

9. LOCAL GOVERNMENT PENSION SCHEME (LGPS) – LOCAL PENSION BOARD

The Local Government Pension Scheme (Amendment) (Governance) Regulations 2014 set out the requirements for an administering authority to establish a Local Pension Board by 1 April 2015. Established in this context means to approve the establishment of the Board, its composition and its terms of reference in accordance with its constitution. It does not have to be fully operational by this date but the first meeting of the Board must take place by 1 August 2015. The Regulatory and Audit Committee considered the matter on 28 January 2014.

The Board is responsible for assisting the administering authority to secure compliance with the Amendment Regulations 2014, any other legislation relating to the governance and administration of the Scheme, or any connected Scheme and any requirements imposed by the Pensions Regulator in relation to the Scheme. The Board must also ensure the effective and efficient governance and administration of the Scheme. The remit of the Board should be interpreted as covering all aspects of governance and administration of the LGPS, including funding and investments.

An administering authority may determine the procedures applicable to a Board, including voting rights, the establishment of sub-committees, and the formation of joint committees and payment of expenses. A Board has the power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions.

The Regulatory and Audit Committee make the following recommendation to the Council;

Recommendation

That Council note this report, dissolve the Pension Fund Consultative Group and approve the establishment of the Local Pension Board, its composition, its code of conduct and its terms of reference in accordance with its constitution.

Resource implications

There will be costs in establishing and operating the Board. It will need secretariat services and will also require access to a budget for specific purposes such as seeking legal, technical and professional advice, accommodation and administrative support to conduct its meetings and training, allowances and expenses for Board members. The expenses of the Board are to be regarded as part of the costs of administration of the fund held by the administering authority.

The administering authority is required to decide whether the establishment of the Board should be a function undertaken by the Administering Authority (i.e. full council) rather than by the delegated Pension Committee. ***The Committee agreed that establishment of the Board should be undertaken by full council.***

Draft terms of reference of the Board

Terms of reference should be approved by the administering authority (i.e. full council). The draft terms of reference are as follows:

Function of the Board – to assist the administering authority to secure compliance and ensure the effective and efficient governance and administration of the LGPS, including funding and investments.

Membership of the Board – the Board will consist of four employer representatives and four member representatives, which include the Chairman and Vice-Chairman. Board members can be elected members (councillors) providing they are not responsible for the discharge of

any function under the Regulations (apart from any function relating to Local Pension Boards or the Scheme Advisory Board). The appointment of Board members will be via an open and transparent recruitment process with a role specification. The process will be designed to attract people with relevant experience and capacity and regard will be given to the obligations of the administering authority in relation to equal opportunities. Appointments will be via an interview process to assess the ability of the individual to meet the requirements of the role. On appointment, the Board member will be required to provide a written undertaking that they understand the requirements of the role and commit to those requirements by:

- Disclosing all dual interests and responsibilities which have the potential to become conflicts of interest;
- Committing to attend a minimum number of meetings per year;
- Committing to undertake and attend the necessary knowledge and understanding training; and
- Undertaking to abide by the Board's terms of reference and wider constitutional documents.

The Board member's term of office will be for a period of 3 years after which time they can seek reappointment as part of the wider recruitment process. If a Board member leaves prior to the term ending, an immediate recruitment process will be undertaken to replace the Board member. Notice to terminate membership prior to the end of the full term must be given in writing by the Board member to the administering authority at least 3 months prior to the date they wish to terminate their membership.

The administering authority will undertake an immediate recruitment process in the following circumstances:

- Where a member has a conflict of interest that cannot be managed in accordance with the Board's conflicts policy;
- A member dies or becomes incapable of acting;
- A member of the Board who is a councillor, is appointed to a Pensions Committee of the administering authority;
- A member is appointed to the role of an officer of the administering authority with responsibility for the discharge of functions under the Regulations;
- A member wishes to resign; and
- A member fails to attend meetings or otherwise comply with the requirements of being a Board member. Where this occurs, the Chairman will have lead responsibility for an initial informal discussion with the member about the concerns. The opportunity to address the issue will be given to the Board member, with the proviso that clear evidence that the issue has been resolved is presented to the administering authority, within 3 months of the date of the Chairman's discussion. Where this is not met, the administering authority will give 1 months' notice of termination to the Board member.

Code of Conduct – members of the Board who are also elected members of a local authority are governed by their local authority's code of conduct for councillors. There is also a legal obligation for councillors to disclose certain pecuniary interests. Any members of the Board who are also councillors of a local authority will have to meet both of these requirements as

well as the code of conduct of the Board. Members of the Board who are not councillors should have regard to the 'Seven Principles of Public Life' which are:

- Selflessness – holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.
- Integrity – holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.
- Objectivity – in carrying out public business, including making public appointments, awarding contracts or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- Accountability – holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- Openness – holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands it.
- Honesty – holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- Leadership – holders of public office should promote and support these principles by leadership and example.

Voting rights – Employer and member representatives will have equal voting rights. The Chairman has a casting vote.

Conflicts of Interest – the Board is required to always act within the terms of reference. Members must abide by the conflicts policy.

Appointment of Chairman/Vice Chairman – the Chairman and Vice-Chairman of the Board will be appointed from the Board membership. Their role will be to ensure Board meetings are properly conducted so that its business can be carried out efficiently, that decision making is clear and any professional advice is followed. They will agree the agenda and approve minutes of Board meetings and approve any substitutes. In the event of voting at a Board meeting being equal, the Chairman will have a casting vote.

Role of Officers – secretariat services will be provided to the Board by the administering authority. Pension fund information will be provided to the Board by administering authority officers.

Administration, Papers, Communication and Obtaining Information – the Board will hold ordinary meetings as necessary and appropriate for the discharge of its functions as detailed in the Number of Meetings section of the terms of reference. The Chairman of the Board may summon a special meeting of the Board. Papers for the Board meetings will be circulated at least five working days in advance of the date of the meeting. Papers will be separated as appropriate into open and closed business so that minutes can be published in the administering authority's FOIA publication scheme. The Chairman will preside over Board

meetings and voting will be made by a show of hands. Decisions will be recorded in the minutes of the Board meeting.

Number of Meetings – the Board will meet three times per year and meetings will be arranged so that minutes of the relevant preceding Pension Fund Committee meetings will be available.

Location and time of meetings – Board meetings will be held at the offices of the administering authority between the hours of 10am-12pm on a weekday. Notice of ordinary meetings will be given at the start of each year.

Quorum – the quorum for the Board is one half of the total number of members and must consist of at least two employer and two member representatives. If any Board meeting does not form a quorum, the Chairman must adjourn the meeting and either arrange it for another date and time or consider any unfinished business at the next ordinary meeting.

Attendance Requirements – Board members are required to attend no less than 2 ordinary Board meetings per year. Failure to meet this requirement will be referred to the Chairman and dealt with under the Membership of the Board section of these terms of reference.

Role of Substitutes – members are allowed to send substitutes to Board meetings where they are unable to attend themselves. Attendance of a substitute constitutes attendance by the member under the Attendance Requirements section of these terms of reference. Any substitute must be approved by the Chairman of the Board at the Board's inception so that training requirements to act as a substitute can be met.

Creation of Working Groups/Sub-Boards – the Board has the power to set up working groups or sub-boards. Terms of reference for any working groups/sub-boards will be formulated and agreed by the Board as and when any working group/sub-board is proposed.

Allowances and expenses – The Chairman of the Board will be paid an allowance of £3,785 per annum. Other members of the Board will be paid an allowance of £750 per annum. However if a member of the Board is a councillor member of a local authority or an employee of an organisation participating in the administering authority's pension fund, they will not be eligible to claim the allowance. Members of the Board will be able to claim mileage costs in accordance with the administering authority's Member's Scheme of Allowances (currently 45 pence per mile) and subsistence where appropriate.

Budget – a budget will be made available for the Board to access and the amount available will be reviewed annually.

Knowledge and Understanding – please refer to the Board's policy and framework to meet the knowledge and understanding requirements of section 248A of the Pensions Act 2004. (This document has to be referred to in the terms of reference but does not need to be approved by the administering authority. The Board approve the policy and framework once they are appointed.)

Reporting – the Board reports to the administering authority by means of an annual update report to Regulatory & Audit Committee. The Board will also report to the Pension Fund Committee via minutes after each Board meeting. Where the Board has concerns which are sufficiently serious to be reported directly at a higher level, or where the Board has raised a concern with the Pension Fund Committee and the Board consider that the Pension Fund Committee have not taken appropriate action to rectify the issue, the matter is to be raised directly with the administering authority's Regulatory and Audit Committee. Regarding internal reporting, all members of the Board must provide the administering authority with such information it reasonably requires for the purpose of satisfying itself that none of the members of the Board has a conflict of interest.

The terms of reference will be reviewed no later than one year after the Board's first meeting to ensure the requirements of the Board are being met.

Draft Conflicts Policy

For the purposes of the Board, a 'conflict of interest' is defined in section 5(5) of the Public Service Pension Act 2013 as 'a financial or other interest which is likely to prejudice the person's exercise of functions as a member of the board (but does not include a financial or other interest arising merely by virtue of membership of the scheme or any other connected scheme).'

A conflict may arise when a member of the Board must fulfil their legal duty to assist the administering authority and at the same time they have a separate personal interest (financial or otherwise), or another responsibility in relation to that matter.

The administering authority will satisfy itself that Board members do not have an actual conflict of interest prior to appointment and from time to time thereafter. There is a duty on a proposed Board member/appointed Board member to provide the administering authority with such information as the administering authority reasonably requires to satisfy itself that such person has no conflicts of interest.

The administering authority as part of the recruitment process will require applicants to disclose any dual interests or responsibilities which could become conflicts of interest before they are appointed. Thereafter they will monitor whether Board members have potential conflicts by an annual report provided by the Board. There is also a requirement on Board members to inform the administering authority of any potential conflicts of interest as and when they arise.

The Board will cultivate a culture of openness and transparency and ensure that its members have a clear understanding of their role and the circumstances in which they may find themselves in a position of conflict of interest.

Some examples of potential conflicts would include:

- A finance officer appointed as a Board member may, from time to time, be required to take or scrutinise a decision which may be, or appear to be, in opposition to another interest or responsibility. For example they may be required as a Board member to take or scrutinise a decision which involves the use of departmental resources to improve scheme administration, whilst at the same time being tasked, by virtue of their employment, with reducing departmental spending.
- A member representative who works in the administering authority's internal audit department may be required as part of their work to audit the Fund. For example, the employee may become aware of confidential breaches of law by the Fund which have not yet been brought to the Board's attention.
- An employer representative from the private sector may also have a conflict of interest as a decision-maker in their own workplace. For example, if an employer representative is drawn from a company to which the administering authority has outsourced its pension administration service and the Board are reviewing the standards provided by it.

To manage a conflict of interest the Board will seek advice from an officer of the administering authority, the administering authority's monitoring officer or alternatively seek professional legal advice. The Board need to be confident that such advice is independent and any

potential or actual conflicts are disclosed by the officer/adviser. Any concerns will be reported to the administering authority. Options for managing an actual conflict of interest include:

- A member withdrawing from the discussion and any decision-making process;
- The Board establishing a sub-board to review the issue; or
- A member resigning from the Board if the conflict is so fundamental that it cannot be managed in any other way.

Decisions regarding any identified conflicts of interest will be recorded in the Board's register of interests. The Register of interests will be circulated to the Board for ongoing review and published on the Fund's website. The Board will keep the conflicts policy under regular review.

Members of the Pension Fund Committee and the Pension Fund Consultative Group were asked to comment on the proposed composition, terms of reference and constitution of the Board. Any comments, where relevant, have been incorporated into this report.

**RICHARD AMBROSE
DIRECTOR OF ASSURANCE**

Background Papers

<https://www.gov.uk/government/consultations/local-government-pension-scheme-regulations-2014-better-governance-and-improved-accountability>

<http://www.lgpsboard.org/images/Consultations/LGPS%20Board%20Guidance%20Consultation%20Final>

http://www.legislation.gov.uk/ukpga/2013/25/pdfs/ukpga_20130025_en.pdf
