

## Council Issues

### Part 1 - Amendments to the Constitution

#### 1 Written Questions

- 1.1 The current deadline for the submission of written questions is 10:30am on the Wednesday prior to Council. Answers are required to be collated and published and distributed before the meeting.
- 1.2 The number of questions has increased over the last ten years. In 2009 the average number of written questions at a meeting was six. So far in 2019 the average has been nineteen. The number of questions has increased in recent year and in order to prepare and distribute a list of questions before the meeting, the Democracy Team generally asks for answers to be supplied on the Friday, which gives the Cabinet Member and officers two working days to answer the question. Questions can be complex and frequently involve collecting information from services.
- 1.3 If the deadline could be brought forward from 10:30 on the Wednesday to 9am a week before the meeting this would increase the time to prepare responses by 50% which would be very helpful.

#### **Recommendation:**

- 1.4 To amend paragraph 16.12.1 of the Constitution to read:

#### **'16.12.1 Written Questions asked by Members of the Council**

A Member may, if notice has been given in writing to the Chief Executive before 9:00am seven calendar days before the Council meeting, ask the Leader, Cabinet Member or Chairman of a Committee any question on any matter in respect of which the Council has powers or duties.'

## **2 Membership of the Health and Wellbeing Board**

- 2.1 The Health and Wellbeing Board is established in accordance with Section 194 of the Health and Social Care Act 2012 and constituted to meet local requirements. In this way, the Act determines some statutory requirements about membership and the council can add to that statutory membership in order to meet local needs. For example, the Act states that there shall be at least one elected county member and Essex County Council has determined that there are three members.
- 2.2 Members of the board are split into three groups:
- Those members that are automatically included by virtue of holding a particular post or office. For example, the Essex County Council's Chief Executive is a member of the Health and Wellbeing Board as is the Essex Police, Fire and Crime Commissioner.
  - Those members who are appointed by one or more external organisations, such as the Clinical Commissioning Groups to represent organisations of that type.
  - Those members who are appointed by the board on the nomination of a group of organisations (such as district councils or voluntary groups) but whose appointment needs to be approved by the Board.
- 2.3 For the first two categories the representative holds office at the pleasure of the appointing group and the Council can expect the appointing organisation to regularly review membership. However, with regards to the third category of members there is no process for reviewing that appointment meaning that in practice appointments may last forever.
- 2.4 It is recommended that the constitution of the Board is changed so that every member of the board appointed in this way has a term of office of four years after which a new nomination is sought. Clearly there is no reason why the appointing bodies cannot re-appoint the same person if they so wish but this process at least means that appointment will at least be reconsidered.

### **Recommendation:**

- 2.5 To insert a new paragraph within 8.1.8 of the Constitution to read:

'Where the Board appoints a member of the Board on the nomination of others, the appointment shall be for a term of four years (or such shorter period as may be specified at the time of appointment) and the member shall hold office until the expiry of the term of office or until they cease to be a member or employee of the organisation which proposed them as a candidate for appointment. When a member ceases to hold office, a new nomination

shall be sought as set out in the table above. Anyone standing down is eligible for reappointment.'

**3 Revised Terms of Reference for the Essex Pension Fund Strategy Board (PSB), the Essex Pension Fund Investment Steering Committee (ISC) and the Essex Pension Fund Advisory Board (PAB) and the updating of other matters including officer delegations,**

- 3.1 The Constitution Working Group at its meeting on 9 September 2019 considered the proposed revised Terms of Reference for the PSB, ISC and PAB, and updated other matters including officer delegations (as set out in appendices A, B, C and D) and recommend the amendments to Council.

**Recommended:**

- 3.2 To approve the amendments to the Constitution as shown in Appendices A,B,C and D to the report.

**3.3 Background**

- 3.4 The Pension Strategy Board has been reviewing its constitution. There are three main bodies which oversee the pension fund:

- The Essex Pension Fund Strategy Board (PSB). This is a committee of the Council which includes non ECC members (this is permitted by law)
- The Essex Pension Fund Investment Steering Committee (ISC). This is a committee of the Council
- The Essex Pension Fund Advisory Board (PAB) which is a statutory body which does not make decisions but is required by law to help and support the Council discharge its function as administering authority for the fund.

- 3.5 The proposed changes to the terms of reference and other matters are attached as appendices A, B, C and D to the Council Issues report. We have attached clean copies but 'tracked changes' versions are available at any time before the meeting emailing [full.council@essex.gov.uk](mailto:full.council@essex.gov.uk). Appendices A, B, C and D to this report show the proposed final wording of the changes proposed to the Constitution. These include:

- Essex Pension Fund Strategy Board (PSB) – Appendix A.  
shows the revised paragraph to be inserted in place of 8.1.5 in the Constitution.
- Essex Pension Fund Investment Steering Committee (ISC) – Appendix B  
shows the revised paragraph to be inserted in place of 8.1.6 in the Constitution.
- Essex Pension Fund Advisory Board (PAB) – Appendix C  
shows the revised paragraph to be inserted in place of 8.1.7 in the Constitution.
- Other Matters including Officer Delegations – Appendix D  
shows the revised articles and paragraphs to be inserted in place of

Article 13.3, paragraph 15.3.2 and the new paragraph 15.3.10 in the Constitution.

- 3.6 All terms of reference have been reviewed by the PSB. These documents have also been reviewed by the Fund in consultation with the Independent Governance and Administration Advisor (IGAA). In carrying out this review, the IGAA has provided advice on best practice in other LGPS administering authorities and expectations of what should be included in the terms of reference in national guidance for the PAB.

### **PSB Terms of Reference – Appendix A**

- 3.7 Many of the changes shown in Appendix A are minor, but there are some substantive changes and the reasons for those changes are set out below.
- 3.8 Membership – additions have been made to clarify how PSB members are nominated or appointed, as well as confirming that the Constitution does not permit non-Essex County Council members to have substitutes. No changes have been proposed to the existing membership.
- 3.9 Term of office – additions have been made to clarify the term of office for each category of PSB member, and the circumstances whereby that could be extended, as well in regard to re-appointment and resignation. Previously the term of reference was at the discretion of the Board.
- 3.10 A paragraph has been added to clarify attendance and participation at meetings of the PSB by PAB members.
- 3.11 Role and Functions – additions have been made, to provide clarity on the principal aim of the PSB, as well as additional specific functions which the PSB already undertakes including new entries at points (vi), (x), (xi), (xii) and (xiii). These have been added as we consider they are integral to the operation of the PSB, including setting strategy, agreeing business plans and, in particular, rewording to clarify that the responsibilities of the PSB include administration, governance and communication (not just funding and investments).
- 3.12 new section added to outline that the PSB can delegate a range of functions to officer(s) of the Administering Authority, and processes to be followed if that were to occur. This simply declares the existing position.
- 3.13 Quorum – new section added to stipulate that at least 4 members must be present for the meeting to be quorate, and at least 3 of those present must be Essex County Council members.
- 3.14 Chairing – articulating how the roles of the Chairman and Vice-Chairman of the PSB will be elected (which maintains the current position, which is that the Chairman is appointed by ECC at the annual meeting and the vice chairman is appointed by the PSB but must be a county councillor).
- 3.15 Training – a paragraph has been added to clarify expectations in relation to training for PSB members.

## **ISC Terms of Reference – Appendix B**

- 3.16 The proposed revised ISC terms of reference is attached at Appendix B. The key changes and the reasons for them are summarised below.
- 3.17 Membership – additions have been made to clarify who the members of the ISC are, and how they are nominated or appointed, including the Chairman and Vice-Chairman.
- 3.18 Essex Pension Fund Advisory Board – a paragraph has been added to clarify attendance and participation at meetings of the ISC by PAB members.
- 3.19 Role and Functions – additions have been made, mainly focussing on the new responsibilities relating to asset pooling, responsible investments and cost transparency.
- 3.20 Training – a paragraph has been added to clarify expectations in relation to training for ISC members.

## **PAB Terms of Reference – Appendix C**

- 3.21 It is considered that an expanded PAB terms of reference will provide greater clarity on the roles and responsibilities for PAB members (including the Independent Chairman) and for potential PAB members, so they can better understand the expectations associated with being a PAB member. This is particularly important given that the procedural rules of Essex County Council's Constitution do not apply to the PAB, as it is established under different legislation to local authority committees. The proposed revisions to the PAB terms of reference are detailed as follows.
- 3.22 Introduction – additions have been made to explicitly state that the Council's procedural rules in the Constitution do not apply to the PAB and to clarify its powers. This is to remind everyone that the PAB is not a local authority committee or a decision-making body.
- 3.23 Remit of the Board – this section has been split into two; the first sections (A) and (B) effectively repeat the legal responsibilities the PAB has, and the second section expands on what this might include on a practical level. The elements relating to escalation have been moved to later in the terms of reference. The final paragraphs in this section clarify the role of PAB compared to the administering authority, and how PAB members are required to work together in the best interest of the Fund rather than purely focussing on their individual roles.
- 3.24 Appointment and membership of the Board – this section now includes clarity on how appointments will be made to the PAB to ensure a robust process is always carried out through an Appointments Panel.
- 3.25 Meetings of the Board – this section suggests an increase in the quorum (from 3 to 4) given the size of the PAB and that adopted by other Funds. This section now includes further operational points around the number of

meetings, dealing with urgent matters, voting and access to meetings by non-PAB members.

- 3.26 Reporting and Escalation – This section has been expanded to include a further internal stage before escalating to the National LGPS Scheme Advisory Board (LGPS SAB) so as to provide sufficient opportunity for the administering authority to respond to concerns.
- 3.27 Standards and Conflicts of Interest – for clarity this now includes the legal definition of a conflict of interest that applies to the PAB (to avoid confusion with local authority rules relating to interests of PSB or ISC members). Additional paragraphs have also been added to apply the majority of the Essex County Council's Members' Code of Conduct to the PAB and to highlight the individual legal requirements in relation to reporting breaches of the law in relation to pension fund matters.
- 3.28 The following new sections have been added to provide further clarity on how the PAB should operate, given that the Council's operating procedures that relate to local authority committees do not apply to the PAB:
- 3.33 Term of office – clarifying how long members will sit on the PAB before a further recruitment must take place and clarifying options for extending existing appointments.
- 3.34 Chairing – explaining the role of the Chairman of the PAB.
- 3.35 Knowledge and Understanding – this section has been expanded to clarify the legal responsibilities in relation to knowledge and understanding for PAB members.
- 3.36 Remuneration and Expenses – clarifying that PAB members can claim travel and subsistence allowances in line with Essex County Council's scheme of allowances. It also provides for a further payment to be made to PAB scheme member representatives where they are not carrying out PAB duties during permitted paid absence from their usual employment. This would, for example, allow a small payment to be made to a retired scheme member carrying out PAB duties during their own time or an employee who was having to take annual or unpaid leave to carry out PAB duties. It also clarifies how remuneration and expenses will be determined for the Chairman.
- 3.37 Receipt of advice and information – confirming that the PAB can request information, and when and how that information will be provided to the PAB.
- 3.38 Administration – clarifying the administration support that is provided to the PAB, including development of agendas, meeting papers and records of meetings.
- 3.39 Accountability – reminding everyone that ECC is the administering authority for the fund and that the PAB is accountable to Essex County Council (i.e. not directly to PSB).

- 3.40 Publication of Board (PAB) Information – confirming the legal requirements to publish various information about the PAB, and where this will be published.

**Other Matters including Officer Delegations – Appendix D**

- 3.41 The other pension related proposed changes to the Constitution, including officer delegations, is attached at Appendix D. The key changes, which relate to article 13.3 and 15.3.2 of the Constitution as well as a new article 15.3.10 and the reasons for these changes are summarised below.
- 3.42 The Director, Essex Pension Fund is now added to the list of officers with delegated functions (new 15.3.10) so there is a proposed clarification of the split of pension fund responsibilities between the Director, Essex Pension Fund and the Executive Director, Finance and Technology (i.e. the Section 151 Officer) (see changes to 15.3.2). The Executive Director for Finance and Technology retains full responsibility for the Fund at Corporate Leadership Team level but the scheme of delegation will in future delegate authority to the Director of the Essex Pension Fund.

**Part 2 :**

**1 Change to the Membership of a Committee**

**Recommendation:**

That Council notes the following change made by officers under delegated powers in accordance with notification given by the Leader of the Conservative Group:

- Councillor Malcolm Maddocks replaces Councillor Wendy Schmitt as a member of the Corporate Policy and Scrutiny Committee.