

# The Local Government Pension Scheme (LGPS) - Governance Guidance Consultation Response

January 2015

*The LGPS Shadow  
Scheme Advisory  
Board -  
consultation  
response*

## Introduction

1. Local Pension Boards (hereafter referred to as 'Board(s)') must be established by the 1 April 2015 under the provisions of section 5 of the Public Service Pensions Act 2013 and regulation 106 of the LGPS Regulations 2013 (as amended). To assist in the establishment of these Boards the Shadow Scheme Advisory Board (SSAB) has developed guidance for Administering Authorities. This guidance, published 28 January 2015 is designed to assist Administering Authorities in the creation and operation of Boards.
2. The following document sets out an overview of responses to the consultation on a draft version of the guidance which took place in October and November 2014. It also makes reference to amendments to the guidance required as a result of changes made to draft versions of the regulations covering Boards. Please note that final laid regulations for the establishment of Boards were issued 28 January 2015. Finally the guidance has also been reviewed in line with the Pension Regulator's code of practice number 14 and where necessary relevant amendments have been made to ensure the guidance accurately reflects the published version of the Regulator's code.

## Consultation Responses and review by Governance and Standards sub-committee and Governance Working Group

3. A consultation process ran from 17 October 2014 to 21 November 2014 seeking views of all parties interested in the LGPS on a draft version of this guidance.
4. 22 responses were received as part of the consultation including responses from administering authorities, trade unions, employers/employer representatives, and advisors. The SSAB would like to thank all those who responded directly to the consultation.
5. In addition the guidance has been further reviewed by both the Governance and Standards sub-committee and members of a Governance Working Group. Thanks are also extended to all who have fed through comments as part of that review.

## Comments received

6. Overall the guidance was well received and viewed as a valuable resource and over 100 comments were made. The SSAB have not referenced each of these comments in this document, instead a general overview of those comments and the amendments/additions made as a result is included below.

### **Role/remit of a Local Pension Board - Comments received**

7. This was one of the areas which attracted the highest number of comments. A number of responses suggested that defining the function of the Board was of great importance and that ambiguity here could risk the function of the Board being interpreted in a number of different ways.
8. The guidance now contains more information on the role/remit of a Local Pension Board. A Schedule (now Schedule A) includes examples of areas which could be incorporated into the remit of a Board. In addition amendments have been made to text in the guidance to further explain the role of the Board (see paragraphs 3.28 and 3.29 of the final guidance).

9. A number of Administrating Authorities asked for more clarification on 'assisting the Administering Authority'. Related to this were enquiries as to whether the SSAB or the Pensions Regulator would be producing draft terms of reference, suggested processes and policy templates.
10. In addition, it was advised that paragraphs 3.27 to 3.29 in the draft guidance should be reviewed to prevent the Board from duplicating or contradicting the work of the pension committee or working outside its terms of reference.
11. In addition the SSAB has worked over recent months to develop a [template Terms of Reference](#) for a Board. This is available as a separate document on the SSAB's website and should be read in conjunction with the guidance as well as relevant legislation including the Public Service Pensions Act 2013 and the LGPS Regulations 2013 (as amended).

#### **Membership and Appointment of Board Members**

12. The topic of membership of Boards also received comments including reference to how the ideal size of a local pension board should be assessed. Comments on the appointment of members included questions on the level of relevant experience and capacity required. In addition respondents sought further information on the role of 'other Board members.
13. The optimum size of a Board is a matter for local determination to be made by each Administering Authority. To assist Administering Authorities further information was added to guidance to indicate methods which could be used to determine the appropriate size of the Board; these include 'the capacity of the Board to undertake its role in assisting the administering authority' and 'the breadth and diversity of scheme members and employers in the Fund'.
14. Comments on the meaning of 'experience and capacity' have been superseded by changes in regulations, as the requirement for representatives to have relevant experience to undertake the role of Board member has been removed. In terms of capacity, further clarification has been added to the guidance including making employers aware of the work needed to carry out the role of a Board member and to ensure processes are in place to allow reasonable time off for Board members to carry out their duties.
15. The role of other Board members and in particular whether they should have voting rights on the Board has also been resolved by the amendment made to regulations during the consultation process which clearly states that voting rights are reserved to employer and member representatives of the Board.

#### **Appointment of a Chair**

16. Respondents indicated that they thought more information on the appointment of a Chair to the Board as well as further guidance on the role of the Chair would be useful.
17. Each Administering Authority will need to indicate in the Board's Terms of Reference whether a Chair is to be appointed, how that Chair is to be appointed and the duties of the Chair. More guidance has been added under the heading 'Chair of the Local Pension Board' in section 5 of the guidance.

#### **Knowledge and Understanding**

18. The inclusion of a schedule in the draft guidance providing 'examples of documents recording policy about the administration of the Scheme' as well as 'examples of knowledge and

understanding of the law relating to pensions' garnered a number of comments from respondents. Some expressed views that it contained too much information and may result in dissuading individuals from taking up the role of Board member. On balance the SSAB consider that the inclusion of this information is beneficial as it provides information which Administering Authorities would otherwise need to pull together themselves.

19. Queries were also received as to whether or not the e-learning programme provided by the Pensions Regulator would be sufficient to meet the knowledge and understanding requirements of a Board member in the LGPS. It is the view of the SSAB that this will not be sufficient given that it covers all public service pension schemes. This has now been reflected in the guidance and further information is available in section 6.

#### **Reporting**

20. A number of requests were made for additional information on internal reporting requirements and in view of these further guidance has been included in section 8 including examples to help Administering Authorities to formalise reporting lines from the Board.

#### **Resourcing and Funding**

21. Some respondents asked for further information in this section including considerations for determining the budget of the Board (see paragraph 9.3) as well as consideration on to whom the Board will be financially accountable (see paragraph 9.9).

### **Amendments required due to changes in regulations**

22. The draft guidance was published based on the draft regulations which were issued for consultation on 10 October 2014. The final regulations were laid before Parliament on 28 January 2015.
23. The consultation on draft regulations led to some further amendments to that legislation and these changes have been reflected in the final version of the guidance.
24. Changes to regulations include:
  - **Joint Pension Boards** - New regulation 106(3) provides for the establishment of a joint local pension board where the administration and management of a Scheme is wholly or mainly shared by two or more administering authorities. Approval for such a Board would have to be obtained from the Secretary of State. See section 10 of the guidance for more information on joint local pension boards.
  - **Voting rights** - New regulation 106(7) provides that voting rights only apply to members of a Board who are either an employer or a member representative. In effect this means that 'other members' of a Board do not have voting rights. In the SSAB's opinion this amendment to regulations chimes with the spirit of the Public Service Pensions Act 2013 which only makes specific reference employer and member representatives on the Board and although that Act is silent on other members it would appear that this regulation now align with principles of the Public Service Pension Act 2013. Guidance has been amended to reflect this point.
  - **Removal of the requirement for 'relevant experience' for those individuals to be appointed to a local pension board as a member or employer representative** - There is now no requirement in regulations (either regulation 107(2)(a) or 107(2)(b)) for a person who is appointed to a Board to have relevant experience. The requirement for capacity is retained. Guidance now reflects this amendment to regulations.

- **Clarification that only officers or elected members of the administering authority relating to the local pension board are precluded from being members of that local pension board** - Regulations now confirm that officers or elected members of Administering Authority A could be members of the Board of Administering Authority B. Guidance now reflects this clarification and also provides examples as to who such precluded officers of the Administering Authority would be.
- **Inclusion of new regulation 107(3)(b)** - Regulations now state that any elected member of the Administering Authority may only be appointed to the Board as either an employer or member representative. This additional regulation dovetails with new regulation 106(7) which restricts voting rights to employer and member representatives and avoids the potential confusion of elected members being construed as having voting rights through other legislation applying to council bodies
- **Inclusion of new regulation 107(4)** - This regulation provides further clarification on the constitution of a combined board and committee as provided for through regulation 106(2). This has been reflected in the information on 'combining a local pension board and a pension committee' in section 10.

### Amendments required due to changes in code of practice number 14

25. The draft guidance was published based on the draft code of practice number 14 from the Pensions Regulator which was issued for consultation in early 2014.
26. The Pensions Regulator have presented an updated draft code of practice number 14 to Parliament on the 12 January 2015 which must lie in draft for forty days during which time the House of Commons or House of Lords may resolve that the code is not made. The expectation is however that this version of the code of practice issued 12 January 2015 will be confirmed in February 2015 and the guidance from the SSAB on Boards has been updated in line with its contents. Please see the consultation response from [the Regulator](#) for further information on the changes they have made.
27. Changes made to the guidance as a result of the amendments to code of practice number 14 include:
  - The code no longer makes reference to a requirement for schemes to provide additional support and training to Board members in the first few months of their taking up the role of Board member. Guidance has been updated to reflect this change.
  - The code no longer makes reference to individuals who are appointed to the Board for their specific expertise and skills therefore the guidance has also removed reference to this information.
  - In the code of practice 'information about conflict of interest' a number of references to 'dual interests' have been replaced with references to 'interest' and this minor amendment has been made to the guidance.

### Guidance and accompanying information

28. The guidance was issued on 28 January 2015. It is anticipated that the guidance will be updated and modified by the SSAB as required in the future. It is also expected that the Statutory Scheme Advisory Board (once created) will adopt this guidance. If so, the guidance will fall under the provisions of section 7(3) of the Public Service Pension Act 2013 which requires that scheme managers (i.e. administering authorities) and Boards must have regard to it.

29. As already noted the guidance is designed to assist Administering Authorities in the creation and operation of Boards. This guidance does not supersede the requirements on Administering Authorities under legislation and in particular section 5 of the Public Service Pensions Act 2013 'Pension Board' and regulation 106 to 109 of the LGPS Regulations 2013 (as amended). It remains the responsibility of the Administering Authority to ensure all relevant legislation has been complied with in the creation and operation of the Board.
30. In addition to the guidance the SSAB have devised a template terms of reference. This is designed to assist Administering Authorities as they formulate the terms of reference for their Board. It must be read in conjunction with the guidance, the provisions of both the Public Service Pension Act 2013 and the LGPS Regulations 2013 noted in the previous paragraph.

## Contacts

31. The guidance has been produced by the SSAB. The SSAB can be contacted through their Secretariat via the methods noted below.

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