

Pension Fund Committee

29 October 2007



Guidance on Governance Compliance Statement

Report of Stuart Crowe, County Treasurer

Purpose of the Report

- 1 The purpose of the report is to advise Members of the draft statutory guidance on completing a Governance Compliance Statement that has recently been issued and to seek authority for me to respond to the consultation document by the closing date for comments – 9 November 2007. The draft guidance suggests that authorities begin to prepare a statement under the basis of the draft guidance and this report also asks members to note that I intend to do so.

Background

- 2 Last year Communities and Local Government (CLG) amended the Local Government Pension Scheme (LGPS) Regulations 1997 to include a requirement for LGPS administering authorities to publish details of their governance and stewardship arrangements by 1 April 2006.
- 3 The Council's Governance Policy Statement is included at Appendix A and is available on the internet at the following web address:

[http://www.durham.gov.uk/durhamcc/usp.nsf/Lookup/Governance%20Policy%20Statement/\\$file/Governance+Policy+Statement.pdf](http://www.durham.gov.uk/durhamcc/usp.nsf/Lookup/Governance%20Policy%20Statement/$file/Governance+Policy+Statement.pdf)
- 4 CLG has stated that the purpose of this 'first step' was to gauge progress in the process of making LGPS committees more democratic and improving governance arrangements in general and to assess what action, if any, should be taken to ensure that all committees operate consistently at best practice standards. On 30 June 2007 the LGPS regulations were further amended to require administering authorities to report the extent of compliance against a set of best practice principles to be published by CLG, and where an authority has chosen not to comply, to state the reasons why. The first such statement must be published by 1 March 2008.
- 5 CLG has now produced draft guidance setting out a detailed description of the best practice compliance principles against which compliance is to be measured and guidance on how the compliance statement should be completed. Copies of the draft guidance and covering letter are included at Appendix A. Comments on the draft guidance are invited by 9 November 2007.
- 6 CLG's covering letter makes it clear that the scope of this guidance is restricted to the way an appointing council delegates its statutory functions under the scheme. Issues like investment and scheme administration performance and investment and

communication policy, for example, are already dealt with separately under the 1997 regulations which require administering authorities to prepare, publish and maintain Statements of Investment Principles, Funding Strategy Statements and Communication Policy Statements. The letter goes on to state that regulation 76c of the LGPS regulations 1997 enables an administering authority to establish a local Pension Administration Strategy which includes the power to introduce local performance targets and to measure performance against them. In this respect, the Governance Compliance Statement is to be seen as just one of a number of similar measures that are designed to make the administration and stewardship of the scheme more transparent and accountable to its stakeholders.

Best practice compliance principles

- 7 The best practice compliance principles are set out under sub-headings in the draft guidance as follows:

Structure

- a) The management of the administration of benefits and strategic management of fund assets clearly rests with the main committee established by the appointing council.
- b) That representatives of participating LGPS employers, admitted bodies and scheme members (including pensioner and deferred members) are members of either the main or secondary committee established to underpin the work of the main committee.
- c) That where a secondary committee or panel has been established, the structure ensures effective communication across both levels.
- d) That where a secondary committee or panel has been established, at least one seat on the main committee is allocated for a member from the secondary committee or panel.

Representation

- a) That all key stakeholders are afforded the opportunity to be represented within the main or secondary committee structure. These include :-
 - i) employing authorities (including non-scheme employers, eg, admitted bodies);
 - ii) scheme members (including deferred and pensioner scheme members),
 - iii) independent professional observers, and
 - iv) expert advisors (on an ad-hoc basis).
- b) That where lay members sit on a main or secondary committee, they are treated equally in terms of access to papers and meetings, training and are given full opportunity to contribute to the decision making process, with or without voting rights.

Selection and role of lay members

- a) That committee or panel members are made fully aware of the status, role and function they are required to perform on either a main or secondary committee.

Voting

- a) The policy of individual administering authorities on voting rights is clear and transparent, including the justification for not extending voting rights to each body or group represented on main LGPS committees.

Training/Facility time/Expenses

- a) That in relation to the way in which statutory and related decisions are taken by the administering authority, there is a clear policy on training, facility time and reimbursement of expenses in respect of members involved in the decision-making process.
- b) That where such a policy exists, it applies equally to all members of committees, sub-committees, advisory panels or any other form of secondary forum.

Meetings (frequency/quorum)

- a) That an administering authority's main committee or committees meet at least quarterly.
- b) That an administering authority's secondary committee or panel meet at least twice a year and is synchronised with the dates when the main committee sits.
- c) That administering authorities who do not include lay members in their formal governance arrangements, provide a forum outside of those arrangements by which the interests of key stakeholders can be represented

Access

- a) That subject to any rules in the council's constitution, all members of main and secondary committees or panels have equal access to committee papers, documents and advice that falls to be considered at meetings of the main committee.

Scope

- a) That administering authorities have taken steps to bring wider scheme issues within the scope of their governance arrangements

Publicity

- a) That administering authorities have published details of their governance arrangements in such a way that stakeholders with an interest in the way in which the scheme is governed, can express an interest in wanting to be part of those arrangements.

Compliance statement

- 8 CLG has suggested a simple format for a compliance statement. This sets out for each of the principles listed above to what extent the Fund complies with the best practice principles and allows space for comments where there is non-compliance and space for any further comments.

Next steps

- 9 CLG has invited comments on the format, structure and content of the draft guidance and has made it clear that the guidance will apply to the new-look LGPS as well as to the existing scheme.
- 10 The first Governance Compliance Statement has to be published by 1 March 2008 and CLG has advised that although comments received will be considered in preparing the final version, administering authorities should start preparing for the initial publication of their Governance Compliance Statement based on the initial draft guidance.

Recommendation

- 11 Members are asked to authorise me, in consultation with the Chair and Deputy Chair, to consider issuing a response to the draft guidance and to note that I will start preparing a Governance Compliance Statement for the Fund based on the initial draft guidance.

Contact: Nick Orton Tel: 0191 383 4429

pen/rep/kno8



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8 October 2007

Addressees as attached

Our Ref:
Your Ref:

Dear Colleague,

**LOCAL GOVERNMENT PENSION SCHEME REGULATIONS 1997
GOVERNANCE COMPLIANCE STATEMENT : STATUTORY GUIDANCE**

1. Further to my letter of 6 June regarding the Local Government Pension Scheme (Amendment)(No 3) Regulations 2007 (SI 2007 No 1561), I enclose a draft of the statutory guidance about completing a Governance Compliance Statement that the Secretary of State is required to issue under Regulation 73A(1)(c) of the 1997 regulations.

2. The draft has been prepared with the assistance of the CLG chaired working group on Governance and is now being circulated widely to all LGPS interested parties for further comment.

3. In making comments, consultees are asked to bear in mind that the scope of the guidance is restricted to the way in which an appointing council delegates its statutory functions under the scheme. Issues like investment and scheme administration performance and investment and communication policy, for example, are already dealt with separately under the 1997 regulations which require administering authorities to prepare, publish and maintain Statements of Investment Principles, Funding Strategy Statements and Communication Policy Statements. In addition, Regulation 76C of the 1997 Regulations, enables an administering authority to establish a local Pension Administration Strategy which includes the power to introduce local performance targets and to measure performance against them. In this respect, the Governance Compliance Statement is to be seen as just one of a number of similar measures that are designed to make the administration and stewardship of the scheme more transparent and accountable to its stakeholders.

4. Comments are invited on the format, structure and content of the draft guidance. In this respect, it should be noted that references to the provisions on governance compliance statements in the final version will include references to both the 1997 and 2007 (Administration) Regulations. The first such statement must be published by 1st March

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2008. Although comments received in response to this letter will be fully considered in preparing the final version, it is suggested that administering authorities and other interested parties should start preparing for the initial publication on the basis of the attached draft guidance.

5. The draft includes at Annex A, an example of a compliance statement template (Principle A on Structure) which administering authorities may wish to adopt when submitting a copy of their statement to the Secretary of State as required by Regulation 73A(5). This arrangement would not, however, fetter the way that an administering authority chooses to publish their statement, either as a stand alone document or as part of their Pension Fund Annual Report (see Regulation 76B(e) of the 1997 Regulations).

6. The closing date for comments is 9 November **2007**. For enquiries on the content of this letter and the attached draft guidance, please e-mail me (Robert.holloway@communities.gsi.gov.uk) or telephone 0207 944 5998. Alternatively, contact Margaret.dunleavy@communities.gsi.gov.uk. Or telephone 0207 944 6012. A copy of this letter and the draft guidance is available in the "What's New" section of our web site at www.xoq83.dial.pipex.com.

Yours sincerely,

Bob Holloway

DRAFT GOVERNANCE COMPLIANCE STATUTORY GUIDANCE

PART I

INTRODUCTION

1. This guidance is issued to all administering authorities in England and Wales with statutory responsibilities under the Local Government Pension Scheme Regulations 1997 (as amended) and other interested parties listed at Annex B and deals with the compliance standards against which Local Government Pension Scheme (“LGPS”) committees are to measure themselves.
2. The guidance includes a combination of descriptive text explaining the rationale of each compliance principle and a description of the relevant statutory provision of the 1997 Regulations (Regulation 73A(1)(c) refers) that requires LGPS administering authorities to measure their governance arrangements against the standards set out in this statutory guidance. Where compliance does not meet the published standard, there is a requirement under Regulation 73A(1)(c) to give, in their governance compliance statement, the reasons for not complying.
3. The Secretary of State will keep the content of the guidance under review in the light of administering authorities and other interested parties’ experience of applying the best practice standards. The guidance will be updated as necessary to reflect this and subsequent legislative changes.

BACKGROUND

4. The LGPS is a common scheme throughout England and Wales, administered by 89 individual pension funds, which includes the Environment Agency. In the context of the UK public pensions sector, it is atypical in being funded with assets in excess of £100bn. Viewed in aggregate, the LGPS is the largest funded occupational pension scheme in the UK.
5. As a statutory public service scheme, the LGPS has a different legal status compared with trust based schemes in the private sector. Matters of governance in the LGPS therefore need to be considered on their own merits and with a proper regard to the legal status of the scheme. This includes how and where it fits in with the local democratic process through local government law and locally elected councillors who have the final responsibility for its stewardship and management. The LGPS is also different in the respect that unlike most private sector schemes where scheme members bear some, if not all, of the investment risk, the accrued benefits paid by local authorities are guaranteed by statute and, perhaps more importantly, are ultimately to be paid by the local authority revenue and not from the pension funds themselves. The pension funds exist to defray the costs. On this basis, it is the local authority itself, and local council tax payers, who are the final guarantors of the scheme.
6. The word “trustee” is often used in a very general sense to mean somebody who acts on behalf of other people but in pensions law it has a more specific meaning. Certain occupational pension schemes, primarily in the private sector, are established under trust law. Under a trust, named people (“trustees”) hold property on behalf of other people (called beneficiaries). Trustees owe a duty of care to their beneficiaries and are required to act in their best interests, particularly in terms of their investment decisions. Although those entrusted to make statutory decisions under the LGPS are, in many ways, required to act in the same way as trustees in terms of their duty of care, they are

subject to a different legal framework and to all the normal duties and responsibilities of local authority councillors. But they are not trustees in the strict legal sense of that word.

7. Trustees are needed in the private sector to ensure better scheme security, prevent employer-led actions which could undermine a scheme's solvency and to ensure that investment decisions are not in any way imprudent. But in a statutory scheme like the LGPS, benefits are guaranteed by statute, independent of investment performance. As such, scheme members in the LGPS bear none of the investment risk. The entitlements and benefits payable to scheme members in trust based schemes are, potentially at least, more volatile and dependent ultimately on the effectiveness and stewardship of their trustees. It is because of this greater risk to security that the Pensions Act 1995 first introduced the concept of member nominated trustees to ensure that scheme beneficiaries are part of the decision making process. But even member nominated trustees must act in the interest of the fund/scheme and must not take decisions out of self-interest. The Pensions Act 2004 simply extends that status.

8. Elected councillors have legal responsibilities for the prudent and effective stewardship of LGPS funds and in more general terms, have a clear fiduciary duty in the performance of their functions. Although there is no one single model in operation throughout the 89 LGPS fund authorities in England and Wales, most funds are managed by a formal committee representing the political balance of that particular authority. Under section 101 of the Local Government Act 1972, a local authority can delegate their pension investment functions to the Council, committees, sub-committees or officers, but there are a small number of LGPS fund authorities which are not local authorities and therefore have their own, distinct arrangements.

9. It is also relevant to note that under The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (SI 2000 No 2853) and The Local Authorities Executive Arrangements (Functions and Responsibilities) (Wales) Regulations 2001 (Welsh SI 2001 No 2291), statutory decisions taken under schemes made under sections 7, 12 or 24 of the Superannuation Act 1972, are not the responsibility of the Executive arrangements introduced by the Local Government Act 2000. This means, for example, that the executive cannot make decisions in relation to discretions to be exercised under the LGPS, or make decisions relating to the investment of the Pension Fund and related matters. These functions have continued to be subject to the same legislative framework as they were before the passing of the Local Government Act 2000, including delegations under section 101 of the Local Government Act 1972. Such delegations vary from local authority to local authority depending on local circumstances. However, the Secretary of State has advised that where such decisions were delegated to committees or to officers, then those delegations should continue. (see paragraphs 5.10 and 5.11 of the Statutory Guidance to English Local Authorities – New Council Constitutions : Guidance Pack Volume 1)

10. Under section 102 of the Local Government Act 1972, it is for the appointing council to decide upon the number of members of a committee and their terms of office. They may include committee members who are not members of the appointing council and such members may be given voting rights by virtue of section 13 of the Local Government and Housing Act 1989. On this basis, it is open to pension committees to include representatives from district councils, scheme members and other lay member representatives, with or without voting rights, provided that they are eligible to be committee members (eligibility rules are set out in section 15 of the Local Government and Housing Act 1989).

STATUTORY BACKGROUND

11. In response to proposals issued by the former Office of the Deputy Prime Minister, the Local Government Pension Scheme Regulations 1997 were amended to require LGPS administering authorities to publish details of their governance and stewardship arrangements by 1 April 2006. The purpose of this first step was to gauge progress made in the democratisation of LGPS committees and governance arrangements in general and to assess what action, if any, should be taken to ensure that all committees operate consistently at best practice standards. On 30 June 2007, the 1997 regulations were further amended to require administering authorities to report the extent of compliance against a set of best practice principles to be published by CLG, and where an authority has chosen not to comply, to state the reasons why. The first such statement must be published by 1st March 2008.

12. The relevant provision, shown below, is regulation 73A of the Local Government Pension Scheme Regulations 1997 :-

“Governance compliance statement

73A.—(1) An administering authority must prepare a written statement setting out—

- (a) whether they delegate their function, or part of their function, in relation to maintaining a pension fund to a committee, a sub-committee or an officer of the authority;
- (b) if they do so—
 - (i) the terms, structure and operational procedures of the delegation;
 - (ii) the frequency of any committee or sub-committee meetings;
 - (iii) whether such a committee or sub-committee includes representatives of employing authorities (including authorities which are not Scheme employers) or members, and, if so, whether those representatives have voting rights;
- (c) the extent to which a delegation, or the absence of a delegation, complies with guidance given by the Secretary of State and, to the extent that it does not so comply, the reasons for not complying.

(2) An administering authority must publish the first such statement on or before 1st March 2008.

(3) An administering authority must—

- (a) revise their statement following a material change in respect of any of the matters mentioned in paragraph (1); and
- (b) publish the statement as revised.

(4) In preparing or revising their statement an administering authority must consult such persons as they consider appropriate.

(5) When they publish their statement, or the statement as revised, an administering authority must send a copy of it to the Secretary of State.””

This regulation will cease to have effect from 1 April 2008 when the 1997 regulations are revoked. After that date, the relevant provision will be regulation xxx of the Local Government Pension Scheme (Administration) Regulations 2007.

PURPOSE

13. The purpose of this guidance is two fold. Firstly, Part II of the guidance provides a detailed description of each of the best practice principles against which compliance is to be measured (with each of the principles being set out in **bold** type) and secondly, it includes guidance on how the compliance statement in Part II should be completed.

TERMINOLOGY

14. Throughout this paper, the distinction is made between those committees or sub-committees that have been formally constituted under 101 of the Local Government Act 1972 (“main committees”) and other committees or panels that have been established outside of that provision (“secondary committees”). Unless reference is made to “elected members”, the word “member” where it appears in the text is used to denote any member of a main or secondary committee, whether elected or not.

POSITION OF NON-LOCAL AUTHORITY ADMINISTERING AUTHORITIES

15. Regulation 73A of the Local Government Pension Scheme Regulations 1997 and this guidance made under powers granted by Regulation 73A(1)(c) of those regulations apply equally to all LGPS administering authorities in England and Wales. It is recognised, however, that a small number of administering authorities are not constituted as local authorities and are not therefore subject to the legal framework imposed on local authorities and their committees by local government legislation. In these cases, the authorities concerned are still required to measure the extent to which they comply with the principles set out in Part II of this guidance and where they are unable to comply, for example, because of their special position, to explain this when giving reasons for being unable to comply.

SUGGESTED READING

16. Although not a formal part of this guidance, it is recommended that administering authorities and other stakeholders should be aware of the contents of the following documents :-

- a) Good Governance Standards for Public Services (Office for Public Management (Alan Langlands – January 2005)
- b) Code of Corporate Governance in Local Government (CIPFA/SOLACE – 2007)
- c) Institutional Investment in the UK – A Review (HM Treasury – March 2001)
- d) Local Government Pension Scheme : Pension Fund Decision Making – Guidance Note (CIPFA Pensions Panel – 2006)
- e) Guidance for Chief Finance Officers : Principles for Investment Decision Making in the Local Government Pension Scheme in the UK (CIPFA Pensions Panel – 2001)

PART II - THE PRINCIPLES

Part II/A - Structure

17. Elected members have legal responsibilities for the prudent and effective stewardship of LGPS pension funds and, in more general terms, have a clear fiduciary duty in the performance of their functions. Although there is no one single model in operation throughout the 89 fund authorities in England and Wales, most funds are managed by a formal committee representing the political balance of that particular authority. Under section 101 of the Local Government Act 1972, a local authority can delegate their statutory functions to the Council, committees, sub-committees or

officers, but there are a small number of fund authorities which are not local authorities and therefore have their own, distinct arrangements (see para xx above).

18. The formal committee structures operated by individual pension fund authorities reflect local circumstances and priorities and it is not the remit of this guidance to prescribe a “one size fits all” approach. The evidence collected by Communities and Local Government in 2006 indicated that the overwhelming majority of these committees operate efficiently and effectively despite the variations in their constitution, composition and working practices. The intention is not therefore to level out these differences but instead to ensure that these different structures reflect the best practice principles described below :-

- a. **The management of the administration of benefits and strategic management of fund assets clearly rests with the main committee established by the appointing council.**
- b. **That representatives of participating LGPS employers, admitted bodies and scheme members (including pensioner and deferred members) are members of either the main or secondary committee established to underpin the work of the main committee.**
- c) **That where a secondary committee or panel has been established, the structure ensures effective communication across both levels.**
- d) **That where a secondary committee or panel has been established, at least one seat on the main committee is allocated for a member from the secondary committee or panel.**

Part II/B - Representation

19. Under section 102 of the Local Government Act 1972, it is for the appointing council to decide upon the number of members of a committee and their terms of office. They may include committee members who are not members of the appointing council and such members may be given voting rights (see Part II/C) by virtue of section 13 of the Local Government and Housing Act 1989. On this basis, it is open to pension committees to include representatives from district councils, scheme member and other lay member representatives, with or without voting rights, provided that they are eligible to be committee members (eligibility rules are set out in section 15 of the Local Government and Housing Act 1989)

20. The number of stakeholders affected by the local management of the pension scheme and governance of pension funds is vast and it is accepted that it would be impractical to expect individual committee structures to encompass every group or sector that has an interest in the decisions that fall to be made under the scheme’s regulations. The following principles are therefore intended to ensure that the composition of committees, both formal and secondary, offers all key stakeholders the opportunity to be represented. For example, deferred and pensioner scheme members clearly have an interest in the performance of pension committees but it would be impractical in many cases to expect them to have direct representation on a committee. Instead, there is no reason why a representative of active scheme members couldn’t also act on behalf of deferred and pensioner scheme members. Similarly, a single seat in the committee structure could be offered to somebody to represent the education sector as a whole, rather than having individual representatives for FE Colleges, Universities, academies, etc.

21. An independent professional observer could also be invited to participate in the governance arrangement to enhance the experience, continuity, knowledge, impartiality and performance of committees or panels. Such an appointment could improve the public perception that high standards

of governance are a reality and not just an aspiration. Moreover, the independent observer would be ideally placed to carry out independent assessments of compliance against the Myners' principles, both in terms of the 2004 follow up report and the latest NAPF consultation on next steps, together with other benchmarks that the fund authority's performance is measured against. The management of risk is a cornerstone of good governance and a further role for the independent observer would be to offer a practical approach to address and control risk, their potential effects and what should be done to mitigate them and whether the costs of doing so are proportionate.

a) That all key stakeholders are afforded the opportunity to be represented, within the main or secondary committee structure. These include :-

- i) employing authorities (including non-scheme employers, eg, admitted bodies);**
- ii) scheme members (including deferred and pensioner scheme members),**
- iii) independent professional observers, and**
- iv) expert advisors (on an ad-hoc basis).**

b) That where lay members sit on a main or secondary committee, they are treated equally in terms of access to papers and meetings, training and are given full opportunity to contribute to the decision making process, with or without voting rights.

Part II/C - Selection and role of lay members

22. It is important to emphasise that it is no part of the fund authority's remit to administer the selection process for lay members sitting on main or secondary committees or to ensure their attendance at meetings, unless they wish to do so. Their role is to determine what sectors or groups are to be invited to sit on LGPS committees or panels and to make places available. Effective representation is a two way process involving the fund authorities providing the opportunity and the representative bodies initiating and taking forward the selection process under the general oversight of the fund authority.

23. Members of a main decision-making LGPS committee are in the same position as trustees in the private sector. Trustees owe a duty of care to their beneficiaries and are required to act in their best interests at all times, particularly in terms of their investment decisions. They are not there to represent their own local, political or private interest. On a main committee, the interests of the scheme and its beneficiaries must always be put before the interests of individual groups or sectors represented on the committee whereas on secondary committees or panels that are not subject to the requirements of the Local Government Act 1972, private interests can be reflected in proceedings.

a) That committee or panel members are made fully aware of the status, role and function they are required to perform on either a main or secondary committee.

Part II/D – Voting

24. Although the 2006 survey conducted by Communities and Local Government revealed that formal votes taken by LGPS committees were rare, it is important to set out the legal basis on which voting rights are, or may be prescribed to elected and lay members.

Elected members of the administering authority

a) All elected members sitting on LGPS committees have voting rights as a matter of course. Regulation 5(1)(d) of the Local Government (Committee and Political Groups) Regulations

1990 (SI No 1553/1990) provides that voting rights will be given to a person appointed to a sub committee of a committee established under the Superannuation Act 1972 who is a member of the authority which appointed the committee.

Elected members of authorities other than the administering authority and lay members

b) Under sections (13)(1)(a) and (2)(a) of the Local Government and Housing Act 1989, a person who is a member of a committee appointed by an authority under the Superannuation Act 1972 but who is not a member of that authority, shall be treated as a non-voting member of that committee. However, the provisions of section 13(3) and (4) of the 1989 Act allow an administering authority discretion as to whether or not a member of a committee is treated as a voting or non-voting member.

Lay members of advisory panels, etc

c) Because they are not formally constituted committees, secondary committees or panels on which lay members sit are not subject to the restrictions imposed by the Local Government Act 1972 on voting rights. In these circumstances, there is nothing to prevent voting rights being conferred by the administering authority on all lay members sitting on panels or informal committees outside the main decision making committee.

25. The way in which an administering authority decides to exercise its discretion and confer voting rights on lay members is not a matter for which the Secretary of State, under his regulations making powers under the Superannuation Act 1972, has any remit. The issue of whether voting rights should be conferred on district council or scheme member representatives, for example, is a matter for individual administering authorities to consider and determine in the light of the appointing council's constitution. Regulation 73A(1)(b)(iii) of the 1997 Regulations already requires an administering authority to include in their statement details of the extent to which voting rights have been conferred on certain representatives, but does not extend to the need to give reasons where this is not the case.

a) The policy of individual administering authorities on voting rights is clear and transparent, including the justification for not extending voting rights to each body or group represented on main LGPS committees.

Part II/E – Training/Facility time/Expenses

26. In 2001, the Government accepted the ten investment principles recommended by Paul Myners in his report, "Institutional Investment in the UK". The first of those principles, "Effective Decision Making", called for decisions to be made only by persons or organisations with the skills, information and resources necessary to take them effectively. Furthermore, where trustees - or in the case of the LGPS, members of formal committees - take investment decisions, that they have sufficient expertise to be able to evaluate critically any advice they take.

27. The Local Government Pension Scheme (Management and Investment of Funds) Regulations 1998 (as amended) already requires administering authorities to report the extent of compliance with this principle. But on the wider issue of governance, it is equally important that they report on the extent to which training facilities, etc, are extended to lay members sitting on either main or secondary LGPS committees.

28. If all stakeholders represented on LGPS committees or panels are to satisfy the high standards set out in the Myners' set of investment principles, it follows that equal opportunity for training, and hence facility time, should be afforded to all lay members. They too should have access to the resources that would enable them to evaluate the expert advice commissioned by the main investment committee and to comment accordingly. But the way that is achieved at local level is not a matter for national prescription, in particular, the policy adopted by individual administering authority or local authority on the reimbursement of expenses incurred by committee or panel members. On this basis, the best practice standard which administering authorities are required to measure themselves focuses on the extent to which they have a clear and transparent policy on training, facility time and reimbursement of expenses and whether this policy differs according to the type of member, for example, elected member or scheme member representative.

a) That in relation to the way in which statutory and related decisions are taken by the administering authority, there is a clear policy on training, facility time and reimbursement of expenses in respect of members involved in the decision-making process.

b) That where such a policy exists, it applies equally to all members of committees, sub-committees, advisory panels or any other form of secondary forum.

Part II/F – Meetings (frequency/quorum)

29. From the evidence collected in 2006 by Communities and Local Government, it is clear that the majority of administering authorities who have introduced a multi-level committee structure operate different reporting/meeting cycles for each committee or panel. In the case of main, formal committees, these tend to meet, on average, at least quarterly, though there are a few examples where meetings are held less often. As a general rule, it is expected that main committees should meet no less than quarterly. Although it is important that any secondary committees or panels should also meet on a regular and consistent basis, it is accepted that there should be no compulsion or expectation that there should be an equal number of main and secondary committee meetings. But as a matter of best practice, it is expected that secondary meetings should be held at least bi-annually.

30. Although the overwhelming majority of administering authorities operate effective representation policies, the evidence collected in 2006 by Communities and Local Government revealed a small handful of authorities who restrict membership of their committee's to elected members only. In legal terms, this is permissible, but in terms of best practice, it falls well short of the Government's aims of improving the democratisation of LGPS committees. In those cases where stakeholders, in particular, scheme members, are not represented, it is expected that administering authorities will provide alternative means for scheme employers, scheme members, pensioner members, for example, to be involved in the decision-making process. This may take the form of employer road-shows or AGMs where access is open to all and where questions can be addressed to members of the main committee.

a) That an administering authority's main committee or committees meet at least quarterly.

b) That an administering authority's secondary committee or panel meet at least twice a year and is synchronised with the dates when the main committee sits.

c) That administering authorities who do not include lay members in their formal governance arrangements, provide a forum outside of those arrangements by which the interests of key stakeholders can be represented

Part II/G - Access

31. The people to whom the appointing council entrust with taking investment, and other statutory decisions, is a matter for that council to consider and determine. However, it is important that others, outside that formal decision-making process but involved in some capacity in the general governance arrangement, have equal access to committee papers and other documents relied on by the main committee in taking its decisions.

32. The fact that voting rights are not conferred on individual lay members should not put them on any less footing than those members who serve on the main committee with full voting rights. Secondary panels or committees have a clear role to underpin and influence the work of the main committee and can only do so where there is equal access.

a) That subject to any rules in the councils constitution, all members of main and secondary committees or panels have equal access to committee papers, documents and advice that falls to be considered at meetings of the main committee.

Part II/H – Scope

33. Traditionally, LGPS committees have focussed on the management and investment of the funds under their supervision, with questions arising from the main scheme dealt with by officers with delegated authority under the council's constitution. In recent times, however, and reflecting the trend towards de-centralisation, administering authorities have become responsible for formulating a significant number of policy decisions on issues like abatement, compensation and the exercise of discretions under the scheme's regulations. These are key decisions which should be subject to the rigorous supervision and oversight of the main committee. And with the prospect of some form of cost sharing arrangement to be in place by March 2009, it is clear that there are other key scheme issues, outside the investment field, that main committees may need to address in the future. Given the not insignificant costs involved in running funds, LGPS committees and panels need to receive regular reports on their scheme administration to ensure that best practice standards are targeted and met and furthermore, to satisfy themselves and to justify to their stakeholders that the fund is being run on an effective basis. This would involve reviewing the committee's governance arrangements and the effective use of its advisers to ensure sound decision making. Here, the use of an independent professional observer, free of conflicts of interest, would enable a wholly objective approach to be taken to the stewardship of the fund.

34. All this points to LGPS committees perhaps becoming more multi-disciplined than they have been in the past, with a consequential impact on, for example, membership and training. For example, if decisions are to be taken by LGPS committees that could impact on the cost-sharing mechanism, it is reasonable to expect scheme member representatives to be present on those decision making committees, given that those decisions could have a direct impact on the position of scheme members under the scheme.

35. Although the future may see LGPS committees having a broader role than at present, individual administering authorities may adopt different strategies to meet these new demands. The more traditional approach might be to extend the scope of existing investment committees to include

general scheme and other administrative issues. But already, there is evidence to suggest that some administering authorities have opted instead to establish new sub committees to deal solely with non-investment, scheme issues. The purpose of this guidance is not to prescribe the way in which administering authorities develop and adapt to scheme developments. Instead, the intention is to increase the awareness that administering authorities and their committees must be flexible and willing to change to reflect scheme changes and wider pensions issues.

a) That administering authorities have taken steps to bring wider scheme issues within the scope of their governance arrangements

Part II/I – Publicity

36. A key component in improving the democratisation of LGPS governance arrangements is to increase the awareness that opportunities exist for scheme member representatives and LGPS employers, for example, to become part of these arrangements. But the onus for increasing awareness should not rest entirely with the administering authority. It is just as much the role of scheme member representatives and scheme employers to keep abreast of developments in this field and to play an active part in the selection and appointment of committee or panel members. This is best left to local choice and discretion. However, administering authorities are reminded that under Regulation 76B(1)(e) of the 1997 Regulations, the latest version of their Governance Compliance Statement must be included in their Pension Fund Annual Report.

a) That administering authorities have published details of their governance arrangements in such a way that stakeholders with an interest in the way in which the scheme is governed, can express an interest in wanting to be part of those arrangements.

Annexe A : Compliance Statement

Principle A – Structure

	Not Compliant*			Fully Compliant	
a)					
b)					
c)					
d)					

* Please use this space to explain the reason for non-compliance (regulation 73A(1)(c)/1997 Regulations)

Please use this space if you wish to add anything to explain or expand on the ratings given above :-

Annexe B – Summary of CLG’s 2006 Survey on Governance

LOCAL GOVERNMENT PENSION SCHEME GOVERNANCE SURVEY - A SUMMARY

On 31 March 2006, LGPS administering authorities in England and Wales were required to publish details of their governance arrangements. This paper summarises the results of the survey. For the purposes of the paper, “representation” is taken to mean either attendance of scheme members (or their representatives) on formal investment/pension committees; attendance on secondary, formal committees; attendance on informal, advisory panels or the opportunity to attend annual general meetings, employer/scheme road shows, etc. A list of LGPS funds showing the extent of representation across these four areas is attached.

1. Main findings

- a). Percentage of fund authorities with representation on main committee = 84%
- b) Percentage of fund authorities with representation on second committees = 11%
- c) Percentage of fund authorities with representation on advisory panels = 15%
- d) Percentage of fund authorities with representation at AGMs, etc = 18%
- e) Percentage of fund authorities with none of the above = 15% (11 authorities)

(English shire counties = 4 authorities)

(London Boroughs = 6 authorities)

(Mets + others = 0 authorities)

(Welsh Unitaries = 1 authority)

2. Membership of Committees

- a) Average Number of members on all main committees= 10 (range = 3 to 20)
- b) English shire counties = 11 (range = 5 to 20)
- c) London Boroughs = 8 (range = 4 to 15)
- d) Mets + others = 15 (range = 10 to 20)
- e) Welsh Unitaries = 8 (range = 3 to 16)

3. Frequency of Committee Meetings

- a) 86% of committees meet at least Quarterly
- b) 2 committees meet twice per annum
- c) 3 committees meet five times per annum
- d) 5 committees meet six times per annum

4. Voting Rights

- a) 4 authorities have conferred voting rights on lay members :-

- English shire counties = 2
- London boroughs = 0
- Mets and others = 2
- Welsh Unitaries = 0

- b) 5 authorities have conferred voting rights to lay members on advisory panels :-

- English shire counties = 1
- London boroughs = 0
- Mets and others = 2
- Welsh Unitaries = 2

5. Number of “trustees”

- a) Total number of members on main committees = 900
- b) Total number of elected members on main committees = 650 (72%)
- c) Number of lay members on main committees = 250 (28%)

6. Correlation between Governance and Funding levels

- a) No representation - Average funding level = 73% (range = 62% to 79%)
- b) 1 item of representation - Average funding level = 72.3% (range = 61% to 88%)
- c) 2 items of representation - Average funding level = 76.5% (range = 64% to 94%)
- d) 3 items of representation - Average funding level = 83.5% (range = 74% to 93%)
- e) 4 items of representation - Average funding level = 79.5% (range = 77% to 82%)

(Average funding level of all funds in England and Wales = 73.4%)

7. Correlation between Governance and Investment Returns

- a) No representation (11 funds) 03/04 Average = 25.7% (range = 22% to 30%)
04/05 Average = 13% (range = 10% to 17%)
- b) 1 item of representation (47 funds) 03/04 Average = 25.4% (range = 20% to 30%)
04/05 Average = 13.1% (range = 9% to 20%)
- c) 2 items of representation (19 funds) 03/04 Average = 23.5% (range = 20% to 29%)
04/05 Average = 11.7% (range = 7% to 15%)
- d) 3 items of representation (2 funds) 03/04 Average = 24.5% (range = 24% to 25%)
04/05 Average = 12.5% (range = 12% to 13%)
- e) 4 items of representation (2 funds) 03/04 Average = 23% (range = 22% to 24%)
04/05 Average = 13.5% (range = 13% to 14%)

REPRESENTATION LEVELS IN THE LGPS (ENGLAND & WALES)

LGPS Funds with no form of representation :-

Buckinghamshire County Council
Cambridgeshire County Council
West Sussex County Council
Worcestershire County Council
Hackney London Borough
Hounslow London Borough
Kensington & Chelsea London Borough
Corporation of London
Redbridge London Borough
Wandsworth London Borough
City & County of Swansea

LGPS Funds with 1 form of representation :-

Berkshire Pension Fund
Cheshire County Council
Cornwall County Council
Devon County Council
Durham County Council
East Riding County Council
Essex County Council
Gloucestershire County Council
Hampshire County Council
Hertfordshire County Council
Kent County Council
Lincolnshire County Council
Teeside Pension Fund
Norfolk County Council
Northumberland County Council

Oxfordshire County Council
Somerset County Council
Suffolk County Council
Surrey County Council
Warwickshire County Council
Wiltshire County Council
Barking London Borough
Barnet London Borough
Bexley London Borough
Bromley London Borough
Camden London Borough
Croydon London Borough
Ealing London Borough
Enfield London Borough
Hammersmith & Fulham London Borough
Haringey London Borough
Harrow London Borough
Havering London Borough
Hillingdon London Borough
Lambeth London Borough
Lewisham London Borough
Merton London Borough
Newham London Borough
Richmond-Upon-Thames London Borough
Southwark London Borough
Sutton London Borough
Tower Hamlets London Borough
Waltham Forest London Borough
City & County of Cardiff Council
Rhondda, Cynon & Taff CBC
Gwynedd Pension Fund
Dyfed Pension Fund
Torfean County Borough Council

LGPS Funds with 2 forms of representation :-

Bath & NE Somerset Council (Avon Pension Fund)
Bedfordshire County Council
Cumbria County Council
Derbyshire County Council
Dorset County Council
East Sussex County Council
Isle of Wight County Council
Lancashire County Council
Leicestershire County Council
Nottinghamshire County Council
Staffordshire County Council
Shropshire County Council
Brent London Borough
Islington London Borough
Merseyside Pension Fund

Tyne & Wear Pension Fund
London Pensions Fund Authority
Environment Agency
Clwyd Pension Fund
South Yorkshire PTA

LGPS Funds with 3 forms of representation:-

West Midlands Pension Fund
Tameside Pension Fund

LGPS Funds with 4 forms of representation :-

West Yorkshire Pension Fund
South Yorkshire Pension Fund

Note 1

Information relating to the following LGPS funds was not available at the time the survey was conducted :-

Northamptonshire County Council
North Yorkshire County Council
Greenwich London Borough
Royal Borough of Kingston Upon Thames
City of Westminster
Powys County Council

Note 2

The four forms of representation referred to above include :-

- membership of scheme members (or their representatives) on formal investment/pension committees;
- membership of scheme members (or their representatives) on secondary, formal committees;
- membership of scheme members (or their representatives) on informal, advisory panels, or
- the opportunity to attend annual general meetings, fund roadshows, etc.

**Department for Communities and Local Government
Local Government and Firefighters' Pension Schemes Division
May 2006**