



Your ref:

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LGPS Governance Regulations 2014
Department for Communities and Local Government
Zone 5/F5 Eland House
Bressenden Place
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Dear Ms Layne

The Local Government Pension Scheme (Amendment) Regulations 2014

The London Borough of Haringey (LBH) in its role as an Administering Authority is responding to the DCLG Consultation entitled “The Local Government Pension Scheme (Amendment) Regulations 2014”, concerning draft regulations on scheme governance. This response has been prepared by officers and advisors of LBH.

Comments on the draft Regulations and other issues raised in the Consultation

Overall

We agree with the Secretary of State that a high standard of governance is required of those who administer local government pension schemes. We also believe that greater guidance and scrutiny of processes and decisions will lead to better outcomes. An obligation to undertake training is vital to ensure that those who take decisions have individual and collective relevant understanding.

Administering authorities currently carry out their duties diligently but may not always be aware when they fall short of best practice. There is a role for greater self scrutiny at local level supported by improved guidance and support from the Scheme Advisory Board and the Pensions Regulator to ensure any governance deficiencies are identified and addressed. Involving representatives of scheme members and other employers is vital to ensure all interests are considered, which is why these parties are represented at meetings of the LBH Pensions Committee.

LBH has reservations with the need for a separate pension board when in most circumstances entities with decision making roles also have compliance and good governance responsibilities. However, the differing legislation covering the establishment and operation of a pension board and a pension committee probably require that these entities be separate.

Regulation 106(1)

The LBH supports the responsibilities assigned to the pension board. We also agree that the timetable to establish a pension board no later than 1 April 2015 is achievable and with the responsibilities of the local pension board as set out in this draft Regulation. The wording of the draft Regulation will allow the establishment of a pension board prior to 1 April 2015 which is vital to ensure appropriate pre-commencement training.

Regulation 106(2) to (5)

LHB has established a pension committee to carry out the scheme manager functions. Performance of the functions set out in 106(1) does not necessitate that the pension committee and pension board be separate entities. Within the private sector, committees of management of pension schemes are expected to both manage the scheme and ensure compliance with regulations / best practice. This is also true within other complex areas of council activities. It is not usual for decision making bodies to have in their remit having regard to regulations, guidance best practice etc and the need for effective and efficient governance. Quite why the Secretary of State considers that the LGPS requires two committees to achieve this goal is unclear.

Separation of the pension board and pension committee has the capacity to generate conflict between the two. To manage this risk, the powers of the pension boards are likely to be limited to making reports, which will not encourage active involvement.

Despite our reservation on the need for separate pension boards and committees, LBH is of the view that establishment practicalities probably means that the two will be separate. As the Consultation itself points out (pages 12 and 13) a combined body would have to operate under two separate sets of legislation (the Local Government Act 1972 and the Public Service Pension Act 2013). The issue of voting rights and compliance with local government law on the political composition of committees would also need to be addressed if a joint committee were approved.

For the sake of flexibility and to allow for circumstances not yet anticipated the LBH encourages the Secretary of State to be open minded to approaches to combine the roles of scheme manager and pension board. We would further suggest that the Secretary of State puts into place a mechanism in order that he may receive the views of the Scheme Advisory Board and Pensions Regulator. The performance of pension boards should be monitored to ensure that separation is actually leading to better governance.

The LBH is of the opinion that the second option of 106(5) "An administering authority may determine the procedures applicable to a local pension board, including as to voting rights, the establishment of sub-committees, formation of joint committees and payment of expenses" should be adopted. This option will provide potentially greater flexibility to suit the local circumstances of the 89 individual LGPS Authorities in England and Wales than the first alternative option of establishing pension boards as if they were Section 101 Committees under the Local Government Act 1972. If however the second option is adopted it is suggested that the Secretary of State mandate the Scheme Advisory Board to produce guidance and guidelines.

Elements of discretion which should be allowed to administering authorities in respect of determining procedures under the second option should, we suggest, include:

- Terms of Reference including delegated authority
- Definition of the role of the pension board
- Determining the composition and number of members
- Process for selecting members of the pension board
- Number of meetings per year
- Determining the quorum
- Determining voting rights
- Knowledge and skills to be obtained by pension board members
- Payment of Allowances and Expenses
- Officer support
- Appointment of advisors
- Conflict of interest policy
- Establishment of sub-committees
- Publication of information

In exercising any of these areas of discretion the administering authority should take account of any guidance issued, for example in respect of conflicts of interest, by the Secretary of State, Scheme Advisory Board or the Pension Regulator.

Regulation 106(6)

The role and responsibilities of the local pension board relate to the LGPS. Therefore it is appropriate, as the draft Regulation states that the expenses of a local pension board be borne by the administering authority.

Regulation 107

The LBH suggests that the prohibition in draft Regulation 107(2)(a) on a member of a local authority serving as an employer representative be omitted from the final Regulations. This restriction does not seem to accord with the idea of “localism.” Also if councillors are prohibited from serving as employer representatives then the major employer in the London Borough of Haringey Fund will not be able to be represented by those who actually are the employers, which are the locally elected councillors. While councillors may be appointed to the board as “others” that demeans the Council’s status as the largest employer.

If the prohibition on councillors serving as an employer representative is maintained then in practice officers would have to serve as employer representatives for the London Borough of Haringey. This in practice, we suggest, may cause difficulties as scrutinising the decisions and actions of the decision making committee, which in this case is the Pension Committee, will require officers to “question” the decisions of Elected Members. This scrutiny role we suggest could be more easily exercised if the London Borough of Haringey in its Employing Authority role is able to be represented on the local Pension Board by one councillor.

The LBH would however suggest that the final Regulations place a prohibition on any serving member of the committee (usually the pension committee) that exercises the role of the scheme manager/administering authority from also serving on the pension board.

In respect of draft Regulation 107(2)(b) the LBH agrees that if local pension boards are to operate as intended is clearly necessary that persons serving on the board do have what could reasonably be considered “relevant experience and capacity.” Why this should be determined on an individual basis pre-appointment as suggested rather than either a collective basis or after a reasonable period for training is not explained and may limit the opportunity for participation. It will certainly restrict the ability of scheme members and employers to nominate and elect through voting representatives to the pension board. It is strange that a scrutiny body should have more onerous experience and capacity rules compared with the decision making committee being scrutinised. The LBH also believes that, as proposed on page 10 of the Consultation, it is essential that the DCLG, in consultation with relevant interested parties, prepares and issues guidance on what constitutes “relevant experience and capacity.”

Regulation 108

In relation to the issue of conflicts of interest of local pension board members the LBH suggests that DCLG in consultation with other relevant parties, including the Scheme Advisory Board and Pensions Regulator, prepare and issue guidance on what might and might not constitute a conflict of interest taking into account, of course, the broad definition provided in Section 5 of the Public Service Pensions Act 2013.

Regulation 109

The LBH welcome the commitment of the DCLG, given on page 11 of the Consultation, to work closely with all relevant interested parties in formulating guidance to be issued by the Secretary of State relating to local pension boards.

In particular the LBH suggests that clear guidance is issued defining the role of local pension boards in relation to funding and investment issues. The LBH suggest that guidance make absolutely clear the limits of the role of the local pension board in relation to funding and investment issues which we understand relate only to the process followed in respect of these issues and not the actual decisions themselves.

Regulation 110

The LBH welcomes the proposed wording of Regulation 110(2) that “The Local Government Pension Scheme Advisory Board is responsible for providing advice to the Secretary of State on the desirability of making changes to the Scheme.”

The LBH also agrees that the Scheme Advisory Board’s remit should include “providing advice to administering authorities and local pension boards” as proposed in draft Regulation 110(3)

Regulation 111

The LBH suggests that the membership of the Scheme Advisory Board should as a minimum be a chair and six other members in order that the different major interest groups in the LGPS be represented. In order to avoid the Scheme Advisory Board becoming too large, and therefore potentially less effective, the LBH agrees with the proposal in the draft Regulations that the upper limit of other members be twelve.

The LBH suggests that in addition to persons representing the interests of scheme employers and persons representing the interests of members, the Scheme Advisory Board should have in attendance, at the main board, relevant practitioners to provide an “expert insight.”

Regulation 112

In relation to the issue of conflicts of interest of Scheme Advisory Board members the LBH suggests that the DCLG in consultation with other relevant parties, including the Scheme Advisory Board and Pensions Regulator, prepare and issue guidance on what might and might not constitute a conflict of interest taking into account the definition provided in Section 7 of the Public Service Pensions Act 2013.

Regulation 113

The LBH agrees that as proposed in draft Regulation 113 (2)(a) the annual budget of the Scheme Advisory Board should be subject to approval by the Secretary of State. The budget should also be subject to consultation with those who pay the levy and the Secretary of State should consider the responses to this consultation.

The LBH also agrees that, as proposed in draft Regulation 113(2)(b) the cost of the Scheme Advisory Board to be borne by each Administering Authority should be proportional to the number of scheme members. This will mean that levies on administering authorities reflect their differing membership sizes.

Other Connected Issues

Joint Boards

Given that the responsibilities of the local pension board proposed in draft Regulation 106(1) are to ensure compliance with the Regulations, relevant legislation, requirements of the Pensions Regulator and “to ensure the effective and efficient governance and administration of the scheme” the default position must therefore logically be one local pension board for each administering authority. This will allow the pension board to concentrate upon and gain genuine understanding of the local administering authority.

The LBH considers that the Regulations should reasonably allow for shared local pension boards where the board can demonstrate through selection of membership, remit and experience the ability to perform this role for more than one scheme. Combined boards may offer greater scope to attract experienced pensions professionals and also to

compare and contrast different approaches to good governance. We agree that a shared board should serve relatively few schemes.

Annual General Meetings, Employers Forums etc

The LBH considers that good governance across the LGPS would be promoted by a requirement within the Regulations that administering authorities hold an annual general meeting for employees and an employers' forum on at least an annual basis.

Public Sector Equality Duty

It would appear appropriate to include in the role of the Scheme Advisory Board the role to have regard to the Equality Duty in making recommendations to the Secretary of State. The LBH also considers the scrutiny/compliance role of local pension boards should include the Equality Duty.

Knowledge and Understanding

The LGPS is becoming ever more complex. Therefore, it is vital that members of decision making committees (pension committees) have appropriate knowledge and understanding. Consequently the LBH considers that an amendment should be made to the LGPS Regulations to include a "knowledge and understanding" requirement for members of pension committees and sub committees of the main committee.

Yours sincerely

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Chief Finance Officer