

Law & Governance
Town Hall, Upper Street, London, N1 2UD

Report of: Interim Director of Law & Governance and Monitoring Officer

Meeting of: Pensions Committee/Pensions Board

Date: 26 September 2023/5 October 2023

Subject: Review of Council Constitution – Approved changes to Terms of Reference for Pensions Committee and Pensions Board

1. Synopsis

- 1.1. At its meeting on 13 July 2023, the Council approved revised Terms of Reference for the Pensions Committee (formerly the Pensions Sub-Committee) and the Pensions Board, as part of an overall review of the Constitution, to ensure legal compliance and high ethical standards were maintained.
- 1.2 This report advises the members of the Committee and the Board of those approved changes, which are detailed in the Appendix to this report.

2. Recommendation

- 2.1. To note the changes to the Terms of Reference of the Pensions Committee and the Pensions Board, as approved by the Council on 13 July 2023 and detailed in the Appendix to this report.

3. Background

- 3.1 The Constitution sets out how the council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent, and accountable to local people. The Council has a legal duty to publish an up-to-date Constitution, to be reviewed annually with any necessary changes being considered at the full Council meeting.

- 3.2 Responsibility to monitor and review the operation of the Constitution is set out in Article 15 and belongs to full Council. The Monitoring Officer is authorised to make minor consequential amendments as necessary or required by legislation from time to time.
- 3.3 The Constitution must contain:
- The Council's standing orders/ procedure rules.
 - The Members' Code of Conduct
 - Such information as the Secretary of State may direct.
 - Such other information (if any) as the Council considers appropriate

4. Pensions Committee

- 4.1 Under the previous Constitution, the Audit Committee under its terms of reference had responsibility for establishing a Pensions Sub-Committee (PSC). The PSC membership was separate from the Audit Committee, not a derivation of its membership as required under the Local Government Act 1972. The process of how its membership was selected was undefined. The previous terms of reference stated: "No special requirements apply to the composition of the Pensions Sub-Committee".
- 4.2 The membership of the PSC was composed of four elected members and had a quorum of two, which did not require either the Chair or Vice Chair in attendance. There were two named substitute members, which was considered very small, given the scale and significance of the investments and decisions that were made.
- 4.3 Although there is no single model in operation across the over 80 Pension Fund authorities (LGPS) in England and Wales, most Funds are managed by a formal Committee appointed by the full Council. This Committee is usually called the Pension(s) Committee or sometimes the Pension Committee. The arrangement in Islington is unusual and it was considered that it was creating legal risk. It was agreed that the Pensions Sub-Committee should be separated from the Audit Committee and established as a separate committee with an elected member membership of 5 or 7 voting councillors.
- 4.4 Individual LGPS Pension Funds are administered by the relevant council and are a separate legal entity within the overall structure of that council. Under the Local Authority (Functions and Responsibilities) (England) Regulations 2000 (as amended), the LGPS is not an Executive function. Therefore, the Executive of a Council cannot make decisions in respect of the Pension Fund. Bullet point six of the previous Terms of Reference stated: "To consider the overall solvency of the Pension Fund, including assets and liabilities and to make appropriate recommendations to the Executive regarding the allocation of resources to the

Pension Fund.” The Executive should not be involved in setting the resources of the Pension Fund. The Sub-Committee itself should be responsible for setting its own budget. The Committee responsible for the Pension Fund must report to the Council and cannot be subject to the Executive.

- 4.5 The former Pensions Sub-Committee’s terms of reference were considered unusually brief at just seven bullet points. A comprehensive list of requirements has been listed in the new Terms of Reference to ensure that the Committee are aware of their full remit. These are set out as track changes to the proposed new Pensions Committee’s Terms of Reference in the Appendix. New changes are highlighted in blue ink.
- 4.6 Members of the Committee are the ultimate decision makers for investment related matters. As such, members are bound by the Directive on Markets in Financial Instruments repealing Directive 2004/39/EC (commonly known as MIFID II). This legislation requires the Pension Fund to “opt up” to professional status, and for decision makers to demonstrate they have the collective knowledge and skills to make investment decisions. If members were not able to demonstrate this, there was a risk that the Pension Fund would not be able to access professional investments. A comprehensive training plan should be agreed for PSC members, which has been added to its Terms of Reference.

5. Pensions Board

- 5.1 The LBI Pension Board composition was previously three employer representatives, three member representatives and one independent member. The former Constitution provided that all members of the Board would be appointed by full Council or its Audit Committee, which would also appoint a chair from among the members of the Board. This practice was considered unusual, as the Pension Board should be responsible for electing its own chair. It was normal practice for the chairmanship to rotate annually from employer to member representatives. Paragraph 5.38 of the Statutory Local Government Pension Scheme (LGPS) Guidance on the creation and operation of Local Pension Boards in England and Wales alluded to this being appropriate.
- 5.2 Members of the Pension Board were required, under the LGPS scheme regulations 2013, to have “capacity” to represent the members and employers of the scheme. The statutory guidance interpreted this as a requirement to ensure that the knowledge and skills of the membership were appropriate to effectively scrutinise the decisions of the Pensions Committee. To assist the Administering Authority, it was implicit that members of a Local Pension Board understood the duties and obligations that apply to the Administering Authority as well as to themselves. This was expanded in section 6 of the statutory guidance which made it clear this was a

legal requirement. It was also suggested that Members of a Local Pension Board should undertake a personal training needs analysis and put in place a personalised training plan and that this should be added to the Terms of Reference. This is currently in train, with Board members invited to complete the personal training needs analysis at their last meeting on 12 July 2023.

- 5.3 The Pension Board Terms of Reference were considered too brief and did not capture all the elements sufficiently from paragraphs 5.35 of the Statutory Guidance. Revised Terms of Reference to be included in Part 5 of the Constitution were approved by the Council and are shown as tracked changes (blue ink) in the Appendix to this report to reflect the full requirements of the Statutory Guidance.

6 Implications

6.1 Financial Implications

There are no financial implications arising from this report.

6.2 Legal Implications

A local authority is under a duty to prepare and keep up to date its constitution under section 9P Local Government Act 2000 as amended. The Constitution must contain:

- a) The Council's standing orders/ procedure rules.
- b) The Members' Code of Conduct
- c) Such information as the Secretary of State may direct.
- d) Such other information (if any) as the authority considers appropriate.

A Constitution Direction was issued by the Secretary of State in December 2000 that required around 80 matters to be included within constitutions, covering members' allowances schemes, details of procedures for meetings, details of joint arrangements with other local authorities and a description of the rights of inhabitants of the area, amongst other things. Whilst issued under Part II Local Government Act 2000, the Direction survives the re-enactment into Part 1A (section 9B et seq.) of the 2000 Act by the Localism Act 2011 (under section 17 Interpretation Act 1978).

Constitutions must be available for inspection at all reasonable hours by members of the public and supplied to anyone who asks for a copy on payment of a reasonable fee.

6.3 Environmental Implications and contribution to achieving a net zero carbon Islington by 2030

There are no environmental implications.

6.4 **Resident Impact Assessment**

The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.

An Resident Impact Assessment Screening Tool for the completed Constitution was completed on 24 April 2023 and indicated no negative impacts.

An up-to-date Constitution will ensure decisions contribute to the advancement of equality and good relations and demonstrate that the Council is paying due regard in decision making in the design of policies and in the delivery of services.

17. Reason for recommendations

To ensure legal compliance and high ethical standards were maintained.

Appendix:

- Appendix - Revised Terms of Reference of the Pensions Committee and Pensions Board

Background papers: None

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Financial implications: none.