

Annex 2

Scheme Governance Discussion Paper
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LGPS New Governance Arrangements (Discussion Paper)

I am writing in response to the above discussion paper on behalf of Oxfordshire County council in its role as Administering Authority for the Oxfordshire LGPS Fund. Unfortunately due to the timing of the consultation paper it has not been possible to agree this response with the Pension Fund Committee, although this response will be included as part of their agenda pack for their meeting on 6 September 2013. The views expressed are therefore those of the officers of the Administering Authority.

We have structure this response in line with the 26 questions set out in the Discussion Paper. However question 9 regarding the separation or not of the Scheme Manager and Pension Board is a key question, and the final answer determined here will influence many of the answers to the remaining questions. Our strong view is that the role of the Scheme Manager and Pension Board should be clearly distinct (as set out under question 9 below) and our responses to the remaining questions are largely on that basis.

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

This in part will depend on the answers to subsequent questions in terms of the size, and make up of the Pension Board and the processes for agreeing appropriate representation. However, we do not see any great urgency to set up the Boards given their overall remit. Given that the new Regulations only become effective from 1 April 2014, and that the Pension regulator will not commence their formal role until April 2015, we see no reason for the Board to begin its role to ensure compliance with the Regulations/Pensions Regulator requirements until April 2015 at the earliest.

We would therefore suggest April 2015 as a target date for the setting up and implementation of Pension Boards. (n.b. In the event that the Pension Board is combined with the Scheme Manager role, we would still argue for an April 2015 target date for the setting up and implementation on the new combined body, with the existing governance arrangements remaining in place until that time.

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

In line with our responses below, we believe that the shadow scheme advisory board should simply be established as the new scheme advisory board, and as such can convert formally immediately following the enactment of the regulations.

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

Q4. Are there any scheme 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 connected schemes in this respect.

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

One of the key questions is what teeth the Pension Board will have in carrying out its role and in calling the Scheme Manager to account where it has concerns of non-compliance, or whether the Board is restricted to flagging concerns directly to the Secretary of State or Pensions Regulator as appropriate.

On a more general issue, we believe that the Board should be responsible for reviewing the general competence of the scheme manager to fulfil their role and in particular to review the skills and knowledge levels across the Scheme Manager and their advisors. The Board should have the right to seek the removal of individuals charged with undertaking the role of the Scheme Manager where they clearly do not have and are unwilling or unable to require the requisite skills and knowledge.

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?

It is difficult to determine in what circumstances any individual would have a conflict of interest in respect of all aspects of the work of a Pension Board, and would therefore need to be excluded from membership. We fully accept that there may well be occasions where individual members of the Board need to declare a specific conflict of interest and absent themselves from the discussion of the item. The circumstances which led to that specific conflict though may on other occasions be beneficial in adding to the skills and knowledge of the Board. We would therefore be against any regulatory provision to exclude membership from the Pension Board, leaving the individual members free to declare an interest on specific issues as appropriate.

Q7. Should Scheme regulations prescribe the type of information that maybe “reasonably required”?

The danger of any prescription on what constitutes information reasonable required in terms of examining a conflict of interest is that it will never be fully comprehensive, creating new arguments about whether requested information is indeed reasonably required. We would therefore prefer this to be left to the discretion Scheme Manager to determine in each individual circumstance.

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

Equally as important as a minimum number would be a maximum number to ensure that the Board both has the skills and knowledge to undertake its role whilst remaining manageable. There is a difficulty of setting both minimum and maximum numbers in isolation from questions about appropriate representation on the 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?

We believe strongly that the Pension Board must be established as a separate body from the Scheme Manager. If the basis of the Pension Board is to provide a scrutiny function of the work of the Scheme Manager and assist in securing compliance with the regulations and the requirements of the Pensions Regulator, then it needs to be sufficiently independent. We cannot see any added value to the current arrangements if the two roles are combined into a single body.

Whilst we understand the issue of cost of a new Pension Board, these need to be assessed against the value of introducing the additional level of scrutiny in the management of what are sizeable pension funds. Similar arguments could be applied to reduce the number of Scrutiny Committees in local Councils and Select committees in Parliament with a corresponding reduction in the numbers of Councillors and MPs. If the scrutiny function is deemed at important element of the overall governance arrangements (which we accept it is), then it needs to be appropriately undertaken even if it adds additional cost.

The introduction of the requirement that the Board must have equal numbers of employer and employee representatives creates an issue around the voting rights of the employee representatives. At the present time, an employee of the administering authority cannot sit as a voting member of the Pension Committee. As the administering authority is normally the largest employer in the Fund, it would not be appropriate to exclude their employees from sitting on a combined Scheme Manager/Pension Board. Further legislative changes to allow employees to sit on their own Scheme Manager Committee would therefore be required in the event that the Pensions Board was to be combined with the role of Scheme Manager. There would also need to be further changes to exclude any combined Scheme Manager/Pension Board from the current rules in respect of proportionate representation in line with the political make up of the host Council.

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?

We would agree that as far as possible, as much of the detailed workings of the local pension boards should be left for local determination, to enable the Board to reflect local circumstances. We would also argue that given the more fundamental role of the Scheme Manager in determining policy etc, it is not logical to be more prescriptive around the detailed workings of the Pension Board.

The question though is who is responsible locally for making the determination and what is the process for resolving matters of dispute particularly in terms of the size and membership of the Pension Board. Arguably, once the Board itself has been established, it can determine all other matters including frequency etc.

However, it would be useful as to have guidance about who has a right to representation on the Pension Board, and whether representation should be linked to proportion of liabilities in the Fund for example. As the number of Academy schools grows for example, should they have a right to representation on the Board.

The Scheme Manager tends to be dominated by a single employer under the law by which the statutory committees exist. To ensure proper independent challenge it would not be appropriate if the Administering Authority had the right to establish a Pension Board where again they control the majority representation. The regulations therefore should create a responsibility on the Administering Authority to create the Pension Board in accordance with separate guidance (which would aim to ensure full representation) and a mechanism for the resolution of any disputes.

The Scheme regulations should also ensure that the Pension Board has the right to call in decisions made by the Scheme Manager before such decisions are enacted. This could be achieved by a 10 day period before all decisions become actionable, during which a majority of the Pension Board can call the decision in to be reviewed.

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 do not believe it is necessary to regulate to ensure the non-removal of scheme member representatives from Scheme Manager Committees. If there is no overall regulation to cover the make-up of the Scheme Manager, and Funds are free to determine membership and voting rights as at present, then it does not appear appropriate to regulate on this single issue only. It would be hoped that having the benefit of a scheme member representative on the Scheme Manager Committee, particularly as a means to reduce the potential number of queries/call in from the Pension Board, will mean that Scheme Managers do not rush to change existing membership arrangements.

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 the Pension Regulator?

This would appear to us to be a reasonable requirement on the Board. The report should also be available on request to scheme members.

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

We have not identified any further issues that need to be covered in the regulations. We would expect the Code of Practice to be sufficiently comprehensive, and for the Regulator to be provided with sufficient teeth to address issues of non-compliance.

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

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 the wording of the Regulations should be open to enable the scheme advisory board to consider and advise on all matters that they deem relevant to the on-going sustainability and affordability of the Scheme.

The Secretary of State will always retain the discretion as to whether he needs to act on any advice received, so we see no benefit in seeking to identify any areas which the scheme advisory board should be prohibited from covering.

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

We would support the option of carrying forward membership from the shadow scheme advisory board, to enable a consistency of service and to ensure the swift transition following the enactment of the new Scheme regulations.

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

No – the independence of the Chair should be protected by excluding the Secretary of State from any role in their appointment.

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?

We believe it is reasonable to prescribe tenure of office to ensure that there is the opportunity for the regular injection of new independent thinking. Whilst not fixed on any specific period of office, we would offer a maximum of 2 terms of 4 years each as a starting point for further discussion.

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?

We believe that given the importance of the role of the Board, it is appropriate that board members should be removed if they are not fulfilling their responsibilities. In particular, we believe that any board member who fails to attend 3 meetings in a row, or fails to complete any identified knowledge and skills training should lose their seat.

If stipulated in the regulations, or in the Terms of Reference for the Board, then removal of a board member should be a simply administrative matter, and can be handled by the secretariat for the Board.

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

We are not sure that this is a matter for the Regulations, and the Board should be able to determine the number of meetings based on the business it needs to determine.

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?

We believe that board members should understand the responsibility that comes with the role, and should be prepared to commit to attending board meetings. Recognising there will always be exceptional circumstances which may prevent a member attending every meeting, we believe it is reasonable for a quorum of 75% of board members to be prescribed in the regulations.

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

Answers included in specific questions above.

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

As the board has been set up to advise the Secretary of State, we would have expected it to have been funded as part of the mechanisms of government. Failing that, we would argue for a mandatory levy on all Scheme pension fund authorities.

There should be no right to opt out of making a subscription given the nature of the role should be to the benefit of all Funds.

Q26. What would 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 have no view on the preferred manner of legal constitution. The members of the board should be fully indemnified against personal liability claims, except in the case where they have acted negligently. The legal constitution therefore needs to be such as to enable claims to be made against a corporate body, and for appropriate insurance arrangements to be put in place.

We hope that the above answers are helpful in determining the shape of the final regulations.

Yours sincerely

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