

PENSION FUND COMMITTEE – 6 DECEMBER 2013

POTENTIAL SCHEME MERGER

Joint Report by the Chief Financial Officer and County Solicitor

Introduction

1. This report updates the Committee on the progress in exploring the potential merger of the Oxfordshire Pension Fund with the Buckinghamshire and Berkshire Funds. It also reports the opinion of Queens Counsel on which body within the Council should be responsible for making any final decision on a merger.

Local Discussions and the National Picture

2. As discussed at the September 2013 meeting of this Committee, the government issued a Call for Evidence regarding the future structural options for the administration of the Local Government Pension Scheme. This Committee submitted its response by the deadline of 27 September 2013.
3. Whilst there have been no reported findings from the result of this exercise, on 7 October 2013, the Cabinet Office and the Department for Communities and Local Government published a tender exercise looking for a short piece of work on structural reform of the Local Government Pension Scheme.
4. The tender states that the Government are looking for a robust analysis of the costs and benefits associated with structural reform. This needs to include any costs of implementing any reforms, as well as the on-going costs and benefits of the reforms. The work should also identify any barriers to implementation, both legal and practical, and report on the value of the money for the proposed options.
5. The tender document has asked for the exercise to consider three specific options, being:
 - A single common investment vehicle to cover the whole of England and Wales, with asset allocation decisions to be made by the 89 individual Pension Funds
 - A set of 5 – 10 common investment vehicles to be determined around Fund size, or geographic location, with asset allocation decisions again remaining under the current arrangements
 - A set of 5 – 10 merged funds, based as above, but with asset allocation decisions made under the new governance arrangements.

6. The decision to go out to tender was met with some dismay from many connected to the LGPS. The timing so close to the deadline for the submission of the Call for Evidence responses suggested to many that the Government had a pre-conceived solution, and were not prepared to properly consider the responses from those working in the LGPS.
7. When we met with officials from the Department for Communities and Local Government with colleagues from Buckinghamshire and Berkshire, they referred to the tender exercise as likely to provide further evidence against which to assess our business case.
8. When asked specifically about the Department's support for our local merger, the Department responded to confirm that they were very supportive of our work towards a merger, and they regarded it as a pilot for future exercises. They remain committed to working on the issues discussed which could impact on a merger, and have an agreed a further meeting on 17 December 2013.
9. The two key issues identified to date are:
 - The question whether a new statutory body to administer the merged fund can be set up under secondary legislation, or whether primary legislation will be required. If primary legislation is required, this is likely to add to both the time and cost of implementation, and as such could impact on the viability of the business case.
 - The issue of whether the new statutory body would require tax-raising powers to enable it to generate sufficient funding to pay all pension liabilities after the scheme has closed and no further employer contributions are payable.
10. All parties are currently continuing to work on the project with a view to developing a business case for early in 2014.

Opinion of Queen's Counsel on the Proper Decision Making Body

11. At the last meeting of the Committee the question was raised as to which was the proper decision making body to determine whether we proceed or not with any proposal to merger. The Committee determined to seek advice from the County Solicitor.
12. Subsequently the question was addressed to Queens Counsel who has advised as follows. Having reviewed the statutory regulations, the Council's Constitution, and the Pension Fund's Governance Policy, the responsibilities of the Pension Fund Committee are in respect of the maintenance and management of the Fund. There is nothing in the documentation to suggest that the termination of the Fund itself, or the establishment of a new Fund would be a matter for the Pension Fund Committee.

13. In Counsel's opinion therefore it is not open to the Pension Fund Committee to take the decision in respect of the merger of the Fund
14. Counsel has also provided the opinion that this is not a decision to be made by the Cabinet. Under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, the functions of the Council relating to the Pension Fund cannot be the responsibility of the Cabinet.
15. It follows therefore that if the decision cannot be made by the Pension Fund Committee, nor Cabinet, it must be made by full Council. Counsel does state that the Pension Fund Committee will undoubtedly have an input into the material placed before the Council in relation to the merger decision. The County Solicitor is also clear that any decision to be made by the Council should follow the recommendation or advice of the Pension Fund Committee.
16. Counsel sees no role for the Cabinet in the decision itself. However, as the main scheme employer within the Fund, the Cabinet should alongside all other Scheme Employers be included in the consultation exercise which feeds the final decision.

RECOMMENDATION

- 17. The Committee is RECOMMENDED to note the report.**

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Background papers: None
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