

# County Council

25 February 2015



## The Requirement to Set Up a Local Pension Board

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**Report of the Corporate Management Team**  
**Don McLure, Corporate Director, Resources**  
**Councillor Simon Henig, Leader of Durham County Council**  
**Councillor Alan Napier, Cabinet Portfolio Holder for Finance.**

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### Purpose of the Report

- 1 The purpose of the report is to:
  - advise Council of the need for it to establish as Administering Authority for the Durham County Council Pension Fund a Local Pension Board ("LPB");
  - advise Council of the recommendations of the Constitution Working Group ("CWG") in relation to the LPB; and
  - invite Council to agree to the establishment of the Board and to adopt the recommendations of the CWG.

### Background

- 2 The Local Government Pension Scheme (LGPS) is a statutory funded public service pension scheme. Prior to these 1 April 2015 changes, the LGPS has had a relatively simple governance structure involving the Secretary of State and each 'Administering Authority'.
- 3 Administering Authorities are responsible for managing and administering the LGPS in relation to any person for which it is the appropriate administering authority under the LGPS Scheme Regulations. Durham County Council is the administering authority for the Durham County Council Pension Fund.
- 4 The Local Government Pension Scheme (Amendment) (Governance) Regulations 2015 (SI 2015/57) have been laid before Parliament. The regulations establish a national scheme advisory board and set out the requirements for each LGPS administering authority to establish a local pension board (LPB) by 1 April 2015. The majority of the provisions came into force on 20 February 2015 allowing administering authorities to establish a LPB by 1 April 2015, as required by the Public Service Pensions Act 2013.

- 5 Durham County Council will need to approve the establishment of the Board; its composition and its terms of reference. Guidance [*Local Government Pension Scheme: Guidance on the Creation and Operation of Local Pension Boards in England and Wales*] ["The Guidance"] states that the Council does not necessarily have to have a fully operational pension board by 1 April, but it is anticipated that the Board should be operational within four months of this date.
- 6 The LPB will need to comply with the Local Government Pension Scheme (Amendment) Regulations and the Local Government Pensions Scheme (Amendment) (Governance) Regulations: Better Governance and Improved Accountability in Local Government Pension Scheme (the Regulations)
- 7 On the 26 January 2015, the Constitution Working Group was invited to make recommendations to Council on the following issues:-
  - (a) Who should establish the Board and be responsible for its recruitment?
  - (b) The composition of the Board;
  - (c) The manner of recruitment of the members of the Board;
  - (d) The terms of reference of the Board; and
  - (e) Whether allowances should be paid to Board members.

### **The Purpose of the LPB**

- 8 The LPB will be part of the new governance structure. Under Section 2 of the Public Service Pensions Act 2013 (the Act), each pension scheme must have a 'responsible authority' which is the person who may make regulations for the running of that scheme. The responsible authority of the LGPS is the Secretary of State.
- 9 Section 4 of the Act requires that the scheme should have a scheme manager who is responsible for managing or administering the scheme. In the case of the LGPS, the scheme managers are the Administering Authorities. Durham County Council is therefore a scheme manager. It is responsible for maintaining and investing its own fund and for making decisions relating to its operation.
- 10 Section 5 of the Act requires regulations to provide for the establishment of a Board with responsibility for assisting the scheme managers. This has resulted in a requirement for a LPB for each fund. The regulations then state that the LPB has the responsibility for assisting the administering authority to secure compliance:-
  - with the Regulations;
  - with other legislation relating to the governance and administration of the LGPS; and
  - with the requirements imposed by the Regulator in relation to the LGPS.

It also has the responsibility for ensuring the effective and efficient governance and administration of the LGPS.

- 11 The Guidance gives the opinion that assisting and administering the authority shall be interpreted as helping the administering authority, including doing work requested by it. The LPB does not, however, replace the administering authority or make decisions. It must comprise of representatives of employers and scheme members.

### **Who Can and Cannot Be Members of the LPB?**

- 12 In the Guidance, Authorities are advised that it is important that the methodology for appointment of members of the LPB ensures that representative Board members are truly representative. All employers and members within a fund must have equal opportunity to be nominated for the role of employer or member representative through an open and transparent process.
- 13 The regulations require the administering authority to ensure that any person it wishes to appoint as an employer or member representative has the capacity to represent the employers or members (as appropriate) of the fund. Examples of relevant experience include, being a member of the LGPS or being a member or a trustee of a private sector defined benefit pension scheme.
- 14 Members of the Board should not have a conflict of interest. A conflict of interest will not arise merely by virtue of membership of the LGPS.
- 15 An individual's ability to properly represent the interests of employers or members (as appropriate) and channel information back to them effectively is described as a key factor in selecting members of the LPB.
- 16 The administering authority may also recruit people to the LPB other than employer or member representatives, but the number must be less than the total of employer and member representatives.
- 17 No officer or elected member of the administering authority who is responsible for the discharge of any function under the LGPS Regulations 2013 may be a member of the LPB.

### **Can the LPB be the Pension Fund Committee?**

- 18 Where an Administering Authority discharges its pension functions through a committee, as is the case with this Council, it can, with the approval of the Secretary of State, appoint the existing committee as the LPB.
- 19 The guidance acknowledges that whilst at first sight, combining the functions of the LPB and Pension Fund Committee may seem attractive, it will however,

in practice, be difficult to meet the requirements of the 1972 Local Government Act relating to a committee which is also a LPB.

- 20 Under the 1972 Act there is a general proposition that co-opted members do not have voting rights. Section 102(3) restricts non-elected membership to committee responsible for regulating or controlling the finances of a local authority. The guidance also reminds authorities that the Secretary of State's approval needs to be obtained and it may be given subject to such conditions as the Secretary of State thinks fit. There remains uncertainty about the likely conditions that could be attached, or the circumstances in which the Secretary of State approval will be granted.
- 21 The guidance concludes that if the LPB is to be a pension committee, it is difficult to see how the LPB could effectively and objectively fulfil its statutory function of assisting itself (as the pension committee) to secure compliance with the law and ensure effective and efficient governance and administration of the LGPS. In addition to these considerations, there is limited time in which to implement this legislation and this report is therefore based upon the proposition that the LPB will not be the Pension Fund Committee in this Council and that the issues that Council is being asked to address are for the establishment of a LPB that is separate from the Pension Fund Committee.

#### **Who Should Establish the LPB and be Responsible for its Recruitment?**

- 22 The responsibility for establishing the LPB lies with the administering authority. Its establishment is not optional. In this Council, the existing pension functions are delegated mainly to the Pension Fund Committee but also with delegations as contained in the Constitution to the Corporate Director Resources. Council will need to consider whether the establishment of the LPB and the appointment of its members should be a function undertaken by Council, or by the Pension Fund Committee or by the Corporate Director Resources.
- 23 At its meeting on the 26 January 2015, CWG agreed to recommend to Council that Council approve the establishment of the LPB, even though it may recommend that other aspects be delegated to the Pension Fund Committee or an officer.
- 24 This Council, with its composition of 126 Members, has delegated recruitment exercises for external persons required to assist in its functions (for example, the Independent Persons in relation to standards; members of the Independent Remuneration Panel) to either committees or by an officer in consultation with a key member. Council may consider the recruitment of the LPB to be suitable for similar arrangements.
- 25 On the 26 January 2015, CWG considered whether the recruitment should be carried out by the Pension Fund Committee or by an officer and considered the following:-
  - Elected Member accountability;

- logistical issues of ensuring a consistent short listing and interview panel;
- the time limits involved in implementing this obligation; and
- the fact that there are a number of tasks, referred to in the closing paragraphs of this report, which will need to be done in order to ensure that the LPB is ready for operation and in the interests of the efficient dispatch of business, delegation of that work either to a committee or to an officer in consultation with a key member, would enable work to be dealt with between council meetings.

26 Having considered this issue, CWG agreed to recommend to Council that recruitment of the members of the panel be delegated to the Corporate Director Resources in consultation with members of the Pension Fund Committee.

### **Composition of the LPB**

27 The LPB must include an equal number of employer and member representatives with a minimum requirement of no less than 4 in total. It cannot include an officer or Councillor of the administering authority who is responsible for the discharge of any of the functions under the regulations. Any member of the Pension Fund Committee and the Corporate Director Resources are therefore excluded from membership.

28 When considering the size of their LPBs, councils are advised that they will need to consider a number of factors including:-

- the size of any existing governing bodies, such as an advisory panel;
- the number of scheme members and the number and size of employers within the fund and any collective arrangements in place for them to make decisions or provide input in relation to fund matters;
- the cost of establishing and operating the LPB; and
- the existence or proposal to form any other advisory groups.

29 At present there is very little information on what other administering authorities are proposing for the membership of their LPBs. Their proposals appear to range in size from 4 members to 9 members.

30 Nationally, Unison suggest that the more assets under management, the greater the workload. They therefore suggest:-

- 2 each for a fund below £500m in asset value;
- 3 each in any fund above £500m to £3bn in asset value;

- 4 each in any fund between £3bn and £10bn in asset value; and
- 5 each in any fund above £10bn.

The current value of the Pension Fund's assets is £2.1bn.

- 31 The options for Council to consider in relation to this issue are whether to adopt the minimum criteria of 4 members or whether to have a larger LPB.
- 32 Depending upon the arrangements proposed in relation to financing the LPB, be it by allowances or by reimbursement of expenses, a LPB comprising 4 members with the Chairman having the casting vote would be the least expensive option for the Council.
- 33 Another relevant factor militating in favour of a small LPB is the fact that it has been historically difficult to attract co-opted members to the Pension Fund Committee from employer members.
- 34 There is however concern that recruiting only the statutory minimum to the LPB creates practical problems when a member of the LPB ceases to be a member leaving the Council, albeit temporarily, with a LPB that does not meet the statutory minimum number. Additional members of the LPB allow for a suitable critical mass to lessen the likelihood of this event. Members may wish to consider a larger membership than the minimum.
- 35 Members of the LPB representing employers could be drawn from Councillors or Officers or representatives from other bodies admitted to the scheme. Member representatives could be either individual employees in the Pension Fund, Pensioners or Trade Union representatives.
- 36 A larger than statutory minimum membership on the LPB would enable there to be room for a cross section of representatives, particularly in relation to member representation where two trade unions have already expressed an interest in filling seats on the LPB. If those unions were both successful in their endeavours in this respect, there would be no further capacity for other membership. A larger membership would also provide a greater opportunity for employer representatives from employers other than this council to be represented on the Board.
- 37 Having considered these issues the decision of CWG was to recommend to Council that the LPB comprise 3 employer representatives and 3 scheme member representatives. The LPB should decide on the way they will come to decisions, including deciding on their Chairman from within the LPB members.

### **Recruitment of the Members to the LPB**

- 38 The Council has already received approaches from two unions, Unison and GMB, expressing an interest in membership of the LPB, and Unison have

submitted a suggested draft constitution which provides that membership of the LPB should consist of equal numbers of trade union representatives and employer representatives.

- 39 Council is, however, referred to the advice given in the guidance in the shadow scheme advisory board public consultation, a summary of which is included under the heading in this report “who can and cannot be members of the LPB?”. Whilst it is highly likely that the trade unions should be able to produce representatives who are eminently suitable to represent members, CWG accepted officer opinion that limiting the employee representative membership to unions only, would not be following the principles of transparency which has been recommended. The group therefore agreed to recommend to Council that the recruitment of both employer and scheme member representatives should involve an open and transparent process, with advertisements placed on the Council website and employers being requested to publicise this to their employees and directing them to visit the Council’s website.

### **Terms of Reference of the LPB**

- 40 When Council establishes the LPB, it should create Terms of Reference for the LPB. These are the rules setting out how it will be constituted and operating on a day-to-day basis. Under the regulations, the LPB will have the general power to do anything which is “calculated to facilitate, or is conducive or incidental” to the discharge of its functions.
- 41 On the 26 January CWG agreed to recommend the following terms of reference for approval to Council:-

That the LPB:-

- (i) assists the Administering Authority:
  - to secure compliance with the Local Government Pension Scheme Regulations;
  - to secure compliance with other legislation relating to the governance and administration of the LGPS;
  - to secure compliance with the requirements imposed by the Regulator in relation to the LGPS; and
  - to ensure the effective and efficient governance and administration of the LGPS.
- (ii) complies with the requirements of a Constitution to be agreed by the Pension Fund Committee compliant with legislation and including the requirement to comply with a Code of Conduct; and

- (iii) Meets at the frequency set out in the Constitution.

### **Should Allowances Should Be Paid to LPB Members**

- 42 The regulations specify that the expenses of the LPB shall be regarded as part of the costs of the administration of the fund. Some of these expenses will include secretarial support, advisory support and other overheads attached to the arranging of meetings.
- 43 Consideration needs to be given to whether or not members of the LPB should be paid allowances or reimbursed expenses. There are possible options for approaching this question:-
- No payments to be made:
  - Reimbursement of travelling expenses; or
  - Payment of an allowance for each member, be it an annual or per meeting allowance.
- 44 On the 26 January 2015, CWG considered the following factors when considering this question:-
- likelihood of Board members being asked to carry out their duties (including preparation and/or training) during personal time or whether they are likely to be able to attend during authorised paid absence;
  - whether a Board member was taking on the role of Chairman and is carrying out a range of additional responsibilities that merit additional payment;
  - Arrangements currently in place for paying independent Chairs, independent persons (in relation to standards), and members of schools appeals panels which involves reimbursement of expenses rather than payment of allowances.

It agreed to recommend that the members of the LPB should not receive allowances but be reimbursed expenses at rates agreed by the Corporate Director Resources in consultation with the Leader and Deputy Leader of the Council.

### **Next Steps**

- 45 Following agreement to establish the Board, there will be a need for further work to secure the effective operation of the LPB. This includes the preparation of various constitutional documents, codes, policies and protocols including:-
- A Constitution



- A Code of Conduct
- A conflicts policy
- A policy framework to address the requirements of knowledge and understanding that applies to members
- Policies covering information security
- Training for the appointed LPB Members
- Procedures and protocols for internal reporting and escalation of serious concerns.

46 Given the short time available, CWG agreed to recommend to Council that this work is delegated to the Pension Fund Committee on the understanding that the Corporate Director Resources and the Head of Legal and Democratic Services will prepare these documents for approval by the Pension Fund Committee.

### **Recommendations and Reasons**

47 Council is asked to:-

- (a) approve the establishment of the Local Pension Board;
- (b) agree that recruitment of the members of the LPB is delegated to the Corporate Director Resources in consultation with the members of the Pension Fund Committee;
- (c) agree that the recruitment of both employer and scheme member representatives should involve an open and transparent process, with advertisements placed on the Council's website and employers being requested to publicise this to their employees and directing them to visit the Council's website.
- (d) Agree that the terms of reference state that the LPB:-
  - (iv) assists the Administering Authority:-
    - to secure compliance with the Local Government Pension Scheme Regulations;
    - to secure compliance with other legislation relating to the governance and administration of the LGPS;
    - to secure compliance with the requirements imposed by the Regulator in relation to the LGPS;

- to ensure the effective and efficient governance and administration of the LGPS.
- (v) complies with the requirements of a Constitution to be agreed by the Pension Fund Committee compliant with legislation and including the requirement to comply with a Code of Conduct;
- (vi) meets at the frequency set out in the Constitution;
- (e) that the members of the LPB should not receive allowances but be reimbursed expenses at rates agreed by the Corporate Director of Resources in consultation with the Leader and Deputy Leader of the Council.
- (f) Make a recommendation to Council that the establishment of constitutional documents, codes, policies, plans, frameworks and protocols connected with the establishment and operation of the LPB be delegated to the Pension Fund Committee on the understanding that the Corporate Director Resources and the Head of Legal and Democratic Services will prepare them for approval by the Committee.

## **Background Papers**

- 48 Local Government Pension Scheme: Guidance on the creation and operation of Local Pension Boards in England and Wales.

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| <b>Contact:</b> | <b>Colette Longbottom</b> | <b>Tel: 03000 269 732</b> |
|                 | <b>Hilary Appleton</b>    | <b>Tel: 03000 266 239</b> |

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## **Appendix 1: Implications**

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**Finance** - Costs of the Local Pension Board's administration will be met from the Pension Fund, the amounts involved will be a result of the constituents and work of the Local Pension Board.

**Staffing** – There will be a requirement for extra work by staff to train and administer the Board.

**Risk** –The failure to establish the Local Pension Board or not having a Local Pension Board that functions properly range from being reported to the Regulator, being found to have acted unlawfully in any legal challenge and having adverse findings made by those responsible for audit.

**Equality and Diversity / Public Sector Equality Duty** – The recruitment of the panel will need to comply with the Council's equality duty and also be an open and transparent process.

**Accommodation** – There will need to be a room made available for the meetings.

**Crime and Disorder** – none specific in this report.

**Human Rights** – none specific in this report.

**Consultation** – none specific in this report.

**Procurement** - none specific in this report.

**Legal Implications** – within the body of the report.