

Pension Fund Committee

4 March 2015



The Requirement to set up a Local Pension Board

Don McLure, Corporate Director Resources

Purpose of the Report

- 1 To inform Members of the need to establish a Local Pension Board (the Board) and to seek approval of the Terms of Reference for the Board.

Background

- 2 The Local Government Pension Scheme (Amendment) (Governance) Regulations 2015 (SI 2015/57) establish a national scheme advisory board and set out the requirements for each local government pension scheme authority (LGPS) to establish a local pension board by 1 April 2015. The majority of the provisions came into force on 20 February 2015 allowing administering authorities to establish a Board by 1 April 2015.
- 3 Durham County Council, as Administering Authority needs 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.
- 4 A report to was taken to County Council on 25 February to approve the recommendations of the Constitution Working Group which considered the options for the establishment of a Board. The report is attached at Appendix 1.

The Purpose of a Local Pension Board

- 5 The Public Services Pensions Act 2013 requires regulations to establish a board with responsibility to assist scheme managers. Administering Authorities are scheme managers.
- 6 The regulations state that the Board has the responsibility 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.

- 7 Assisting the administering authority is interpreted as helping the administering authority, including doing work requested by it. The Board does not, however, replace the administering authority or make decisions. It must comprise of representatives of employers and scheme members.

Delegations to the Pension Fund Committee

- 8 If the County Council approves the report on 25 February and establishes a Board, certain actions will be carried out via the Pension Fund Committee. The County Council Report recommends that:

- the recruitment of the members of the Board is delegated to the Corporate Director Resources in consultation with the members of the Pension Fund Committee.

This 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.

- the establishment of constitutional documents, codes, policies, plans, frameworks and protocols connected with the establishment and operation of the Board 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.

- 9 As the Council has empowered the Pension Fund Committee to establish the documents etc. connected with the establishment and operation of the Board, this has been added into the Pension Fund's Terms of Reference.

Terms of Reference for the Local Pension Board

- 10 In line with the recommendation to County Council, Terms of Reference have been drafted for the Board. These are attached at Appendix 2.
- 11 The Terms of Reference are based upon a template provided by the Shadow Scheme Advisory Board and have been amended to refer to the Council's Constitution and policies being applicable to the Board rather than providing a separate Constitution.

- 12 Examples of core functions of the Board have also been removed to allow the first meeting of the Board to decide on its focus and give it flexibility to devise its own work plan.

Recommendations

- 13 Members are asked to :
- Note the contents of the County Council report establishing the Local Pension Board, and
 - Approve the Terms of Reference for the Local Pension Board.

Background Papers

- (a) Local Government Pension Scheme (England and Wales) new governance arrangements - Discussion Paper
- (b) The Local Government Pension Scheme (Amendment) Regulations 2014 – Draft Regulations on Scheme Governance
- (c) Aon Hewitt – Governance Spotlight – June 2014
- (d) Pension Fund Committee – 11 September 2014 - Pension Boards - Draft LGPS Regulations on Scheme Governance
- (e) Local Government Pension Scheme: Guidance on the creation and operation of Local Pension Boards in England and Wales.

County Council

25 February 2015

The Requirement to Set Up a Local Pension Board



**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.**

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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Appendix 1: Implications

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.

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

.....
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)