

## NORTH YORKSHIRE COUNTY COUNCIL

## PENSION FUND COMMITTEE

10 JULY 2014

## CONSULTATION ON DRAFT LGPS REGULATIONS ON SCHEME GOVERNANCE

## Report of the Treasurer

**1.0 PURPOSE OF REPORT**

- 1.1 To inform Members of the latest consultation on LGPS Regulations on scheme governance.

**2.0 THE CONSULTATION**

- 2.1 The anticipated changes to scheme governance were introduced through the Public Service Pensions Act 2013 (PSPA), laid on 25 April 2013. A discussion paper issued by DCLG followed in June 2013, inviting responses from administering authorities and other interested parties.
- 2.2 At the PFC meeting on 28 June 2013 Members received a presentation from Karen McWilliam, Head of Public Sector Benefits Consulting at Aon Hewitt to consider how these new arrangements could be addressed by NYPF. An NYPF response was submitted by the deadline of 30 August 2013.
- 2.3 On 23 June 2014 the Government published the long awaited consultation “The Local Government Pension Scheme (Amendment) Regulations 2014: draft Regulations on scheme governance”. These Regulations are essentially a crystallisation of the governance arrangements framework set out in the PSPA and the options for local implementation set out in the discussion paper.
- 2.4 An introduction to the consultation and the consultation document itself are available at <https://www.gov.uk/government/consultations/the-local-government-pension-scheme-amendment-regulations-2014-draft-regulations-on-scheme-governance>.
- 2.5 The key points for the local pension board being consulted on are highlighted in the attached Governance Spotlight paper by Aon Hewitt (**Appendix 1**) which also provides an interpretation of the Regulations and highlights the issues NYPF will need to deal with, assuming the Regulations are laid as they are currently written. The Report of the Independent Professional Observer (**Item 5, Governance Arrangements, Appendix 2**) also comments on the key points; please refer to the sections headed Governance Framework, Governance Structure and Governance Guidance.

- 2.6 Members will need to decide if they want to formally respond to the consultation. However, any response would be likely to closely reflect the NYPF response to the discussion paper – see **Appendix 2** which was emailed. It is also worth noting that the Regulations have been written after a lengthy period of engagement with organisations such as the LGA so it is very unlikely that material changes will be made.

### **3.0 ACTION REQUIRED**

- 3.1 For NYCC as the administering authority, establishing a Pension Board as a separate body is the only realistic option of the two being consulted on. A combined PFC/Pension Board entity presents a number of problems, not least the membership changes that would be required for the PFC.
- 3.2 Full Council approval will be needed to establish the Pension Board, either if it were as a committee, or as a body with a bespoke set of procedures.
- 3.3 Members will also need to consider whether the Advisory Panel should continue or if it should be replaced by the Pension Board. The remit of the Advisory Panel covers all areas of NYPF activity including investments, but the Pension Board will not.
- 3.4 Based on views expressed by Members, a proposal for the Pension Board will be brought for recommendation to the September meeting on the PFC with a view to seeking subsequent approval by the Council.

### **4.0 RECOMMENDATIONS**

- 4.1 Members are asked to comment on the consultation generally, and decide whether or not a formal response should be submitted by NYPF.
- 4.1 Members are asked to comment on the arrangements which should apply to NYPF, to assist in the preparation of the formal proposal which will be brought for recommendation to the September meeting of the PFC.

GARY FIELDING  
Treasurer  
Central Services  
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27 June 2014

# Consultation on Draft LGPS Governance Regulations

The Department for Communities and Local Government ("DCLG") has just issued the long awaited consultation on the draft Governance Regulations for the Local Government Pension Scheme ("LGPS") in England and Wales, to which interested parties are required to respond by 15 August 2014. In this Spotlight, Karen McWilliam and Daniel Kanaris consider the contents of the draft Regulations and covering consultation letter, and highlight some areas that LGPS Administering Authorities may wish to consider in formulating their responses.

## **A short but important message.....**

If you are short of time, we hope this short message will help highlight that these governance changes are not to be ignored. To summarise:

- All administering authorities MUST put in place a Pension Board by 1 April 2015
- It is relatively unlikely you will be able to just make small adjustments to your current Pension Committee or equivalent to meet these new requirements as it must have equal numbers of member and employer representatives
- The new Board will need formally established (we suspect more than likely by full Council or the equivalent for non-local authorities) and will require some sort of nomination or election process to appoint scheme member and employer representatives.

## **We highly recommend all administering authorities start considering their options including engaging with their legal and democratic service teams.**

We should perhaps stress this Spotlight considers these provisions at a VERY high level. The devil is often in the detail, although in this regard, much of the detail will be left to each Administering Authority to develop! There are so many practical issues to consider which we just don't have time to cover in this Spotlight. However there are plenty of opportunities over the next few weeks to find out more:

- Aon Hewitt Governance Webcast – this Wednesday (25th June) from 3pm until 4pm. This is a chance to hear from Bob Holloway at DCLG regarding the intentions behind the draft regulations. More information and registration at: <http://app.respond.aonhewitt.com/e/es.aspx?s=2598&e=125222&&id=2&>
- CIPFA Networks – 2<sup>nd</sup>, 4<sup>th</sup> and 15<sup>th</sup> July (Manchester, London and Cardiff respectively) – more information from [neil.sellstrom@cipfa.org](mailto:neil.sellstrom@cipfa.org)
- NAPF Local Authority Forum – 8<sup>th</sup> July, London. More information available at: <http://napf.co.uk/Conferences and Seminars/Local Authority Forums/Programme.aspx>

## Background

Driven by the Independent Public Service Pensions Commission's 2011 report which made a number of recommendations on scheme governance, the Public Service Pensions Act 2013 (PSPA 2013) was passed on 25 April 2013. As well as introducing a number of benefit changes to public sector schemes (e.g. the new CARE Scheme for the LGPS in England and Wales from 1 April 2014), PSPA 2013 requires each scheme to have a Pension Board in place to "assist the Scheme Manager in ... compliance" of, as a minimum, scheme regulations and the Pension Regulator's requirements. For the LGPS and the uniformed police and fire pension schemes, these Pension Boards need to be established at a local level by the Scheme Manager; in the LGPS world, this is the Administering Authority.

Further, the Act requires each public service pension scheme to introduce a national Scheme Advisory Board to provide advice to the Responsible Authority (i.e. whoever makes their scheme regulations) and, for locally administered schemes, to local Scheme Managers and local Pension Boards.

DCLG have now issued draft amendment Regulations outlining how they intend to introduce the local Pension Boards and national Scheme Advisory Board within the LGPS. The provisions primarily cover topics such as the membership of the boards and conflicts of interest. The covering letter also highlights a number of policy areas that are still open to consideration.

Our general impression is that the draft Regulations are quite 'light touch', with the intention of allowing authorities considerable flexibility in how to establish their local Pension Boards. However, this actually raises a considerable number of questions / areas where further thought is required, and we discuss this below. We understand it is intended that there will be some guidance either from DCLG or the Scheme Advisory Board.

Firstly, we consider some of the implications of the draft Regulations on local Pension Boards:

## Local Pension Boards

**What the draft Regulations say:** Each Administering Authority has to establish their local Pension Board by 1 April 2015, and the expenses of the Board are to be regarded as part of the administration cost of the Fund.

**Our thoughts:** The deadline is being driven by the PSPA 2013 and so there is no flexibility in this. Accordingly, the shorter consultation period is welcome. This going to be an extremely challenging deadline to meet, assuming the Council (or the organisation's main Board for non-local authorities) will need to approve the new Pension Boards. Though the draft Regulations do permit the Administering Authority to delegate their functions under these provisions, it might not be considered appropriate to delegate the establishment of the Pension Board, particularly to an existing Pension Committee.

**What the draft Regulations say:** The Board is responsible for assisting the Administering Authority with securing compliance with:

- i) the Regulations,
- ii) any other legislation relating to the governance and administration of the Scheme, and
- iii) requirements imposed by the Pensions Regulator in relation to the Scheme

as well as ensuring the effective and efficient governance and administration of the Scheme.

**Our thoughts:** The drafting of points i) and ii) above merit some consideration; in PSPA 13 points i) and ii) are combined. So the key question is whether the words "*relating to the governance and administration of the scheme*" are intended to refer to point ii) only or to points i) and ii) jointly? From speaking to our legal colleagues, these two interpretations could be result in quite different functions for the new Board.

Further, the inclusion of the reference to ensuring the effective and efficient governance and administration of the Scheme also effectively repeats the requirements of PSPA 13. It will be interesting to see whether DCLG or Scheme Advisory Board guidance will attempt to define what this actually means.



**What the draft Regulations say:** The local Pension Board can be the same as an existing committee, if approval is obtained from the Secretary of State,

**Our thoughts:** We understand that this has been included to provide flexibility if needed. In practice there will be a very high hurdle to overcome to satisfy the Secretary of State that an existing committee and the new Board can be combined into a single entity capable of carrying out all functions without any conflicts of interest arising (and see comments on conflicts below) and being mindful of the potentially conflicting elements of local authority legislation and PSPA 13 combined with the LGPS governance regulations. In reality, we therefore do not expect (m)any local authority Administering Authorities to consider a joined up committee / local Pension Board as appropriate, and we expect two separate entities to be the default, obvious and accepted approach i.e.:

- the Pension Committee continuing to have responsibility for decision making and overall management of the Fund, and
- the new local Pension Board with an oversight role to assist in securing compliance of regulations, the Pension Regulator's guidance and ensuring effective and efficient governance and administration of the Fund.

**What the draft Regulations say:** Part 6 of the Local Government Act 1972 applies to the Board as if it were a committee established under section 101 of that Act.

OR

The Administering Authority is responsible for determining the procedures that apply to the Pension Board (e.g. voting, establishment, payment of expenses etc).

**Our thoughts:** Two options are provided for draft clause 106(5) and this is perhaps the area where most thought will be required by Administering Authorities. The first option effectively would apply some elements of local authority legislation to the local Pension Board as if it were a statutory local authority committee, whereas the second option would permit each Administering Authority to have pretty much complete flexibility. On the face of it, the first option could be quite restrictive and some of the elements of local authority legislation might

not fit for a local Pension Board made up of non-elected members (explained below). However, the flexibility of the second approach would benefit from national guidance, particularly in relation to the elements that each Administering Authority should include as a minimum within any such terms of reference.

**What the draft Regulations say:** The local Pension Board is to "include an equal number, which is no less than 4 in total, of employer representatives and member representatives". Each Administering Authority shall establish the membership and manner of appointment, but it shall not include a member of a local authority (i.e. councillor) as any of those representatives. Further the total of employer and member representatives must exceed the number of other members of the local Pensions Board.

**Our thoughts:** Our interpretation of this clause is that the total number of member and employer representatives must be at least 4 (though the phrasing could result in some interpreting this as 8). We welcome the fact this isn't a larger number. Further, these representatives cannot be elected members of local authorities....but the Board can still have some elected members on it.

For example, it would appear a Pension Board could have, say:

- Two scheme member representatives (perhaps an elected active member representative and a union member), and
- Two employer representatives (perhaps a Board member from a local charity and the Head of Human Resources from the Administering Authority), and
- Up to three local authority elected members (in this example, as it can not exceed the total of the two categories above).

Most Administering Authorities have already experienced the testing (but important) task of appointing employer and/or scheme member representatives to Pension Committees or Panels. This can be a struggle for a number of reasons:

- some administering authorities seem to encounter apathy amongst stakeholders (often even with a concerted effort at engagement),

- larger funds may have so many employers it is difficult to restrict numbers fairly (and then have to match them with equivalent member representatives under the new Pension Board requirements),
- smaller funds may struggle to get any interest.

We were surprised to see the clause explicitly preventing "a member of a local authority" from being appointed as a member or employer representative. The explanation at the end of the provisions and in the covering letter appears to indicate that the intention is that councillors of the Administering Authority (rather than any local authority) won't count as employer or member representatives. It would be interesting to see how a Pension Committee (usually made up of elected members in the main) might respond to "advice" from a local Pension Board made up from officers.

Our Webcast this week will provide an opportunity for DCLG to help us understand the thinking behind these provisions though we suspect it is to provide an element of separation between an existing Pension Committee and the local Pension Board.

**What the draft Regulations say:** The representative must have relevant experience and capacity to represent their stakeholders on the local Pension Board.

**Our thoughts:** On first read, the reference to relevant experience might relate to LGPS and/or pensions experience but this appears to just refer to their experience to be able to represent their stakeholders. This is clarified in the covering letter where DCLG confirm this requirement does not relate to the knowledge and understanding requirements included in PSPA 13.

**What the draft Regulations say:** The Administering Authority must be satisfied that any person appointed to or sitting on a local Pension Board does not have a conflict of interest.

**Our thoughts:** This wording appears to present a very high hurdle for Administering Authorities to overcome though we appreciate it is just repeating the requirements of PSPA 13. This is essentially a legal point, but our experience is that the sensible approach to conflicts of interest focuses on them being appropriately managed (and where they can't be, then an individual might be asked to

remove themselves from being involved in considering a particular item). Instead, by requiring no conflicts of interest at all, we believe this could prevent many possible representatives from being able to sit on the Boards due to the likelihood that some potential conflicts could eventually materialise.

**What the draft Regulations say:** The Secretary of State may issue guidance, which administering authorities must have regard to.

**Our thoughts:** Statutory guidance is a useful means of providing solutions whilst not removing the flexibility of the legislation. However, we appreciate administering authorities will wish to see any guidance (even in draft form) at the earliest possible opportunity. We look forward to discussing with DCLG what might be included in such guidance at our Webcast this week.

## Other policy matters

The covering consultation poses some questions on a number of other matters, some of which we've already covered. Others that merit specific mention include:

- **Joint Pension Boards** – This relates to establishing a joint Pension Board, covering more than one Administering Authority area. The consultation welcomes views on whether this should be permitted, for example, where the management is effectively shared through a joint committee. We don't believe many (if any) Administering Authorities would be able to meet this requirement, but those involved in shared services (for example) may still consider there is a benefit in responding with a case for establishing a joint Pension Board.
- **Knowledge and Skills** – PSPA 13 requires Pension Board members to meet certain knowledge and skills requirements. The consultation asks whether these requirements should be extended to Pension Committee members. Though the majority of Administering Authorities have been embracing the CIPFA Code of Conduct on Knowledge and Skills, it does appear a bit unbalanced for local Pension Boards to have a legal knowledge requirement, but for Pension Committees (or whoever is carrying out the Scheme Manager function) not to have an equivalent requirement.

- **Public Sector Equality Duty** – The consultation asks respondents to provide views on whether this duty should be extended to Pension Boards and the Scheme Advisory Board. This is the duty for all public bodies and others carrying out public functions to ensure that they consider the needs of all individuals in their day to day work, ensuring their policies and services are appropriate and accessible to all and meet different people’s needs.
- **Annual General Meetings** - Comments are invited on whether the Regulations should require administering authorities to facilitate a forum for both employers and employees on at least an annual basis. Though we appreciate the reasoning behind this, it might be a matter best dealt with as part of statutory (or other) guidance.

### What is the consultation silent on?

There are a number of areas that have not specifically been included within the draft Regulations, which we assume is an intentional decision by DCLG as they believe local flexibility is important and we would endorse that, particularly in relation to areas such as appointments, terms, frequency of meetings, reporting and overlap of membership with an existing Pension Committee (albeit excluding elected members has the same effect). However, we do hope national guidance (whether statutory or from the Scheme Advisory Board) will incorporate many of these areas to guide administering authorities on what can be considered good practice.

### Scheme Advisory Board

**What the Regulations Say:** The Scheme Advisory Board is established with the responsibility of providing advice to the Secretary of State on the desirability of making changes to the Scheme, and 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 draft regulations suggest that the Secretary of State will appoint a chairperson, who then appoints between 2 and 12 people to sit on the Scheme Advisory Board (subject to the approval of the

Secretary of State). The chair can also appoint other people to be members of sub committees. Again, those appointed must have no conflicts of interest. Otherwise the Scheme Advisory Board pretty much has full flexibility to determine its procedures, which will be a useful tool, for example, for ensuring fairness in representation.

Each Administering Authority will need to meet the costs of the Scheme Advisory Board in such proportions as are determined by the Board, and must pay this at the time determined by the Board.

**Our Thoughts:** This formalises a process that is already somewhat up and running in the form of the Shadow Scheme Advisory Board.

We see that the Scheme Advisory Board would look somewhat strange with only 2 members and a chair, and so suspect the focus of this provision is to ensure that the size of the Board does not become too big (and, with that, potentially ineffective).

The role of the Chair of the Board will be critical; this individual will be an important figure in ensuring the Board plays a part in shaping the future of the LGPS (both with DCLG and Administering Authorities), as well as ensuring that the Board gains the respect of the key LGPS stakeholders at a national level. A key consideration when establishing the Scheme Advisory Board, in our view, is ensuring that the individuals on the Board have the appropriate knowledge and skills, whilst carrying out their role in a balanced manner. Though the provisions refer to considering equality amongst employer and member representatives, we believe there is sufficient flexibility to include other professionals such as representatives of Administering Authorities (i.e. practitioners); we believe such expertise is important to complement the other roles on the Scheme Advisory Board.

We are pleased to see that the cost of running the Board has been included in the Regulations and particularly for it to be calculated on a proportionate basis to allow for the different sizes and/or scheme membership of the Funds.

## Summary

We believe it is desirable for any governance changes to minimise disruption for those LGPS funds that already demonstrate good governance (particularly funds which have recently reviewed and updated their governance arrangements)

There may be legal issues to be considered and we would encourage Administering Authorities to engage with their Legal and Democratic Services early in the process and to make them aware of these draft Regulations.

We agree with DCLG's apparent approach that too much prescription does not recognise the differences between LGPS funds. However, we think that LGPS funds could benefit from national guidance at the earliest opportunity.

Administering Authorities which have not considered how they appropriately resource their governance arrangements may want to review this, as it will clearly require more time and expertise in future.

Finally, we believe it is critical that stakeholders do not lose sight of the fact that the Scheme Manager role, often carried out by a Pension Committee, is where key decisions are made and key risks are managed. Any changes should not deflect from this and should ensure that this role is the key priority and meets high standards of good governance

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