

Divisions: N/A

PENSION FUND COMMITTEE – 4 DECEMBER 2020

RISK REGISTER

Report by the Director of Finance

RECOMMENDATION

The Committee is RECOMMENDED to:

- (a) note the changes to the risk register and offer any further comments; and**
- (b) confirm the short-term policy not to award an unreduced pension under Regulation 30 (7) where the associated pension strain cost would result in the total exit costs payable by the scheme employer breaching the £95,000 exit cap.**

Introduction

1. At their meeting on 11 March 2016, the Committee agreed that the risk register should form a standard item for each quarterly meeting. A copy of the report also goes to each meeting of the Pension Board for their review. Any comments from the Pension Board are included in their report to this meeting.
2. The risk register presented to the March 2016 Committee meeting was the first produced in the new format, which introduced the concept of a target level of risk and the need to identify mitigation action plans to address those risks that were currently not at their target score. This report sets out any progress on the mitigation actions agreed for those risks not yet at target, and identifies any changes to the risks which have arisen since the register was last reviewed.
3. A number of the mitigation plans are directly linked to the key service priorities identified in the Annual Business Plan. This report should therefore be considered in conjunction with the business plan report elsewhere on this agenda.

Comments from the Pension Board

4. At their meeting on 23 October 2020, the Pension Board welcomed the addition to the Risk Register regarding the legal risks associated with the implementation of the Restriction on Public Sector Exit Payments Regulations 2020 in advance of the appropriate amendments to the LGPS Regulations, as agreed by this Committee at their September meeting.
5. They also asked for the impact of risk 13 regarding the skills and knowledge of the members of the Pension Fund Committee to be amended to add the potential loss of Professional Investor Status under MIFID II.

Latest Position on Existing Risks/New Risks

6. Over the last quarter there has been little movement in the overall levels of risks faced by the Fund. All Funds are recorded at the same risk score as in September with the exception of the new risk 21, which was added by the Committee at the September meeting. The likelihood of this risk has increased over the quarter with the implementation of the Restriction of Public Sector Exit Payments Regulations 2020 (the exit cap regulations), and the publication of the guidance from the Scheme Advisory Board. This risk has now been scored Red and requires urgent review. Four of the other risks remain at an Amber rating, and therefore requiring regular review.
7. The new risk 21 reflects the legal ambiguity introduced by the implementation of the exit cap regulations in advance of the associated changes in the LGPS Regulations. The exit cap regulations became law with effect from 4 November 2020. The closing date on the consultation on the proposed amendments to the LGPS Regulations does not close until 18 December 2020, which means it is highly unlikely that these will be enacted until quarter one of 2021.
8. Whilst the Government have acknowledged the current ambiguity, they believe that the exit cap regulations over-ride any requirements in existing regulations including the LGPS Regulations. This view is not shared by the Queens Counsel consulted by the Scheme Advisory Board on behalf of all Administering Authorities. It is his opinion that a scheme member would be highly likely to be able to bring a success legal challenge against an Administering Authority who did not pay an unreduced pension in accordance with Regulation 30 (7) of the current LGPS Regulations, due to the associated pension strain costs taking the total exit costs payable by the scheme employer above the exit cap of £95,000.
9. However, the QC opinion goes on to advise that not awarding an unreduced pension carries the lowest risk to an Administering Authority in that it is easiest to remedy in light of a successful challenge via the Courts or the Pension Ombudsman. This does though also involve the scheme employer deferring the alternative cash lump sum payment payable under Regulation 8 of the exit cap regulations. Minimising the initial payments made to the scheme member, maintains the greatest flexibility to make additional payments on resolution of the legal challenge.
10. The Council's Monitoring Officer has advised this Committee to follow the advice set out by the Scheme Advisory Board and contain in the QC opinion. The Committee are recommended to endorse this approach in the short-term until the necessary changes are made to the LGPS Regulations to allow payment of a partially reduced pension to avoid breaches of the exit cap.
11. The risk register entry reflects the risk of a successful legal challenge to this policy. At this stage it is not clear where the first legal challenge to this approach will fall, although it is likely there will be significant local media interest in the Oxfordshire position even if the test case arises elsewhere in the Country.

12. The four risks which have retained an Amber rating are as follows. Risk 6 in respect of the risks associated with climate change remains Amber whilst more work is undertaken on developing the framework for monitoring compliance with the climate change policy, and for agreeing metrics and targets. It was previously agreed to review the Amber status at the March 2021 meeting of this Committee.
13. Risk 8, the risk of employer default remains at Amber reflecting the on-going financial pressure on scheme employers as a result of the Covid-19 pandemic. The main concern is around the HE/FE sector due to the potential losses of income from student fees and accommodation charges, their weaker financial covenant when compared to the tax raising bodies, and the relative size of their past service deficits. The implementation of a second lockdown and uncertainty of the position going forward means it is currently not possible to determine the potential long term financial impact on employers and what further actions including seeking a legal charge against assets could be explored to mitigate the risks of default.
14. The third risk rated Amber is the risk 13 around intervention from the Pension Regulator in respect of the skills and knowledge of the Committee. In line with the comments of the Pension Board, the impact statement has been amended to include the potential risk of losing Professional Investor status under MIFID II. This in turn would prevent the Fund investing in the majority of the existing portfolios. This risk will be mitigated through the adoption of the training programme discussed as part of the Governance review to the September Committee meeting, plus adopting any changes recommended under the Independent Governance Review currently being undertaken by Hymans Robertson.
15. This risk in respect of the skills and knowledge of the Committee will also need to be reviewed following the County Council elections due in May 2021. Following the last set of elections in 2017, the Committee lost almost all of the previous skills and knowledge as a result of previous Committee Members choosing not to seek re-election or losing their seat. The position will therefore need to be re-assessed once the new Committee is formed in the second quarter of 2021.
16. The final risk scored Amber is risk 20 which covers the implications of the proposed new Regulations seeking to remedy the Court decisions in the age discrimination cases brought by McCloud and Sargeant. As reported last quarter, we are currently working with the Fund Actuary to identify the members who will be in scope for the extended protection, and to set up a project to load and validate the data we have already received, and to work with scheme employers and other Funds to collect the outstanding data. The Project Team will also review the resources necessary to undertake the work required and will determine whether to seek to make temporary appointments to the internal teams or seek to outsource the additional work to a 3rd party. The risks associated with this issue will be better understood once the Government have responded to the consultation exercise and published the agreed changes to the scheme Regulations.

17. There are three risks on the Register which are currently showing unchanged as Green, but which are subject to future review. Risk 17 relates to the risk of failing to meet Government requirements on pooling. We are currently awaiting revised guidance from the Government on pooling arrangements, and this risk will need to be reviewed against this guidance. Given the advanced state of the development of the pool, it is likely that this risk can be removed from the register following this future review.
18. Risk 18 relates to the risk that the portfolios offered by Brunel do not meet the investment requirements under this Fund's Investment Strategy. This risk needs to be reviewed following the decision to amend the Investment Strategy to require all investments to be in portfolios aligned to the Paris Agreement. Given Brunel's own Climate Change Policy and their own statements about wishing to align their investments with the Paris Agreement it is felt that this risk is correctly scored as unlikely at this time, but this needs to be subject to on-going review as the portfolio development is taken forward.
19. Finally, Risk 19 is currently scored Green but will need to be reviewed once the Government determines its response to last year's consultation on providing the HE/FE sector the option to opt out of the LGPS.

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