

Governance and Standards Sub-Committee

Actions and Agreements 26th November 2014, Local Government House

Item

1. Present

Members

Colin Meech, UNISON (Member representative)
Robert Lynch, Unite (Member representative)
Keir Greenaway, GMB (Member representative) (*substituting for Phil McEvoy*)
Emelda Conroy, UCEA (Employer representative)
Cllr Doug McMurdo, LGA (Employer representative)
Geoff Reader, (Practitioner representative)
David Anthony, (Practitioner representative)
Bob Summers, CIPFA (Chair)
Paul Finbow, ALATS (Treasurer representative)
Robert Plumb, the Pensions Regulator

Observers

Bob Holloway, DCLG
Barry Mack, Hymans Robertson
Annemarie Allen, Barnett Waddingham
Mark Kowalik, APL (*substituting for Kirsty Bartlett*)

Secretariat

Mary Lambe, LGA
Con Hargrave, LGA

Apologies

Phil McEvoy, GMB (Member representative)
Nick Buckland, ALATS (Treasurer representative)
Geoff Dobson, CIPFA
Karen McWilliam, Aon Hewitt
Nigel Thomas, Mercer
Kirsty Bartlett, APL
Neil Bhan, APL

2.

Actions & Agreements from 15th September 2014

- Mary Lambe (ML) confirmed that the UNISON response to the June governance consultation had been received and shared with the sub-committee by Colin Meech (CM) on 17 September 2014.
- Robert Plumb (RP) provided an update on the code of practice for public service pension schemes. It was confirmed that minor changes were being made to the code with a view to the final code being laid before Parliament in December.

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- Bob Holloway (BH) outlined that DCLG were still awaiting clarification from HM Treasury as to the legal entity that local pension boards (LPBs) will formally constitute upon their creation.

Agreed - All other items were confirmed as being on the agenda for the meeting.

3. Local pension board guidance

a) Responses to the consultation

- BH confirmed that discussions will take place with the Secretariat to establish if the Shadow Scheme Advisory Board (SSAB) guidance, once finalised, can be converted to statutory guidance but that DCLG are positive about this based on the draft issued for consultation.

- BH provided an overview of the current position within DCLG on governance regulations. In some cases this will mean an amendment to the existing draft regulations before they are laid before Parliament (obviously also subject to Ministerial approval). These include:

- Combined pensions committees and LPBs will be permissible.
- Joint LPBs will be allowed subject to a test, which is expected to require that both the administration and management of a Fund is shared (i.e. they would have to have the same decision making structure for example a shared pension committee) then those administering authorities may have a joint LPB subject to DCLG approval.
- The public sector equality duty will apply to LPB members as an LPB will have the equivalent status to a committee of a local authority.
- The requirement for potential LPB members to have 'relevant experience' as included in draft regulations 107(2) (a) and (b) is not planned to be included in the final regulations.
- It is planned that the regulations will limit the number of non-member or employer representatives (i.e. otherwise appointed representatives) so that these cannot exceed the total number of member and employer representatives sitting on an LPB.

- CM noted his appreciation that DCLG do not intend to require 'relevant experience' for potential LPB members.

- BH confirmed that the majority of responses received to the earlier governance consultation (as commenced in June 2014) felt that members of pension committees should have a requirement under regulation to have knowledge and understanding equivalent to that required by LPB members. DCLG are considering the possible scope for including this in regulation in due course (not likely in these governance regulations).

- A concern was raised that the regulations do not require the size of LPBs to be proportionate to the size of the pension fund.

- It was **agreed** that the guidance should outline that administering authorities, in determining the size of their LPBs, should consider the

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capacity of the body to undertake its role in assisting the Scheme Manager with the governance and administration of the scheme.

- BH confirmed that DCLG's preferred route in respect of the role of an LPB's chair is to continue the non-prescriptive approach and continue to not refer to the role of chair directly in draft regulations.
- It was agreed that the guidance should include examples of practices which should be avoided by administering authorities in appointing and determining the role of an LPB chair.
- A discussion was held regarding the application of the EU 2003 Directive on Institutions for Occupational Retirement Provision to the LGPS, but it was agreed that this matter was being considered further in other parts of the SSAB structure
- ML outlined that an issue frequently raised in the responses to the consultation on LPB guidance was the lack of detail as to what the role and function of LPBs should be.
- BH noted that it was important to emphasise that an administering authority does not have the power to set out the role and functions of their LPB, and that an LPB will have, under the regulations, the power to do anything incidental to their duties.
- Emelda Conroy (EC) pointed out that the use of the word 'assist' to describe the LPB's relationship with the Scheme Manager doesn't suggest that LPBs would be driving their own agenda and setting their own terms of reference.
- BH acknowledged this point but noted the difficulty there would be in changing the regulations significantly at this point.
- It was agreed that the guidance (and possibly template/ example terms of references) should set out further detail as to the role and function an LPB could undertake in assisting the Scheme Manager.
- EC noted that it would be hard for a LPB including just two employer representatives to represent the diversity of employers which participate in a pension fund.
- David Anthony (DA) pointed out the concerns there are within administering authorities over finding sufficient employer and member representatives to sit on LPBs.
- CM outlined the view that member representatives should be recruited to LPBs via election by the fund membership and not appointed via an appointment process undertaken by the administering authority.
- Concerns were raised that the appointment of councillors to LPBs as otherwise appointed representatives could distort the balance of a LPB against member representatives.
- It was agreed that regard should be given by administering authorities to voting rights to reflect concerns of imbalance where councillors sit as other members on a LPB. Guidance to be updated to include a short section on voting rights in order that these issues are fully addressed.
- It was confirmed by RP that the e-learning programme which will be made available by the Pensions Regulator for members of LPBs will not be

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sufficient for LPB members in obtaining the required LGPS-specific knowledge and understanding.

- Barry Mack (BM) noted the response to the guidance consultation which suggested that there be a reference to the Wednesbury principles included. BM pointed out that the Wednesbury principles relate to decision making processes and not conflict of interest.
- In respect of reporting, BH outlined that he anticipates that in the future LPBs may be required to provide a commentary that would accompany the fund's annual report.
- A brief discussion was held as to the possibility of incorporating some of the principles contained in the proposed Scottish governance structure into the SSAB's LPB guidance (for example, joint meetings of pensions committees and LPBs).
- It was agreed that more clarity and additional information should be provided for in guidance on:
 - The creation of combined pension committees and LPBs
 - Joint pension boards (regulations expected)
 - The potential for differing structures such as combined meetings where the pension committee and the LPB meet at the same time (based on the Scottish Model)

Action - The Chair asked for further comments with respect of the guidance to be sent through to the Secretariat.

b) Additional Q&A document

- Annemarie Allen (AA) noted that one of the sample questions referring to the establishment of LPBs was an older version based on an earlier understanding of the meaning of 'establishment'.
- ML confirmed that an updated Q&A document would be circulated to the sub-committee upon further progress being made.

c) Draft terms of reference for discussion

- A discussion was held on the possibility of the SSAB issuing a template terms of reference to administering authorities.
- One view outlined in the discussions was that issuing a template terms of reference would encourage a certain standard for LPBs and allow for the SSAB to encourage best practice.
- Another view outlined in the discussions was that issuing a template terms of reference would be counter to the SSAB's approach in drafting the guidance which set out the variety of legally permissible options available. This view was concerned that issue of a template terms of reference could fetter the freedoms available to administering authorities.
- As no agreement could be reached, it was agreed that this matter be referred back up to the SSAB for their consideration and decision.

Action - Secretariat to raise this matter for consideration at the SSAB meeting of 8th December 2014. (Note - SSAB agreed to work to achieve one

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model Terms of Reference for a LPB at its meeting on 8th December 2014. Timetable for delivery to be in line with expectation for laid regulations in early January 2015.)

d) Next steps

- It was agreed that the guidance be updated to reflect the discussions held at the meeting with a view to guidance being finalised in mid-January.

Action - Secretariat to update the guidance based on the responses received and the above noted points and circulate a revised version to the sub-committee for comment. Revised document to then be provided to the SSAB for their approval.

4. Draft governance regulations

a) Board response

- The response submitted by the SSAB was noted.

b) Update from DCLG

- A brief update was provided by BH on structural reform following rumours which had been circulating of an imminent Government announcement. It was noted that no decisions had been made across Government on the approach which would be adopted.
- In respect of the consultation on governance and cost control regulations, BH confirmed that 42 responses had been received as at the time of the meeting.
- BH outlined that DCLG's plans were to issue final regulations as soon as possible and that finalisation of these could take place in December, but it would be more likely that these would be made and laid before Parliament in January 2015.
- The Practitioner representatives in attendance noted the impact that the continuing delays to Scheme regulations will cause as administering authorities seek to ensure that LPB constitutions are approved in order to meet the requirement that these are established by 1st April 2015.

5. Separation of scheme manager function from lead authority

- It was confirmed that the separation working group would be meeting in December. The findings of that meeting would feed in to the sub-committee's discussions at its next meeting in order that the sub-committee can make recommendations back to the SSAB in early 2015.
- Comments were requested by the Secretariat on the content of the paper accompanying this agenda item.
- AA noted that one of the options that should be explored is that no further separations are made between the scheme manager and the lead authority (i.e. maintain the status quo).

6. AOB

- No other business was raised.

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Date of next meeting

To be confirmed. Potential date for next meeting pencilled in as Monday 16th February 2015 at 2pm in Local Government House. The Secretariat will confirm with the Chair in January 2015 whether this meeting is required and will confirm to sub-committee members if this date is to go ahead.