

By: Chairman Superannuation Fund Committee
Corporate Director of Finance and Procurement

To: Superannuation Fund Committee – 6 February 2015

Subject: **PENSION BOARD**

Classification: Unrestricted

Summary To make proposals for the establishment of a Pension Board.

FOR DECISION

INTRODUCTION

1. As part of the reforms of public sector pension schemes following Lord Hutton's 2010 review major changes were proposed in the Public Services Pension Act 2013. The Act included a requirement for the Department for Communities and Local Government (DCLG) as a responsible authority to make regulations establishing a national scheme advisory board and enabling each Local Government Pension Scheme (LGPS) administering authority to establish local pension boards.
2. The Committee has responded to a number of consultations from the DCLG in August and November 2014. Our responses have been fairly typical of those of administering authorities who have questioned the purpose and role of the new boards. In fact the consensus view would seem to be that for a locally administered scheme such as the LGPS they are wholly unnecessary and reflect fundamental misunderstandings about how the LGPS is currently governed. Notwithstanding this view we have to comply with the regulatory requirement
3. This report includes a proposed basis for the establishment of a Pension Board for the Kent Fund which will be consulted on.

SECTION 101 COMMITTEE

4. Each Administering Authority is responsible for administering and managing the LGPS and is now referred to as the Scheme manager. Under the Local Government Act 1972 decisions about pensions are delegated in accordance with Section 101 to "committees or sub committees made up of councillors from all of the political groups and will be politically balanced". In Kent the

Constitution delegates this responsibility to the Superannuation Fund Committee.

5. The number of County Councillors on the Committee is determined as part of the overall political balance of the County Council. Additionally the Committee has:
 - 1) Three District Council representatives, one for each of the Conservative, Labour and Liberal Democrat parties. It is understood that this arrangement goes back to the mid 1990's and there was a one off opportunity at that time to give these representatives full voting rights. There is no documentation in Democratic Services or Finance to explain how this was done. Initially nominations were made through the Kent Association of Local Authorities (KALA) but since that was superseded where changes have been necessary then the Head of Financial Services has asked the Leader of each KCC group if they could make a nomination through the party structure in the county.
 - 2) One Medway Council representative since 2002. This was the last time that the membership of the Committee was reviewed and it was not felt to be appropriate that the second largest employer in the scheme did not have a seat on the Committee. But it was not possible to give voting rights.
 - 3) Two Kent Active Retirement Fellowship representatives. Again this goes back to when KARF was established in the mid 1990's and there are no voting rights. Pensioners are a key part of the total community of the scheme but there are no decisions which the Committee can take which affects the entitlements of pensioners.
 - 4) One trade union representative. This was reduced from 2 members, for the county and district councils in 2002, non-voting.
 - 5) One staff representative from KCC, non-voting.
6. The creation of a Pension Board does not change the core role of the Administering Authority in any way. But it does give the opportunity to review the current membership of the scheme. In this context the main issues are:
 - 1) Formally confirming the arrangements for the District Council representatives. The current arrangement of nomination by political group does not accord with normal practice. For example, the Council's Health Overview and Scrutiny Committee has two voting District Council representatives – nominated by Councils in East and West Kent
 - 2) Determining whether it is possible to give the Medway Council representative full voting rights.

- 3) Determining whether the KARF, trade union and staff representation is more appropriate through the Pension Board itself.

Changes to the membership of this committee would have to be agreed by Council.

7. There are no proposals to change the remit of the Committee.

PENSIONS REGULATOR

8. The regulatory powers of the Regulator were extended under the 2013 Act to cover some aspects of public service pension schemes, including the LGPS. The Regulator is an existing body corporate established by the Pensions Act 2004 Act. Prior to 1 April 2015, the Regulator regulated occupational and personal pension schemes provided primarily through private sector employers.
9. The Regulator has a number of statutory objectives including to:
 - 1) Protect the benefits of pension scheme members,
 - 2) Promote, and improve understanding of, the good administration of work-based pension schemes; and
 - 3) Maximise compliance with the duties and safeguards of the Pensions Act 2008.

The 2013 Act introduces a framework for the regulatory oversight of aspects of the governance and administration of public service pension schemes by the Regulator from 1 April 2015, through expanding its current role.

10. The Regulator has oversight in areas such as those listed in below and may issue codes of practice for public service pension schemes in these areas. The Regulator has issued the Code of Practice which covers:
 - 1) Knowledge and understanding by pension board members.;
 - 2) Conflicts of interest;
 - 3) Reporting breaches of the law;
 - 4) Information to be published about a scheme;
 - 5) Internal controls;
 - 6) Scheme record-keeping;
 - 7) Maintaining contributions;
 - 8) Information to be provided to members; and
 - 9) Internal dispute resolution.

However, only the areas of knowledge and understanding, conflicts of interest and reporting breaches of the law have direct application to Local Pension Boards. The other areas apply to Administering Authorities, although are areas that a Local Pension Board will need to be aware of in order to assist the Administering Authority.

11. For the avoidance of doubt the powers of the Regulator were not extended to cover areas such as the funding and investment of Funds.
12. The Regulator will have a range of enforcement powers under the 2013 Act including:
 - 1) The power to appoint a person to assist a Local Pension Board in the discharge of its functions if the Regulator considers it desirable for the purpose of ensuring compliance with relevant “pensions legislation”;
 - 2) The power to issue an ‘improvement notice’ to an Administering Authority or to a member(s) of a Local Pension Board directing them to take, or refrain from taking, such steps as are specified in the notice in order to remedy or prevent a recurrence of a contravention of “pensions legislation”;
 - 3) The power to issue a ‘third party notice’ directing a third party to take, or refrain from taking, such steps as are specified in the notice in order to remedy or prevent a recurrence of a contravention of “pensions legislation”;
 - 4) The power to issue a ‘report notice’ to an Administering Authority or to a member(s) of a Local Pension Board requiring them to provide a report on a specified matter(s) which are relevant to the exercise of any of the Regulator's functions;
 - 5) The power to require Administering Authorities and members of Local Pension Boards to produce documents and information;
 - 6) The power to inspect premises;
 - 7) The power to apply for an injunction;
 - 8) The power to apply for restitution where there has been a misuse or misappropriation of any Fund assets;
 - 9) The power to recover unpaid contributions on behalf of an Administering Authority; and
 - 10) The power to impose civil penalties for breaches of certain pensions legislation including the duty for Administering Authorities and members of Local Pension Boards to report breaches of the law, the duty for Administering Authorities to report the late payment of employer

contributions and the failure to comply with an 'improvement notice' or a 'report notice'.

As noted above, certain powers of the Regulator are limited to contravention of "pensions legislation". For this purpose, "pensions legislation" has a specific meaning and includes certain pieces of core pensions legislation which apply to both public and private sector schemes (the Pension Schemes Act 1993; parts of the Pensions Act 1995; the Pensions Act 2004; and statutory provisions on pension sharing on divorce). In terms of the legislation contained in the 2013 Act, "pension legislations" only includes sections 5(4) (pension board: conflicts of interest and representation), 6 (pension board: information), 14 (information about benefits) and 16 (records).

Of the 2013 Act provisions, only section 5(4) (pension board: conflicts of interest and representation) has direct relevance to a Local Pension Board, as the other sections relate to Scheme Manager responsibilities.

13. The other listed statutory provisions are relevant to the extent that a Local Pension Board is responsible for assisting the Administering Authority to comply with legislation relating to the governance and administration of the LGPS (which will include certain elements of the listed statutes). In all cases, the term "pensions legislation" covers both the statutory provisions listed and any secondary legislation made under those provisions.
14. If the Regulator has reasonable grounds to suspect or believe that a member of a Local Pension Board:
 - 1) Has misappropriated any assets of the Fund or is likely to do so; or
 - 2) Has a conflict of interest in relation to the investment of assets of the Fund

The Regulator must report the matter to the Administering Authority. However, given that a member of Local Pension Board should not have access to Fund assets or be involved in the investment of Fund assets then the exercise of this duty should be rare in practice.

CONSTITUTION AND MEMBERSHIP OF A LOCAL PENSION BOARD

15. Final regulations for the Pension Board have still not been received so the proposals here reflect the draft Statutory Instrument reported to the Committee in November and the January 2015 document produced by the Pensions Regulator.
16. Regulation 106 (1) states that the Pension Board will be responsible for assisting the Administering Authority:

To secure compliance with:

These Regulations,

Any other legislation relating to the governance and administration of the Scheme and any connected scheme, and

Any requirements imposed by the Pensions Regulator in relation to the Scheme.

To ensure the effective and efficient governance and administration of the Scheme.

17. Local Pension Boards must be established no later than 1 April 2015. Established in this context means that the Administering Authority must have approved the establishment of the Local Pension Board and the Local Pension Board's composition and also the terms of reference, in accordance with its constitution. It does not necessarily mean that the Local Pension Board has to be fully operational by this date. However it is anticipated that a Local Pension Board should be operational within a reasonably practicable period after 1 April 2015 (being no longer than 4 months).
18. The responsibility for establishing a Local Pension Board rests with the Administering Authority of each Fund. This is something the Administering Authority must do, it is not optional.
19. An Administering Authority is given power under regulation 106(5) of the Regulations to determine the procedures applicable to its Local Pension Board, including voting rights, the establishment of sub-committees and the payment of expenses. When exercising this power (as provided for in the 2013 Act), the Administering Authority must do so in accordance with usual local government principles, acting reasonably and within the powers set out in the Regulations.
20. A Local Pension Board must include an equal number of employer and member representatives with a minimum requirement of no less than four in total. In addition, the Regulations do not preclude that other members may also be appointed to the Board.
21. No officer or councillor of an Administering Authority who is responsible for the discharge of any function under the Regulations (apart from any function relating to Local Pension Boards or the Scheme Advisory Board) may be a member of a Local Pension Board. The Committee did respond to DCLG in November on this issue stating:

“We welcome the amendment which allows elected members to be members of the board. But the absolute refusal to allow elected members of the administering authority to be on the board is unhelpful. The greatest level of expertise resides with these members and the board would greatly benefit from their involvement. We would ask the Secretary of State to allow elected

members of the administering authority to serve on the board but in a minority”.

22. In accordance with section 248A of the 2004 Act, every individual who is a member of a Local Pension Board must:

Be conversant with:

The rules of the LGPS, in other words the Regulations and other regulations governing the LGPS (such as the Transitional Regulations and the Investment Regulations); and

Any document recording policy about the administration of the Fund which is for the time being adopted in relation to the Fund, and

Have knowledge and understanding of:

The law relating to pensions; and

Such other matters as may be prescribed.

23. The proposals for the Kent Fund Pension Board are set out in Appendix 1. It is proposed that we consult with all employers and interested parties including trade unions and KARF on these proposals. Final recommendations can then be made to the Committee on 20 March with formal recommendations to be submitted to Council on 15 May. This will still allow for the first meeting of the board to take place within 4 months of 1 April 2015 as required.

RECOMMENDATIONS

24. Members are asked to agree the consultation document set out in Appendix 1 and the process set out in paragraph 23. above.

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KENT COUNTY COUNCIL SUPERANNUATION FUND COMMITTEE

CONSULTATION ON ESTABLISHING A PENSION BOARD

INTRODUCTION

1. Kent County Council is the Administering Authority for the Kent Pension Fund. The scheme has 110,000 members, there are 500 employers and assets of £4.3bn.
2. As part of the reform of public service pension schemes by the Government there is a new requirement for Local Government Pension Schemes to have a Pension Board sitting alongside the Superannuation Fund Committee.
3. The Superannuation Fund Committee remains responsible for the management of the Fund.
4. Regulation 106 (1) of the draft Statutory Instrument states that the Pension Board will be responsible for assisting the Administering Authority:
 - 1) To secure compliance with:

These Regulations,

Any other legislation relating to the governance and administration of the Scheme and any connected scheme, and

Any requirements imposed by the Pensions Regulator in relation to the Scheme.
 - 2) To ensure the effective and efficient governance and administration of the Scheme.
5. Local Pension Boards must be established no later than 1 April 2015. Established in this context means that the Administering Authority must have approved the establishment of the Local Pension Board and the Local Pension Board's composition and also the terms of reference, in accordance with its constitution. It does not necessarily mean that the Local Pension Board has to be fully operational by this date. However it is anticipated that a Local Pension Board should be operational within a reasonably practicable period after 1 April 2015 (being no longer than 4 months).
6. This consultation is on the Superannuation Fund Committee's proposals for the membership of the Pensions Board.

PROPOSED APPROACH

7. Membership

Chairman- KCC elected member NOT currently on the Superannuation Fund Committee.

Vice Chairman- to be agreed by board.

Member representation (4):

Staff- 2 representatives; 1 KCC and 1 non KCC.

Kent Active Retirement Fellowship- 1 representative.

Trade unions- 1 representative

Employer (4):

KCC- 2 representatives (including Chair)-not members of the Superannuation Fund Committee

District Councils /Medway Council/Police/Fire- 1 representative

Other employers- 1 representative

8. Selection of members

This will vary by the type of member:

Employee representatives will be asked to nominate themselves and a panel of Finance and HR officers from employers will select.

Pensioner- nominated by KARF.

Trade unions- will be approached direct.

Employer representatives- will be nominated by those employers.

9. Relevant Knowledge and Understanding of Representative Members

The Regulations require that individuals appointed have relevant knowledge and understanding. Much of this will come from serving on the board and there will be a nucleus of member representatives who have experience from currently attending Committee meetings in a non-voting role.

Individuals should not have a conflict of interest but membership of the LGPS or the Fund will not constitute a conflict of interest.

10. Term of Office

Given the substantial investment which will need to be made to bring members skills and knowledge up to an acceptable level it is proposed to have a four year membership period.

11. Termination

A member should cease their office where:

A member has a conflict of interest which cannot be managed in accordance with the Board's conflicts policy;

A member dies or becomes incapable of acting;

A member who is a councillor of the Administering Authority is appointed to a Superannuation Fund Committee;

A member is appointed to the role of an officer of the Administering Authority with responsibility for the discharge of functions under the Regulations;

A member resigns.

A representative member ceases to represent his constituency, for example if an employer representative leaves the employment of his employer and therefore ceases to have the capacity to represent the Fund's employers; and

A member fails to attend meetings or otherwise comply with the requirements of being a Board member, for example fails to attend the necessary knowledge and understanding training.

12. Terms of Reference

The board will assist the Superannuation Fund Committee to secure compliance with the requirements of the LGPS Regulations and of the Pensions Regulator.

The board will receive regular reports on governance and compliance issues.

13. Officer Support

The KCC Corporate Director of Finance and Procurement will be responsible for providing professional advice to the board.

Meeting agendas will be prepared and published by KCC Democratic Services, papers will be available on the KCC website and KCC Democratic Services will minute meetings and publish the minutes on the KCC website.

14. Number of Meetings

The board will meet twice a year in Sessions House, Maidstone.

15. Quorum

A minimum of 4 members will need to be present for the board to be quorate.

16. Substitutes

~~Substitutes will not be allowed.~~

Substitutes will be allowed for the Kent Active Retirement and Unison members of the Board but they must be a named individual who will undertake the necessary training and development. (*Amendment agreed at the County Council meeting on 26 March 2015*)

17. Expenses

Member representatives will be paid expenses for attending the meeting.

Any expenditure the board proposes to incur will need to be agreed in advance by KCC's Head of Financial Services.

18. Data Protection

All members of the board will be required to comply with KCC's data protection and information security policies.

Responses to the consultation should be made to:

nick.vickers@kent.gov.uk

By 6 March 2015

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