

LGPS interests in England and Wales

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**Dear Colleague,**

## **LOCAL GOVERNMENT PENSION SCHEME**

1. Local Government Pension Scheme interests in England and Wales are familiar with the consistent approach taken by the Government for some time on the question of representation and Scheme member involvement in and around the decision cycle of the Scheme's operation, and particularly the governance of its pension funds.

### **Background**

2. The management and investment of the Scheme's pension funds' assets remains at the highest standard, both in terms of overall legal compliance with the extant regulatory framework and with published departmental statutory guidance. To maintain that important high, transparent standard, Ministers have requested that informal soundings now be taken with Scheme interests to consider the scope for any further initiatives which could reinforce both the important progress which has already been made on extending representation and standards of governance, and whether and how best to extend it.

3. This letter, therefore, reminds Local Government Pension Scheme administering authorities in England and Wales of:-

- the current statutory position regarding their responsibilities for the management and investment of their pension funds (paragraphs 5 - 8);
- the extent and purpose of existing statutory guidance, including its principal messages (paragraphs 9 – 10),
- the current extent of compliance with the extant guidance issued in October 2008, (paragraphs 11 - 14); and

**requests that authorities, in continuing to act responsibly and constructively within the above framework, consider the best means of extending their already high levels of member and other non-elected stakeholders' participation and active involvement in the governance of the existing regulatory framework.**

4. Responses are requested no later than 30 September 2009.

#### **Current statutory framework and responses from administering authorities**

5. Elected councillors have comprehensive legal responsibilities for the prudent and effective stewardship of LGPS funds and, in more general terms, have a clear fiduciary duty regarding the performance of these functions. Although there is no one single model in operation throughout the 89 LGPS fund authorities in England and Wales, most funds are managed by a formal committee representing the political balance of that particular administering authority. Under section 101 of the Local Government Act 1972, a local authority can delegate their pension investment functions to the Council, committees, sub-committees or officers, but there are a small number of LGPS fund authorities which are legally not local authorities and who therefore have their own arrangements.
6. Under section 102 of the Local Government Act 1972, it is for the appointing council to decide upon the number of members of a committee and their terms of office. They may include committee members who are not members of the appointing council and such members may be given voting rights by virtue of section 13 of the Local Government and Housing Act 1989. On this basis, it is open to pension committees to include representatives from district councils as voting members on the committee, and also to include trade union and other lay member representatives, with or without voting rights, provided that they are eligible to be committee members. The eligibility rules are set out in section 15 of the Local Government and Housing Act 1989.

7. Although administering authorities with responsibilities for LGPS pension funds are able to delegate functions to individual officers of the authority, to sub or joint – committees, or to authorised external fund managers, it is the case that policy and final investment decisions and general stewardship of the fund sit with the main pensions or investment committee. Under the Local Government Pension Scheme (Management and Investment of Funds) Regulations 1998 (as amended), decision-making committees must have regard to a wide range of statutory responsibilities, including:-
- except where investments are managed in-house, the duty to appoint one or more authorised investment managers to manage and invest monies on their benefit;
  - to take proper advice in making investment decisions;
  - to invest monies in a wide variety of investments;
  - to have regard to the suitability of investments;
  - to ensure that investments comply with the authority’s Statement of Investment Principles (SIP);
  - to monitor and review external investment manager’s performance;
  - to ensure that investments fall within the prescribed limits; and
  - to prepare, publish and maintain the authority’s SIP (including Myners’ compliance statement); Funding Strategy Statements (FSS); Pension Fund Annual Report (with effect from December 2009); Communications Policy Statement and Governance Compliance Statement.
8. In addition to these core statutory responsibilities, LGPS pension fund administering authorities are also subject to general local government law on the way in which they conduct their affairs; to manage potential areas of conflict; and to exercise their duty of care to those who bear the financial and investment risks of the Scheme. Pension fund authorities also bear a responsibility, on behalf of scheme members and beneficiaries, to ensure that the Scheme is managed effectively and efficiently on their behalf. In more general terms, authorities are responsible for a wide range of important decisions relating to the management and actuarial valuation of LGPS funds under part 4 of the Local Government Pension Scheme (Administration) Regulations 2008 (as amended).

### **The Extent and Purpose of Governance Statutory Guidance**

9. Following a previous governance initiative in 2006, statutory guidance was issued by the department to administering authorities and other stakeholders in November 2008 to assist authorities in the preparation and publication of their Governance Compliance Statements, as required by regulation 31 of The Local Government Pension Scheme (Administration) Regulations 2008 (as amended). The purpose of the exercise was to assess the extent to which each authorities’ governance arrangements measured up to best practice standards and to identify those areas where further work was necessary to ensure consistent best practice across all 89 pension fund authorities in England and Wales.

10. The best practice principles on governance, against which, authorities have now been required to measure their compliance. In particular, administering authorities are now required to measure their compliance are:-
- Structure;
  - Committee membership and representation;
  - Selection and role of lay members;
  - Training/facility time/expenses;
  - Meetings (frequency/quorum);
  - Access;
  - Scope; and
  - Publicity.

### **Governance compliance results**

11. The statutory arrangements regarding compliance measurement of governance policies and arrangements against a clear set of established best practice principles its has two purposes. First, to send out a clear policy signal as to the standard of governance expected of Scheme pension fund administering authorities and second, to identify any specific areas of weakness in specific authorities where further action may be necessary to ensure consistency across the Scheme as a whole.
12. The statements returned to the Department are comprehensive and detailed and it will be another month or so before the full results and outcomes will be available. In the meantime, it is hoped that the following summary, based on an initial review of all 89 statements, will help recipients of this letter to prepare their responses.
13. In overall terms, compliance against the nine best practice principles was significantly high, with 11 out of the 17 individual marking points scoring 80%, or higher. Particularly strong areas included Structure; Representation and Selection and the Role of Lay Members, with very welcome significant progress being made since the 2006 survey (see Annex B of the CLG Statutory Guidance issued in November 2008 in “What’s New 2008” section at <http://ww.xoq83.dial.pipex.com>). Since then, the number of pension fund authorities with no scheme member representation in their formal governance arrangements has fallen from 11 to just 3 meaning that some 96% of Scheme authorities now have some level of representation. This is a clear indication of substantive progress and LGPS administering authorities can be congratulated on the steps taken.
14. However, the picture is less positive when Training, Facility Time and Expenses are considered. Although the evidence suggests that some progress is being made in this area, there are indications that there remains a lack of clarity about where responsibility, in particular for the training of lay members, rests and a belief that formal training is regarded as a matter for elected members only. In other cases, attendance at committees is often hindered by the absence of any clear policy regarding the award of facility time, or the payment of expenses. The general conclusion to emerge is that whilst significant progress has been made in recent years to see representative governance structures in place, there is still work to be done on raising the quality of some of the associated arrangements.

## **Next steps challenge**

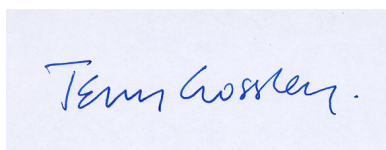
15. It would be helpful therefore, if consultees could specifically consider, what steps could be taken to achieve consistency across the Scheme to match the standards set out in the statutory guidance, especially regarding training and facility time for **all** those involved in the democratic process around LGPS stewardship. Capacity building for existing involved councillors and others is clearly important, and so too is the need to expressly extend the knowledge base of new councillor members of fund committees **as well as** existing new non-elected **and** committee participants. Several training events are available. For example, the LGE provides specific events of high quality and a number of very useful pension conferences also provide very good introductory and advanced material for elected members and other members of investment committees.
16. Part 2/F of the Department's 2008 statutory guidance sets out the need for pension fund authorities to provide some alternative method of communication and representation in those instances where scheme members were not represented on their main committee, sub-committee or advisory panel. A small number of administering authorities were unable to meet this aim. More remains to be done, therefore, to ensure that key stakeholders can be much more actively involved in the wider governance framework and particularly, where a place in the committee-structure itself has not been made available. There are some first rate local examples of such initiatives available and administering authorities may wish to consider these if they decide to explore the merits of various local options. This is a real opportunity for the well established practice of most Scheme authorities to be logically extended to the whole of the LGPS, initially at least on a voluntarily basis.
17. There is clear emerging evidence now that there should be a focus much more towards the quality of engagement with scheme member representatives and other lay members. This should help to extend the opportunities for real stakeholder involvement and, where there is already a good degree of active involvement, even to improve current standards.
18. The various surveys undertaken by the Department demonstrate that significant progress has been made in getting the right structures in place and, in the overwhelming majority of cases, ensuring that scheme members are able to take a full and active part in proceedings. This involvement is essential and to be welcomed. However, several specific areas that can be extended, as described above, have been identified. The Department now wishes to explore with Scheme interests the most appropriate ways of achieving improvements in those areas quickly and effectively.
19. There is a real opportunity now to encourage a better understanding of the Scheme among its membership, to demystify some of its structures and to explain to Scheme members and their representatives the key tenets of the Scheme, its funding, costs and benefit structure. The Scheme's operation, including aspects such as its new cost-sharing mechanism, all need very careful understanding so there are wider than simply investment issues to be brought forward.

20. Recipients in considering their response may wish to take account of the publication of the latest set of Myners' investment principles published by the government in November 2008 when considering and framing their response. The reports' principles are now being assessed by the Department to see whether and how far they need to be revised to reflect the special circumstances of the LGPS; it is hoped draft details will be published shortly.
21. **Your views are now invited on how best to take forward the next stage of work on Scheme governance designed to extend the current high standards of governance and involvement and to see where and how future improvements can be made in the interests of all stakeholders.**

## **Responses**

22. Consultees are invited, therefore, to respond by 30 September 2009 with their assessments of any further opportunities to extend current levels of participatory involvement in LGPS governance. Ministers will wish subsequently to consider how best to translate any measures and proposals for best practice and experience into either a new regulatory format, or one based on further guidance – statutory, or otherwise.
23. The Department remains very willing to discuss specific proposals with stakeholders within the timeframe of this consultation exercise. In addition, it is intended as a stimulus to future action to contact selected Scheme administering authorities to discuss their current and future policy, and how this is locally to be managed in those authorities.
24. Please send all responses to Richard McDonagh here using the following contact details: Richard McDonagh, WPP4, Zone 5/F6, Communities and Local Government, Eland House, Bressenden Place, London SW1E 5DU, or via email at [richard.mcdonagh@communities.gsi.gov.uk](mailto:richard.mcdonagh@communities.gsi.gov.uk), telephone number 020 7944 4730.

Yours sincerely,

A rectangular box containing a handwritten signature in blue ink that reads "TBJ Crossley".

TBJ CROSSLEY