Part I Minutes of the Pension Fund held on 23rd January 2012

Present: Mr Michael Brown (Chairman), Mr Robert Dunn, Mr Mick Hodgson, Mr Clem Stevens, Mr Steve Waight, Mr Andrew Smith, Mr Gordon Marples, Mr Alan Price, Mr Robert Lanzer (observer),

Apologies: Rachel Wood, Chris Earwaker

In Attendance: Caroline Burton, Richard Hornby, Laura Davies, Steve Harrison

Introduction

916. Mr Marples not available to attend lunch due to commitment to attend Downing St. Mr Hodgson to leave at 10.55 but return shortly after. Mr Brown welcomed Mr Robert Lanzer to the group as an observer.

Declaration of Interest:

917. Members and officers are invited to make any declaration of personal or prejudicial interests that they may have in relation to items on the agenda and are reminded to make any declarations at any stage during the meeting if it becomes apparent that this may be required when a particular item or issue is considered.

918. It is recorded in the register of interest that Mr Stevens' nephew, Peter Hadden, is a partner in Baillie Gifford, Mr Hodgson is a Governor for Collyers Sixth Form College, Mr Browns' son is employed by Delloitte, Mr Smith is a deferred pensioner of Mercer and Mr Hornby is a co-opted Governor for the University of Chichester

919. Mr Hodgson's son has recently started a new job at Henderson's Investments. This to be added to the standing register.

Approval of Part I Minutes of the Pensions Panel held on 24 October 2011

920. The minutes were agreed by the Panel

Part II Matters

921. The Chairman asked members to indicate at this stage if they wished the meeting to consider bringing forward into Part 1 the items on Part II of the agenda.

922. Resolved – That under Section 100(4) of the Local Government Act 1972, the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Part 1 of Schedule 12A of the Act (paragraph 3: financial or business affairs of any particular person (including the authority holding the information)) and that, in all the circumstances of the case, the public interest in maintaining the exemption of that information outweighs the public interest in disclosing the information.

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Chairman Date

Michael Brown
Cabinet Member for Finance and Performance and Chairman of the Pensions Panel

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27 February 2012

Mr Philip Perry
Workforce, Pay & Pensions division
Department for Communities & Local Government
Zone 5/G6, Eland House, Bressenden Place,
London SW1E 5DU

Dear Mr Perry,

Draft Local Government Pension Scheme (Miscellaneous) Regulations 2012

The County Council welcomes the opportunity to respond to the Government's consultation on the Local Government Pension Scheme (Miscellaneous) Regulations 2012.

The County Council has not responded on each of proposals for further amendments to the Local Government Pension Scheme (LGPS) Regulations but instead limited its comments to those it views as most significant.

Regulation 22

The County Council has concerns about the proposal set out in Regulation 22, which intends to amend Administration Regulation 7 by making it a mandatory requirement to have an indemnity, bond or parent guarantor for all transferee admission and community admission bodies. This replaces the existing requirement on the letting authority to carry out an assessment of the level of risk of premature termination of the provision of the service. Whilst the Council supports to rationale to protect other employers in the Fund and council tax payers in the event that an admitted body is wound up or faces other financial difficulties, it believes that this level of protection can be provided by other means.

- In the case of Transferee Admission Bodies, this provision would not necessarily provide best value for the Council, or other Scheme Employers if enforced. The financial standing of contractors is already assessed during the County Council's procurement process and under the County Council's current pass through arrangements, the County Council retains responsibility for any funding deficit, which is the largest component of a bond assessment. The Pension Fund can take assurance that the County Council (or other Scheme Employers) will act as a guarantor to the Pension Fund and will therefore bear, in full, the risk of the contractor being unable to meet its obligations. In all circumstances, the cost of obtaining a bond will fall back to the Scheme Employer, whether this is a direct pass through cost or a premium on the contract price. Provided therefore that the Pension Fund is protected (and please refer to the further bullet point below), the Scheme Employer should be able to determine whether it is more cost effective for it to cover the risk via a bond (the charge for which is likely to be added to the contract price) or make its own arrangements for dealing with the risk, for example by setting aside some funds.

- The Fund administering authority can refuse an election to participate in the LGPS from a Community Admission Bodies and/or (under existing Regulations) can impose requirement for a suitable bond or guarantor to be put in place before participation is confirmed. The proposed amendment to make it a mandatory requirement to have an indemnity, bond or parent guarantor in place for these bodies may be onerous both in the amount required to service the bond and the need for an annual revaluation of the bond amount. For Community Admission Bodies currently in the Scheme, the County Council requires that insurance is put in place (via a bond, guarantor or parent company guarantee) or in the absence of this the actuary employs different mortality and financial assumptions when calculating the Community Admission Body's contribution rate.

- It is not clear under what circumstances an admission body would not be able to enter into an indemnity or bond and it may be that the admission body is more robust than its parent, for example where the parent is a holding company. In these circumstances a parent company guarantee would not offer the fund any additional protection.

- The existing Regulations should be clarified to include an express (rather than implied) obligation on the Scheme Employer to pay any liabilities incurred by its Transferee Admission Bodies which are not recoverable from them, or any person providing an indemnity or bond. This is applicable even if the Government decides on a mandatory obligation for a bond for all new employers as a bond valuation can quickly date, and therefore could be inadequate compared to actual cost at the time of termination.

Regulations 29 and 30

The County Council supports Regulations 29 and 30 which deal with the Administration Regulation on appropriate funds to allow movements of employers to occur between funds without threatening the stability of pension funds of the viability of employers where premature crystallisation of pension deficits requires an immediate cash payment. The County Council has argued for a long time that it is sensible for employers to be able to move and consolidate its pension obligations between Funds following reorganisations and to achieve this it is important that deferred and pensioner members as well as active members are transferred. The current situation means that only active members can be transferred from one fund to another which means that the legacy fund is forced to carry out a cessation valuation to ensure that future liabilities are covered in full. This crystallisation of liabilities can be costly and places a potential funding risk onto the ceding fund. This is a particular concern to the County Council following a the merge of West Sussex and East Sussex Probation Boards in 2001 (forming the Sussex Probation Board). In this event a bulk transfer was settled which covered active members. However, the Regulations at the time did not permit the pensions liability in respect of the former employees who have not yet retired (i.e. deferred) and pensioner members to be transferred out of the West Sussex CC Fund. These pension liabilities for these members had to be retained within the West Sussex County Council Pension Fund and the West Sussex Fund now has a growing liability for these Members (£5.7m) without an immediate funding source.

The proposed amendment would allow a clean break to be achieved. The new entity would remain fully responsible for all liabilities in respect of the former organisation(s) particularly in relation to deferred and pensioner liabilities that might have otherwise been retained by the former Fund, and avoid any costs associated with the crystallisation of past service deficit.

Regulation 32

The County Council supports the proposed Regulation 32 which makes it explicit that an administering authority can call for a payment following a cessation valuation in respect of a scheme employer when it ceases to be an employer in the fund and permits the administering authority, where there is evidence that an employer is to leave the LGPS at some point soon, the circumstances relating to a scheduled body have substantially altered or there are other circumstances which are likely to result in the fund's valuation, to hold more frequent actuarial review of employer contribution rates. This would allow the Council to obtain a revised rates and adjustment certificate, including for any lower employer contributions, to manage the gradual reduction of any pension deficit or surplus. The County Council welcomes this amendment which would allow the administering authority more flexibility during the inter-valuation period and allow it to manage the termination process, rather than call for a one off cessation payment. Furthermore the County Council believes it to be important that it must be possible to seek cessation debts from all scheme employers, including scheduled bodies, which will provide protection for the Fund against future deficits arising.

Regulation 42

The County Council welcomes the clarity about Appropriate Funds for Academies set out in the proposed Regulation 42. However it would request that the Government provides a further amendment to make it clear which fund centrally employed individuals are eligible for membership of, if any. If an academy trust, for example, operates a central HR team that provides services to academies across the country, it is unclear under the current Regulations whether those employees are eligible for membership or one or other of the Funds in the area in which the academy operates.

The County Council would also request that the Secretary of State for Communities and Local Government and Secretary of State for Education clarify the funding position for Academies following their joint letter to Local Authority Leaders and Chief Executives in England dated 22 December 2011. West Sussex County Council currently applies a 20 year deficit recovery period for all Academies. However without an explicit guarantee from Central Government about future funding, and funding in the event of cessation, this position must be kept under active consideration to reflect the risk to Fund should a school or Academy fail, specifically that the assignment of existing assets and liabilities would be assigned to a new or an existing education establishment.

Yours sincerely,

Michael Brown
Cabinet Member for Finance and Performance and Chairman of the Pensions Panel