

# briefing note

LGPS Governance

July 2013



Barry Mack  
Partner & Head  
of Governance

## LGPS (England and Wales) Consultation on Governance

The Department of Communities and Local Government (CLG) published a discussion paper seeking views on the future governance arrangements of the LGPS. The deadline for responses to this consultation paper is 30 August 2013. Hymans Robertson will be formally responding and we want to help you in developing your thinking in advance of any response your organisation may also wish to make.

The purpose of our briefing note is to offer our initial thinking on the various questions posed in the CLG discussion paper, as well as highlight areas where we feel further thinking might be required.

### What's covered in the CLG paper?

The paper explores five specific sections of the Public Service Pensions Act, ("the Act"), which impact on the new governance arrangements for the Scheme, giving a more detailed summary of what is required for each section in order to comply with the Act:

- Responsible Authority (i.e. Secretary of State);
- Scheme Manager (i.e. Local Administering Authority);
- Pension Board (i.e. new local scrutiny board to assist the Scheme Manager);
- Pension Board Information;
- Scheme Advisory Board (i.e. new national advisory board to the Secretary of State).

The paper invites responses, to 26 questions, on a wide range of issues across the five sections set out above. As might be expected the majority of the questions focus on the constitution of the pension boards and scheme advisory board.

### Our initial thoughts

#### Timing

We appreciate the need to ensure that the changes to the contribution and benefit elements of the LGPS are given adequate resources to ensure a smooth implementation. For that reason alone we support the intention to introduce governance changes from a later date. In order that the changes can be introduced smoothly it is also important that any deadline imposed does not clash adversely with the cycle of local elections in 2014 and 2015.

The absence of any mandate on when the new national scheme advisory board and local pension boards have to be set up seems to be intended to give schemes some flexibility given the workloads for implementing public sector reform.



## LGPS Governance

### Impact on other primary legislation

From an LGPS perspective sufficient thought should be given to how the governance requirements of the Act interact with the statutory requirements of section 101 of the Local Government Act 1972. This is particularly the case if it was decided to require a combined pension board/s.101 committee. In such a situation, changes to the Local Government Act 1972 may be required to enable the new LGPS governance arrangements to actually work. This approach in itself could have significant unintended consequences in terms of decision making, flexibility and accountability.

All in all, “good governance” would support the avoidance of any procrastination with implementation of local pension boards being no later than April 2015, when the Pensions Regulator commences its public sector pension duties.

### Pensions Board

A number of key discussion points have been raised in relation to the creation of pension boards and the extent to which regulations should prescribe how they are set up, and what their responsibilities should be.

### Separate or combined Pension Boards and s101 Committees

This is perhaps the key question posed by discussion paper. If no formal response is given to any other question in the consultation paper this is the one that CLG is most keen to hear views on. In our work with LGPS Funds, when looking at questions of governance, we fully appreciate both sides of the argument for and against separate or combined boards/s.101 committees. Another question that has been posed is whether it would be possible to have regional pension boards.

### Be careful what you wish for

We appreciate the additional burden on administering authorities that would result from requiring Pension Boards to be separate from s101 committees. We can also see why, on the face of it, a combined solution might appear attractive to some; not least the concerns over sourcing enough suitably skilled individuals to sit on a separate Pension Board.

Certainly, within the private sector, this scrutiny role falls to the board of trustees, which is also responsible for decision making too. The private sector blueprint, however, is set against a very different legal structure where for example there is a clear separation of the pension scheme from the sponsoring employer. The policing structure in place gives the Pensions Regulator more powers than we currently expect them to have in relation to public service pension schemes. However, administration of the LGPS is a statutory function of individual administering authorities and so any considerations of future LGPS governance models that seek to achieve some degree of parity with the private sector model need to be considered with care. At an extreme, for example, any proposals that sought to move the current LGPS governance arrangements to a similar structure to that for private sector schemes could have far reaching consequences for administering authorities and their pension teams.

There is, therefore, much to consider before opting for combined boards/s101 committees, which we consider below.

- Combined boards/s101 committees would see a clash of two sets of primary legislation (the Local Government Act 1972 and the Act); the former being concerned with the mechanics of local authority decision making and the latter being focussed on the scrutiny of those mechanisms in relation to the management and administration of the LGPS. A combined solution would appear to require a change to overriding legislation to enable the two functions to operate within the one body.



## LGPS Governance

- The Act requires employee and employer representation in equal numbers on a pension board. Under a combined solution this would require a review of the existing pension committee structure to ensure this requirement could be met. Given the current constitutional structure within which local authorities currently exist it may be more beneficial, therefore, to maintain the existing s101 committee in its current form and enable a more focussed pension board to be set up in order to carry out the scrutiny role.
- A combined solution would appear to pass decision making powers to the new employer and other employer representatives as well, although the administering authority would still retain overall responsibility for the outcome of any decisions taken.
- The existing requirement of any finance related committee of a local authority is to have a majority of elected members on it. In any combined solution this is clearly at odds with the requirement of the Act to have equal employee and employer representation on the pension board.
- Regional boards, while at first glance look appealing, also have their downside. The Act requires each Scheme Manager (i.e. administering authority) to put a Pension Board in place. Regional boards would appear to only work, therefore, where administering authority functions have also been regionalised (e.g. fund mergers), which we assume at this stage is not what administering authorities are looking to pursue.

Good governance is ultimately about accountability and understanding and managing risk. In the context of the existing constitution of local government, and in light of some of the potential barriers highlighted above, we see benefit in the separation of the two bodies, mirroring the scrutiny roles undertaken across most, if not all, other areas of local authority business.

Assuming CLG decide to require the setting up of a separate Pension Board further thought needs to be given to how the two separate bodies are run. For example, using an existing scrutiny committee e.g. audit committee has merits (vs. setting up a brand new one) not least as it will utilise people who are used to a scrutiny role but also have financial knowledge, which may be useful in working with pensions. Thought would be required around how membership of any existing structures could be expanded in order to bring in membership from employee and other employer representatives.

Whatever the final decision we do support the opinion expressed by CLG in paragraph 1.27 that there should be a consistency of basis across all LGPS Funds.

### Conflicts of interest

Regulations will need to include provision to ensure that no person is appointed to the Pension Board either at outset, or from time to time, who has a conflict of interest other than by virtue of being a member of the scheme. Our experience of working with companies in the corporate sector suggests this will be difficult, if not impracticable, to regulate because conflicts abound in business all the time. For this reason, and accepting that specific wording of the Act may act as a barrier, we would prefer regulation which mandated establishment of a “conflicts policy” (like in the private sector). This would set out how conflicts will be managed when they are identified. This approach mitigates unnecessary exclusion of people with relevant skills and, without any specific policy or regulation, has resulted in few senior corporate officers (i.e. CEOs, FDs) on pension trustee boards.

### Restrictions on Membership

Related to the above, the discussion paper cites concerns raised in early discussions with interested parties that administering authorities could move members from the s101 committee to the Pension Board and vice versa, were this governance structure decided upon. The question, from a good governance point of view is why would one prevent this? This approach can only strengthen the governance process; having the merit of bringing their relevant experience and knowledge across to the scrutiny role.

We do acknowledge, however, that in the short term this could result in a “void” as a consequence of an individual moving from a committee to a Pension Board (i.e. actions attributable to an individual needing to be completed or re-assigned before the individual can transfer across).

### Role

A question is asked about what “other matters” if any should be included in regulations to add to the role of the Pension Board. We note that the Act is silent on investment and funding which needs to be included, ensuring the scrutiny role of Pension Boards is explicitly extended to cover the process associated with investment decision making of the Scheme Manager. The Board could also be given a specific role in promoting best practice beyond service standards, including the breadth of services that a fund offered to its members and also employers.

### Scheme Advisory Board – remit, membership and funding

Given the express purpose of this body is to advise the Secretary of State, we can see no reason why its remit should be restricted in any way preventing it acting proactively within the scope of advising on public sector pension provision. In addition we also believe that the remit of the Scheme Advisory Board should extend to cover the overarching management and investment of funds within the scheme. This would be with a view to ensuring the investment rules of the scheme are sufficiently flexible to enable funds to make best use of investment opportunities, while still retaining suitable controls and limits where appropriate.

For the same reason, in terms of the Board’s membership and its advisory role to the Secretary of State, this should be comprised of pension professionals from the actuarial, investment, accounting and legal professions who have public sector pension experience. Given that a shadow board is in place our preference would be for the Secretary of State to approve this board as the full Scheme Advisory board at such time as the governance requirements come into effect, rather than require a new board to be put in place.

### Funding

On the funding of the Board, it has been made clear that this must be self-financing from the administering authorities, either on a voluntary subscription or mandatory levy basis. In our view, given the Board will represent the whole of the LGPS universe in England and Wales, and all funds will benefit from it, the only appropriate solution is a mandatory levy.

### Conclusion

We acknowledge there are many examples of good and improving governance within the LGPS. We have, however, been strong supporters of the aims of the Public Service Pensions Act 2013 to further raise standards by introducing a more structured governance framework to the public service pension schemes, including the LGPS.

Overall we believe CLG are adopting a pragmatic approach to the setting up of local Pension Boards and the national Scheme Advisory Board. In terms of the pension board, given the statutory framework within which administering authorities and the LGPS exists we see merit in requiring these Boards to be separate from existing statutory s101 committees. This would ensure an appropriate level of separation between the two distinct roles and provide a suitable level of transparency at the same time. We appreciate there is still further work required in considering changes to the current statutory framework should there be support for a combined solution as well as the potential for conflicts of interest whatever solution is decided upon. We also recognise the additional burden setting up a separate Pension Board might have on local resources.

Beyond specifying that administering authorities are required to have separate pension boards from any statutory committee, we would support a light touch overall in terms of the regulatory framework for both the Pension Board and the Scheme Advisory Board, which would allow a suitable degree of flexibility in terms of how these structures operate.

We would hope the eventual solution will retain suitable flexibility in terms of how s.101 responsibilities are executed, to cater for local circumstances and performance.

We await, with interest, the outcome of this period of informal consultation and look forward to the eventual draft LGPS Regulations that will result.

In the meantime please contact me ([barry.mack@hymans.co.uk](mailto:barry.mack@hymans.co.uk) or 0207 082 6141) or your usual Hymans Robertson contact if you would like to discuss any of the matters set out in this briefing note.