



<h2>PENSIONS COMMITTEE</h2> <p>23 September 2014</p>	

<b>Subject Heading:</b>	Local Government Pension Scheme Governance Reform 2014
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<b>Policy context:</b>	The Local Government Pension Scheme Regulations and Public Services Pension Act 2013
<b>Financial summary:</b>	The reforms required under the 2013 Act will require resourcing from the Pension Fund in administering the changes, the consultation, feedback and training.

### The subject matter of this report deals with the following Council Objectives

Clean, safe and green borough	<input type="checkbox"/>
Excellence in education and learning	<input type="checkbox"/>
Opportunities for all through economic, social and cultural activity	<input type="checkbox"/>
Value and enhance the life of every individual	<input type="checkbox"/>
High customer satisfaction and a stable council tax	<input checked="" type="checkbox"/>

## SUMMARY

The Public Service Pensions Act 2013 ('The Act') outlined new governance structures for Pension Funds to take effect from 1 April 2015 and propose for a Scheme Manager to be advised by a Pensions Board which is to consist of a proportionate number of employer and member representatives.

The Act further provides for explicit regulatory oversight of pension schemes by the Pensions Regulator whose role will be to issue Codes of Practice on the governance standards of conduct and general practices expected of local government pension schemes (LGPS).

**RECOMMENDATIONS**

It is recommended that the Pensions Committee:

- 1 Note the report and that further information will be provided as it becomes available.
- 2 Agree the creation of a joint Governance Reform Working Party with officers from the London Borough of Newham, as a joint oneSource arrangement.
- 3 Agree the remit of the joint Working Party as set out in the report.
- 4 Delegate to the Transactional Manager to manage the Working Party going forward.

**REPORT DETAIL**

**1. Background**

- 1.1. Following the Hutton review in 2011 the Public Service Pensions Act 2013 brought about a significant number of changes to the Local Government Pension Scheme and how it was to be administered.
- 1.2. The changes to the Local Government Pension Scheme came into effect from 1 April 2014 and the Havering Pension Fund has successfully implemented the changes to the scheme.
- 1.3. The stated aim of the whole reform of public sector pensions is to raise the standard of management and administration of public service pension schemes and to achieve a more effective representation of employer and employee interests in that process.
- 1.4. The Government issued a consultation paper on 23 June 2014 with a response deadline of 15 August 2014. The Council did not submit a response to the consultation due to the timing of the Committee and the complex issues that would need to have been considered. The consultation paper and draft regulations are attached at Appendix 1.

**2. The Responsible Authority**

- 2.1. Is the person who makes regulations for the scheme, which, in the case of the LGPS, is the Secretary of State for the Department of Communities and Local Government (DCLG). The Secretary of State will be responsible for policy but requires the consent of H M Treasury before any regulations are made.

### **3. National Scheme Advisory Board**

- 3.1. Regulation 110(1) provides that a scheme advisory board is established, which has a responsibility for providing advice to the Responsible Authority and the Pension Boards.
- 3.2. Regulation 113 sets out the funding and value for money of the Scheme Advisory Board. The Government proposes that the costs of the National Scheme Advisory Board are shared amongst Local Authority Pension Funds.

### **4. National Structure**

- 4.1. At national level the Secretary of State (DCLG) is responsible for policy and making regulations. In this they will be advised by the Scheme Advisory Board. The remit and membership of this board have yet to be determined but is likely to follow that of the Shadow Advisory Board, set up in summer of 2013, which is currently chaired by the CEO of the National Association of Pension Funds (NAPF). It consists of:
  - employer representatives;
  - scheme member representatives (trade unions);
  - advisors (Actuary, Local Authority Treasurer, Fund Practitioner and CIPFA's Pensions Panel);
  - plus observers from DCLG, TPR and NAPF.
- 4.2. In particular, the Scheme Advisory Board will review affordability of the Scheme, "the cost cap", and advise the Secretary of State of changes to current contributions/benefits are required to maintain affordability.
- 4.3. The Scheme Advisory Board will also provide advice to Scheme Managers and the Pensions Board in relation to effective and efficient administration and management of LGPS.

### **5. The Scheme Manager**

- 5.1. Section 4 of The Act requires that each pension scheme has a Scheme Manager who will be responsible for administering and managing the Scheme. It has been confirmed that the Scheme Manager will be the Administering Authority and will have the ultimate responsibility for the scheme.
- 5.2. The Scheme Manager is a function which can be delegated under S101 of the Local Government Act 1972. Further, The Act also provides that the two roles of administration and management can be undertaken as separate functions by two scheme managers.
- 5.3. The Scheme Manager will be assisted by the Pensions Board.

### **6. The Pension Regulator**

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- 6.1. In December 2013 the Pension Regulator (TPR) issued a draft Code of Practice for the governance and administration of public service pension schemes, including therefore LGPS. Codes of Practice are not statements of the law but in practice compliance with Codes are expected by external audit and failure to comply is likely to result in an adverse audit opinion.
- 6.2. The Code is directed at Scheme Managers and members of pension boards. It contains sections on managing risks, administration and resolving issues, but has a main section on governance and in particular the knowledge and understanding required by pension board members.
- 6.3. The Shadow Advisory Board has a Governance and Standards Sub-Committee which is currently working with TPR to develop the Code of Practice and subsequently an LGPS specific code. Once the final regulations and the final Code of Practice are published the Administering Authority will have a number of decisions to make in relation to future governance arrangements, including:
  - Whether membership of the Pensions Committee and the Pensions Board can be combined or must be separate.
  - How to ensure compliance with TPR Code of Practice in particular with requirements for knowledge and understanding of Board members.
  - Whether to introduce the new arrangements in advance of the statutory date (assumed to be April 2015) in order to test the appropriateness of the arrangement for the Havering Fund.
  - The extent to which these decisions will be informed by consultation with employers within the Fund and scheme members.

## **7. The Pensions Board**

- 7.1. New Regulation 106 concerns the establishment of local pension boards.
- 7.2. Is a board with responsibility for assisting the Scheme Manager in securing compliance with scheme regulations, other legislation and the requirements of TPR. Each Scheme Manager is required to have a separate Pension Board.
- 7.3. The Pension Board is required to include equal numbers of employer and employee representatives. Currently within the Fund there are approaching 30 employers including Academies, a University Technical College, Further Education Colleges and Admission Bodies. There are over 16,900 members and consideration will need to be given as to how best to reflect this number and their variety in the formation of the Board.
- 7.4. The Act further requires that those appointed to the Board do not have a conflict of interest requiring each to declare any such conflicts imposing a responsibility on the Scheme Manager to ensure such conflicts do not interfere with the ordinary course of the Fund's business.

- 7.5. Section 5(7) of The Act enables subsequent legislation to provide that the Scheme Manager, where this has been delegated to a Committee, to also be the Pensions Board.

## **8. Combined Pension Committees/Pension Boards**

- 8.1. The Act introduces the role of TPR into public sector schemes. This is a new requirement and will need to be complied with. Currently, compliance with the law and good governance and effective administration are roles that in the Pensions Committee already has and exercises. The Havering Pension Fund also encompasses best practice in having employer and employee representation on the Committee and consults with the Employers as and when required.
- 8.2. In the Bill and in consultation the draft regulations provided for the Pensions Board to be either the same as the existing statutory committee or a separate body. The Act, though light on details, states regulations may still permit this but requires that board members should not have a conflict of interest, suggesting Scheme Manager and Pensions Board would have to be two separate entities.
- 8.3. The introduction of Pensions Boards is an added layer of bureaucracy that is an unintended consequence of national legislation for other public sector schemes. Although it has to be recognised that not all Pension Funds have the same governance structure or practices as the Local Government Pensions Scheme, or the London Borough of Havering. Therefore, one of the options that will need to be reviewed is whether the new Pension Board governance responsibilities can be built upon the existing governance structure. Further, in recognising that it would be an added layer to the existing governance structure it should be introduced in as simple a way as possible to maximise cost effectiveness without in any way undermining the role of Pensions Boards.
- 8.4. Pension Boards perform a role of overseeing and supporting the Pensions Committee to assist the administering authority to:
- Secure compliance with –
    - these Regulations;
    - any other legislation relating to the governance and administration of the Scheme; and
    - requirements imposed by the Pensions Regulator in relation to the Scheme.
  - To ensure the effective and efficient governance and administration of the Scheme.

In that context the idea of combining Pensions Boards and Committees makes sense from a practical viewpoint since they perform a similar role. Having two separate bodies meeting separately will lead to duplication and added costs of running the scheme. Equally, the knowledge and skills required of each would be broadly similar and specialist – so combining the activities would again reduce duplication. However, there will be a need to consider how the support could operate effectively under a scenario where the bodies were combined.

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- 8.5. However, it is understood that DCLG are concerned whether combining Pensions Boards and existing Committees could work legally; and have placed a high hurdle in that any such proposals would need Secretary of State approval and would need to meet any conditions laid down by the Secretary of State.
- 8.6. The consultation paper makes a fairly broad reference to difficulties of a combined body existing under two legal codes – The Local Government Act 1972 and the Pension Act 2013. In particular and by way of example the Pensions Act requires equal employer and employee representation whereas the Local Government Act would require appropriate political balance. It may be that the two pieces of legislation are simply not compatible.
- 8.7. Even if a combined Pensions Board/Pensions Committee is not worth pursuing due to the high hurdle or due to legal grounds, it would be sensible to seek options that could reduce the duplication for officers and recognising the overlap in skills and knowledge requirements when deciding how a Pensions Board might operate.
- 8.8. That could lead to a practical suggestion that even if the Board meets separately it could be timed to follow Pensions Committee meeting, although this may not be feasible administratively. Furthermore, it could also be helpful if members of the Board attended the Pensions Committee meeting to keep abreast of any knowledge and skills training and to understand the decisions reached. This would then reduce the time needed at the Pensions Board meeting where the Board can concentrate on their own agenda items. In order for them to attend all items including non public items it would be preferable, if legally possible, they be co-opted members of the Committee (without voting rights). In that way it could be possible to practically deliver a combined Board/Committee but with the Board remaining a separate body.
- 8.9. The suggested operation would then reduce the duplication and training needs of two separate bodies considering essentially the same things. Further it would help ensure that everyone had access to the same information/training to ensure common as possible standards of knowledge and skills. It does however raise a question over the independence of the Board. Careful consideration of the membership of the Board and how it obtains advice may help to ensure its independence. Furthermore as the legislation as currently drafted provides for combined roles it will be possible to see what conditions the Secretary of State attaches to such bodies to ensure that if the approach of a 'notional' combined body were adopted it could still comply with best practice.
- 8.10. On a broadly similar theme the consultation also proposes two options for setting up Pensions Boards either using Local Government law (i.e. as if it were a Committee) or as a separate body.

## **9. Joint Boards**

- 9.1. The consultation suggests that joint Boards i.e. Boards that exist across two or more administering authorities could be considered where joint arrangements

already exist between those authorities. Depending upon the outcome of the review of Havering and Newham pension administration arrangements, noted to the Committee in another paper on the agenda, this option could be explored further. If there is collaboration with neighbouring authorities Pensions Boards could potentially be merged as appropriate, which would deliver savings to the relevant pension funds over operating two Pension Boards. Such an option would have to be approved by the Secretary of State, and may not be acceptable or require significant evidence to support such a proposal.

**10. Membership (Regulation 107)**

10.1. The draft Local Government Pension Scheme (Amendment) Regulations at Regulation 107(2)) requires that there is equal employer and member (employee) representation on Pension Boards. It prevents Local Councillors from being appointed as employer or employee representatives (although they can be appointed in the 'other' category), and excludes Councillors who already sit on the Pension Committee. The regulations provide for a minimum number of four representatives. It also allows for other members of the Board to be appointed but they cannot exceed the number of employer/employee representatives. The following table sets out the possible minimum and maximum numbers.

	Option 1	Option 2	Option 3
Number of employer/member Representatives	4 (mimimum)	6	8
Other Nominees (maximum)	3	5	7
Total (maximum)	7	11	15

10.2. The regulations also set out that employer and member representatives must have 'relevant experience and capacity' (although this doesn't; seem to be required for other nominees).

**11. Working Party**

11.1. It is proposed that an officer working group, lead by the Transactional Manager, be set up and will review all the options that have emerged from the draft guidance. These are issues all LGPS funds will be considering and it is likely that in addition to regulations and guidance from TPR advice will be available from a number of sources, including LGA, the Fund's Actuary, CIPFA and other interested parties.

11.2. It is further proposed, that specialist advice be sought from the Havering Pension Fund actuary and that the working group agree whether the support of the actuary would be further required to develop and implement the options, which will be brought back to Committee.

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- 11.3. The working group will meet at least once a month with the ability to call meetings in between should the position change or the draft regulations be approved in their current or amended form.
- 11.4. The remit of the working group will be to review the legislation, consider proposals for the future structure, consult with members and employers of the Fund, and report back to the Pension Committee. Ultimately, decisions about the organisation of a Pension Board and appointments to it may have to go to Governance and Full Council.
- 11.5. The remit of the working group will be applicable for the Newham Pension Fund due to the combined responsibility of officers as part of oneSource, subject to the appropriate actual cost split of the officer time between the two Pension Funds, outside of the oneSource cost and saving arrangements.
- 11.6. The proposed timeline is:
- September – Pension Committee paper setting out a briefing of the new governance issues.
  - September – working group founded and first meeting, supported by the Havering Pension Fund actuary.
  - September/October/November – working party operation and consultation with employers.
  - December – update on the outcomes and a proposed structure presented to Committee for information and consultation
  - January – Governance Committee report
  - March – Full Council decision
  - April – implement the new Governance structures.
- 11.7. The proposed timeline is tight and may be subject to change, which will be brought back to future Committee meetings.

### **IMPLICATIONS AND RISKS**

#### **Financial implications and risks:**

The reform required under the 2013 Act will create financial pressure on the resources of the Fund in administering not only the changes, but the consultation, feedback, and training required by these changes together with any necessary amendment to the Fund's literature and websites.

The costs of this current work is to be met from the Fund, with any actual costs for actuarial advice and support together with officer time, met by both the Havering Fund and the Newham Fund as necessary if a joint approach to the working groups is agreed by both Pension Committees.



The cost of operating the Pension Board is not able to be identified currently but will be a part of the review and identified in future papers to Committee when the final proposals are agreed.

As mentioned in paragraph 3.2, the cost of the Scheme Advisory Board, which is currently not identifiable, will also be charged to the Pension Fund.

**Legal implications and risks:**

The changes outlined in the report are as a result of legislative reform and are not optional. Failure to adhere to the legislative requirements may result in judicial review and the possibility of Government intervention, together with fines from the Pension Regulator.

**Human Resources implications and risks:**

There are no direct Human Resource implications arising from this report. The work to deliver the options and implement the final approved structure will be absorbed within current roles.

**Equalities implications and risks:**

The report is setting out the proposed changes for information purposes at this stage, and no decision on the governance of the fund are contained in the report.

The consultation asks about the practicality of incorporating the Public Sector Equality Duty within the governance structure. Any decision that the Council has autonomy over which has implications for residents or staff will need to pay due regard to the Public Sector Equality Duty and this should be incorporated within the governance structure.

Any negative equality issues that are raised as part of the consultation process should be mitigated when possible.

The benefits payable from the London Borough of Havering Pension Fund are almost exclusively determined by the Department for Communities and Local Government (through the Local Government Pension Scheme Regulations) or in a small number of cases, by the scheme member's employer. The benefits package is rarely, if ever, within the control of the Fund to adjust. All eligible employees working for employers in the pension scheme are automatically admitted as a member of the Scheme unless they choose to opt-out. Each employer is responsible for informing the London Borough of Havering of new eligible employees joining the Scheme and those who later decide to leave.

DCLG has published an equality statement, assessing the [equality impact of the Local Government Pension Scheme reforms \(2014 Scheme\)](#) using the current, 2008 Scheme as a baseline. The equality statement considers the impacts, both positive and negative, of the reforms on groups with protected characteristics. Decision-makers

are advised to refer to the above equality analysis for further information of the impact on people with protected characteristics.

**BACKGROUND PAPERS**

The Local Government Pension Scheme Regulations (various) and the Guidance notes issued with them.

The Public Services Pension Bill 2013