

Local Pension Board of Durham County Council

Terms of Reference

Introduction

1. The Local Pension Board is established by Durham County Council (the 'Administering Authority') and will be governed by Durham County Council's Constitution.
2. This document sets out the terms of reference of the Local Pension Board of Durham County Council (the 'Administering Authority') a scheme manager as defined under Section 4 of the Public Service Pensions Act 2013. The Local Pension Board (the 'Board') is established in accordance with Section 5 of that Act and under regulation 106 of the Local Government Pension Scheme Regulations 2013 (as amended).
3. The Board is established by the Administering Authority and operates independently of the Committee. Relevant information about its creation and operation are contained in these Terms of Reference.
4. The Board is not a committee constituted under Section 101 of the Local Government Act 1972 and therefore no general duties, responsibilities or powers assigned to such committees or to any sub-committees or officers under the constitution, standing orders or scheme of delegation of the Administering Authority apply to the Board unless expressly included in this document.
5. Except where approval has been granted under regulation 106(2) of the Regulations the Board shall be constituted separately from any committee or sub-committee constituted under Section 101 of the Local Government Act 1972 with delegated authority to execute the function of the Administering Authority.

Interpretation

6. The following terms have the meanings as outlined below:

'the Act'	The Public Service Pensions Act 2013.
'the Code'	means the Pension Regulator's Code of Practice No 14 governance and administration of public service pension schemes.
'the Committee'	means the Pension Fund Committee - the committee that has delegated decision making powers for the Fund in accordance with Section 101 of the Local Government Act 1972.

'the Fund'	means the Durham County Council Pension Fund – the Fund managed and administered by the Administering Authority.
'the Guidance'	means the guidance on the creation and operation of local pension boards issued by the Shadow Scheme Advisory Board.
'the Regulations'	means the Local Government Pension Scheme Regulations 2013 (as amended from time to time), the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (as amended from time to time) including any earlier regulations as defined in these regulations to the extent they remain applicable and the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009 (as amended from time to time).
'Relevant legislation'	means relevant overriding legislation as well as the Pension Regulator's Codes of Practice as they apply to the Administering Authority and the Board notwithstanding that the Codes of Practice are not legislation.
'the Scheme'	means the Local Government Pension Scheme in England and Wales.

Statement of purpose

7. The purpose of the Board is to assist¹ the Administering Authority in its role as a scheme manager of the Scheme. Such assistance is to:
 - (a) secure compliance with the Regulations, any other legislation relating to the governance and administration of the Scheme, and requirements imposed by the Pensions Regulator in relation to the Scheme and;
 - (b) to ensure the effective and efficient governance and administration of the Scheme.

Duties of the Board

8. The Board should, at all times, act in a reasonable manner in the conduct of its purpose. The principles included in the 'Code of conduct for Members', set out in Durham County Council's Constitution, will apply to members of the Board.
9. All other relevant Council policies shall also apply to members of the Board.

¹ Please see paragraph 3.28 of the Guidance for more information on what assisting the Administering Authority means.

Establishment

10. The Board is established on 1 April 2015 following approval by the County Council at its meeting on 25 February 2015. Subsequent to its establishment, the Board may establish sub-committees.

Membership²

11. The Board shall consist of six voting members, as follows:

Three Member Representatives; and

Three Employer Representatives.

12. There shall be an equal number of Member and Employer Representatives.

Member representatives

13. Member representatives shall either be scheme members³ or have capacity to represent scheme members of the Fund.
14. Member representatives should be able to demonstrate their capacity⁴ to attend and complete the necessary preparation for meetings and participate in training as required.
15. Substitutes shall not be appointed.
16. Three member representatives shall be appointed following a transparent recruitment process which should be open to all Fund members and be approved by the Administering Authority.

Employer representatives

17. Employer representatives shall be office holders or senior employees of employers of the Fund or have experience of representing scheme employers in a similar capacity. No officer or elected member of the Administering Authority who is responsible for the discharge of any function of the Administering Authority under the Regulations may serve as a member of the Board.
18. Employer representatives should be able to demonstrate their capacity⁵ to attend and complete the necessary preparation for meetings and participate in training as required.

² When determining the size of the Board consideration should be given to items noted in paragraphs 5.7 to 5.12 of the Guidance.

³ Active, deferred or pensioner members

⁴ See paragraphs 5.16 to 5.20 of the Guidance which outlines what 'capacity' in this context means.

⁵ See paragraphs 5.16 to 5.20 of the Guidance which outlines what 'capacity' in this context means.

19. Substitutes shall not be appointed.
20. Three employer representatives shall be appointed by the Administering Authority following a transparent recruitment process which should be open to all employers in the Fund.

Appointment of chair⁶

21. Subject to the meeting arrangements in paragraphs 35 to 37 below a chair shall be appointed for the Board by the employer and member representatives of the Board from amongst their own number or on a rotating basis with the term of office shared between an employer and a member representative on an equal basis.

Duties of chair

22. The chair of the Board:
 - (a) Shall ensure the Board delivers its purpose as set out in these Terms of Reference,
 - (b) Shall ensure that meetings are productive and effective and that opportunity is provided for the views of all members to be expressed and considered, and
 - (c) Shall seek to reach consensus and ensure that decisions are properly put to a vote when it cannot be reached. Instances of a failure to reach a consensus position will be recorded and published.

Terms of Office⁷

23. The term of office for Board members is four years and consideration will be given to allowing members to retire on a rolling basis during their term of office.
24. Extensions to terms of office may be made by the Administering Authority with the agreement of the Board.
25. A Board member may be appointed for further terms of office using the methods set out in paragraphs 16 and 20.
26. Board membership may be terminated prior to the end of the term of office due to:

⁶ This is not a regulatory requirement under the LGPS Regulations 2013 as amended. The appointment of a Chair is a decision to be made locally, where a Chair is appointed this section should be amended as appropriately. For more information see paragraphs 5.37 to 5.40 in the Guidance.

⁷ See paragraphs 5.29 and 5.30 of the Guidance which outlines points to consider when setting out the term of office for Board members. In particular consideration should be given to allowing members to retire on a rolling basis to ensure experience is retained.

- (a) A member representative appointed on the basis of their membership of the scheme no longer being a scheme member in the Fund⁸.
- (b) A member representative no longer being a scheme member or a representative of the body on which their appointment relied.
- (c) An employer representative no longer holding the office or employment or being a member of the body on which their appointment relied.
- (d) A Board member no longer being able to demonstrate to the Administering Authority their capacity to attend and prepare for meetings or to participate in required training.
- (e) The representative being withdrawn by the nominating body and a replacement identified.
- (f) A Board member has a conflict of interest which cannot be managed in accordance with the Board's conflict policy.
- (g) A Board member who is an elected member becomes a member of the Committee.
- (h) A Board member who is an officer of the Administering Authority becomes responsible for the discharge of any function of the Administering Authority under the Regulations.

Conflicts of interest⁹

- 27. All members of the Board must declare to the Administering Authority on appointment and at any such time as their circumstances change, any potential conflict of interest arising as a result of their position on the Board.
- 28. A conflict of interest is defined as a financial or other interest which is likely to prejudice a person's exercise of functions as a member of the Board. It does not include a financial or other interest arising merely by virtue of that person being a member of the Scheme.
- 29. On appointment to the Board and following any subsequent declaration of potential conflict by a Board member, the Administering Authority shall ensure that any potential conflict is effectively managed in line with both the internal procedures and the requirements of the Code.

Knowledge and understanding (including Training)¹⁰

- 30. Knowledge and understanding must be considered in light of the role of the Board to assist the Administering Authority in line with the requirements outlined in paragraph 7 above.
- 31. The Board shall establish and maintain a record of training to address the knowledge and understanding requirements that apply to Board members under the Act. A list of examples of the knowledge and understanding required is attached at Annex 1 to this document and is summarised in paragraph 32. That record shall set out the degree of knowledge and

⁸ This includes active, deferred and pensioner members.

⁹ See section 7 of the Guidance for more information on Conflicts of Interest.

¹⁰ See section 6 of the Guidance for more information on Knowledge and Understanding.

understanding required as well as how knowledge and understanding is acquired, reviewed and updated.

32. Following appointment, Board Members should be conversant with:
 - (a) The legislation and associated guidance of the Local Government Pension Scheme (LGPS);
 - (b) General pensions legislations applicable to the LGPS;
 - (c) Role and Responsibilities of a LPB;
 - (d) Role and Responsibilities of the Administering Authority;
 - (e) Role and Responsibilities of Scheme Employers, Advisers and key persons; and
 - (f) Funding and Investment
33. The Administering Authority will provide training in these areas for Board members.
34. Board members shall attend and participate in training arranged by the Administering Authority. They shall undertake such personal training needs analysis or other processes that are put in place in order to ensure that they maintain the required level of knowledge and understanding to carry out their role on the Board.

Meetings

35. The Board shall as a minimum meet twice each year.
36. Meetings shall normally take place between the hours of 9:00am and 5:00pm at County Hall, Durham.
37. The chair of the Board with the consent of the Board membership may call additional meetings. Urgent business of the Board between meetings may, in exceptional circumstances, be conducted via communications between members of the Board including telephone conferencing and e-mails.

Quorum

38. A meeting is only quorate when at least one member and one employer representative is present.
39. A meeting that becomes inquorate may continue but any decisions will be non-binding.

Board administration

40. The Chair shall agree with the Monitoring Officer (the 'Board Secretary') an agenda prior to each Board meeting.
41. The agenda and supporting papers will be issued at least five working days (where practicable) in advance of the meeting except in the case of matters of urgency.

42. Draft minutes of each meeting including all actions and agreements will be recorded and circulated to all Board members within five working days after the meeting. These draft minutes will be subject to formal agreement by the Board at their next meeting. Any decisions made by the Board should be noted in the minutes and in addition where the Board was unable to reach a decision such occasions should also be noted in the minutes.
43. The minutes may with the agreement of the Board, be edited to exclude items on the grounds that they would either involve the likely disclosure of exempt information as specified in Part 1 of Schedule 12A of the Local Government Act 1972 or it being confidential for the purposes of Section 100A(2) of that Act and/or they represent data covered by the Data Protection Act 1998.
44. The Board Secretary shall ensure that Board members meet and maintain the knowledge and understanding as determined by guidance or legislation.
45. The Board Secretary shall arrange such advice as is required by the Board subject to such conditions as are listed in these Terms of Reference for the use of the budget set for the Board.
46. The Board Secretary shall ensure an attendance record is maintained along with advising the Administering Authority on expenses to be considered under these terms.
47. The Board Secretary shall liaise with the Administering Authority on the requirements of the Board, including advanced notice for officers to attend and arranging dates and times of Board meetings.

Public access to Board meetings and information

48. The Board meetings can be open to the general public (unless there is an exemption under relevant legislation which would preclude part (or all) of the meeting from being open to the general public).
49. The following will be entitled to attend Board meetings in an observer capacity:
 - (a) Members of the Committee,
 - (b) Any person requested to attend by the Board.

Any such attendees will be permitted to speak at the discretion of the Chair.

50. In accordance with the Act the Administering Authority shall publish information about the Board to include:
 - (a) The names of Board members and their contact details.
 - (b) The representation of employers and members on the Board.
 - (c) The role of the Board.
 - (d) These Terms of Reference.

51. The Administering Authority shall also publish other information about the Board including:
- (a) Agendas and minutes
 - (b) Training and attendance logs
 - (c) An annual report on the work of the Board to be included in the Fund's own annual report.
52. All or some of this information may be published using the following means or other means as considered appropriate from time to time:
- (a) On the Administering Authority's website.
 - (b) As part of the Fund's Annual Report.
 - (c) As part of the Governance Compliance Statement.
53. Information may be excluded on the grounds that it would either involve the likely disclosure of exempt information as specified in Part 1 of Schedule 12A of the Local Government Act 1972 or it being confidential for the purposes of Section 100A(2) of that Act and/or they represent data covered by the Data Protection Act 1998.

Expenses and allowances

54. The Administering Authority may meet the expenses of Board members as agreed by the Corporate Director Resources in consultation with the Leader and Deputy Leader of the Council.
55. The Administering Authority shall not pay allowances for Board members.

Budget

56. The Board is to be provided with adequate resources to fulfil its role. In doing so the budget for the Board will be met from the Fund. The Board will seek approval from the Corporate Director Resources, as Section 151 Officer, at the Administering Authority for any expenditure it wishes to make.

Core functions¹¹

57. The first core function of the Board is to assist¹² the Administering Authority in securing compliance with the Regulations, any other legislation relating to the governance and administration of the Scheme, and requirements imposed by the Pensions Regulator in relation to the Scheme. Within this extent of this core function the Board may determine the areas it wishes to consider.

¹¹ In determining the role of the Board, further information can be found in paragraphs 3.27 to 3.29 of the Guidance.

¹² Please see paragraph 3.28 of the Guidance for more information on what assisting the Administering Authority means.

58. The second core function of the Board is to ensure the effective and efficient governance and administration of the Scheme. Within this extent of this core function the Board may determine the areas it wishes to consider
59. In support of its core functions the Board may make a request for information to the Committee with regard to any aspect of the Administering Authority's function. Any such request should be reasonably complied with in both scope and timing.
60. In support of its core functions the Board may make recommendations to the Committee which should be considered and a response made to the Board on the outcome within a reasonable period of time.

Reporting¹³

61. The Board should in the first instance report its requests, recommendations or concerns to the Committee. In support of this any member of the Board may attend a Committee meeting as an observer.
62. Requests and recommendations should be reported under the provisions of paragraphs 59 and 60 above.
63. The Board should report any concerns over a decision made by the Committee to the Committee subject to the agreement of at least 50% of voting Board members provided that all voting members are present. If not all voting members are present then the agreement should be of all voting members who are present, where the meeting remains quorate.
64. On receipt of a report under paragraph 63 above the Committee should, within a reasonable period, consider and respond to the Board.
65. Where the Board is not satisfied with the response received it may request that a notice of its concern be placed on the website and in the Fund's annual report.
66. Where the Board is satisfied that there has been a breach of regulation which has been reported to the Committee under paragraph 63 and has not been rectified within a reasonable period of time it is under an obligation to escalate the breach.
67. The appropriate internal route for escalation is to the Monitoring Officer or the Corporate Director Resources, as Section 151 Officer (as appropriate).
68. The Board may report concerns to the LGPS Scheme Advisory Board for consideration subsequent to, but not instead of, using the appropriate internal route for escalation.
69. Board members are also subject to the requirements to report breaches of law under the Act and the Code and the whistleblowing provisions set out in the Administering Authority's Confidential Reporting Policy.

¹³ See section 8 of the Guidance for more information on Reporting.

Review of terms of reference

70. These Terms of Reference shall be reviewed on each material change to those parts of the Regulations covering local pension boards and at least every four years.

71. These Terms of Reference were adopted on 1 April 2015

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Signed on behalf of the Administering Authority

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Signed on behalf of the Board

Published 25 February 2015

Examples of knowledge and understanding of the law relating to pensions

1. **Background and Understanding of the Legislative Framework of the LGPS**

- Differences between public service pension schemes like the LGPS and private sector trust-based schemes
- Role of the IPSPC and its recommendations
- Key provisions of the 2013 Act
- The structure of the LGPS and the main bodies involved including the Responsible Authority, the Administering Authority, the Scheme Advisory Board, the Local Pension Board and the LGPS employers
- An overview of local authority law and how Administering Authorities are constituted and operate
- LGPS rules overview (including the Regulations, the Transitional Regulations and the Investment Regulations)

2. **General pensions legislation applicable to the LGPS**

An overview of wider legislation relevant to the LGPS including:

- Automatic Enrolment (Pensions Act 2008)
- Contracting out (Pension Schemes Act 1993)
- Data protection (Data Protection Act 1998)
- Employment legislation including anti-discrimination, equal treatment, family related leave and redundancy rights
- Freedom of Information (Freedom of Information Act 2000)
- Pensions sharing on divorce (Welfare Reform and Pensions Act 1999)
- Tax (Finance Act 2004)
- IORP Directive

3. **Role and responsibilities of the Local Pension Board**

- Role of the Local Pension Board
- Conduct and conflicts
- Reporting of breaches
- Knowledge and understanding
- Data protection

4. **Role and responsibilities of the Administering Authority**

- Membership and eligibility
- Benefits and the payment of benefits

- Decisions and discretions
- Disclosure of information
- Record keeping
- Internal controls
- Internal dispute resolution
- Reporting of breaches Statements, reports and accounts

5. Funding and Investment

- Requirement for triennial and other valuations
- Rates and adjustments certificate
- Funding strategy statement
- Bulk transfers
- Permitted investments
- Restrictions on investments
- Statement of investment principles
- CIPFA guidance
- Appointment of investment managers
- Role of the custodian

6. Role and responsibilities of Scheme Employers

- Explanation of different types of employers
- Additional requirements for admission bodies
- Automatic Enrolment
- Deduction and payment of contributions
- Special contributions
- Employer decisions and discretions
- Redundancies and restructuring (including the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006)
- TUPE and outsourcing (including Fair Deal and the Best Value Authorities Staff Transfers (Pensions) Direction 2007)

7. Tax and Contracting Out

- Finance Act 2004
- Role of HMRC
- Registration
- Role of 'scheme administrator'
- Tax relief on contributions
- Taxation of benefits
- Annual and lifetime allowances
- Member protections
- National Insurance
- Contracting out (Pensions Scheme Act 1993)
- Impact of abolition of contracting out in 2016

- VAT and investments

8. Role of advisors and key persons

- Officers of the Administering Authority
- Fund actuary
- Auditor
- Lawyers
- Investment managers
- Custodians
- Administrators – in house v. third party
- Procurement of services
- Contracts with third parties

9. Key Bodies connected to the LGPS

An understanding of the roles and powers of:

- Courts
- Financial Services Authority
- HMRC
- Information Commissioner
- Pensions Advisory Service
- Pensions Ombudsman
- The Pensions Regulator (including powers in relation to Local Pension Boards)