

SURREY PENSION FUND COMMITTEE REPORT

SURREY COUNTY COUNCIL

SURREY PENSION FUND COMMITTEE

DATE: 13 SEPTEMBER 2024

LEAD OFFICER: ANNA D'ALESSANDRO, EXECUTIVE DIRECTOR, FINANCE AND CORPORATE SERVICES

SUBJECT: IMPROVING THE GOVERNANCE OF THE SURREY PENSION FUND

SUMMARY OF ISSUE:

Surrey County Council (SCC) has the dual role as Administering Authority for and a scheme employer of the Surrey Pension Fund (SPF). This dual role creates potential conflicts of interest. This report recommends ways in which the governance of the SPF can be improved to enable this conflict to be more effectively managed. It also explores areas in which the recognition of the autonomy of the SPF can enhance the effectiveness of its Strategic Plan.

RECOMMENDATIONS:

It is recommended that the Pension Fund Committee:

1. Supports the proposed changes to the Council's Pension Fund Committee Terms of Reference and Scheme of Delegations and recommends approval of these changes to SCC at the Full Council meeting of 8 October 2024.
2. Notes that officers are exploring options for the future of SPF, as outlined in this report. Any proposed options to be taken forward will be subject to further consideration by the Pension Fund Committee and the Council's governance, legal and financial due diligence.

REASON FOR RECOMMENDATIONS:

To optimise the performance of the SPF, by more effectively recognising the distinct relationship and management of conflicts of interest with SCC, allowing it to meet its strategic vision, allow for more cost effectiveness and equipping it to meet future changes to the LGPS (please see Background document 1).

DETAILS:

Background

1. Every Local Government Pension Scheme (LGPS) is legislatively required to have an Administering Authority that is ultimately responsible for managing and administering the scheme. At SCC this responsibility is delegated to the Pension Fund Committee, as laid out in the Constitution of Surrey County Council, Part 3, Section 2. There is also a Local Pension Board which is

charged with ensuring the Committee complies with relevant LGPS regulations and pension law.

2. This governance structure creates challenges and discrepancies:

- a) There is a potential for conflicts of interest e.g. SCC is both the Administering Authority and an employer within the scheme. SCC could therefore exert undue influence which may not be in the best interests of all the 360+ other employers in the scheme. This can also manifest itself organisationally through strategic misalignment.
- b) Although Surrey residents are a key stakeholder of the SPF its primary customers are members and employers of the scheme. The SPF has a fiduciary duty to the members and employers of the scheme.
- c) The SPF team is subject to all the policies of SCC. The cost of those resources necessary for delivering the administering authority role is met from the pension fund (under Regulation 4(5) of The Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009). There is therefore no direct impact on SCC's revenue account costs.
- d) The current pressure on resources faced by SCC is recognised. However, as laid out by the Scheme Advisory Board (SAB), Administering Authorities must ensure that sufficient resources are maintained to meet the statutory obligations placed on them to manage the scheme. Where sufficient resources are not provided, there are a number of potentially negative outcomes including:
 - i) Censure by the Pensions Regulator (TPR) for non-compliance with the requirements of the Public Service Pensions Act 2013 and other primary legislation.
 - ii) Findings against SCC by the Pensions Ombudsman.
 - iii) Failure to fulfil financial responsibilities in accordance with Accounts and Audit (England) regulations 2011.
 - iv) Failure of internal control systems for financial and investment activities (Accounts and Audit (England) regulations 2011 and CIPFA/LASAAC code of practice).
 - v) Overpayment or underpayment of pension amounts.
 - vi) Incomplete data leading to valuation assumptions which could result in increased employer contributions.
 - vii) Incorrect tax liabilities for the authority, participating employers, and scheme members.

3. A review of the current governance artefacts was completed by an independent pensions industry expert (Barnett Waddingham) in late 2023. This review, combined with internal audit recommendations, the Scheme Advisory Board (SAB) Good Governance project and the new Pensions Regulator's (TPR) General Code of Practice suggests that SPF should evolve its governance to:
 - ensure it has sufficient independence to effectively manage conflicts of interest
 - enable SPF to achieve its vision
 - future proof the organisation to any governance changes proposed by the Government as part of its review of pensions
 - safeguard the interests of its members and employers.

Governance changes

4. The SPF has a rolling 3-year strategic plan which highlights its roadmap to become a trailblazing LGPS Fund. We are committed to ensuring that the Fund completes its transformation and builds the organisational capability and resilience to ensure it is well positioned to be the leader in its response to anticipated changes in the pension industry.
5. This paper recommends that, in order to deliver the Strategic Plan and provide a first class and cost-effective service for the benefit of its members and employers (including SCC), the SPF requires greater recognition of its autonomy within existing structures. The SPF has drawn on four sources of evidence to inform our recommendations:
 - a) An independent governance review
 - b) Recommendations of Internal Audit
 - c) Recommendations of the SAB Good Governance Project
 - d) Guidance from TPR in its new General Code of Practice

Independent Review

6. An independent review of the current governance artefacts was completed by an independent pensions industry expert (Barnett Waddingham) in late 2023 (See Annexe 1). The objectives of the review were as follows:
 - a) Make the governance and supporting arrangements for the LGPS function work more effectively and efficiently.
 - b) Ensure conflicts of interest between the council and LGPS function are managed.
 - c) Ensure the independence of the LGPS function is recognised.

7. The review recommends the increased use of delegations. Under this proposal the Pension Fund Committee would retain the principal role of oversight and strategic decision making in all areas of the LGPS function while delegating the majority of functional and implementation decisions to officers. This would:
 - a) Enable the committee to concentrate its time and resources on material matters for which it is accountable to the full council and ultimately the local taxpayer.
 - b) Significantly reduce the potential for actual or perceived conflict of interest.
 - c) Increase the ability of officers to act swiftly and efficiently in delivering the LGPS function.

Internal audit recommendations

8. In April 2023 the Surrey Internal Audit team reviewed the current governance structure of the SPF (See Annexe 2). The following risks and mitigations were recommended with regard to “Clarity Regarding Committee Roles:

Risk:

“One of the key objectives of the Good Governance Review was to consider how potential conflicts of interest manifest themselves within current LGPS set up, including recognition of the dual role of the Council as the Administering Authority and a scheme employer in the Fund, and to suggest how those potential conflicts can be managed to ensure that they do not become actual conflicts.”

Recommended mitigations:

- a) *“Develop a comprehensive matrix of roles and responsibilities.*
- b) *Undertake discovery work in the context of the relationships with the Council, Staff, IT, Cyber Security, Accommodation etc.*
- c) *The Governance matrix will clearly lay out the decision-making powers and delegations.*
- d) *Ensure the Scheme of delegations and constitution are amended and approved by full Council.*
- e) *Creation of a Conflict of Interest Policy.”*

The SAB Good Governance Project

9. The Good Governance project was instigated by the SAB to examine the effectiveness of LGPS governance models and consider enhancements to further strengthen governance. After a procurement exercise, Hymans Robertson were appointed by the Board in January 2019 to work alongside scheme stakeholders to identify best practice and propose beneficial changes to regulations or guidance.

10. In the February 2021 Scheme Advisory Board Meeting, the Board considered the final report from Hymans Robertson (See Background paper 2).
11. This included the need for the creation of a “Senior LGPS Officer” to ensure that the role of the pension fund and LGPS matters are understood and represented at the local authority’s senior leadership level. The SPF created this role in 2022 and recommendations in this report allow for closer alignment of it with the recommendations of the Good Governance project.
12. It also included the following with regards to the potential conflict between the Council as administering authority and employer:
 - a) *“Each fund must produce and publish a conflicts of interest policy which includes details of how actual, potential and perceived conflicts are addressed within the governance of the fund, with specific reference to key conflicts identified in the Guidance.*
 - b) *The Guidance should refer all those involved in the management of the LGPS, and in particular those on decision making committees, to the guide on statutory and fiduciary duty which will be produced by the SAB.”*

Guidance from TPR in its General Code of Practice

13. In March 2024 TPR published a new General (Single) Code of Practice (see Background paper 3) under the powers given to us in section 90 and section 90A of the Pensions Act 2004 and is a combined code in accordance with section 90A(6)(a).
14. The new code merged ten of the existing TPR codes of practice into one, this included the public service pension code, and the LGPS has a statutory duty to comply with it.
15. TPR describes conflicts of interest as follows:

“Conflicts of interest may arise from time to time while running a pension scheme, either among members of the governing body themselves, or with service providers, sponsoring employers, advisers, and others. Conflicts can also arise for members of the governing body who for example, are members of the scheme or who represent trade unions. Conflicts of interest may be either actual conflicts or potential conflicts. Unless otherwise stated, references to ‘conflicts of interest’ include both actual and potential conflicts.”

Proposed governance changes

16. A number of minor proposed changes are recommended to the Pension Fund Committee’s Terms of Reference and the Council’s Scheme of Delegations.
17. It is proposed to amend the Pension Fund Committee’s Terms of Reference to allow for formal recognition of the potential conflict of Surrey County Council in its dual role as Administering Authority for and scheme employer of the Surrey Pension Fund. The following addition is recommended:

“j) To consider and approve an annual conflict of interest policy, which shall include how the potential conflict of Surrey County Council in its dual role as Administering Authority for and scheme employer of the Surrey Pension Fund is managed.”

18. Proposed changes to the Council’s Scheme of Delegations primarily reflect the current ways of working - where responsibility for the operation of the SPF is delegated to the Senior LGPS Officer and will formalise the reporting line directly to the Section 151 Officer. These changes help to ensure that the SPF has appropriate senior representation in the organisation, enabling a clear line of sight and support to the Section 151 Officer and providing unimpeded dialogue and response for what is a key part of the Section 151 responsibilities.
19. An example of changes on a day-to-day basis would be the formal identification of the LGPS Senior Officer as lead officer for the SPF in reports to the Pension Fund Committee and Local Pension Board. In addition, decisions regarding pension fund matters (e.g. cash transfers) will be exclusively delegated to pension fund officers with appropriate expertise. The full list of proposed changes to the Terms of Reference and Scheme of Delegations is included as Annexe 3.
20. It is also suggested that these proposed changes will allow SCC to more effectively manage any inadvertent moral hazards and reputational risk as well as providing greater clarity on roles and responsibilities. This ultimately leads to stronger organisational control, compliance to regulations and better service provision.

Future proposals in recognition of the autonomy of the SPF

Policies

21. Subject to approval of the proposed governance changes and consistent with Internal Audit Recommendations, the SPF will bring a SPF Conflict of Interest Policy and Roles and Responsibilities Matrix to the Pension Fund Committee for approval.

The identity of the SPF

22. Drawing on collateral from the SPF Customer Insights project and further anecdotal evidence, there is confusion amongst SPF customers regarding the SPF relationship with SCC. This prohibits the effective and efficient delivery of service.
23. Subject to approval of the proposed governance changes, to remedy this, it is recommended that the SPF explores how it may bring more clarity to its identity.

Systems and services

24. Subject to approval of the proposed governance changes and consistent with internal audit recommendations, a thorough review should be conducted of the services that are cross charged to SPF such including Staff, IT, Cyber Security, Accommodation, etc to ensure that the current level of service is fit for purpose and is appropriate for its longer-term strategic plan aspirations. As a first stage it is proposed to benchmark costs and have clear service level agreements in place.

Future proofing the Fund

25. On 16 August 2024 the Government shared the Terms of Reference of its pension review. This will include *“tackling fragmentation and inefficiency in the Local Government Pension Scheme through consolidation and improved governance”*, in order to improve *“the affordability and sustainability of the Local Government Pension Scheme in the interest of members, employers and local taxpayers”*.

26. The proposals in this report are consistent with the ask from Government to improve governance. Increased autonomy will allow the SPF to be nimbler to respond to future industry developments and allow both the SPF and SCC to be at the forefront of change.

27. The SPF will continue to investigate governance options that exist within primary pensions legislation. There are a number of potential options which will be fully explored before bringing any further recommendations as and when appropriate.

CONSULTATION:

28. The Chair of the Pension Fund Committee and Chair of the Local Pension Board and the SCC Corporate Leadership Team to be consulted on this report.

RISK MANAGEMENT AND IMPLICATIONS:

29. Any relevant risk related implications have been considered and are contained within the report.

FINANCIAL AND VALUE FOR MONEY IMPLICATIONS:

30. The cost of the resources necessary for implementing the changes recommended above and for delivering the administering authority role is met from the pension fund (under Regulation 4(5) of The Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009).

EXECUTIVE DIRECTOR OF FINANCE & CORPORATE SERVICES (S151 OFFICER) COMMENTARY:

31. The Executive Director of Finance and Corporate Services (s151 Officer) is supportive of the proposed changes and satisfied that all material, financial

and business issues and possibility of risks have been considered and addressed.

LEGAL IMPLICATIONS – MONITORING OFFICER:

32. The County Council has delegated responsibility to the Pension Fund Committee for its statutory functions as the Administering Authority for the SPF. The scheme of delegations is the function of full Council and Legal will be part of any future options appraisal to ensure the Council undertakes its full due diligence.

EQUALITIES AND DIVERSITY:

33. There are no equality or diversity issues.

OTHER IMPLICATIONS:

34. There are no other implications.

NEXT STEPS:

35. The following steps are planned:

- a) Take the proposed changes to the Council's Pension Fund Committee Terms of Reference and Scheme of Delegations to the County Council for approval at its meeting of 8 October 2024.
- b) Subject to County Council approval of changes to the Council's Pension Fund Committee Terms of Reference and Scheme of Delegations officers to begin discovery work of the SPF as outlined in this report, in the areas of policy, identity, accommodation, people, systems and services and future proofing.

Contact Officer:

Neil Mason, Assistant Director – LGPS Senior Officer

Annexes:

1. Independent governance review (Barnett Waddingham)
2. Internal Audit Report: Pension Fund Governance
3. Proposed changes to the Pension Fund Committee Terms of Reference and Scheme of Delegations

Sources/Background papers:

1. Surrey Pension Team 2024/25 Strategic Plan [PowerPoint Presentation \(surreycc.gov.uk\)](https://www.surreycc.gov.uk)
2. [Good Governance Final Report February 2021.pdf \(lgpsboard.org\)](https://www.lgpsboard.org)
3. [Conflicts of interest TPR code module | The Pensions Regulator](https://www.thepensionsregulator.gov.uk)

4. Pension Fund Committee Terms of Reference [SECTION 2 \(surreycc.gov.uk\)](https://surreycc.gov.uk)
5. Scheme of officer delegations [SERVICES FOR COMMUNITIES \(surreycc.gov.uk\)](https://surreycc.gov.uk)
6. Government pension review [Terms of Reference - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

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