

20 August 2013

Chris Megainey
Department for Communities and Local Government
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Eland House
Bressenden Place
London
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Dear Chris

Scheme Governance Discussion Paper

Further to the scheme governance discussion paper issued on 20 June 2013, in which you sought comments regarding how the Department might incorporate the governance provisions of the Public Service Pensions Act 2013 in the governance arrangements for LGPS 2014.

As you know, CIPFA, via the Pensions Panel, has long had an interest in the governance arrangements in the LGPS and has over the years provided guidance to LGPS practitioners on various aspects of the governance framework, including knowledge and skills, risk management and investment decision-making. Consequently we have a strong professional interest in how the requirements of the Public Service Pensions Act 2013 will impact upon LGPS governance.

Our overall conclusion is that wherever possible, the regulations should avoid over-prescription and should aim to allow funds the maximum possible flexibility to implement the requirements of the Public Service Pensions Act in such a way that suits their own local circumstances. This would follow the well-established and successful model for pension fund decision-making bodies in the LGPS, where individual funds can structure their governance arrangements according to local determinants.

As requested in the consultation document we have provided comments in response to the specific questions posed in your letter in the attached Annex.

I hope these comments are a useful contribution to DCLG's consideration of the implications for the LGPS of the governance requirements of the Public Service Pensions Act 2013. As ever, if you would like to discuss further any of the points raised, please do not hesitate to contact CIPFA via the Pensions Panel Secretary, Nigel Keogh, at nigel.keogh@cipfa.org.

Yours sincerely

Bob Summers
Chair, CIPFA Pensions Panel



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Annex A

Q1. What period, after new governance regulations are on the statute book, should be given for scheme managers/administering authorities to set up and implement local pension boards?

Funds are currently experiencing a significant workload with the implementation of LGPS 2014, dealing with the outcomes of the 2013 valuation and responding to, and potentially acting upon, proposals for structural reform in the LGPS. Given that funds will be approaching this from different starting points in terms of current governance arrangements, and given the potential timescales and resources involved in the selection, appointment and training of suitable employer and employee representatives, we would suggest that the regulations for local pensions boards take effect from 1 April 2015. However we would encourage early adoption for those funds that are in a position to do so.

Q2. How long after new governance regulations are on the statute book should the national scheme advisory board become operational?

A great deal of work has already been done to establish a shadow national LGPS scheme advisory board. The shadow board is now operational and is well-placed to move from shadow to full operational status from 1 April 2014, providing that the necessary regulations are in place.

Q3. Please give details of any such "connected" scheme that you are aware of.

We are not aware of any other scheme that meets the criteria as set out in the Public Service Pensions Act 2013 as being a connected scheme.

Q4. Are there any schemes connected to the main Local Government Pension Scheme, other than an injury or compensation scheme, that the new Scheme regulations will need to refer to in setting out the responsibilities of scheme managers?

We are not aware of any other scheme that meets the criteria as set out in the Public Service Pensions Act 2013 as being a connected scheme.

Q5. What "other matters", if any, should we include in Scheme regulations to add to the role of local pension boards?

In considering whether any "other matters" should be set out specifically in Scheme regulations with regard to the role of the pensions board, it should be borne in mind that the Public Service Pensions Act requirements are in many areas drafted with the central government/unfunded schemes clearly in mind and this is one example.

In those schemes there is little in the way of pre-existing statutory governance or reporting requirements (beyond annual accounting requirements). There is therefore a case for the pensions board to have the flexibility to look at matters outside the confines of Regulations 5(2a) and 5(2b), although these in themselves are fairly broadly drawn.

The same lack of statutory scrutiny cannot be said of the LGPS where there are existing requirements for reporting on governance compliance, pensions administration, funding strategy, investment principles, communications strategy etc.

Given the nexus of governance in the LGPS which comprises pensions committees, DCLG, the Scheme Advisory Board, the Policy Review Group, professional codes of practice and, from 2015, Pensions Regulator, we are not minded to suggest any extension to the role of pensions boards at this time. However DCLG may wish to include in the scheme regulations powers for it to add to the role of the pensions board should any gaps in the scrutiny framework become apparent that the pensions board may be in a position to fill.

Q6. Should Scheme regulations make it clear that nobody with a conflict of interest, as defined, may be appointed to or sit on a pension board?

The Public Service Pensions Act already requires that the scheme manager (in the case of the LGPS, the administering authority) take steps to manage conflicts of interest in respect of persons appointed to a pension board.

We see no particular difficulty in the scheme regulations reiterating this requirement. However this should be supported by guidance to administering authorities on identifying and managing conflicts of interest which expands upon that given in the Public Service Pensions Act at Regulation 5(5). For example section 151 officers have a key role to play in both the management of the fund and the management of the administering authority's finances, and in view of this and other pressures, the Panel is already committed to issuing guidance on managing conflicts of interest in the LGPS.

Q7. Should Scheme regulations prescribe the type of information that may be "reasonably required"?

Prescribing the information required in regulation may prove unwieldy. DCLG will need to strike a balance between the defined information requirements that are:

- not too limiting to the steps that the administering authority feels are necessary to fulfil their duties under the Public Service Pensions Act, and;
- information requirements that are over-burdensome on both prospective pension board member and administering authority.

Consequently we feel that this is an area that is best left to the discretion of the administering authority supported by the guidance mentioned.

Q8. Although not required by the Act, should Scheme regulations prescribe a minimum number of employer and employee representatives?

The Public Service Pensions Act does not set a minimum level of employer and employee representatives and we believe that DCLG should avoid prescribing a minimum in scheme regulations. As a general principle, the Panel feels that wherever possible the Scheme regulations regarding pensions boards should avoid too great a level of prescription and that administering authorities should have the maximum possible flexibility to implement the requirements of the Public Service Pensions Act in such a way that suits their own local circumstances.

Clearly in order to accommodate the different member and employer constituencies, more than one representative on each side will be required. However funds should be free to determine their own membership levels based upon local circumstances. To impose a minimum number may place an unnecessary burden on funds where employer/employee participation is limited or difficult to secure. It may also artificially inflate the training requirements and associated costs imposed upon an authority where a minimum number of members is set above that that the authority deems that it requires to discharge the role of the pensions board.

Q9. Should the new Scheme regulations require local pension boards to be a body separate from the statutory committee or for it to be combined as a single body?

The Public Service Pensions Act permits DCLG to draft scheme regulations in such a way as to allow the pensions committee to take on the role of the board. However principles of good governance would suggest that the roles of decision-making and scrutiny should be formally separated. The regulations should therefore require such separation.

However, as above, this is an area where we feel the detailed arrangements for discharging the responsibilities of the pensions board as set out in the Public Service Pensions Act would be most effectively be determined at local level. Many funds have existing scrutiny arrangements and should have the latitude to amend these to meet the requirements of the Public Service Pensions Act.

Q10. Apart from what is required under the Act, what other elements of local pension boards should be set out in the new Scheme regulations?

Q11. Apart from what is required under the Act, what other elements of local pension boards should be left to local determination?

Again, this is an area we feel should be left to local discretion (subject to the comments at Question 13). Whilst the existing requirements of the Public Service Pensions Act are sufficiently broadly drawn to allow funds to draw up wide-ranging terms of reference for their pensions boards, it would be helpful if the scheme regulations permitted the

inclusion of other functions within those terms of reference, should the fund deem it necessary.

Q12. Should the new Scheme regulations prevent any incumbent scheme member representative being moved from a statutory committee to the local pension board (if the committee and the board are not one and the same body)?

We believe that any restriction on how funds manage the process of setting up their local pensions board, including how employer and employee representatives are selected, would limit the ability of funds to implement the requirements of the Public Service Pensions Act.

As noted in response to Question 8, such restrictions may place an unnecessary burden on funds where employer/employee participation is limited or difficult to secure. It may also artificially inflate the training requirements and associated costs imposed upon an authority.

Q13. Should the new Scheme regulations include a requirement for each local pension board to publish an annual statement of its work and for this to be sent to the relevant scheme manager, all scheme employers, the scheme advisory board and Pensions Regulator?

The CIPFA Pensions Panel would support the inclusion of such a requirement, supported by appropriate statutory guidance.

Q14. Apart from the training and qualification criteria that may be covered by the Pensions Regulator in a code of practice, are there any specific issues that we should aim to cover in the new Scheme regulations as well?

Beyond the existing CIPFA Code of Practice on Knowledge and Skills and whatever knowledge and skills requirements the Pensions Regulator may introduce in respect of pensions boards members, we do not believe that there are any further criteria that need be set down in regulation.

Q15. Should Scheme regulations simply replicate the wording of the Act? If not, what specific areas of work should the new Scheme regulations prescribe?

We would agree that the wording in the Public Service Pensions Act is sufficiently broad as to allow the Scheme Advisory Board to develop its own remit and allow this to evolve over time. Seeking to more tightly define the role of the Board in scheme regulations may in the medium to long term prove limiting and would require regulatory intervention to keep aligned with the evolving role of the Board.

Q16. Should Scheme regulations include a general provision enabling the scheme advisory board to advise the Secretary of State on the desirability of changes to the Scheme as and when deemed necessary?

Q17. Are there any specific areas of advice that Scheme regulations should prohibit the scheme advisory board from giving?

We believe that it is a primary responsibility of the Scheme Advisory Board to advise the Secretary of State on matters that it deems necessary. This may be on the need for scheme changes but also on matters where the Board feels the Secretary of State should intervene. Consequently our preference would be that scheme regulations do not seek to limit those areas upon which, or instances when, the Board should provide such advice.

Q18. What options (if any other, please describe) would be your preference for establishing membership of the scheme advisory board?

The working group that has overseen the establishment of the Shadow Scheme Advisory Board has been through an exhaustive process, in consultation with scheme stakeholders, to determine the constitution of the Board and the manner of appointment of board members. We would therefore suggest that this be carried forward when the Board goes live.

Q19. Should Scheme regulations require the Secretary of State to approve any recommendation made for the position of Chair?

Q20. Should Scheme regulations prescribe tenure of office? If so, what should the maximum period of office be and should this also apply to the Chair of the board?

The selection of the Chair will be critical in ensuring that the Board enjoys the confidence and respect of all scheme stakeholders and Secretary of State approval of the chair will help to imbue the role with the necessary status. We would therefore support scheme regulations requiring Secretary of State approval and powers to remove (in prescribed circumstances – see Question 21). The regulations should also stipulate length of tenure. As certain elements of the work of the Board will be driven by the outcome of fund triennial valuations, we would suggest a minimum three year term. However DCLG might wish to consider tying the length of tenure in with the electoral cycle which would suggest a slightly longer period. For Board members we suggest that this be reserved for the Board to determine within its own terms of reference.

Q21. Should Scheme regulations make provision for board members, including the Chair, to be removed in prescribed circumstances, for example, for failing to attend a minimum number of meetings per annum? If so, who should be responsible for removing members and in what circumstances (other than where a conflict of interest has arisen) should removal be sought?

Q22. Should Scheme regulations prescribe a minimum number of meetings in each year? If so, how many?

Q23. Should Scheme regulations prescribe the number of attendees for the board to be quorate? If so, how many or what percentage of the board's membership should be required to be in attendance?

Q24. Rather than make specific provision in Scheme regulations, should the matters discussed at Q19 to Q23 be left as matters for the scheme advisory board itself to consider and determine?

We believe that these matters of procedural detail should be left for the Board to consider and determine.

Q25. Should the scheme advisory board be funded by a voluntary subscription or mandatory levy on all Scheme pension fund authorities?

We agree with the analysis set out in the discussion paper that one risk associated with associated with a voluntary subscription is that the board's agenda and workplans would be subject to an uncertain level of funding, dependent on whether or not individual fund authorities considered the work of the board to represent good value for money. A further risk with a voluntary regime is that funds may regard participation in the Board's work and compliance with its recommendations equally voluntary.

The mandatory levy would not only give the board the financial certainty that it would need to be able to discharge its functions but also reinforce its legitimacy to act across all LGPS funds.

Q26. What would be your preferred manner of legal constitution of the scheme advisory board and how should Scheme regulations deal with the issue of personal liability protection for board members?

The Panel has no particular preference regarding the legal constitution of the Board but is clear that there should be no personal liability issues for its members on the grounds that they are volunteers and are not undertaking the role in a commercial capacity.