

Pensions CIV Sectoral Joint Committee (PSJC) 25 February 2015

Minutes of a meeting of the Pensions CIV Sectoral Joint Committee held on Wednesday 25 February 2015 at 10:30am in the Conference Suite, London Councils, 59½ Southwark Street, London SE1 0AL

Present:

City of London	Mark Boleat (Chair)
Barking and Dagenham	-
Barnet	Cllr Mark Shooter
Bexley	-
Brent	Cllr Shafique Choudhary
Camden	-
Croydon	Cllr Simon Hall
Ealing	Cllr Yvonne Johnson
Enfield	Cllr Toby Simon
Greenwich	-
Hackney	Cllr Roger Chapman
Hammersmith and Fulham	Cllr Iain Cassidy
Haringey	-
Harrow	-
Hounslow	Cllr Mukesh Malhotra
Islington	Cllr Richard Greening
Kensington and Chelsea	-
Kingston Upon Thames	Cllr Eric Humphrey
Lambeth	Cllr Adrian Garden
Lewisham	Cllr Mark Ingleby
Merton	Cllr Imran Uddin
Newham	Cllr Ted Sparrowhawk (Deputy)
Redbridge	Cllr Elaine Norman
Richmond Upon Thames	Cllr Thomas O'Malley
Southwark	-
Sutton	Cllr Sunita Gordon
Tower Hamlets	Cllr Clare Harrison
Waltham Forest	-
Wandsworth	Cllr Maurice Heaster
City of Westminster	-

Apologies:

Bexley	Cllr John Waters
Camden	Cllr Theo Blackwell
Greenwich	Cllr Don Austen
Kensington & Chelsea	Cllr Quentin Marshall
Newham	Cllr Forhad Hussain
Waltham Forest	Cllr Simon Miller
Westminster	Cllr Suhail Rahuya

Officers of London Councils were in attendance as was Mr Chris Buss (Chair of Technical Sub-Group).

1. Declaration of Interests

- 1.1. There were no declarations of interest that were of relevance to this meeting.

2. Apologies for Absence & Notification of Deputies

- 2.1. Apologies and deputies are listed above.

3. Appointment of Labour Group Vice Chair

- 3.1. Councillor Robert Chapman (LB Hackney) nominated Councillor Yvonne Johnson (LB Ealing) to be the Labour Group Vice Chair of the PSJC. Councillor Yvonne Johnson was appointed as the Labour Group Vice Chair of the PSJC

4. Minutes of the Meeting held on 17 December 2014

- 4.1. The minutes of the PSJC meeting held on 17 December 2014 were agreed as an accurate record.

5. Establishing the Operator for Authorisation (Presentation by Deloitte)

- 5.1. The Chair invited Tony Gaughan (Partner, Deloitte) to give a presentation on the Authorised Contractual Scheme (ACS):

- An “Operator” was a regulated entity and authorised by the Financial Conduct Authority, under the Financial Services and Markets Act 2000 (FSMA), to be a Fund Manager running a regulated Collective Investment Scheme;
- People fulfilling key roles (known as Controlled Functions) would need to be approved by the FCA;
- There were three key work-streams to create the ACS Operator:
 - i. *Defining the Operating Model*, which involved detailed operating procedures and due diligence processes to appoint Investment Managers;
 - ii. *Drafting the Regulatory Application*, which will be submitted to the FCA;
 - iii. *People*, which would focus on the staff that were required to fulfil key roles.
- The Operator build and authorisation would normally take between 6 to 7 months, although it was hoped that the FCA would expedite this application reducing the time needed for final authorisation.
- The key elements required to build an ACS Operator were:
 - i. An *Oversight model*, which included due diligence and an on-going programme of monitoring;
 - ii. A *Governance model*, including TORs, sub-committees, inspections from regulator and a strong audit trail;
 - iii. The selection of an *Operator partner* to support the fund for the first two years and manage regulatory requirements;

- iv. *Compliance processes*, which had a number of key requirements, including meeting the FUND, and COLL Sourcebook requirements and reporting regimes; and
 - v. *Company processes*, including HR policies such as payroll, JDs and disaster recovery (to ensure that the business could continue to operate in an emergency).
- Operator and fund authorisation were key elements in the Operator build. A regulatory business plan was a significant piece of work, as were the business, capital and technology models. The fund would be authorised after the firm. An engagement session with the FCA had taken place in December 2014 and had been very positive. The Approved Person process (approved by the FCA) was also key as was ensuring good consumer (the boroughs) outcomes.
 - Equivalent organisations had been looked at and a good benchmark for this organisation had been set. The three core skill areas identified were client management, investment and risk, and operations and regulations. The structure of the organisation, in order to deliver, required a strong Board of Directors (CF1), followed by a Chief Executive (CF1 & CF3), and then an Investment Oversight manager (CF30) and Chief Operating Officer/Chief Finance Officer (CF1, CF10, CF11, CF28). The COO would have a Compliance Manager and Operations Manager working under them.
 - An Approved person had to pass the FCA Fit and Proper Persons Test (FIT). The FIT comprised of three elements:
 - i. Honesty, integrity and reputation;
 - ii. Competence and capability; and
 - iii. Financial soundness.
 - The FCA had tightened-up the issue of competency and there was a threshold qualification. This was now the market norm.
 - The FCA needed to see key leadership roles in the application, and the CEO role needed to be in place first.

5.2. Discussion

- Councillor Malhotra (LB Hounslow) asked if an explanation of the “controlled function” (CF) codes could be given. Tony Gaughan agreed to provide this.
- Councillor Malhotra asked who would manage the accreditation regarding the financial soundness of Approved persons. Tony Gaughan said that a firm could be used to do this work or a professional body. Councillor Malhotra asked whether the PSJC would be advised on what bodies would be used for this. Tony Gaughan confirmed that they would be notified
- Councillor Shooter (LB Barnet) asked when the FCA application would be ready for submission. Tony Gaughan confirmed that the intention was to have the first iteration of the application ready for submission in April, there would then be a gap until authorisation was completed.

- Councillor Greening (LB Islington) asked what stage of development the “models” were at. Tony Gaughan confirmed that the governance model had already been developed and the capital model was currently being discussed. The business model was in progress.
- Councillor Malhotra asked what the expectations of the skill sets would be for the technology model. Tony Gaughan confirmed that Northern Trust would be providing most of the software associated with managing the fund. In addition it might be necessary to procure some other third party tools, for instance Bloomberg. It was noted that the disaster recovery requirement was also a key technology element.

5.3. **The Committee** discussed and noted the presentation by Deloitte on Establishing the Operator for Authorisation

6. Introduction to the Role of the Asset Servicer (Presentation by Northern Trust)

6.1. The Chair invited Alastair Hay and Karen Rouse (Northern Trust) to introduce this item and deliver a presentation on the role of the Asset Servicer:

- One of the key functions that Northern Trust would deliver was the Depositary, which had responsibilities as the protector of the investors’ interests.
- There were three main parties to an ACS fund, namely the investors, the Operator and the Depositary. The Depositary had to be independent of the Operator. The Depositary did not oversee performance, but could be seen as the ‘policeman’ overseeing the Operator and its delegates (suppliers (e.g. Custodian)) on behalf of the investors.
- The Depositary was a combination of desk-based monitoring and annual diligence visits. Audit reports would be produced for the Operator to ensure that any recommendations were implemented.
- The Depositary would be a joint signatory to the application for fund authorisation at the outset and to any applications for authorisation of fund changes.
- Northern Trust would be the Custodian, Fund Accountant and Transfer Agency for the CIV.
- As the CIV is a ‘Tax Transparent Fund’ there were additional tax responsibilities and Northern Trust, in conjunction with the CIV’s tax advisor, would be responsible for maintaining the tax transparency of the fund. As part of this role there would be a requirement for the participating boroughs to complete a number of tax documents in order that tax reclaims could be properly administered across different jurisdictions.
- In its Fund Administrator role Northern Trust would provide a full array of services, including investor and agent servicing, the monitoring of fund expense ratios and the production of annual reports.

6.2. Discussion

- Councillor Malhotra asked whether the annual diligence visit was a physical visit by Northern Trust employees. Alastair Hay confirmed that it was.

- Councillor O'Malley (LB Richmond) asked whether Northern Trust performed due diligence on itself. Alastair Hay confirmed the Depositary would perform monitoring and diligence on other areas of Northern Trust acting as delegates of the Operator. This is a standard industry model and recognising the potential conflict of interest, the regulator and the industry generally, expects high degrees of independence on the part of the Depositary. Northern Trust has established the depositary business with reporting lines separate to those for fund accounting, transfer agency and other services, extending to having its own Depositary relationship team, its own operations team, compliance monitoring team and system, legal team etc.- effectively operating as an independent entity. As part of the FCA's authorisation of the Depositary business unit, the FCA reviewed the Depositary's independence arrangements in detail, resulting in successful authorisation.
- Councillor Simon asked how voting rights would be exercised through the CIV. Karen Rouse said that effectively the CIV would be the shareholder exercising voting rights on behalf of the investors.
- Hugh Grover confirmed that a report would be brought to a future PSJC meeting setting out proposals and options for agreeing a voting policy for the CIV.

6.3. The Committee:

- Discussed and noted the presentation by Northern Trust on the roles of the Asset Servicer, and
- Agreed that a paper would be brought to a future PSJC meeting, setting out proposals for a voting schedule at shareholder AGMs

7. Responsibilities of a Member Acting as a Shareholder and the Key Duties and Responsibilities of the Operating Company (Eversheds)

7.1. The Chair invited Pamela Thompson and Richard Lewis (Eversheds) to introduce this item and deliver a presentation:

- Pamela Thompson said that she would be the lead Partner advising on setting up the CIV fund, whereas her colleague Richard Lewis would be advising on company law and shareholder matters.
- Although it was anticipated that many of the day-to-day duties of the Operator would be delegated, its legal and regulatory responsibilities to the investors and the FCA remain with it.
- The "core duties" were the "engine" of the ACS and included:
 - Investment Management
 - Administration; covering:
 - 'Middle office' functions (e.g. portfolio accounting, data management, client reporting);
 - 'Back office' functions (e.g. settlement management and reconciliations, income and tax reclaim collection).
 - Dealing; covering:
 - Dealing services;
 - Registration services;

- Fund distribution;
 - In-specie transfers.
- Risk and Compliance
- Governance
- Fund Maintenance; covering:
 - Fund design;
 - Obtaining and maintaining fund authorisation;
 - Creating and maintaining key documents
 - Regulatory compliance.
- A number of documents would need to be submitted to the FCA (e.g. deed of constitution, prospectus) and all documents (e.g. tax documentation, Depository Agreement) would need to be completed prior to the launch.

7.2. Richard Lewis made the following comments:

- This committee would be fulfilling two roles:
 - i. As a committee to consider matters covering fund design and overall CIV performance;
 - ii. As the forum for shareholder representatives through which company meetings (AGMs and General Meetings) would be convened.
- There would be at least one shareholder meeting each year, that being the AGM.
- The Articles of Association were between the Company and each of the shareholders. The shareholder agreement was a private agreement negotiated among the boroughs. Heads of Terms to inform the amendment of the current 'model' Articles and the drafting of a shareholder agreement were the subject of the next item on the agenda. Both documents would require the consent of all the shareholders.
- The process for holding formal shareholders' meetings would be different from the PSJC meetings. Shareholders would receive a minimum of 14 days' notice to attend a General Meeting. There would be a proxy form should a shareholder be unable to attend. The quorum for the meeting would be one-third of all shareholders.

7.3. Discussion

- Councillor Mark Ingleby (LB Lewisham) asked whether there would be a list of shareholders that included the remaining seven boroughs that had recently joined the CIV. It was noted that the list of shareholders had been updated at Companies House and that the revised Articles would reflect the full membership.

7.4. **The Committee** discussed and noted the presentation by Eversheds

8. Heads of Terms for Amending the Articles of Association and Drafting a Shareholder Agreement

- 8.1. This report covered draft Heads of Terms (HoT) which would be used to inform the drafting of revised Articles of Association and a Shareholders Agreement.

8.2. The Chair commented that he hoped that amendments to the HoT would be kept to a minimum. Boroughs were requested to provide any feedback to Hugh Grover before the next meeting (25 March 2014) or to bring issues to the next meeting for discussion. It was hoped that the HoT could be agreed at the next meeting, subject to any amendments, in order that Eversheds could begin the process of amending the Articles and drafting the Shareholder Agreement.

8.3. Discussion

- Councillor Greening asked for greater clarity about the remuneration that was being proposed for CIV personnel.
- Councillor Yvonne Johnson (LB Ealing) proposed that a small sub-group be set up to discuss the most immediate issues. The Chair said that he agreed with this proposal.
- Councillor Malhotra queried whether shareholders could be Non-Executive Directors (NED) if they passed the "FIT" test and asked for more detail about the requirements involved. It was noted that there could be issues concerning conflict of interest were a shareholder to become a NED.

8.4. **The Committee:**

- Agreed the proposed next steps and timetable
- Agreed that more detail would be provided to a future meeting about the FIT requirements and potential conflict of interest issues in respect of shareholders becoming NEDs.

9. **Any Other Business**

9.1. It was noted that the next meeting of the Pensions CIV Sectoral Joint Committee would be held 25 March 2015, and would start at 3:00pm (and not the usual 10:30am)

The meeting resolved to exclude members of the press and public to consider the Exempt item of the agenda (E1 Operating Budget & Benefits).

The meeting closed at 12.25pm