



Scheme governance discussion paper
Department for Communities & Local Government
Zone 5/G6
Elland House
Bressenden Place
London, SW1E 5DU

Direct Line: 0151 242-1390

Please ask for: Yvonne Caddock

Date: 30 August 2013

Dear Mr Perry

Discussion Paper- New Governance Arrangements LGPS 2014

Wirral Council is responsible for the administration of the Merseyside Pension Fund which is part of the Local Government Pension Scheme (LGPS). The Merseyside Pension Fund deals with the LGPS pension administration and investments on behalf of the 5 Merseyside District Councils, and over 130 other employers on Merseyside and elsewhere throughout the UK.

The Fund has over 44,500 active contributing members, 44,700 pensioners and 34,500 deferred pensioners. It is responsible for the investment and accounting for a pension fund of £5.6 billion.

I would be grateful if you would consider the following comments in relation to the paper on the new governance arrangements required for the impending 2014 Local Government Pension Scheme.

Comments on Questions Posed

"Timing"

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?

The setting up of new boards requires a significant change to the constitution of the Council and also requires the need to consider who can be co-opted and/or appointed to these boards following an appropriate selection process. The specific skills set required of board members may limit the pool of potential candidates.

As the main focus of the Fund's efforts and resources will be towards the implementation of the new benefit structure, the introduction of local pension boards prior to the legislative date of April 2015 will be extremely challenging and unwelcome.

The time consuming exercise of amending constitutions within the civic calendar, in addition to finding, selecting and nominating employer and scheme member representatives, would mean that an early implementation date would be unrealistic.

In addition, the Public Service Act does not regulate for the oversight role of the Pension Regulator to take effect until April 2015. As a key remit of the pension board is to comply with the regulator's guidance, it would appear appropriate that the creation of the board should coincide with the date of the regulator's active involvement with the LGPS.

Due to the current 'Call for Evidence' on the future structure of LGPS funds it would appear more sensible to understand the outcome of the intended strategy before prescribing changes to the current governance arrangements . Thereafter it would be necessary for a lead in period of at least 12 months to allow administering authorities to become fully compliant with both the technical and governance regulations.

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

As the work of the Shadow Scheme Advisory Board will be useful to shape the Statutory Scheme Advisory Board It would appear appropriate for the former to be functioning for a period of 12 to 18 months embedding its remit and structure before the Statutory Board becomes operational.

“Responsible authority” & “Scheme manager”

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

Not aware of any “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?

Not aware of any “connected” scheme .

“Pension Boards”

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

The role of the local Board is to act as a scrutiny function and not to be involved at the decision making stage. It should therefore perhaps be left to each local board to decide how it fulfils that role within the parameters of the regulations and which matters it wishes to consider. It is imperative however that the local Board should ensure that all the policies and statements that are in place are current and are being referred to in the decision making process.

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?

This may act as a barrier and may be better mandated with the requirement for a conflict of interest policy to be published that sets out how any conflict will be managed and an agreed definition of what amounts to a conflict of interest.

The focus should be on identifying when there is a potential for conflict in relation to an individual situation and where that conflict cannot be adequately managed.

It would be of benefit to funds for appropriate statutory guidance to be issued on how conflicts of interest should be managed.

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

It would be helpful to have guidance or legislation that demonstrates the role and responsibilities of the Pension Board members. This could highlight that the fact they are representatives of a particular group should not influence their execution of the role, with guidance serving to clarify the key objectives that the Pension Boards are set to achieve.

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

Many Administering Authorities will have already experienced the arduous task of appointing employer and or scheme member representatives to existing committees. This can be a challenge due to :

- Apathy amongst stakeholders in smaller funds;
- Larger funds may have so many employers it is difficult to fairly restrict numbers.

The requirement for equal numbers of employer and member representatives, as introduced by the Public Service Pensions Act, will lead to a continuing struggle. In short, prescribing numbers in LGPS Regulations would create difficulties for Administering Authorities. The concept of a proportionately sized board relative to the size of the local fund may hold merit or a recommended minimum number with the need for a fund to comply or explain a lower variance.

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?

There remains a concern amongst Administering Authorities that local pension boards will create another level of governance which isn't strictly required should the Local Authority have robust governance arrangements in place. If good governance arrangements are already in place then there may not be the requirement for a separate local pension board.

However, it is evident that it is difficult for a committee to self scrutinise and that an independent view may be required, which could be achieved through the use of professional advisors. Therefore, in this circumstance the statutory committee and the local pension board could be the same body.

We recognise that making use of professional advisors as a solution raises a constitutional issue in accordance with Section 101 and 102 of the Local Government Act - which would preclude non elected members from having voting rights in respect of financial matters relating to the Administering Authority.

Furthermore, restrictions imposed by the Public Service Pension Act will make it challenging for the scrutiny role to be carried out by an existing committee, specifically the requirement for the Pension Board to have equal numbers of employer and member representatives.

Good governance is about transparency, accountability, understanding and managing risk which is better suited by the separation of the two bodies with different members assigned to the Scheme Manger Committee and to the Pension Board.

Administering Authorities could consider whether a local pension board can be set up to serve a number of different funds on a regional basis as compliance issues should be the same across all Funds. This model could provide a larger pool of knowledge and allow greater potential for independent challenge and is in accordance with Hutton's recommendation for increased cooperation between LGPS funds.

However the potential of a limited number of pension boards providing the scrutiny function for all existing Funds may lead to a particular vested interest exercising undue influence.

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?

The less prescriptive the easier to administer as funds will need to consider their own particular local circumstances in compliance with the key objectives. Flexibility should be afforded to allow funds to develop their own individual approaches in establishing the board taking account of national guidance and examples of best practice.

I reiterate that best practice, bench marking and guidance are preferable to another layer of regulations which may contradict or remain silent on key aspects.

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

As it is important to enable each fund to meet the over arching requirements within the Public Service Pension Act ,in relation to the Board there should be flexibility around the range of individuals who could be appointed i.e. elected members, HR Officers, Solicitors and in relation to tenure of appointees.

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)?

This may be too restrictive as there may be a genuinely good reason to allow movement between the committee and the board as a particular member may have a particular skill set appropriate to the alternative role. It would be imperative that following any movement the Scheme Manager must ensure that an individual should not review a decision in which they were directly involved. It should also be noted that any imposed restrictions may prove detrimental and limit the availability of appropriate expertise.

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?

For transparency purposes, a statement of the local pension board's work should be available to all stakeholders and could be published as an integral part of the Fund's annual report and accounts.

This could be viewed as mandatory to allow the DCLG to be aware of the local issues that the boards are concerned with, and for the members and employers to understand the developments within the scheme and rationale for decisions.

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?

To ensure consistency amongst funds there should be a statutory requirement for funds to adhere to the code of practice and requirements to be recorded within internal compliance manuals. In addition a mandatory compliance statement could be recorded within the annual report and accounts.

“Scheme Advisory Board”

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

Initially it may prove beneficial to replicate the wording of the Act as regulatory provisions may restrict the evolution of the board. It may be advantageous not to overly prescribe the provisions relating to this board in the first set of governance regulations allowing key requirements to emerge at a later date. Amendments to the regulations can be readily made at future dates.

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?

Although it is not the intention for the Scheme Advisory Board to replace the DCLG as regulator of the LGPS, this proposal is an excellent opportunity to formalise the method in which stakeholders can provide views to the government prior to consultation and suggest areas that may require review.

The national board could provide a best practice and development forum allowing members to offer their expertise when new regulations are proposed and tighten up the drafting of regulations, avoiding unnecessary silences and errors.

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

No specific area should be excluded as long as membership of the board is appointed on a transparent basis, with appropriate expertise in all regulatory areas and a fair representation from all stakeholder groups.

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

The continuation of the membership of the shadow board would appear appropriate at the implementation date subject to a regulatory review framework.

If it is the intention that the Scheme regulations should prescribe the sectors from which members of the board are drawn this could be construed as too prescriptive, unless the board had the authority to make appropriate appointments to seek specialist advice or guidance.

In the likely event that interest to become a board member is low the regulatory bodies should contribute in an advisory capacity until the necessary expertise is acquired.

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

On the basis that two of the main features of good governance are overview and accountability it would seem appropriate that there is some form of overview by DCLG. This could involve agreeing the Chair of the Scheme Advisory Board or being satisfied that the terms of reference of the Board and its sub-committees are appropriate.

The ratification of the individual to be Chair by the Secretary of State could be important in confirming that there are no conflicts of interest relating to the individual and recognition the Government formally recognise the authority of the 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?

There should be fixed terms potentially 5 years of office to provide continuity of the scrutiny process after which a member must stand for re-election. This would allow members to acquire a high level of expertise due to the esoteric nature of the regulations and complexities of dealing with multiple asset classes.

There is an argument that the Chair's tenure should be longer due to the critical role of the Board in shaping the future of the LGPS as the Chair will be required to ensure that new members of the board understand the nature of their responsibilities. In addition, the Chair is instrumental in ensuring that the Board gains the respect of the key LGPS stakeholders at a national level.

There could be an option for the Secretary of State to remove the individual from office due to a loss of confidence as defined within the terms of reference and constitution of the Board.

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?

If members are failing to fulfil their duties it is necessary that they should be removed via motions put forward by the other members of the board with an appropriate vote taken. The appropriate circumstances should be prescribed by statutory provision but the detail and process should be determined by the board within its constitutional rules.

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

Yes to ensure the effectiveness of this board., a quarterly timetable of meetings should be prescribed per annum and the regulations should include provision for discretion to call additional meetings when necessary.

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?

Yes, two-thirds of the board should be in attendance to be quorate as the decisions taken may lead to a significant change of the Scheme affecting all stakeholders.

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?

The regulations should provide the broad outline as required by the Act with additional provisions around tenure. If the DCLG is given the authority to oversee the board then all other areas could be matters for the board as long as a fair and transparent approach is undertaken.

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

Ensuring the Board is appropriately financed is critical to its success - consequently, a mandatory levy rather than a voluntary subscription would be fairer and deliver stability allowing the board to fulfil its responsibilities. As it is expected that part of its role is to provide guidance and examples of best practice this could reduce the development work locally delivering efficiencies across all 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?

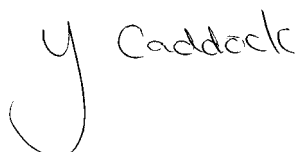
We do not have anything to contribute on this matter.

Conclusion

Merseyside Pension Fund acknowledges the necessity to improve governance standards and deliver consistency throughout all funds, although it would be desirable that the regulations are not too prescriptive to allow for the differences between LGPS funds.

However we are concerned that the establishment of local pension boards will add further cost and complexity at a time when we are focussing on cost reductions and simplification of processes. We welcome measures to ensure high standards of governance across the whole of the LGPS but believe there are simpler and better ways of achieving this objective.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J Caddock'. The signature is written in a cursive style with a large, looped initial 'J'.

Principal Pension Officer