



Full Council Report

ISLE OF WIGHT COUNCIL

Meeting	FULL COUNCIL
Date	20 MARCH 2024
Title	LOCAL PENSION BOARD TERMS OF REFERENCE
Report of	CHAIRMAN OF PENSION FUND COMMITTEE

Executive Summary

1. The Pension Fund Committee meeting on 14 February 2024 received a report on the long-term (May 2023 to January 2024) failure of the Isle of Wight Council to nominate a councillor as employer representative to the Local Pension Board. At that meeting it was resolved 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”.
2. At the Full Council meeting on 29 February 2024, the longstanding vacancy on the Pension Board was resolved by appointment of an elected member.
3. This report seeks to prevent future recurrences of this matter, by amending the terms of reference for the Local Pension Board included within the Council’s Constitution.
4. The proposed amendment will still allow the opportunity for an elected member to be appointed to the board, but should that not be possible, an alternative representative may be appointed by the council’s senior management team.
5. This will ensure that there remains an equal number of scheme member and employer representatives on the Local Pension Board, in accordance with legislation.

Recommendation

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| <ol style="list-style-type: none">6. THAT council approve revision to the Local Pension Board Terms of Reference in the Council Constitution, to read 'one of the employer representatives may be an elected member of the council', as recommended by the Pension Fund Committee. |
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Background

7. 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 amended) (LGPS Regulations) as “a [local authority] required to maintain a pension fund under the local government pension scheme regulations”.
8. Regulation 106 of the LGPS Regulations requires that each administering authority must establish a local pension board.
9. 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.
10. The Local Pension Board for the Isle of Wight Council Pension Fund is required by the Public Service Pensions Act 2013 (PSPA13) and the LGPS Regulations to have equal number of scheme member and employer representatives, with a minimum of two from each category.
11. 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.
12. 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...”.
13. 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.
14. Successive Full Council meetings held in July 2023, September 2023, November 2023 and January 2024 have failed to make an appointment, meaning that there has been unequal representation of employers and scheme members on the Local Pension Board for a considerable period.
15. This has been recorded on the pension fund’s breaches log, in accordance with the fund’s *Policy for the recording and reporting breaches of the law*, and has been reported to Pension Fund Committee meetings in November 2023 and February 2024, and Local Pension Board meetings in December 2023 and March 2024.
16. Advice has been sought from the fund’s governance advisers, Hymans Robertson LLP, and discussions have been held with the Council’s Chief Executive, Monitoring Officer and Director of Finance.

17. At the meeting of Full Council on 28 February 2024, the longstanding vacancy on the Pension Board was resolved by appointment of an elected member. However, it is recommended to progress with the suggested amendment to the Terms of Reference, to provide future resilience.
18. At its meeting on 14 February 2024, the Pension Fund Committee agreed to recommend to Full Council that the Local Pension Board's terms of reference be amended to remove the requirement for an elected member to be appointed to the board as an employer representative, with an appropriate change of wording as follows:

"..... one of the employer representatives **may** be an elected member of the council". The word "may" replacing the word "shall".

Corporate Priorities and Strategic Context

19. 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

20. 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.
21. 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.

Financial / Budget Implications

22. There are no additional costs associated with the proposals contained within this report.

Legal Implications

23. 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".

24. Regulation 106 of the LGPS Regulations requires that each administering authority must establish a local pension board.
25. Regulation 107(1) 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.
26. Regulation 107(3) states that no-one (officer or elected member) who has responsibility for the discharge of functions in respect of the Local Government Pension Scheme may be a member of the local pension board.
27. The council's constitution includes the terms of reference for the Local Pension Board, which determines the membership of the Local Pension Board in compliance with Regulation 107(1)(a) as a minimum of four, maximum of eight, members, being equally split between scheme member and employer representatives.
28. The constitution also determines the manner of appointment for the board members in accordance with Regulation 107(1)(b):
 - (a) For scheme member representatives:
 - (i) one shall be nominated by a recognised trades union.
 - (ii) the others will be appointed from selection process by the council requesting expressions of interest from all active, deferred and retired members.
 - (b) For employer representatives:
 - (i) One shall be an elected member of the council.
 - (ii) One shall be nominated by the external employers in the fund.
 - (iii) Others shall be nominated by the council's corporate management team.
29. The constitution clearly states, in compliance with Regulation 107(3), that members of the Pension Fund Committee cannot be appointed to the Local Pension Board.
30. The council is currently fully compliant with the requirements of the Public Services Pensions Act 2013 and the Local Government Pension Scheme Regulations 2013 (as amended) but was not in compliance with its own constitution.

Equality and Diversity

31. 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.
32. There are no specific equality impacts arising from the recommendation in this report.

Options

33. Option 1: That full council do not amend the terms of reference of the Local Pension board.
34. Option 2: That full council approve revision to the Local Pension Board Terms of Reference in the Council Constitution, to read 'one of the employer representatives **may** be an elected member of the council' as recommended by the Pension Fund Committee.

Risk Management

35. 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.
36. Amending the terms of reference for the Local Pension Board will allow future administrations the option to appoint a councillor to the Local Pension Board, but will also give flexibility to seek an alternative employer representative from within the Council's staff, should Full Council not make an appointment.
37. This flexibility reduces the risk of failing to comply with LGPS regulations and the Pension Regulator's codes of practice, which could cause reputational damage to the Council as administering authority for the pension fund.

Evaluation

38. Option 1 would commit every future administration of the council to appoint a representative to the pension board. Should future administrations fail to make such an appointment, the council will remain in breach of its own constitution, which could result in further reports being made to the Pensions Regulator.
39. If this option were agreed, and should future administrations fail to make such an appointment, the council's failure to fulfil its own constitutional arrangements would need to be reported as a breach of the law to the Pensions Regulator, in accordance with the fund's *Policy on recording and reporting breaches of the law* 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'.
40. Accordingly, option 1 is not recommended.
41. Amending the council's constitution to allow this, and future administrations, the opportunity to appoint an elected member to the board will ensure that there is still a role for elected members on the Local Pension Board should they chose to appoint. It will also ensure that Full Council can decline this opportunity without compromising compliance with legislation and regulations.

42. Accordingly, option 2 is recommended.

Appendices Attached

43. None.

Background Papers

44. Isle of Wight Council Constitution, Terms of reference of committees and boards
[PART 3 - Terms of Reference of Committees and Boards.pdf \(moderngov.co.uk\)](https://www.moderngov.co.uk/.../PART%203%20Terms%20of%20Reference%20of%20Committees%20and%20Boards.pdf)
45. 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/> .
46. Isle of Wight Pension Fund Committee 14 February 2024, Item 7 Breaches log
<https://iow.moderngov.co.uk/documents/s14043/ITEM%207%20Breaches%20Log.pdf>
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