

**Pension Fund Committee**

**28 January 2008**



**Governance Compliance Statement**

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**Report of Stuart Crowe, County Treasurer**

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**Purpose of the Report**

- 1 The purpose of the report is to ask Members to approve the Governance Compliance Statement the Council has to submit to Communities and Local Government (CLG).

**Background**

- 2 All Local Government Pension Scheme (LGPS) administering authorities are required to publish a Governance Compliance Statement by 1 March 2008. CLG has consulted on draft guidance and asked authorities to prepare statements on the basis of this draft guidance.
- 3 The Council responded to the consultation exercise and a copy of the response is included at Appendix A.

**Governance Compliance Statement**

- 4 The Council's Governance Compliance Statement is included at Appendix B.
- 5 CLG has not produced the final guidance for preparation of Governance Compliance Statements. Any changes made before 1 March 2008 between the draft and final guidance will need to be included in the final published version of the statement.
- 6 If approved, the statement will be distributed to Scheme Employers and placed on the Council's website by 1 March 2008.

**Recommendation**

- 7 Members are asked to agree the Governance Compliance Statement for the Fund set out in Appendix B and approve its publication by 1 March 2008.
- 8 Members are asked to authorise me to make any changes necessary to the statement including any changes needed should the final guidance differ materially from the draft guidance.

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Nick Orton

9 November 2007

Mr R Holloway  
CLG

By email

Dear Mr Holloway

**Local Government Pension Scheme Regulations 1997  
Governance Compliance Statement: Draft Statutory Guidance  
Consultation response on behalf of Durham County Council**

I am writing in response to your letter dated 8 October 2007, which asked for comments on a draft of the statutory guidance about completing a Governance Compliance Statement issued under Regulation 73A(1)(c) of the 1997 regulations. We welcome the opportunity to comment on this guidance.

Durham County Council is the largest local authority in the North East of England with a population of 499,800. It is also a major employer within the Local Government Pension Scheme with over 10,000 current employees contributing to the Scheme. The Council also has a key role to play as an administering authority within the Local Government Pension Scheme and is responsible for the administration (including investments) of the Durham County Council Pension Fund.

Please find enclosed a response sent on behalf of Durham County Council as an administering authority within the Scheme.

I hope this is useful, please contact me if you need to discuss any of the issues raised in this response.

Yours sincerely

Nick Orton  
Head of Pensions

**Local Government Pension Scheme Regulations 1997  
Governance Compliance Statement: Draft Statutory Guidance.**

**Consultation response on behalf of Durham County Council as an Administering Authority.**

**General comments**

Paragraph 5 states that it is the local authorities and local council tax payers who are the ultimate guarantors of the scheme. In practice, most local authority income (up to two thirds in some cases) comes from central government. This means the cost of the local government pension scheme is mainly being met by tax payers across the country, not just “local council tax payers”.

Administering authorities will be required to measure their governance standards against the standards set out in the statutory guidance and give reasons for not complying. In practice, any deviation from the central guidance will be scrutinised by internal and external auditors and there is a danger that this approach will lead to a central governance methodology being imposed upon the 89 LGPS pension funds in England and Wales. This imposition of a central government agenda on local government through the imposition of firm statutory guidance is at odds with the Government’s recent dramatic reduction in the number of key performance indicators it will measure in local government.

**Comments on the text of the draft guidance**

***Structure***

Paragraph 18 lists four best practice principles. Principles a), c) and d) deal solely with the relationship between a secondary committee or panel and the main committee. Principle b) also makes reference to the existence of a secondary committee. This emphasis on secondary committees suggests that best practice is to have such a secondary committee. However, given that principle a) states that decisions on investment management and the administration of benefits remain the responsibility of the main committee, it is not clear what the expected role of the secondary committee would be or why there should be such a focus on a secondary committee (for information, here in Durham there is only one committee which deals with all business and this works well and is liked by Members as they see it as “inclusive”).

***Representation***

Paragraph 20 states that deferred and pensioner scheme members “clearly have an interest in the performance of pension committees”. This seems to contradict statements made in background section, such as paragraph 7 which states that “benefits are guaranteed by statute” and “scheme members in the LGPS bear none of the investment risk”. It is difficult to envisage a decision made by a pension fund committee that would have a direct impact on the current or future pension benefits of a scheme member. Scheme members could be affected by decisions made on communications and administration however committees rarely directly make decisions on these issues. Scheme members including deferred and pensioner members have an

## Appendix A

interest in the efficient day to day administration by officers delivering these services rather than the committee.

Paragraph 21 lists the advantages of inviting an independent professional observer to join the committee, these include:

- To enhance the experience, impartiality and performance of committees
- To improve the public perception of good governance
- To carry out independent assessments of compliance against the Myners' principles
- To carry out risk assessments

There is no explanation of the type of professional observer referred to here. Would they be a professional simply by virtue of the fact they were being paid to attend the meeting or is there some professional qualification required to meet the criteria? Also, most committees and authorities already undertake risk management and have a duty to report on their compliance to Myners' principles and often are advised by investment advisers or qualified Treasurers. It is unlikely that the general public are aware of the operation of local government pension committees so it is difficult to see how public perception of their good governance could be improved. It is also unclear how the presence of an independent professional observer would necessarily enhance the experience, impartiality and performance of committees.

Best practice guideline a) states that all "key stakeholders are afforded the opportunity to be represented within the main or secondary committee structure." The guideline goes on to list the key stakeholders as including employing authorities, scheme members, independent professional observers and expert advisors. It is difficult to see how independent professional observers and expert advisors can be classed as key stakeholders in the LGPS. Also, whilst scheme members are the beneficiaries of the LGPS their benefits are not affected by the activities of pension committees so they are not "key stakeholders" in the decision making process in the same way that employing authorities are.

### ***Voting***

The best practice guideline on this subject states that an administering authority's policy on voting rights should be clear and transparent and should include "the justification for not extending voting rights to each body or group represented on main LGPS committees". This suggests CLG expect some of the groups represented on committees not to have voting rights. It would be useful to have guidance on what CLG considers are acceptable reasons for not extending voting rights. But fundamentally, if professional observers / advisers are deemed necessary they should not be given voting rights.

### ***Meetings***

Paragraph 30 refers to the Government's aim of "improving the democratisation of LGPS committees" – this is an unusual description for wanting to move away from the current position where an LGPS committee can be entirely comprised of democratically accountable elected councillors.

## Appendix A

CLG suggests that employer road-shows or AGMs could be set up where questions could be addressed to members of the committee. Is there any evidence of an appetite for such road-shows or presentations? Some authorities do attempt to engage their wider membership in this way but find it an expensive way of communicating with pensioner members and not viable at all with active members (owing to poor turn-out).

### **Scope**

Paragraph 34 states that where “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”.

The Government Actuary’s Department (GAD) produced an initial paper on cost-sharing which included a list of those elements that should be included in assessing changes to future pension costs that could be shared with the scheme membership. The elements GAD listed were – longevity improvements, other demographics, pay increases, benefit options and changes to benefit structure. None of these elements are likely to be affected by decisions made by LGPS committees, so it is difficult to see how future cost-sharing can be used as an argument for scheme member representation on LGPS committees.

### ***Correlation between Governance and Funding levels***

Section 6 of Annexe B includes some information under the heading “Correlation between Governance and Funding levels”. This seems to be an attempt to produce evidence that increasing the items of member representation on a pension fund committee will have a positive impact on the funding level of a Fund. There are a number of problems with this, for example:

- The figures provided suggest it is better to have no representation than one item of representation. Similarly it seems to be better to have 3 items of representation rather than 4.
- Taken in isolation, a Funds funding level can be fairly meaningless as there is no indication of the actuary’s assumptions used in determining this funding level or the employer contribution rate resulting from it.
- Even if we accept that evidence of correlation exists, this is not evidence of cause and effect. It is quite possible for example that Funds with a higher funding level feel more able to concern themselves with extending member representation as they have less concerns on the investment return front. It is also quite possible that a third unidentified factor makes it more likely that funding levels will be higher and that a larger number of items of member representation will be present.
- Are the differences revealed statistically significant given the small sample size?

### **Summary**

Whilst appreciating the regulatory requirement for CLG to issue statutory guidance on the governance compliance statement, we have a number of concerns with the draft guidance.

The general approach adopted appears to be to mirror the developments in private sector pension schemes and in particular the requirement for trustee boards to have member-nominated trustees. However, the position for LGPS funds is radically different

## Appendix A

with benefits protected by statute and decisions on regulations being made by central government not by the local funds. The key stakeholders in the LGPS are the employing authorities and the taxpayers (as they ultimately fund most of the employing authorities). These key stakeholders are already represented on most LGPS committees through the elected members.

There is an argument that scheme members should be represented on committees to encourage a sense of ownership of the Fund and to help publicise the investment issues under debate. However, our concern is that the way the guidance is currently drafted means the default position will be for Funds to include member representatives with voting rights on their committees when there is no evidence this will improve investment decision making

The guidance also supports the inclusion of “independent professional observers” on pension committees. Again, this is an attempt to mirror the position in the private sector where some trustee boards have professional independent trustees as members. It is not clear how their independence or professionalism will be assessed and it is also not clear how the benefit of having an “independent professional observer” will outweigh the cost. By including these individuals in the statutory guidance there is a danger the default position for authorities will be to include them on their committees without first assessing their potential value.

## Durham County Council Pension Fund Governance Compliance Statement as at 1 March 2008 (draft)

	<b>Principle</b>	<b>Compliant? (Fully / Partially / Not / Not Applicable)</b>	<b>Comments</b>
	<b>Principle A – Structure</b>		
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.	Fully	
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.	Partially	Scheme members are represented by two non-voting union observers No specific representation from admitted body employers
c)	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.	Not Applicable	No secondary committee or panel
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.	Not Applicable	No secondary committee or panel
	<b>Principle B – Representation</b>		
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).	Partially	No specific representation from admitted body employers Scheme members are represented by two non-voting union observers No ‘independent professional observers’ Expert advisors do not have voting rights
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.	Fully	Trade union observers given full access to papers and allowed to participate without having voting rights

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	<b>Principle</b>	<b>Compliant? (Fully / Partially / Not / Not Applicable)</b>	<b>Comments</b>
	<b>C - Selection and role of lay members</b>		
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.	Fully	All committee members are made fully aware of their role and function
	<b>D – Voting</b>		
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.	Fully	As set out in Governance Policy Statement
	<b>E – Training/Facility time/Expenses</b>		
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.	Fully	
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.	Fully	
	<b>F – Meetings (frequency/quorum)</b>		
a)	That an administering authority's main committee or committees meet at least quarterly.	Fully	
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.	Not Applicable	No secondary committee or panel
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	Not Applicable	Trade union observers represent lay members



## Durham County Council Pension Fund Governance Compliance Statement as at 1 March 2008 (draft)

	<b>Principle</b>	<b>Compliant? (Fully / Partially / Not / Not Applicable)</b>	<b>Comments</b>
	<b>G - Access</b>		
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.	Fully	
	<b>H - Scope</b>		
a)	That administering authorities have taken steps to bring wider scheme issues within the scope of their governance arrangements	Fully	The Pension Fund Committee regularly considers 'wider issues' not just investments
	<b>I - Publicity</b>		
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	Fully	Governance Policy Statement was distributed to all employers and published on the Council's website