

Mr Robert Ellis
LGPS Governance Regulations 2014
Department for Communities and Local Government
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Dear Robert

Local Government Pension Scheme

Please find attached to this letter the LGA's response to the consultation:

The Local Government Pension Scheme (Amendment) (Governance) Regulations 2014 - Better Governance and Improved Accountability in the Local Government Pension Scheme.

Please feel free to get in touch if you have any questions.

Yours sincerely



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Response

Local Government Association (LGA)

Response to the consultation: Better Governance and Improved Accountability in the Local Government Pension Scheme

Summary Response

This paper sets out the LGA's response to the above consultation issued by the Department for Communities and Local Government (DCLG) in respect of the Local Government Pension Scheme (LGPS). In summary the response is as follows:

Local Pension Boards

- **Membership - regulation 107(3):** The LGA seeks clarification on the restriction on elected members and officers of an administering authority who are responsible for the discharge of any function under the LGPS 2013 Regulations. We believe that such individuals should only be precluded from being on the local pension board for that administering authority, rather than being precluded from sitting on any local pension board in England and Wales and the regulation should make this clear (i.e. an elected member or officer from fund A should be able to sit on the local pension board of fund B).
- **Membership - Otherwise appointed members:** The nature and number of other members of a local pension board should be spelt out and their number limited to ensure they cannot out-vote the employer and scheme member representatives on a board.
- **Membership - Chair:** The appointment of a chair from outside of the local pension board membership should be subject to confirmation by the membership of the local pension board.
- **Timeframe for implementation:** The very restricted timescale remaining before 1 April 2015 may result in flawed structures being hastily created which may not provide for an effective employer voice.
- **Joint Pension Boards and also provisions for specific cases (closed funds):** Provision for joint boards where there is a joint discharge of the function across two or more scheme managers should be expressly provided for in the regulations. In addition the regulations should make provision for flexibility in the case of closed funds with a small employer base, providing more dynamic ways in which these atypical administering authorities can establish a local pension board.

Scheme Advisory Board

- **Funding:** Clarity on the amount of, and arrangements for, Scheme Advisory Board funding should be forthcoming as soon as possible.

Cost Management

- **Interaction between two cost management processes:** We are concerned over the silence in the regulations with regard to the interaction between the two cost

management processes but welcome the letter from the Minister inviting the Scheme Advisory Board to set out proposals for such interaction.

Response in Detail

Local Pension Boards

1. Membership - Regulation 107(3)

1.1 Regulation 107(3) states:

No officer or elected member of an administering authority who is responsible for the discharge of any function under these regulations (apart from any function relating to local pension boards or the Local Government Pension Scheme Advisory Board) may be a member of a local pension board.

1.2 It is not explicitly clear whether this regulation is restricting an officer or elected member (who is responsible for the discharge of the pension function) from being a member of any local pension board in England and Wales or only the local pension board of the Fund in which they are discharging any function under these regulations.

1.3 The LGA would expect that officers or elected members of an administering authority (with a responsibility for the discharge of the pensions function) would only be restricted from membership of the local pension board for that administering authority.

1.4 The LGA would welcome clarity that there is no restriction on an elected member or officer of the Fund (who is responsible for the discharge of the pension function) from being a member of a local pension board in another fund i.e. an elected member or officer from Fund A should be able to sit on the local pension board of Fund B.

2. Membership - Otherwise appointed members

2.1 The regulations no longer make specific reference to 'otherwise appointed members' of a local pension board. In the previous iteration of these regulations there was a provision to ensure that "the number of members appointed under paragraph (2) [i.e. employer and member representatives] must exceed the number of members otherwise appointed to a local pension board". Whilst there is nothing within the draft regulation to preclude the inclusion of members other than those appointed as employer and member representatives there is also nothing within the regulations to limit the number of 'otherwise appointed members' to a local pension board.

2.2 With no provision within regulations as to the number of 'otherwise appointed members' there is a risk that, potentially, the local pension board's main membership of equal representation from both employers and scheme members could be less than the number of members appointed outside of these two cohorts. If this were to occur it would seem to be counter to the spirit of the overriding legislation (Public Service Pensions Act 2013) and could result in situations arising where the core membership of the Board (employer and scheme member representatives) are out-voted by members who have been appointed in another capacity.

2.3 The LGA would like to see the regulations include provision for 'otherwise appointed members'. Regulations should provide for the maximum number of 'otherwise appointed members'. Given that the Public Service Pensions Act 2013 gives equal representation to both employer and scheme members it would seem counterintuitive to have a potential scenario where the 'otherwise appointed members' could out-vote the employer and scheme member representatives on a local pension board. Therefore, the LGA would like to see provision in the regulations to limit the number of 'otherwise appointed members' to ensure there is no potential for them to out-vote the employer and member representatives.

2.4 It would also be helpful if statutory guidance alluded to the nature of who the category of 'otherwise appointed members' could include, and also confirmed whether they are subject to the same requirements for relevant experience and capacity as regulation 107(2) imposes on employer and scheme member representatives.

3. Membership - Chair

3.1 The draft regulations do not make specific provision for the appointment of a chair on a local pension board. Whilst regulation 106(6) offers overarching power for the local pension board to fully discharge its function, which would include the potential for the terms of reference for a local pension board to include the role of Chair and potentially a deputy, there are some more specific concerns which the LGA would like addressed in the regulations.

3.2 Each administering authority can decide firstly whether to appoint a chair and secondly how to make that appointment to the local pension board. The appointment could be made from the membership of the Board, for example rotating the chair role between both the employer and scheme member representatives on the Board. The chair could also be selected independently from the membership of the Board.

3.3 The LGA would like to see provision in the regulations, or certainly in statutory guidance, that where the appointment of a chair is made from outside the board's membership (i.e. an independent chair), such an appointment would be subject to confirmation by the membership of the local pension board. This will ensure that the role of chair has the full backing of the local pension board membership and that no potential barriers are in place to prevent the effective working of the local pension board. The need for this can be emphasised by considering a situation where, for example, the chair of the board has a casting vote.

4. Timeframe for implementation

4.1 Regulation 106(1) requires that *"each administering authority shall no later than 1st April 2015 establish a pension board ("a local pension board")"*. The LGA would like to highlight concerns regarding the length of time remaining to establish local pension boards.

4.2 The diminishing time left to establish local pension boards is becoming increasingly problematic. Administering authorities are making preparations based on current draft regulation but, without final laid regulations in place, it is not possible for administering authorities to obtain final approval for the constitution and terms of reference of their local pension board via their chosen method of approval (e.g. full council approval).

4.3 The LGA are concerned that the restricted timescale may result in hastily created local pension boards which may not provide an effective platform for employers' voices. The constitution of the board needs full consideration by both employer and member sides to ensure that both groups' appointments to the board can be properly considered.

4.4 The LGA wish to see laid regulations in place as soon as possible after the close of this consultation to give as much of the remaining time to 1 April 2015 as possible to administering authorities to establish their local pension boards and to allow for ample consultation with their employer and scheme member base to ensure a robust local pension board is created.

5. Joint Pension Boards and also provisions for specific cases (closed funds)

5.1 In the earlier consultation on the first iteration of these regulations (*the LGPS (Amendment) Regulations 2014 - Draft Regulations on Scheme Governance*) there was reference in the 'connected policy issues' section to the potential for shared local pension boards (i.e. joint pension boards).

5.2 The LGA in our [response to that consultation](#) (dated 15 August 2014) indicated that we would welcome provision within regulations for joint pension boards in cases where the scheme manager function is being delivered wholly or mainly via a joint committee. We continue to hold that view and would like to see regulations made which enable this option for joint pension boards.

5.3 Furthermore there are other circumstances where it is becoming apparent that increased flexibility would be welcomed. Specifically this is in respect of administering authorities who only have a closed LGPS fund and who have a very small employer base¹.

5.4 A number of potential practical issues are becoming evident in terms of the establishment and operation of local pension boards for such administering authorities. These include the difficulty in recruiting employer and member representatives given the very small base of employers and scheme members in that fund.

5.5 Such funds, with their own delegated administration function (i.e. a separate section 101 pension committee) often share an administration function with a larger administering authority.

5.6 Given the very specific composition and also management of such closed funds, it would be helpful if regulations could provide for an element of flexibility in such cases (where this is sought locally by the administering authority).

5.7 For example provision could be included to allow for the creation of a joint pension board, i.e. where the local pension board to be established by the administering authority of the closed fund and the local pension board to be established by the administering authority for the other larger fund (which shares its administration function) are merged.

¹ E.g. the South Yorkshire and West Midlands Passenger Transport Authorities.

5.8 That local pension board would then be required to assist both scheme managers in the areas set out in regulation 106(1). That board would contain membership from employers and scheme members from both administering authorities but would not be required to have a minimum of 4 members from each of the administering authorities. Statutory guidance should indicate how best to achieve appropriate representation across both administering authorities.

5.9 Such flexibility would allow for more appropriate structures to be created given the differing circumstances under which those administering authorities that only have a closed fund have to operate.

Scheme Advisory Board

6. Funding

6.1 Regulation 113 makes provision for the funding of the Scheme Advisory Board with regulation 113(2) requiring that:

(2) The Local Government Pension Scheme Advisory Board must identify the amount to be paid by each administering authority towards its annual costs based on—
(a) its annual budget approved by the Secretary of State; and
(b) the number of persons for which the administering authority is the appropriate administering authority.

6.2 It is important that decisions relating to the funding of the Scheme Advisory Board's annual budget are taken and communicated to administering authorities as quickly as possible. This is to ensure they are in a position to budget for the costs associated with the Scheme Advisory Board from April 2015 onwards.

Cost Management

7. Interaction between two cost management processes

7.1 The cost management process for the LGPS shall be a dual process which consists of:

- An LGPS Future Service Cost process managed by the Scheme Advisory Board and the Department for Communities and Local Government with input from the Government Actuary's Department, which is subject to
- A public service pension cross schemes Employer Cost Cap process managed by HM Treasury and GAD.

7.2 The LGA are concerned that the regulations are silent in respect of the interaction between the two cost management processes listed above. It would also appear that regulation 63 of the LGPS Regulations 2013 may need amendment to deliver the LGPS Future Service Cost process.

7.3 The LGA welcomes the Minister's letter inviting the Scheme Advisory Board to set out proposals for such interaction and would like to see that any interaction between both processes is clearly provided for in legislation.

The LGA, and in particular its pensions team, is available to discuss and answer any questions the department may have on this response.