



LGPS Governance Regulations
Department for Communities & Local Government
Zone 5/F5 Eland House
Bressenden Place
London, SW1E 5DU

Direct Line: 0151 242-1390

Please ask for: Yvonne Caddock

Date: 15 August 2014

Dear Ms Layne

Local Government Pension Scheme (Amendment) Regulations 2014 Draft Regulations on Scheme Governance

I refer to the above draft regulations issued on 23 June 2014, the invitation for comments on these and the separate policy issues raised in the consultation document. I am responding on behalf of Wirral Council in its capacity as the Administering Authority for Merseyside Pension Fund (MPF).

Merseyside Pension Fund, which is part of the Local Government Pension Scheme (LGPS), is the 5th largest of the 89 funds with assets in excess of £6.2bn. MPF undertakes the LGPS pension administration and investments on behalf of the five Merseyside district authorities and over 150 other employers on Merseyside and elsewhere within the UK. The Fund has over 127,000 active, deferred and pensioner members.

MPF fully supports the concept that effective governance of the LGPS is fundamental to the future sustainability of the scheme. To achieve this objective, MPF has already developed a robust governance framework in order to ensure that the administration and investment management of the Fund is suitably transparent and accountable to its stakeholders within defined risk parameters.

We are acutely aware that it is vital that all LGPS funds are governed to high standards, with the need for a structure that recognises the challenges ahead and able to react efficiently and effectively at the appropriate time.

This response builds upon our earlier response to the 'governance discussion paper' in August 2013. It is our belief that the draft regulations take account of the comments provided at that time, specifically the requirement to avoid rigid prescription permitting individual Funds to reflect local circumstances.

I should be grateful if you would consider the following comments which focus on the questions raised with regard to the establishment of the Scheme Advisory Board and local Pension Boards.

1/ Combined Section 101 Committee & Local Pension Board (Regulation 106(2))

MPF is of the opinion that, as the Scheme Manager function and the Pension Board exist under different primary legislation and also differ in both purpose and nature, they cannot be contained in one committee.

Even putting aside any legal obstacle, a combined body would likely weaken the effectiveness of the board's responsibility in its oversight and compliance role, without necessarily increasing the effectiveness of the Scheme Manager.

The conflicting provisions within the legal codes with regard to voting rights and employer/member representation will make it challenging for any Administering Authority to gain approval of the Secretary of State for a combined committee and pension board.

The inclusion of the potential for a combined board appears incongruous and therefore we are of the view that the regulations should explicitly require that the scheme manager function be discharged by a body separate to the pension board.

2/ Establishment of Local Pension Boards (Regulation 106(5))

The option to establish the Pension Board in accordance with Section 101 of the Local Government Act would provide a ready made set of supporting provisions. This solution is perceived as clearer, less administratively burdensome and therefore may alleviate pressures due to the challenging implementation date of 1 April 2015.

Conversely, the use of the Act appears quite restrictive, as elements in regard to voting rights and procedural matters in Constitutions and Codes of Conduct, cannot apply to a local Pension Board made up of non-elected members.

It is our understanding that the Scheme Manager role is a function and the Pension Board is a body and, as such, Section 101 cannot apply to the Pension Board.

Therefore, it is our view that the local authority provisions do not apply and all matters relating to the establishment of the board should be derived from the Public Service Pension Act 2013 and the specific LGPS Governance Regulations.

The second option within the draft regulations is our preferred approach as it allows the Administering Authority to comply with the intent of the Public Service Pension Act and affords local authorities flexibility when creating the board in relation to appointments, terms, frequency of meetings, voting rights, quorum and reporting.

The "light touch" of the draft regulations will necessitate the timely release of supporting statutory guidance, to provide direction on the extent of the board's remit in relation to specific areas; including effective management of assets and reporting responsibilities to relevant bodies if any concerns are identified.

The regulatory provision which extends the board's role to ensure the effective and efficient administration of the Schemes would benefit from clarification as to the purpose of this clause. It is our understanding that this provides the board with responsibility to undertake due diligence to ensure that decisions around investment matters and administration are informed and have been taken based on robust information and advice.

3/ Local Pension Boards: membership (Regulation 107)

The requirement for a board member to have relevant experience and capacity as a precondition of appointment would also benefit from clarification as to what merits relevant experience for employer/member representatives.

Regulation 107 (2a) prevents a councillor from being included as an employer or member representative although they are not prevented from being on the local pension board.

The Fund is of the opinion that this restriction is unnecessary as councillors are elected public officials who represent the interests of the local community who will ultimately fund the LGPS.

It would also alleviate the potential problem of sourcing appropriately qualified representatives for the local pension board. The only exclusion necessary is that councillors cannot serve on both the statutory committee and the local pension board at the same time.

Conversely, councillors who have previously served on the statutory committee should be permitted to serve on the pension board particularly as they would have knowledge of the operation of the statutory committee.

4/ Local Pension Boards: conflict of interest (Regulation 108)

Furthermore, there is a clear need for guidance around 'conflict of interests' as a literal interpretation of the requirement that there can be no conflict on appointment could prevent many possible representatives from being able to sit on the Board, due to the likelihood that some potential conflicts could eventually materialise.

A sensible approach is to ensure any conflict is appropriately managed and in circumstances where it is untenable, an individual could be removed from considering a particular agenda item.

It would be helpful if the guidance also articulates the key objectives for which all individuals sitting on the statutory committee and pension board are jointly responsible; this could be a key area of information in managing conflicts of interests.

5/ Local Pension Boards: general comment

In order to strengthen the governance arrangements of the board, given the objective of representing both employers' and members' interests within the LGPS it would seem desirable to ensure that formal arrangements are established for board members to enter into dialogue with respective stakeholders.

Statutory guidance is welcomed as a pragmatic approach which can be more easily adapted than regulatory amendments as experience emerges. A review of the board's performance and remit within a reasonable period of its introduction would appear appropriate to allow for any required changes to the statutory guidance ensuring the board is fit for purpose and meets all objectives.

National guidance is required to incorporate all the given flexibilities to clarify expected levels of acceptable practice to ensure the new governance regime is delivered consistently across the LGPS.

We are however mindful that due to time constraints to establish Pension Boards especially if full council needs to approve amendments to the constitution that the Funds will require sight of the guidance at the earliest opportunity.

6/ Funding of the Scheme Advisory Board (Regulation 113)

MPF supports the mandatory levy to fund the cost of running the Scheme Advisory Board and the proportionate basis to allow for Fund size which is both fair and transparent. Shared funding of the board by all authorities is the best way of ensuring it is properly resourced to effectively fulfil its role

However, the board should be accountable for the cost incurred to ensure that they are relevant, reasonable and proportionate which should be demonstrable by the publication of an annual review of work undertaken.

7/ Joint Pension Boards

As all Funds strive to deliver greater cost efficiencies by increased co-operation and support at all levels, the regulations should permit a Joint Pension Board covering more than one Administering Authority where there are elements of shared administration across Funds.

This would help ensure that the governance structure could be easily adapted to take account of any such arrangements as they are introduced.

8/ Annual General Meetings, Employer Forums etc.

MPF has held an annual employer conference for the past seventeen years. Well attended, it provides a forum for all employers to engage with Fund officers and the event is led by the Chair of Pensions Committee. The Pension Committee member representatives and union delegates attend on behalf of the membership and it is intended that an invitation will also be extended to Board members to strengthen member representation at future events.

It is the Fund's view that dialogue with the whole membership can be more efficiently coordinated by electronic means and individual pension surgeries.

9/ Knowledge and Understanding

The majority of Administering Authorities are fully engaged in the CIPFA Code of Conduct on Knowledge and Skills. However, it does appear unbalanced for members of Local Pension Boards to have a statutory knowledge requirement, but members of Pension Committee not to have an equivalent legal requirement.

It would appear equitable for DCLG to consider extending these requirements on Knowledge and Skills beyond the Pension Board as part of the LGPS regulations.

Conclusion

It is imperative that the roles and responsibilities of those involved in the management of the Scheme are clearly defined and understood. Furthermore, those involved will need to have sufficient knowledge, training and skills, and access to advice and information, to ensure informed decisions are taken in the best interests of all stakeholders of the Scheme.

The welcomed flexibility inherent within the regulations must be accompanied by detailed statutory guidance. This is essential to provide consistency across the LGPS and to ensure the new governance structure empowers the relevant bodies to take appropriate action at an individual Fund level.

We look forward to early sight of the statutory guidance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J. Cadden', written in a cursive style.

Principal Pension Officer