

**14 December 2023****Agenda Item: 7**

## **REPORT OF THE MONITORING OFFICER**

### **THE COMPOSITION AND VOTING RIGHTS OF MEMBERS OF THE PENSION FUND COMMITTEE**

#### **Purpose of the Report**

1. This report addresses questions from members about the composition and voting rights of members of the Pension Fund Committee ("the Committee").

#### **Information**

##### Background

2. The Nottinghamshire Pension Fund Committee is the Committee to which Council has delegated authority to take decisions on behalf of the Council in its role as the Pension Administering Authority for the Local Government Pension Scheme (LGPS). The Administering Authority carries the statutory responsibilities for discharging the functions of the Nottinghamshire Fund.
3. The current composition of the Committee has largely come about because the functions of two sub-committees were transferred to the Committee. Both of those sub-committees were essentially advisory in nature and included other non-County Council representatives. Those non-County Council representatives appointed to sub-committees had voting rights but the matters on which they voted were to make recommendations to the main Pension Fund Committee, which had the final decision making authority. The non-county council members of the sub-committees were not members of the main Pension Fund Committee and had no voting rights in respect of that Committee.
4. In May 2017, the Council's overall Committee structure was revised in order to improve efficiency and effectiveness, streamlining arrangements to create a smaller number of Committees of Council and reducing the support required to service those Committees. This revision also affected the committee arrangements relating to pension fund administration and investment. The new structure effectively transferred the activities of the former sub-committees and the main decision-making Committee into a single Committee covering all aspects of pensions administration and investment matters.
5. In order to reflect the fact that the two sub-committees had non-county council representatives, the Council determined that similar numbers of such representatives would become members of the Pension Fund Committee but that they would not have voting rights. This was because the rights of those non-county councillor members on the former sub-committees had

previously been to make recommendations to the main Pension Fund Committee with the final decisions resting with that Committee. In addition, legal advice taken at the time confirmed that the option of having a committee comprising 9 County Council voting members and 10 other non-county council representatives all with voting rights would lack legal viability. As a result this option was not considered further.

6. The first meeting of the new look Pension Fund Committee with its combined voting and non-voting membership took place on 22 June 2017 at which the membership of voting (County Councillors) and non-voting (other representatives) was set out as the second item on the agenda.
7. The Pension Fund Committee currently has 21 members: 11 voting members, and 10 non-voting members. The 11 voting members are elected members of the County Council; 6 of whom are from the majority political group on the Council (the Conservative Group); the remaining 5 voting members are 2 from the Labour Group, 2 from the Independent Alliance and 1 non-aligned independent member. The 10 non-voting members are 3 from Nottingham City Council, 2 from District/Borough Councils, 2 Trade Union representatives, 1 Scheduled Body representative, and 2 pensioner representatives.
8. Some non-voting members of the Committee have requested to be given voting rights. Following this request, the Chairman of the Committee asked the Monitoring Officer to arrange for a review of the current practice. This has included consideration of practices across a range of other local authorities' Pensions Funds Committees, as well external legal advice being sought on the requirements of applicable law.
9. The practices across various local authorities indicate a wide variation nationally. There are examples where the voting members are drawn only from the Administering Authority (as in Nottinghamshire) and others where non-councillors from outside the Administering Authority had voting rights. At some Pension Funds the non-members were present only as observers and not members of the Committee. As a result there was no consistency of approach. It should be noted that no two Fund areas are the same and each Pension Fund Administering Authority makes its own decision on what is most appropriate for their area, regarding Committee membership. The Government response to the Good Governance report (see below) should help provide improved clarity over any expectations in this area and whilst it is not expected that prescriptive legislative provisions will be imposed, revised Government guidance may assist in providing a framework for greater consistency to assist Administering Authorities in how they approach the issue of representation.
10. It is also worth reflecting on the regular use of working groups at Nottinghamshire, made up of voting and non-voting members each having equal status and opportunity to contribute to the work and outcomes and to influence the formation of a consensus view to be put before the Committee. In addition, although non-county councillors do not have voting rights, they do have the right to speak as members of the Committee. These mechanisms provide valuable opportunities for the non-voting members of the Committee to influence debate and proposals to assist the Committee in reaching its decisions.

### Legal Issues

11. The Pension Fund Committee is formed under section 101 of the Local Government Act 1972, with delegated authority from the County Council to deal with responsibilities and decision-making powers in relation to the administration of the Local Government Pension Scheme.
12. Legal advice relating to the issue can be summarised as follows:

- a. Non-County Council members (provided they are not disqualified) can be appointed to the Committee.
  - b. The choice and number of such appointees is a matter for the County Council as Administering Authority.
  - c. The County Council may give such appointees voting rights.
  - d. A majority of the Committee ought to be constituted by members of the majority political group on the County Council but in other respects, the requirements regarding political proportionality between different political groups need not apply.
13. Whether or not the current composition of the Committee is retained is therefore a matter for the County Council. The County Council has the legal authority to decide whether to give voting rights to non-voting members or continue with the current practice. There is no legal requirement to agree a request to grant voting rights to non-County Council members of the Committee, and if the Council was minded to do so it would have to take into account the other legal issues set out above.
14. Any decision on the composition of the Committee is a matter for the Full Council. This Committee does not have the power to make that decision but may vote to refer the matter to the Full Council for a decision if that is considered appropriate at this time. The Council's constitutional arrangements currently do not allow for non-County Council members of the Committee to have voting rights. Therefore, any decision to grant voting rights to non-County Council members of the Committee will require a change to the Council's constitutional arrangements relating to the Pension Fund Committee.
15. A decision to grant voting rights to non-County Council members of the Committee would have knock on implications for the size of the Committee due to the application of the relevant requirements relating to political proportionality. It would require a change to the composition of the Committee, to ensure compliance with the principle that a majority of the Committee should be constituted by members of the majority political group on the Council. If all current non-voting members had voting rights the number of majority group members would have to be increased to such an extent that the total membership of the Committee would be 31 people
16. It is also important to consider the effective functioning of committees, particularly in relation to decision making. If all 21 current members of the Committee had voting rights, this could be potentially unwieldy and would create an unusually large number. Increasing the voting membership of the Committee beyond the current 11 members also risks it becoming less effective in terms of reaching decisions and fulfilling its duties.
17. As a result, if voting rights were to be considered for non-county council members it would be impractical to do that without giving fundamental reconsideration of overall voting and non-voting membership to determine an appropriate size and composition for the Committee. Such a review would necessarily need to reconsider whether an appropriate mix of Scheme Employer bodies, Scheduled body representatives, Pensioner representatives and other relevant bodies are reflected within the membership alongside Council members representing the administering authority. The outcome of such a review could result in a quite different

looking membership from the Committee in place today which could be different in size, composition and voting rights, providing the overriding requirements of the law are met.

18. Given the current position with the Good Governance review (see below) and the potential for changes to legal requirements which may flow from that, it also seems premature to consider making changes which could soon be affected by any consultation on future governance requirements as proposed by Government.
19. There appear to be a number of options for the possible composition of the Committee and the approach to voting rights. These include:
  - a. Maintaining the status quo and making no changes at this time
  - b. Giving all current non-voting members a right to vote (but this requires increasing the number of majority group members to 10 and would make the Committee size unwieldy)
  - c. Removing all non-voting members from the Committee and set up separate employer and member committees/forums to obtain their input
  - d. Reducing the overall number of members of the committee and giving all members a vote, whilst ensuring the necessary legal requirements are met.
  - e. Increasing the size of the Committee and giving some of the non-voting members voting rights.
20. Further consideration of these options and their pros and cons are set out in the **Appendix**.

#### Good Governance Review

21. The Good Governance project by the Scheme Advisory Board for the LGPS (SAB) was instigated to examine the effectiveness of LGPS governance models and consider enhancements to further strengthen governance. Work was undertaken to work alongside scheme stakeholders to identify best practice and propose beneficial changes to regulations and guidance for consideration by Government.
22. The good governance review carried out by Hymans Robertson on behalf of the SAB reported its findings in a final report in February 2021 together with an Action Plan regarding the recommendations. Section C of the Phase III report of the Good Governance project which is headed 'Representation', recommends that each fund should publish a policy on the representation of scheme members and non-administering authority employers on its committees, explaining its approach to voting rights for each party. There is a recognition that each administering authority knows its own situation best, and any guidance should avoid being overly prescriptive and limiting. Administering authorities are advised to prepare, maintain and publish their policy on representation and provide the rationale for their approach to representation for non-administering authority employers and scheme members (both local authority and non-local authority) on any relevant committees; and the rationale as to whether those representatives have voting rights.
23. The SAB's view is that it would expect scheme managers to have the involvement of employers and member representatives on any relevant committee. In addition to representatives on committees, administering authorities should state the other ways in which they engage their wider employer and scheme membership. It is an important principle that administering authorities retain a majority vote on decision making bodies in order to reflect their statutory responsibilities for maintaining the fund.
24. As part of the Good Governance Review, the report is now with the Department for Levelling Up, Housing and Communities (DLUHC), with an Action Plan consisting of formal requests to

the DLUHC and other bodies to implement certain recommendations. Implementation of the recommendations will require the Government to amend scheme regulations and produce revised statutory guidance. It is not currently known the extent to which DLUHC will endorse the SAB recommendations or the timescale within which the Government decision will be made. Whatever the view, there will need to be consultation on any proposed amendments to the relevant Regulations and then those amendments will need to be published, most likely alongside updated statutory guidance.

25. There are aspects of the Action Plan, relating to promoting best practice, which may be a useful guide when considering the current composition of the Committee, and allocation of voting rights, when the County Council is ready to consider those issues. Although it would be possible to review those issues in advance of the position being clarified by Government, on balance it is suggested that this activity is better left until the Government responds formally to the SAB recommendations in the Good Governance Review to avoid the possibility of needing to undertake such an exercise twice, thereby avoiding duplication of cost and effort.
26. Another of the recommendations of the Good Governance Review is that members of the Committee have the appropriate knowledge and understanding to carry out their duties effectively. Maintaining sufficient knowledge and understanding can be difficult to achieve due to the highly technical nature and increasingly complex landscape of matters brought for a decision to Pension Fund Committee. In addition, maintaining knowledge and expertise for directly elected members, can be impacted by the duration of their terms of office as they are subject to change at each main election every 4 years and following any by-elections. Also, the larger the number of members on the Committee with voting rights, potentially the more difficult it is to ensure that they all have sufficient knowledge and understanding to carry out their duties on the Committee.
27. As the DLUHC position is yet to be published, this report does not propose changes to the composition or voting rights of the Committee. Once a response from the Government has been received, the Committee may want to consider commissioning an independent governance review to include a range of issues set out in the Good Governance Review and ask officers to bring a report back to the Committee on any appropriate options and next steps. As a result, the recommendation of this report is for no change to the composition or voting rights of the Committee and to adopt a “wait and see” approach with regard to the response from Government to the SAB Good Governance report recommendations.

## **Other Options Considered**

28. The alternative options have been set out. Broadly they would be to give some or all of the current non-voting members voting rights. That would have knock on implications for the size of the Committee and its operational effectiveness as its membership would have to increase to 31 (if all current members were giving voting rights) in order to meet the requirement for the majority group on the Council to have the majority on the Committee. This is considered to be inappropriate and not good practice. Another option would be to undertake a complete review the current membership and consider reducing the number of members overall. This may have the effect of reducing the number of non-county councillor representatives in order to make the committee size manageable and to meet the relevant requirements of political proportionality. Finally, it would be possible to change the arrangements back to a sub-committee and main committee structure however that would reverse the effect of the changes made in 2017 to improve efficiency and effectiveness across the whole governance system. Any changes introducing additional committees would require additional resources to manage the work of the committees and is not therefore considered appropriate at this time.

## **Reason/s for Recommendation/s**

29. It is recommended not to change the Committee composition or voting rights at this time. Instead a wait and see approach is proposed until such time as the Government has responded to the recommendations of the SAB Good Governance Review and any legislative or regulatory changes which may flow from that and determine an appropriate course of action at that time.

## **Statutory and Policy Implications**

30. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance, finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Where appropriate consultation has been undertaken and advice sought on these issues as required.

### **Financial Implications**

31. There are no direct financial implications identified from the report.

### **Legal Implications**

32. The legal implications have been set out in the main body of the report.

### **Consultation**

33. The decision on whether or not to change the voting rights and composition of the Committee is a matter for the County Council on which no consultation is required.

### **Crime and Disorder Implications**

34. None identified in connection with this matter.

### **Data Protection and Information Governance**

35. None identified in connection with this matter.

### **Human Resources Implications**

36. None identified in connection with this matter.

### **Business Support Implications**

37. None identified in connection with this matter.

### **Human Rights Implications**

38. None identified in connection with this matter.

### **Implications in relation to the NHS Constitution**

39. None identified in connection with this matter.

## **Public Sector Equality Duty implications**

40. The Council must have regard to its duties under the Equality Act 2010 when reaching decisions. No impacts on people with protected characteristics are identified in connection with this matter.

## **Smarter Working Implications**

41. None identified in connection with this matter.

## **Safeguarding of Children and Adults at Risk Implications**

42. None identified in connection with this matter.

## **Implications for Residents**

43. None identified in connection with this matter. The issues relate to the responsibilities of the Council as Pension Administering Authority and the governance arrangements relating to the discharge of those functions.

## **Implications for Sustainability and the Environment**

44. None identified in connection with this matter.

## **RECOMMENDATION/S**

It is recommended that the Pension Fund Committee:

1. Notes the contents of the report and the information set out in the **Appendix**.
2. Agrees that at this time no changes are required to the composition and voting rights of the Committee pending the outcome of the Government response to the SAB Good Governance report when Committee will consider any appropriate next steps at that time.

**Marjorie Toward**  
**MONITORING OFFICER**

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## **Constitutional Comments (KA 27/11/2023)**

45. This committee is the appropriate body to consider the issues raised in this report. However, any decision on the voting rights of members of the committee will require a change to the constitution, which is a matter for the Full Council.

## **Financial Comments (KRP 4/12/23)**

46. There are no direct financial implications arising from the recommendations in the report.

## **Background Papers and Published Documents**

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- 'SAB Good Governance Final Report February 2021:  
[Good Governance Final Report February 2021.pdf \(lgpsboard.org\)](https://www.lgpsboard.org/Good_Governance_Final_Report_February_2021.pdf)

## **Electoral Division(s) and Member(s) Affected**

- All