions adequately.
14. Following the November Full Council meeting, and as reported at the 22 November 2023 committee meeting, the Pension Fund Manager sought support from the Council's Monitoring Officer and Director of Finance in resolving the issue. One suggestion made was that the terms of reference could be amended to remove the requirement for one employer representative to be an elected member. No response was received from this request for support before the Local Pension Board meeting on 6 December 2023.
15. The Pension Fund Manager sought guidance from the fund's governance consultants, Hymans Robertson LLP, on whether the breach was of significant materiality to report to the Pensions Regulator. This advice was received on 1 December 2023, and was verbally reported to the Local Pension Board on 13 December 2023.

Nature of the breach

16. While the manner of appointment of the members of the local pension board is not prescribed in the LGPS Regulations, the council must be bound by the terms of its own constitution. Accordingly the failure to appoint an elected member representative to the board may be considered a breach of the council's constitution.

Requirement to report to the Pensions Regulator

17. Paragraphs 253 to 262 of the Pensions Regulator's Code of Practice No 14: *Governance and administration of public service pension schemes (COP14)*, reflected in the fund's own Policy on recording and reporting breaches of the law, states that four areas need to be considered in determining whether a breach is likely to be of 'material significance' to the Pension Regulator (TPR):

Criteria	Assessment
(a) Cause of the breach	Council has persistently failed to appoint an elected member to the Local Pension Board.
(b) Effect of the breach.	Limited impact to the function of the Local Pension Board due to this missing member. However, no immediate resolution appears to be forthcoming so this could undermine future operation.
(c) Reaction to the breach.	There was a 'prompt' push to resolve the issue by advertising the vacancy and utilising the Council's Monitoring Officer to promote the post. However, hampered by a lack of engagement/uptake within the Councillor membership.
(d) Wider implications of the breach.	Local Pension Board still operating as expected but needs ongoing assessment.

18. Following discussion at the Local Pension Board meeting on 12 December 2023, it was determined that the breach would not be reported to the Pensions Regulator at that stage, but that it would be recorded on the breaches log (see Appendix 1) and would be formally reported to the committee at its next available meeting.

Action since Local Pension Board meeting

19. The Council's Chief Executive sent an email to the leaders of each political group on 6 December 2023 promoting the vacancy again and seeking nominations before January 2024 full council meeting. This was supplemented by an email from the Pension Fund Manager offering to discuss the role with any interested councillor. Other than one councillor declining the opportunity, no responses have been received to that email.

20. Following the by-election in Ventnor and St Lawrence in December 2023, a report on political proportionality of the council was presented to the 17 January 2024 Full Council meeting. That report highlighted the vacancy on the Local Pension Board and again sought nominations. No nominations were received at that meeting, accordingly the vacancy remains unfilled.
21. A suggestion has been made by the Pension Fund Manager to amend the Board's terms of reference to remove the requirement (implied by "shall be") for an elected member to be appointed as an employer representative. The chairman of the committee is broadly in favour of this amendment – potentially replacing "shall be" with "may be" – but no response has been received from senior management within the council.
22. Further guidance has been sought from Hymans Robertson on this matter, which has not been received at the date of writing this report. A verbal update on this will be presented at the meeting. The next steps for the treatment of this potential breach will be determined at the meeting.
23. In accordance with regulatory requirements, the Pension Fund Manager submitted the fund's annual return to the Pensions Regulator on 22 January 2024. This return requires information about the membership and composition of the Local Pension Board to be provided. As there remains an employer representative vacancy on the board, the return showed an unequal number of representatives, which may attract the Regulator's attention. This can be mitigated by the recording and consideration of this potential breach of regulatory requirements.

Corporate Priorities and Strategic Context

24. There is nothing contained in this report which directly contributes to the priorities contained in the Isle of Wight Council [Corporate Plan 2021 – 2025](#).

Pension Fund Strategic Aims

25. The primary objective of the fund is to provide pension and lump sum benefits for members on their retirement and/or benefits on death, before or after retirement, for their dependents, in accordance with the Local Government Pension Scheme (LGPS) regulations and statutory provisions. The committee aims to operate the fund in such a manner that, in normal market conditions, all accrued benefits are fully covered by the value of the fund's assets and that an appropriate level of contributions is agreed by the employer to meet the cost of future benefits accruing.
26. The fund has also agreed the following objectives, which are supported by information in this report:
 - (a) Ensure compliance with the LGPS Regulations, other relevant legislation and the Pensions Regulator's Codes of Practice.
 - (b) Ensure Fund is managed, and its services provided, by people with the appropriate knowledge and understanding.

Local Pension Board View

27. The Local Pension Board considered this matter at its meeting on 13 December 2023.
28. Details of their consideration are included in paragraphs 13 and 14 above and are included in the draft minutes presented elsewhere on this agenda.

Financial / Budget Implications

29. There are no direct financial implications associated with this report.

Legal Implications

30. Isle of Wight Council is the administering authority for the Isle of Wight Council Pension Fund. An administering authority is defined in the Local Government Pension Scheme Regulations 2013 as “a [local authority] required to maintain a pension fund under the local government pension scheme regulations”.
31. Regulation 106 of the LGPS Regulations requires that each administering authority must establish a local pension board.
32. Regulation 107 states that each administering authority shall determine:
 - (a) the membership of the local pension board.
 - (b) the manner in which members of the local pension board may be appointed and removed.
 - (c) the terms of appointment of members of the local pension board.
33. The Pension Regulator’s Code of Practice 14: *Governance and administration of public service pension schemes* requires administering authorities to establish and operate appropriate and effective procedures to enable the people with responsibility to report potential breaches of the law to meet their legal obligations. This has been achieved by the publication of the fund’s policy on recording and reporting breaches of the law.

Equality and Diversity

34. The council as a public body is required to meet its statutory obligations under the Equality Act 2010 to have due regard to eliminate unlawful discrimination, promote equal opportunities between people from different groups and to foster good relations between people who share a protected characteristic and people who do not share it. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
35. There are no implications for any of the protected characteristics in any of the matters considered.

Options

36. Following consideration of the guidance from Hymans Robertson, the committee should consider whether the continued failure of full council to appoint an employer representative to the board has changed the original decision not to report this breach to the Pensions Regulator, based on considerations as outlined in paragraph 15 above.
37. In order to resolve this matter, the committee may decide to recommend to full council that the terms of reference for the Local Pension Board be amended to remove the requirement for a councillor to be appointed as employer representative on the board.
38. Were the wording in the terms of reference amended to “may be” an elected member, then if full council fail to nominate a representative, it would be for the council (as largest employer in the fund) to appoint a second employer representative from the general staff of the council.
39. Should this be agreed, a paper will be drafted for the Full Council meeting on 20 March 2024, setting out the background, as contained in this report, and proposing two options to Full Council:
 - (a) That full council do not amend the terms of reference of the Local Pension board and confirm a named elected member representative to sit on the Board at the meeting on 20 March 2024 for the remainder of the current council term. This would commit the Council after each set of local elections to appointing an elected member representative to the board.
 - (b) That full council amend the terms of reference of the Local Pension Board to read that the employer representative “*may be* an elected member of the council” and authorise the council’s Chief Executive to make the appointment for the current vacancy. This would allow the first Full Council meeting following each set of local elections to determine whether the appointment should be an elected member or appointed by the Chief Executive.
40. Should the council then fail to nominate a staff employer representative, the vacant position could be offered to external employers in the fund for nomination. This would result in the council (as largest employer in the fund) having the smallest representation on the local pension board.

Risk Management

41. The fund is in compliance with the expectations of the Pensions Regulator as it has created and published a policy for the recording and reporting of breaches of the law.
42. The council remains compliant with LGPS Regulations in having constituted a board with an equal number of scheme member and employer representatives (albeit with one vacancy), and still meets the minimum total membership requirements of two from each category.

43. Fund officers and the Local Pension Board have considered this potential breach in accordance with the policy, having sought advice from the fund's governance consultants.
44. As the previously identified actions to address the breach, including emails to elected members, inclusion of an agenda item on the January 2024 full council meeting, have not produced a resolution, further action must now be taken to resolve the breach, as outlined in paragraphs 33 to 36 above.
45. If no action is taken, consideration will have to be given to reporting the breach to the Pensions Regulator, being caused by 'poor governance or administration' with the effect of 'adequate internal controls not being established and operated, which may lead to schemes not being run in accordance with their scheme regulations and other legal requirements'.
46. The Pensions Regulator will consider any breach reported and may take enforcement action if they consider it necessary. This could cause additional work for the fund, and may have reputational issues for the council.

Appendices Attached

47. Appendix 1: Isle of Wight Council Pension Fund breaches log

Background Papers

48. Isle of Wight Council Constitution, Terms of reference of committees and boards
[PART 3 - Terms of Reference of Committees and Boards.pdf \(moderngov.co.uk\)](#)
49. Isle of Wight Council Pension Fund Policy for recording and reporting breaches of the law
<https://www.isleofwightpensionfund.org/resources/policy-for-recording-and-reporting-breaches-of-the-law-2023/> .
50. The Pensions Regulator's code of practice no 14: Governance and administration of public service pension schemes
[Code 14 Public service pension code of practice | The Pensions Regulator](#)
51. Isle of Wight Council Full council meeting 17 January 2024, Item 10a Review of political proportionality, alternative arrangements, nominations and appointments
<https://iow.moderngov.co.uk/documents/s13839/ITEM%2010A%20-%20Review%20of%20Political%20Proportionality%20Alternative%20Arrangements%20Nominations%20and%20Appointments.pdf>

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