PUBLIC

MINUTES of a meeting of the **PENSIONS AND INVESTMENT COMMITTEE** held on 4 November 2020

PRESENT

Councillor J Perkins (in the Chair)

Derbyshire County Council

Councillors R Ashton, J Boult, P Makin, S Marshall-Clarke, R Mihaly, P Murray (substitute Member) and B Ridgway

Derby City Council

Councillor M Carr

Also in attendance – M Fairman, D Kinley, N Smith and S Webster.

Apologies for absence were received on behalf of Councillors N Atkin (Derbyshire County Council) and L Care (Derby City Council).

47/20 **MINUTES** **RESOLVED** that the minutes of the meeting held on 9 September 2020 be confirmed as a correct record.

48/20 **MHCLG CONSULTATION ON REFORM OF EXIT PAYMENTS IN LOCAL GOVERNMENT** The Committee was advised of the publication of the Ministry of Housing, Communities and Local Government's (MHCLG) consultation on draft regulations to reform exit payment terms for local government workers, and specifically for those who were eligible to be members of the Local Government Pension Scheme (LGPS). The consultation was attached as Appendix 1.

Approval was sought for the Director of Finance & ICT, in consultation with the Chairman of the Committee, to consider the Fund's response to the consultation and to authorise its submission to MHCLG.

The Government had been working on proposals to reform public sector exit payment terms for a number of years. In April 2019, the Government had published a consultation which sought views on regulations implementing a £95,000 cap on exit payments in the public sector. The consultation closed in July 2019 and the government published its response to the consultation together with draft regulations in July 2020. The Restriction of Public Sector Exit Payments Regulations 2020 (Exit Payment Regulations) were subsequently approved by Parliament and would come into force on 4 November 2020.

The cap of £95,000 would apply to the aggregate sum of payments made in consequence of termination of employment. It was not currently proposed that an inflationary uplift would be applied to the cap, which Members expressed their concern about. The main elements of an exit payment would be:

- statutory and discretionary redundancy payments
- strain/shortfall payments to a pension fund to reduce or remove actuarial reductions on the payment of early retirement benefits

Payments in respect of the following would be exempt from restriction:

- death in service
- incapacity as a result of accident, injury or illness
- annual leave due but not taken
- compliance with an order of a court or tribunal
- pay in lieu of notice that does not exceed one quarter of the relevant person's salary
- certain payments related to firefighters and members of the judiciary

Draft HM Treasury Directions published in 2019, set out circumstances where the power to relax restrictions must be exercised (mandatory cases) and may be exercised (discretionary cases). The power to relax the cap was expected to be delegated to certain authorities which included the full council of a local authority provided they act in accordance with HM Treasury Directions or otherwise with the consent of HM Treasury.

The mandatory waiver process was expected to cover:

- settlement payments related to whistleblowing, discrimination; health and safety related detriment and unfair dismissal claims if the authority was satisfied that on the balance of probabilities an award would be made to the employee if the claim proceeded to a tribunal
- obligations to make exit payments arising as a result of TUPE transfers (but would not apply to transfers resulting from local government re-organisation)
- certain pension payments by the Nuclear Decommissioning Authority

The circumstances expected to be covered by the discretionary waiver process were highlighted. It was expected that the discretionary relaxation of the cap would only be used in exceptional circumstances and that its application by local authorities would require approval by MHCLG and HM Treasury.

The Guidance and Directions to accompany the Exit Payment Regulations, which would set out the discretionary waiver process, and the position of exits agreed before 4 November 2020 where the date of leaving was after, were published on 30 October 2020. The Head of Pension Fund informed the Committee that the Regulations were subject to four potential challenges by means of Judicial Review. These were based mainly around the fact that the Regulations had been brought in retrospectively and affected contracts of employment that were already in place.

Government departments responsible for the main public sector workforces had been asked to negotiate and agree exit payments reforms directly with each sector. On 7 September 2020, MHCLG had published a consultation on restricting exit payments in local government in England and Wales. The consultation related to proposed changes to the Local Government Pension Scheme Regulations 2013 and the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (Discretionary Compensation Regulations).

The LGPS Regulations 2013 provided that employees aged 55 or more who were members of the LGPS were entitled to an immediate unreduced pension benefits where:

- the member is dismissed from an employment on redundancy or business efficiency ground
- the employment is terminated by mutual consent on business efficiency grounds

The consultation goes wider than addressing the government’s original stated concern about the number of exit payments made to public sector workers that exceeded or come close to £100,000. Under the proposals, the value of exit packages for all English and Welsh members of the LGPS who were made redundant could be significantly reduced.

Total exit payments would be capped at £95,000 in line with the Exit Payment Regulations. However, even below the £95,000 level, local government employees would be affected by the proposed changes. It was proposed that the following would apply to redundancy payments in local government:

- a maximum tariff for calculating exit payments of three weeks’ pay per year of service
- a ceiling of 15 months (66 weeks) on the maximum number of months’ or weeks’ salary that can be paid as a redundancy compensation payment
- a maximum salary of £80,000 on which a redundancy compensation payment can be based

As noted above, the Exit Payment Regulations came into force on 4 November 2020. The additional further exit payment reforms proposed by MHCLG, which included the accommodation of the Exit Payment Regulations, were currently subject to consultation and were not expected to come into force before the end of this year. This would mean that there would be a period of legal uncertainty when scheme employers were under an obligation under the Exit Payment Regulations to potentially limit strain cost payments and administering authorities were required under existing LGPS regulations to pay unreduced pensions to qualifying scheme members. Members expressed their concern over this issue and requested that clarification be sought. MHCLG was expected to issue a statement with respect to the difficulty this would cause for local government employers and LGPS administering authorities very shortly. The LGPS Scheme Advisory Board was also obtaining legal advice on the risk of challenge to LGPS authorities during this period.

A bulletin, including a briefing note from Hymans Robertson, the Fund's actuary, had been sent to all of the Fund's employers highlighting the issue of exit payments which may have a significant impact on current and future workforce planning arrangements. Updates would be provided to employers as appropriate. A working group of officers from the Pension Fund and from the council's HR and Legal departments were meeting regularly to discuss the implications of the evolving exit payments legislation.

The MHCLG consultation would close on 9 November 2020 and officers were working through the MHCLG consultation document and would formulate a response to the consultation in due course. Therefore, approval was sought for the Director of Finance & ICT, in consultation with the Chairman of the Committee, to consider the Fund's response to the consultation and to authorise its submission to MHCLG.

RESOLVED that the Committee (1) notes the publication of MHCLG's consultation on draft regulations to reform exit payment terms for local government workers; and

(2) delegates the consideration of the Fund's response to the consultation, and the approval of its submission to MHCLG, to the Director of Finance & ICT in conjunction with the Chairman of the Committee.

49/20 <u>INVESTMENT STRATEGY STATEMENT, RESPONSIBLE INVESTMENT FRAMEWORK AND CLIMATE STRATEGY CONSULTATION</u>

The Investment Strategy Statement (ISS), Responsible Investment (RI) Framework and Climate Strategy had been approved by Committee for consultation on 9 September 2020. The consultation process opened on 23 September 2020 and ran until 21 October 2020.

The proposed ISS, RI Framework and Climate Strategy, together with the FAQs, were attached to the consultation page. In order to make stakeholders aware of the consultation letters had been sent to over 82,000 individual members of the Fund. The letter included details of the forthcoming member self-service solution (including the required notice that Annual Benefit Statements would be available online next year); the consultation; and details of the McCloud remedy.

The deadline for providing comments on the consultation was extended, in early October, from 14 to 21 of October when it became apparent that the post was taking longer than usual to arrive due to the current pandemic

Officers of the Fund had also held a virtual meeting with representatives of Divest Derbyshire and Derbyshire Pensioners' Action Group to discuss the proposed Climate Strategy at their request.

The Fund had received 49 responses to the consultation from various respondents. The vast majority of responses related to the proposed Climate Strategy, with forty respondents wanting the Fund to divest from fossil fuels investments on the basis that:

- there was financial risk due to the global transition to a more sustainable economic and environment model (including the risk of stranded assets)
- global oil demand 'was widely thought to have already peaked'
- fossil fuels were not a sustainable energy source
- 'renewables were now cheaper than fossil fuels in every major region in the world'
- 'carbon was causing the Climate Crisis'

Amber Valley Borough Council's response to the consultation reported that the Council had voted to support the following motion at its meeting on 30 September 2020:

'Having declared a Climate Emergency in July 2019, Amber Valley Borough Council calls for the Derbyshire Pension Fund to disinvest its remaining funds in fossil fuels and to invest in renewables.'

This followed similar motions from Chesterfield Borough Council, passed by full Council in July 2020, and from Derby City Council, passed by full Council in March 2018.

Thirty-two respondents thought that the proposed targets for reducing the carbon footprint of the listed equity portfolio, investing in low carbon and sustainable investments and achieving a carbon neutral portfolio by 2050 were not ambitious enough. Twenty-three respondents wanted to see a greater increase in the allocation to renewable investments, with seventeen respondents asking the Fund to invest at least 80% of the portfolio in low carbon and sustainable investments by the end of 2025. Fourteen respondents wanted the Fund to achieve a portfolio of assets with net zero carbon emissions by 2030. A point which was also suggested by Councillor Carr.

The comments on the consultation process itself would be considered before the Fund next consulted with its stakeholders. Some respondents welcomed the set of Frequently Attached Questions attached to the consultation. However, all suggestions for improving written communications to stakeholders would be considered.

The Head of Pension Fund informed the Committee that taking into consideration the consultation, it was now proposed that targets for carbon footprint and low carbon and sustainable investment in the Climate Strategy would be reviewed in three years' time (rather than the five years proposed in the consultation), and would thereafter be reviewed on at least a three yearly basis' in recognition of evolving practice and concerns raised by stakeholders.

Councillor Carr suggested that a biennial review of the targets might be more appropriate, taking into consideration the increasing scientific evidence of the effects of climate change and the feedback to the consultation.

Councillor Marshall-Clarke welcomed the consultation and the feedback provided and noted the importance of considering social and governance matters alongside environmental matters. It had been a long term ambition of this Committee to have a robust climate strategy in place and he wished to thank officers for their contribution and fully endorsed the development of the strategy.

RESOLVED that the Committee (1) notes the outcome of the consultation in respect of Derbyshire Pension Fund's revised Investment Strategy Statement, and inaugural Responsible Investment Framework and Climate Strategy;

(2) confirms that no changes to the revised Investment Strategy Statement are required based on the outcome of the consultation and approves the revised Investment Strategy Statement attached as Appendix 1 to the report;

(3) confirms that no changes to the Responsible Investment Framework are required based on the outcome of the consultation and approves the Responsible Investment Framework attached as Appendix 2 to the report;

(4) agrees that the Fund will review the carbon footprint of the listed equity portfolio together with the low carbon and sustainable investment targets on a triennial cycle from the date of approval of the Climate Strategy; and

(5) approves the Climate Strategy attached as Appendix 3 to the report.

50/20 **<u>CONFLICTS OF INTEREST POLICY</u>** Conflicts of interest had always existed for those with Local Government Pension Scheme (LGPS) administering authority responsibilities as well as for advisers to LGPS funds. This reflected the fact that many of those managing or advising LGPS funds would have a variety of other roles and responsibilities, for example as an elected member of an employer participating in the LGPS or as an adviser to more than one LGPS administering authority.

Whilst the current legislative background largely related to managing conflicts of interest with respect to members of Local Pension Boards, in the interests of best practice, this Policy would relate to:

- All members of Derbyshire Pension Board
- All members of the Pensions and Investments Committee, including trade union observers
- Senior officers involved in the governance and management of the Pension Fund (the Director of Finance & ICT, the Head of Pension Fund, the members of the Pension Officers' Management Group, senior officers from Legal Services)
- All advisers and suppliers to the Fund, whether providing advice or supplies to the Board, the Committee or Fund officers

The Policy was intended to aid good governance, in conjunction with the Fund's other governing policies, encouraging transparency and minimising the risk of any matter prejudicing decision making or management of the Fund. The Policy would be reviewed annually.

RESOLVED to approve the draft Derbyshire Pension Fund Conflicts of Interest Policy attached as Appendix 1 to the report.

51/20 **<u>GOVERNANCE POLICY AND COMPLIANCE STATEMENT</u>** The Governance Policy and Compliance Statement (attached at Appendix 1 to the report) set out the governance arrangements for Derbyshire Pension Fund and records the extent to which the Fund complied with the statutory guidance issued by the Secretary of State in respect of these matters. The Statement had been updated to reflect:

- the move from eight formal meetings of the Pensions and Investments Committee to six formal meetings and two training sessions
- the updated arrangements for representing Derbyshire County Council on the Joint Committee and Shareholders' Forum of the LGPS Central Pool and the delegated authority for the Director of Finance & ICT to make decisions on any matter which required a decision by the shareholders of LGPS Central Ltd

- the up to date position with regard to compliance with best practice

The updated governance arrangements with respect to the LGPS Central Pool and LGPS Central Ltd were approved by full Council on 9 October 2019. Compliance with the statutory guidance based on best practice principles had continued to improve; widening scheme member and employer representation in the Fund's governance structure remained an area for development.

The Fund had recently written to all of its members as well as to scheme employers to highlight a recent Pension Fund consultation in order to improve engagement with scheme members and it was intended that a Members' Forum would be established in conjunction with the implementation of the Member Self-Service system.

RESOLVED to approve the draft Derbyshire Pension Fund Governance Policy and Compliance Statement attached at Appendix 1 to the report.

52/20 HALF-YEAR PENSION ADMINISTRATION PERFORMANCE REPORT 1 APRIL 2020 TO 30 SEPTEMBER 2020 The Committee was notified of the administration activity undertaken by the Pension Administration Team of Derbyshire Pension Fund and the performance levels that had been achieved, in the first six months of 2020-21. A quarterly report on pension administration performance had previously been provided to the Committee. For the first six months of 2020-21, a half-year report was now presented to Committee which included a summary of the Fund's performance in key areas of activity and provided assurances for the Committee.

The introduction of the Government's lockdown measures in response to the Covid-19 pandemic had posed a number of challenges for the Fund's administration. These included the need to urgently implement a plan to maintain continuity of core service provision while the majority of the team worked remotely from home. In recognition of the pressures placed on the administration of pension schemes, The Pensions Regulator had issued guidance in April 2020 for schemes including the identification of core responsibilities which should be prioritised. A detailed Covid-19 Business Continuity Plan had now been developed. The Business Continuity Plan had been circulated to members of the Committee and members of the Board in April 2020 and would remain under review.

A summary of the Fund's administrative activity during the period 1 April to 30 September 2020 was summarised and included details of membership figures; achievements against standards; quantity of work; data quality; backlog management; and monthly contribution returns.

The Fund had contributed monthly data towards the LGPS Scheme Advisory Board's analysis of member deaths during the Covid-19 pandemic to help understand its impact on the LGPS. In comparison to the same half year period in 2019 when 416 member deaths had occurred, there had, to date, been 459 member deaths reported to the Fund as having occurred during the period 1 April 2020 to 30 September 2020. This included active, deferred and pensioner members.

It was reported that 11 new academies had joined the Fund as fund employers during the first half of 2020-21 and 5 new admission bodies had formally joined the Fund during the same period.

Annual Benefit Statements based on membership as at 31 March 2020 had been issued to active and deferred scheme members. Over 91% of statements had been issued and work was ongoing to issue statements to the outstanding cases.

The programme for employers to implement the i-Connect system, part of the functionality linked to the Altair pension administration system, had developed during the first half of 2020-21. The programme had commenced at the start of 2020 and, to date, 78 employers had successfully implemented i-Connect for the transmission of member data from their payroll system directly into Altair.

The implementation of Member Self-Service (MSS), a further functionality linked to Altair, was being finalised with a view to the system being 'live' in early 2021. The Fund's MSS Project Board had agreed that the system's name when used by members would be 'My Pension Online'. This name would appear alongside the Derbyshire Pension Fund logo. MSS would be available to all scheme members, with the main functionality being the member's ability to access their own pension records securely online. Annual Benefit Statements would be issued online from 2021, although members would have the option to continue receiving a paper copy.

A McCloud Project Group had been set up in July to prepare for the implementation of the remedy in respect of the McCloud and Sargeant judgements. A response to the MHCLG Amendments to the Statutory Underpin Consultation had been developed by this group and was approved by the Chairman of the Pensions and Investments Committee and the Director of Finance and ICT for submission to MHCLG.

Similarly, the Fund was currently establishing a group to review working procedures for the changes in scheme regulations which would come into force, at short notice, as a result of the new legislation governing the restriction of exit payments in the public sector.

Members of the Committee were informed that the Pension Fund Team was very satisfied with the new pensions administration system and it had already improved efficiency. Members had recognised the progress that had already been made and the amount of work undertaken during the Covid-19 pandemic and wished to thank all of the staff for their contribution, particularly under these trying circumstances.

RESOLVED that the Committee notes the workloads and performance levels outlined in the report.

53/20 **DERBYSHIRE PENSION FUND ANNUAL REPORT** It was the Fund's standard practice to present a copy of the Annual Report to Committee prior to 1 December each year and to seek approval to publish the Annual Report on the Fund's website. However, this had not been possible this year because of the timing of Committee meetings and the external audit in respect of both the County Council's and the Fund's 2019-20 Statement of Accounts which had yet to be completed due to delays caused by the Covid-19 pandemic. This was not unique to either the Council or the Fund, and many other UK county councils and LGPS pension schemes had reported similar audit delays.

Due to the delays, the Council's audited accounts, which included the Fund's Statement of Accounts, had yet to be considered and approved by the Council's Audit Committee. As a result, approval was sought for the Director of Finance & ICT, in conjunction with the Chairman of the Committee, to approve the publication of the Fund's 2019-20 Annual Report before 1 December 2020 as required by the Regulations. A copy of the Fund's 2019-20 Annual Report would be reported to Committee in December 2020.

This year, the Investment section of the Annual Report would be updated to include details of the Fund's carbon risk metrics. These metrics had been presented to Committee in March 2020 and were disclosed in the Fund's Climate-Related Disclosures Report, a copy of which was available on the Fund's website.

RESOLVED that approval be given for the Director of Finance & ICT, in conjunction with the Chairman of the Committee, to approve the publication of the Pension Fund's Annual Report for 2019-20.

54/20 **DERBYSHIRE PENSION FUND RISK REGISTER** The Director of Finance & ICT presented the Derbyshire Pension Fund Risk Register for Members' consideration. The main Risk Register was attached at Appendix 2 to the report and the changes from the previous quarter had been highlighted.

The Fund's Business Continuity Plan had continued to work well and all of the Fund's critical activities had been maintained throughout the period of business disruption. Alternative processes set up to accommodate remote working, remained under review. The implications of the continuation of the current working arrangements for a longer period of time were being evaluated.

The Risk Register currently had five High Risk items but two of these would now be reviewed.

A Climate Strategy had been developed for the Fund and had now been agreed by the Committee. The strategy would now be implemented and the probability score would be reviewed.

MHCLG had published its proposed remedy related to the McCloud judgement in July 2020. The proposed remedy involved the extension of the current underpin protection given to certain older members of the Scheme when the LGPS benefit structure was reformed in 2014. It removed the condition that required a member to have been within ten years of their 2008 Scheme normal pension age on 1 Apr 2012 to be eligible for underpin protection.

Hymans Robertson (Hymans), the Fund’s actuary, had estimated that total liabilities might increase by around 0.2%, equivalent to around £0.5bn across the whole of the English and Welsh LGPS. This estimate was significantly less than the £2.5bn quoted in the MHCLG consultation.

As the remedy had not yet been finalised, the administration risk relating to the McCloud judgement would remain as a high risk for the time being. A McCloud Project Team had been set up to formalise the governance of this major impending project.

Three new risks had been added to the Risk Register this quarter. They were as follows.

- Conflicting exit payments legislation/Increased administration requirement related to exit payments (Risk No. 44).
- Lack of two factor authentication for Member Self Service (Risk No. 45):
- Implications of Goodwin ruling (Risk No. 46):

Public Sector Exit Payments Regulations 2020 (Exit Payment Regulations) were approved by Parliament and will come into force on 4 November 2020. The cap of £95,000 will apply to the aggregate sum of payments made in consequence of termination of employment.

On 7 September 2020, MHCLG published a consultation on restricting exit payments (including both redundancy compensation pay and early access to pensions) in local government in England and Wales. The additional further exit payment reforms proposed by MHCLG, which include the accommodation of the Exit Payment Regulations, are currently subject to consultation and are not expected to come into force before the end of this year.

This means that there will be a period of legal uncertainty when scheme employers are under an obligation under the Exit Payment Regulations to potentially limit strain cost payments and administering authorities are required under existing LGPS regulations to pay unreduced pensions to qualifying scheme members. The Head of Pension Fund outlined the measures that were being taken by the Fund to deal with this situation.

The Fund is implementing a member self-service solution (MSS) to improve the quality and efficiency of the service it provides to its members. MSS will allow members to view certain parts of their pension information (including Annual Benefit Statements), to undertake a restricted number of data amendments and to carry out benefit projections on-line.

The member self-service solution provided by Aquila Heywood does not currently utilise a two-factor authentication method. To mitigate this risk, robust registration and log-on procedures have been developed which have been approved by the Council's Information Governance Group.

Following the Walker v Innospec Supreme Court ruling, the government had decided that in public service schemes, surviving male same-sex and female same-sex spouses and civil partners of public service pension scheme members would, in certain cases, receive benefits equivalent to those received by widows of opposite sex marriages. A recent case brought in the Employment Tribunal (Goodwin) against the Secretary of State for Education highlighted that these changes may lead to direct sexual orientation discrimination within the Teachers' Pension Scheme (TPS), where male survivors of female scheme members remain entitled to a lower survivor benefit that a comparable same-sex survivor. The government concluded that changes were required to the TPS to address the discrimination and believed that this difference in treatment would also need to be remedied in those other public service pension schemes, where the husband or male civil partner of a female scheme member was in similar circumstances. A consultation would take place on the required regulatory changes for the LGPS. It was expected that the Fund would need to investigate the cases of affected members, going back as far as 5 December 2005 when civil partnerships came into force, which will provide administration challenges.

RESOLVED that the Committee notes the risk items identified in the Risk Register.

55/20 **EXCLUSION OF THE PUBLIC** **RESOLVED** that the public be excluded from the meeting during the Committee's consideration of the remaining items on the agenda to avoid the disclosure of the kind of information detailed in the following summary of proceedings:-

SUMMARY OF PROCEEDINGS CONDUCTED AFTER THE PUBLIC HAD BEEN EXCLUDED FROM THE MEETING

1. To receive declarations of interest (if any)

2. To confirm the exempt minutes of the meeting held on 9 September 2020 (contains exempt information)

56/20 **MINUTES** **RESOLVED** that the exempt minutes of the meeting held on 9 September 2020 be confirmed as a correct record.