

Governance and Standards Sub-Committee

Item 5 - Discussion Paper - level of separation between scheme manager function and lead authority

1. Workplan 2014/15

The Governance and Standards sub-committee have been asked to consider the level of separation between the scheme manager function from that of the lead authority, the desirability of increasing the separation, and to make recommendations to the Board on ways in which greater separation could be achieved.

2. Recap of existing framework

Regulations require that the function of an 'administering authority ' including the local management of a fund is delivered by those bodies (most of which are local authorities) named in the regulations.

Local authorities discharge their statutory functions (such as that of the administering authority) through the provisions in sections 101(1) of the Local Government Act 1972 (LG Act 1972).

The provisions in sections 101(1) of the LG Act 1972 currently result in the following outcomes at the local authority level:

- Delegation to a pensions committee
- Delegation to a pensions committee with sub committees (e.g. investment sub-committee)
- Delegation to an individual officer (section 151 officer).

There are also some examples of authorities using other provisions within section 101 of the LG Act 1972 to delegate part of the function to joint committees or other local authorities.

Essentially the fund which has no legal identity of its own resides within a host authority. This is a very different situation to the private funded sector where the fund is managed by a trustee body separate from the sponsoring employer/s.

There are a couple of exceptions to this situation namely South Yorkshire and the LPFA. In these cases the administering authority function is delivered a separate single purpose authority.

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3. The degree of separation between the scheme manager and the lead authority

The introduction of new governance arrangements by the Public Service Pensions Act 2013 present an opportunity to revisit the extent to which the scheme manager (administering authority) role is able to be separated from the aims, objectives and other functions of the host authority.

Particularly in times of austerity the position of the fund in relation to its host needs careful consideration whether to discourage the temptation of using the fund for political means or to protect the fund's managing resources from across the board cuts.

For example should we consider rolling out the South Yorkshire model across the whole LGPS, what would be benefits and costs of setting up new authorities and how would the relationship to employers and members work?

Alternatively do we need to legislate for higher walls between the fund and host authority, for example regulations could be extended to include such provisions as:

- A requirement to produce and report on (separately from those of the authority) a detailed budget for scheme manager activities to be met from the scheme.
- A requirement for the above budget to be met from the scheme rather than a power to do so.
- A requirement to appoint a senior officer to oversee scheme manager activities with a particular responsibility to promote and protect the interests of the scheme, paid for by the scheme.
- A requirement for audit and risk management functions to be separate from the host authority
- Enshrining the fiduciary duty of the host authority.
- Requiring separate accounts for the fund.
- Ensuring fund monies cannot be used by the host authority for any other purpose than investment, administration or paying benefits.

Or can we address any issues of potential conflict of interest via enhanced training and guidance together with a more robust role for the Regulator?

A greater degree of separation could address many of the issues around conflict of interest, transparency and, equally importantly, enabling the function to set its own budget and objectives and operate independently from the authority's financial and political constraints and aims.

4. Points made at last meeting 20th August 2014

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- Work of other sub-committee/working groups of the SSAB were also reviewing the issues of separation and asked how this piece of work fitted in with these existing strands of work being undertaken (investment sub-committee/ fiduciary duty work) as well as the application of the European Directive (article 8). These points should be included in the recommendations made to the SSAB.
- Association of Pensions Lawyers (APL) confirmed that the APL public sector sub-committee would be willing to do some legal work around reviewing the issues raised by UNISON on the European Directive, the recent Law Commission report as well as local government legislation (from 1972 Act onwards).
- Other practical issues discussed including:
 - a. period of change being entered into and given this it may be that a shift is already taking place in some funds - discussed the example of increased discussion around Conflict of Interest. We should be mindful of this in any work we commence. In addition looking at selection of pension funds who are considered to have a good degree of separation and identifying areas this has improved as well as any inefficiencies it's created would be helpful when pulling together recommendations.
 - b. Issue of accounts noted too and need for increased separation in England and Wales (to mirror provisions in Scotland where separate accounts are required).
 - c. Reference also made to discussions around 'nominated officer' for each fund.

5. Next steps

The sub-committee is tasked with making recommendations to the SSAB on ways in which greater separation could be achieved (SSAB to then review those options with a view to making their recommendations to DCLG).

Some questions to consider:

- To what extent is greater separation between the scheme manager and the lead authority desirable?
- What level of separation can be achieved which would not impact on the practicality of fund management within a host authority?
- What level of separation can be achieved within secondary legislation?

Timeframe for development and method of working

- What work do the sub-committee consider should be carried out to determine a set of recommendations?
- How do the sub-committee propose the work is carried out and by whom?
- By when do the sub-committee want to have produced a recommendations paper for SSAB (at the last meeting the SSAB meeting

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on the 8th December was mentioned as an aim for the work to be passed up to the Board).

Board Secretariat
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