

Governance and Standards

Sub-Committee

Item 5 - LGPS Local Pension Boards Guidance

Update on work of the Governance Working Group (GWG)

The GWG met on the 23rd July to discuss further the development of guidance on the creation and maintenance of local pension boards. This discussion helped to hone the core structure of this guidance and get to a position where work on writing the content could commence.

In addition given the work needed to actually write and create the guidance the Local Government Association (LGA) agreed to fund a tender bid to source a suitable organisation to assist in the drafting of the guidance (the details of which the Governance and Standards sub-committee and GWG have already agreed). The successful bidder, Eversheds have started work on realising the specification set out by the sub-committee and the GWG. They will work closely with the secretariat and the GWG to ensure that they achieve the aims which have been set out. At today's (20 August 2014) meeting Eversheds will join us to provide details of their work plan for the creation of this first draft of the guidance and provide an update on their progress to date. The plan is that a first complete and comprehensive first draft of guidance will be available by the 1st September and will then be reviewed by the GWG.

The information below is the specification provided to Eversheds, as discussed and agreed with the sub-committee and the GWG.

A. Summary

The introduction of local pension boards via the Public Service Pensions Act 2013 and through LGPS scheme regulations from 1 April 2015 marks a sea change in the governance of LGPS funds. The Shadow Scheme Advisory Board (SSAB) recognise that this changing structure will require scheme managers to be fully aware of their role in the creation and maintenance of this new structure and in particular in the introduction of local pension boards. In identifying this it became evident that scheme managers will need guidance to assist them in establishing these boards. Therefore the SSAB has tasked the Governance and Standards (G&S) sub-committee with developing this guidance which is currently being achieved through a Governance Working Group (GWG) of the sub-committee.

In support of the creation of this guidance the Local Government Association (LGA) have agreed to provide funding for external resources and are therefore inviting proposals from interested parties to further the preliminary work of the GWG to deliver this guidance.

This paper lays out the preparatory work which has been undertaken by the GWG and includes the following:

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- Details on the intended framework/ structure of this guidance
- Content areas including the information required in each section and areas identified by the GWG as needing reference to in guidance

B. Framework/Structure for guidance

The guidance is designed to assist scheme managers (administering authorities) in the creation and maintenance of local pension boards in line with relevant legislation and in particular the Public Service Pension Scheme Act 2013 and the LGPS draft regulations on scheme governance. Given that the guidance will be prepared with only sight of draft regulations, we appreciate that there may be a requirement that the guidance is reviewed where the laid scheme regulations (due autumn 2014) are different.

The draft scheme regulations provide for local determination in many areas, the agreement of the G&S sub-committee is that in line with the spirit of draft regulations guidance on the creation and maintenance of local pension boards should not be overly prescriptive. The guidelines for the creation of this guidance include:

- Provide details of the legislative framework relating to individual topic areas
- Set out the parameters within the legislative framework
- Identify options but highlight that these are not exhaustive and could be seen as best practice
- Deliver guidance through the use of examples (best practice) to demonstrate options and assist scheme managers
- The guidance should closely align to the principles of the Pensions Regulator's (tPRs) code of practice number 14 and where relevant clear cross-reference to this code should be made. In addition where the code does not provide sufficient LGPS specific information consideration should be given to including such detail in the SSAB's guidance
- References should also be made to relevant guidance already available where this links to the relevant subject matter
- The guidance will focus on local pension boards as individual structures of each scheme manager (administering authority) however a separate chapter will be required to cover alternative structures including combined local pension boards and joint local pension boards.

C. Content of guidance

The following section details the suggested content for local pension board guidance.

It includes an index and thereafter information about what the GWG would expect to be included in that section of the guidance. The items listed are not exclusive and

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where identified, bidders are asked to indicate any further areas of content they would consider warrants inclusion in this guidance.

Suggested Index

Chapter 1 - Introduction

Chapter 2 - Legislative Background and structure of governance arrangements

- 2.1 Legislative requirements for governance in the LGPS
- 2.2 Governance structure in the LGPS
- 2.3 Constituent parts of LGPS Governance Structure
- 2.4 Internal controls
- 2.5 Funding of local pension boards

Chapter 3 - Local pension boards

- 3.1 Establishment (Including timetable to be met to ensure creation of board by 1 April 2015)
- 3.2 Constitution of a local pension board/ Membership
- 3.3 Appointment to a local pension board
- 3.4 Term of Office
- 3.5 Termination
- 3.6 Terms of Reference
- 3.7 Knowledge and Understanding
- 3.8 Conflict of Interest
- 3.9 Resourcing
- 3.10 Reporting
- 3.11 Information

Chapter 4 - Other possible structures

- 4.1 Combined local pension board and section 101 pension committee
- 4.2 Joint local pension boards

Chapter 5 - Other guidance

(Provide list of other governance guidance available)

Chapter 1 - Introduction

To include:

- Brief background to the existing governance structure in the LGPS

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- Historical context regarding the development of the new structure (from Hutton through to Public Service Pensions Act 2013 and governance scheme regulations)
- Brief synopsis of the new governance structure in the LGPS
- Outline the role, purpose and function of local pension boards
- The reasons for the creation of this guidance
 - reference to the legal references for Board guidance including Public Service Pension Schemes Act 2013 - section 7(2) and 7(3) and draft regulation 110(3) LGPS 2013 Regulations (as amended) where this advice must be regarded by the Administering Authority.
- Reference to the role of the Pensions Regulator from April 2015 as well as new code of practice number 14.

Chapter 2 - Legislative Background and structure of governance arrangements

2.1 Legislative requirements for governance in the LGPS

To include:

- Reference to the legislative requirements for the creation and maintenance of a local pension board through the following legislation:
 - Public Service Pensions Act 2013
 - Local Government Pension Scheme Regulations 2013 as amended
 - Local Government Act 1972
 - Local Government & Housing Act 1989
 - Local Government Act 2000

2.2 Governance structure in the LGPS

To include:

- Diagram of the governance structure from 1 April 2015 (including all the various structures/bodies in place)
- Diagram to reflect the most common structure (s101 pension committee) but guidance to identify other structures which exist (e.g section 151 officers).

2.3 Constituent parts of LGPS Governance Structure

To include:

- List of various parts of the LGPS governance structure
- Provide details as to the legal framework behind each of these
- Content to include reference to:

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Responsible Authority

- Section 2 and Schedule 2 PSP Act 2013
- LGPS Department for Communities and Local Government

Administering authority/Scheme Manager

- Scheme regulations provide that a scheme manager is the administering authority (regulation 2(2) LGPS Regulations 2013)
- An administering authority is a body listed in part 1 of schedule 3 (LGPS Regulations 2013)
- The body listed in part 1 of schedule 3 can discharge its function (but not an executive function) to a
 - o section 101/102 pension committee
 - o S151 officer
- In some instances two or more administering authorities may share their administration function - this does not mean they share the administering authority function.

Local Pension Boards

- Each administering authority (by 1 April 2015) shall establish a local pension board
- That local pension board is a separate board as provided for in LGPS scheme regulations (as per the requirements of the PSP Act 2013 - section 5)
- However the LGPS regulations 106(2), (3) and (44) provide that where a committee of a local authority (where the function has been delegated) acts as the scheme manager the local pension board can be the same as that committee - provided the administering authority obtains approval of the Secretary of State.

Scheme Advisory Board

- Provides advice to the Secretary of State on the desirability of making scheme changes, and
- Responsible for providing advice to administering authorities and local pension boards in relation to the effective and efficient administration and management of the scheme and its pension funds.

The Pensions Regulator (tPR)

- New role relating to tPR in public service pension scheme governance from 1 April 2015
- See Schedule 4 PSP Act 2013, section 17 (regulatory oversight) and tPR code of practice number 14 and chapter 4 of this guidance for further details.

2.4 Internal Controls

To include:

- Oversight role, assisting scheme manager, reporting lines

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2.5 Funding of local pension boards

To include:

- Reference to legislative requirements that board funded through administration costs
- Reference to budget of local pension boards

Chapter 3 - Local pension boards

3.1 Establishment

To include:

- Legislative requirement: Each administering authority must establish a pensions board by 1 April 2015
- Highlight this guidance is developed for individual local pension board, (separate from pension committees).
- Cross reference to chapter on alternative structures (e.g. combined and joint boards)

3.2 Constitution of a local pension board/ Membership

To include:

- equal number of employer and member representatives with a minimum requirement of no less than 4 in total
- considerations when constituting a local pension board including potential size, potential membership, potential representation, reporting structure, reference to role of those on the board who are not employer or member representatives
- reference to be made where an administering authority already has a body which functions in a similar way to a future local pension board (e.g. advisory group, consultative forums etc.) including the potential conflicts in seeking to amend this structure and to then introduce this structure as the local pension board.

3.3 Appointment to a local pension board

3.3.1 Process of Appointment

To include:

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- reference to be made to fact that all employers, their representatives, members and their representatives must have equal opportunity to be nominated for the role of employer or member representative.
- Note the considerations for scheme manager when determining the process of appointment e.g.

Member representatives:

- Election, balloting scheme members listing those member representatives who have been nominated or requested to be put forward for the role of a member representative and who in the view of the scheme manager have both the relevant experience and the capacity to represent scheme members.
- Selection, by the scheme manager of those member representatives who have been nominated or requested to be put forward for the role of a member representative and who in the view of the scheme manager have both the relevant experience and the capacity to represent scheme members.

Employer representatives:

- Election, balloting listing those employer representatives who have been nominated or requested to be put forward for the role of an employer representative and who in the view of the scheme manager have both the relevant experience and the capacity to represent scheme employers.
- Selection, by the scheme manager of those employer representatives who have been nominated or requested to be put forward for the role of an employer representative and who in the view of the scheme manager have both the relevant experience and the capacity to represent scheme employer.

Plus any other methods available for selection

- Appointment of those who are neither employer nor member representatives, taking into consideration equality issues for this group

3.3.2 Making Appointments

To include:

- Legislative requirements: At the point that a scheme manager is making an appointment to the local pension boards they must ensure that the legislative requirements of the LGPS Regulations 2013 (*regulation 107*) and *section 5(5) and 5(6)* of PSP Act 2013 are fully met.
- Appointments must be in place by the 1 April 2015
- Any potential conflict of interest which may arise when making appointments
- Note the knowledge and capacity requirements in draft regulations for appointment of representatives

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3.4 Term of Office

To include:

- Considerations which a scheme manager should have in respect of term of office these could include:
 - To have periods of membership staggered to ensure that the local pension board does not see all existing employer and member representatives leaving at the same point in time and therefore losing all the conversant level of knowledge and understanding of the board at the same time
 - To identify where a board representative may need to terminate their role, for example due to a conflict of interest
 - Where a representative requests to relinquish their role on the board
 - Re-election of existing members
 - Any further considerations

3.5 Termination

To include:

- A term of office is set out by the administering authority however there may be occasions where a representative's term of office is terminated sooner than the end of their term of office. Examples where a representative's term of office may need to be terminated by an administering authority could include:
 - A conflict of interest is identified which has arisen since they were appointed to the role and mean that that person is no longer in a position to carry out their role
 - That representative can no longer be considered to represent either the employers or scheme members in that pension fund
 - Include any other considerations relating to termination

3.6 Terms of Reference for a local pension board

To include:

- Outline the need for an administering authority to have a policy on Local Pension Boards which sets out the boards terms of reference
- List as a minimum the terms of reference which should be in place for the local pension board, such a list could include:
 - Function of the board
 - Membership including appointment and selection process
 - Attendance requirements
 - Number of meetings each year
 - Remuneration/ expenses for local pension board representatives

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- Facilities time for member representatives
- Voting rights
- Role of substitutes
- Role of advisors
- Use of officers
- Co-optes
- Quorum requirements
- Conflict of interests
- Creation of working groups/sub-cttes
- Attendance requirements for sub-committees or working groups
- Training
- Appointment of a chair
- Role of chair/vice chair
- Administration, papers, communication (secretariat of the board/ member services)
- Requests for information
- Any other items which would be considered relevant in the terms of reference
- Each of the areas identified above as part of a terms of reference would then need to be further explored to assist the scheme manager through more detailed information and examples (possibly identifying practices elsewhere in local government or private sector pensions, where legislative powers do not exist - i.e. industry best practice)
- Consider referring to consultation by scheme manager on contents of terms of reference with relevant interested parties

3.7 Knowledge and Understanding

To include:

- Legal requirements
- How are Knowledge and Understanding (K&U) requirements achieved
- How should requirements be documented and reported
- Demonstrating compliance
- What level of K&U is required by local pension board members (statutory requirement)
- How can a scheme manager check that K&U is met to a sufficient level
- Individual board members have individual responsibility for K&U
- What methods can be used to achieve K&U
- Ongoing learning programme for local pension board members
- Ongoing reviews of K&U of board members.
- If K&U requirements not met (non-compliance) - what penalties are in place (link to tPR code of practice)

3.7.1 Legal requirements

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To include:

- Pension Board Members must be conversant (after training) with the LGPS regulations and LGPS policy documents regarding scheme administration and overriding pension scheme legislation (when in the role of local pension board member)
- Pension Board Members must be experienced and have capacity to represent either employers or members on the Board (to be appointed to the role of a local pension board member)
- The area of knowledge and understanding is central to the role undertaken by pension board members.
- The legislative requirements are explicit and for scheme manager they will need to ensure they have the necessary policies and arrangements in place to ensure appropriate levels of knowledge and understanding.
- A scheme manager will need to designate a person to have responsibility that a framework is created and implemented *[paragraph 35 tPR code no. 14]*. Such a person could be an officer of the fund (e.g. pensions manager or a governance specialist). (Consider could a scheme manager delegate this function to an outside consultancy/expert? If so who should they consult with before delegating?)
- All pension board members must be satisfied they will have the appropriate level of knowledge and understanding to carry out their role as set out in relevant legislation and guidance.

3.7.2 Areas of knowledge and understanding

To include:

- As a minimum requirement a local pension board member is expected to be conversant in LGPS scheme regulations, overriding legislation and relevant policy documents for the administering authority in order to carry out their role on a pension board (after completing training). LGPS funds may have local policy documents in line with those listed in *paragraph 38* of the tPR code no. 14 and or in addition to that list.
- Scheme managers are advised to keep a register (and regularly update it) of the legislation and documents which a pension board member needs to be conversant with (ensuring those listed are necessary). Access to these documents must also be made available to pension board members.

3.7.3 Degree of knowledge and understanding

To include:

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- The degree of knowledge and understanding to which each pension board member is expected to have regarding LGPS scheme regulations and policy documents includes (having received the necessary training to undertake the role):
 - Sufficient knowledge to know where scheme regulations or policy documentation is relevant to a particular issue/topic
 - Knowing the relevant regulatory provision or part of a policy document which is relevant to a particular issue/topic
- In respect of overriding legislation applying to public service pension schemes a pension board member must:
 - Be aware of the collection of legislation and the scope with which this legislation has
 - Be aware of any impact this overriding legislation has their responsibilities
- It is for each scheme manager to help each pension board member to determine they have the necessary knowledge and skills. How a scheme manager will do so should be outlined in the funds knowledge and skills policy. Guidance should consider if this should this be open to consultation?
- Ability (through knowledge and skills) to challenge perceived failures in compliance or in not meeting standards is a mandatory requirement for a pension board member.

3.7.4 Acquiring, reviewing and updating knowledge and understanding

To include:

- In order to ensure that all pension board members are fully conversant to the degree required of them in respect of knowledge and understanding of scheme rules, policy document as well as overriding legislation they must be given sufficient time to achieve this. Nonetheless a pension board member has a legal responsibility from the first day in that role. In view of these requirements it would be expected that a scheme manager provides access to:
 - Pre appointment training for a pension board member (where appropriate)
 - Full training for a pension board member to ensure they are fully compliant with knowledge and understanding on appointment as soon as possible after they undertake their role. What is the timeframe to achieve this - needs incorporating into guidance. This is advised to take no more than a period of six months, from the date of appointment into the role of pensions board member, to complete.

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- A pension board member is also expected to keep themselves up to date on changes to legislation and policy documentation to ensure an ongoing and up to date level of knowledge and understanding. Scheme managers should provide for regular training updates as outlined in their knowledge and understanding policy.

3.7.5 Demonstrating knowledge and understanding

To include:

- In demonstrating knowledge and understanding a scheme manager must keep a register of all pension board members detailing the training and learning activities they undertake. Information on the types of courses/training events and the dates these courses took place should also be included.
- In addition any learning programme which a scheme manager puts in place should be made available to pension board members and made public to demonstrate the learning activities of pension board members.
- The knowledge and understanding requirements for pension board members are for each individual member not a collective of the pension board. Therefore where on an LGPS local pension board a member is chosen for their specialist knowledge they must also demonstrate a knowledge and understanding relating to all items listed above which a pension board member is required to have.

3.8 Conflict of Interest

To include:

3.8.1 Conflict of interest management policy

- To ensure a consistent approach is taken by the administering authority it is advised that they devise a conflict of interest management policy and it's suggested that such a policy contains:
 - What constitutes a conflict of interest
 - How should breaches be identified and managed
 - How does a scheme manager ensure ongoing reviews of conflict of interests
- Scheme manager must be satisfied that there is no conflict of interest at appointment or during term of appointment
- Member of pension board must provide information to allow scheme manager to satisfy above requirement
- Requirement for equal number of employer and member representatives
- These conflicts of interest can stem from:
 - A separate personal interest (financial or otherwise), or

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- Another responsibility which gives rise to a conflict with their role on the board (i.e. fulfil their legal duty to assist the scheme manager in securing compliance with the scheme regulations, other legislation relating to governance and administration of the scheme and the requirements of tPR)
- Scheme managers should have regard to the '[Seven Principles of Public Life](#)' and be mindful of these when devising any frameworks or policy documents in respect of the local pension boards (and other relevant guidance e.g. Standards for England)
- Consider references to existing code of conduct
- Consider references to relevant provisions of overriding legislation e.g. Localism Act 2011 and section 117 of the LG Act 1972?

3.8.2 Identifying potential conflicts/Monitoring potential conflicts/ Managing potential conflicts

- Reference to information in tPR code of practice number 14
- provide further practical examples to match with the real life experience of the LGPS framework in particular being mindful of the increasing breadth of LGPS employers, the various implications where officers of the local authority, the administering authority and the pension committee could have a conflict of interest (general or specific),
- Examples of conflicts of interest particular to the LGPS
 - Dual interests and responsibilities - possibly add list of examples of where these don't impact on the role of the pension board member?
 - Additional examples to understand specific LGPS framework

3.9 Resourcing

To include:

- How the board can be resourced (including administrative support)
- Financial implications (budget)
- Officer implications - potential conflict of interest (or not) where dual role in resourcing local pension board and pension committee

3.10 Reporting

To include:

- Legal requirements (e.g. reporting breaches - Schedule 4(6) requirement - duty to report breaches in the law)
- Internal reporting structure

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- Who - Pension Board, full council, scheme manager, pension committee, local authority committees
- When - regularity of such reporting
- How - method of reporting, via scheme managers, independently
- What - areas expected to be reported on
- Whistleblowing (internal) *examples
- External reporting structure
 - Who - Scheme Advisory Board, DLCG, tPR
 - When - regulatory of such reporting
 - How - method of reporting to external structures
 - What - areas expected to be reported on
 - Whistleblowing - to external organisations *examples
- Reporting conflicts of interest
 - E.g. examples to cover occasions when local pension board may not agree with decisions of the pension committee/s151 officer, scheme manager?
- Annual requirement
 - Report of activities - local annual report/national annual report?
- Link with existing structures:
 - Full council, Pension Committee and various sub-committees/ single officer led funds
 - Nationally with Scheme Advisory Board

3.10 Non-compliance

To include:

- Where the local pension board is not meeting its requirements (statutory) - what action should be taken and by whom?

3.11 Information about the Pension Board

To include:

- Scheme manager must publish information about the pension board for the scheme (and keep that information up-to-date), this includes who is on the board, who they represent and what the board's responsible for
- Ongoing communication requirements
 - Method and frequency of communication from the local pension board
 - E.g. website, annual report
- Types of information which would be beneficial in the public domain - agendas, minutes with reasons as to why this would assist in transparency for the board.

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Chapter 4 - Other possible structures

To include:

4.1 Combined local pension board and section 101 pension committee

- Legal requirements to ensure that legislative framework for a pension board (under PSP Act 2013) will interact with equivalent legislative requirement for pension committees (under LG Act 1972) and Local Government and Housing Act 1989.
- Items for a scheme manager to take into consideration when deciding to merge both board and committee.
- High bar for practices that should be in place to ensure good governance is achieved - including scrutinising itself and the need for separation of investment decisions from the role which the pension board is required to undertake.
- Things to consider (for AA) if seeking approval for combined board from DCLG.

4.2 Joint local pension boards

- Whilst draft regulations do not currently provide for joint pension boards, their possible inclusion (as indicated in paragraph 3.11 of the consultation document) in scheme regulations would indicate a requirement to cover this point in guidance. This paragraph states that "the default position must be one local pension board for each administering authority, but that exception where administration and management is mainly or wholly shared between two or more administering authorities should be catered for". If regulations were to be made for such a provision there is a need for guidance to set out what a wholly or mainly delegated scheme manager function would entail.

Chapter 5 - Other guidance

(Provide list of other governance guidance available)

Board Secretariat
14 August 2014