

Consultation on the draft regulations on scheme governance

Response from the Lancashire County Pension Fund

The Lancashire County Pension Fund welcomes the opportunity to respond to the Government's proposals for the reform of scheme governance within the Local Government Pension Scheme.

On a general level we are disappointed that the regulations impose additional cost and bureaucracy on Funds, at a time of financial restraint, by making the creation of an effective single body to oversee the operation of local authority pension funds almost impossible. This seems to us a wasted opportunity which has been lost through seeking to arrive at a one size fits all solution for all public sector pension schemes, ignoring the fundamental differences between LGPS, which already has effective and inclusive governance arrangements which can be built on and the unfunded schemes which do not.

Turning to the draft regulations themselves.

New Regulation 105

This regulation is welcomed as it provides helpful clarity in support of increased collaboration between funds over the full range of their activities and places it directly within the regulations rather than placing reliance on more general Local Government Act powers.

New Regulation 106

The provisions in terms of the role of the Board are uncontentious and as is stated simply carry forward the provisions set out in the Public Service Pensions Act 2013.

The issue for funds within the LGPS will be about the practical operation of what is clearly the Department's preferred model of two bodies. There would appear to be significant potential for conflict between the new Boards and the pre-existing Committees both of which have a significant oversight role in relation to the performance of funds, and there is likely to be significant overlap in agendas.

It is our view that the Department could make legislative amendments that would allow a single governing body for a local authority pension fund to be constituted under a single legislative framework. This is simply a matter of will. Similar issues have been overcome in other contexts such as Health and Well Being Boards. However, absent the will to make the necessary changes to the underlying framework our feeling is that other than perhaps the few exceptional funds that are not run by local authorities there will be no move to single bodies, particularly given the provisions of new regulation 107, which we deal with below. We view this as a wasted opportunity to provide better governance of funds within LGPS.

In relation to the options set out in relation to new regulation 106(5) the reality of the position is likely to be that local authorities will rely on the LGA 1972 regime to provide the framework regardless of any discretion as this is an existing framework and therefore avoids potentially significant development work. We would therefore express a preference for option 1.

New Regulation 107

The exclusion of councillors from membership of a Pension Board is not explained and the Department needs to properly justify this. There could be a case for excluding a councillor on the administering authority from a Board on conflict of interest grounds, but this would also prevent any officer from the administering authority being an employer representative, and this is explicitly not suggested. However, in Lancashire this would not preclude the members of the other 14 principal councils being members of the Board. As councillors are now excluded from membership of the LGPS there cannot be a personal interest, and in any event such an interest would be remote as the benefit structure of the scheme is neither influenced nor determined locally. If Pension Boards are intended as one means to improve local accountability then excluding those directly accountable to taxpayers through the ballot box from membership seems illogical.

The operation of the "relevant experience and capacity" test on a practical level is likely to provide an interesting dimension to the process of making appointments to Pension Boards, as will the process of ensuring that they are sufficiently representative of both the employer and member base, particularly as the number of different employers within funds continues to grow. However, we strongly support this requirement as a key part of an overall move to professionalise the operation and management of all aspects of LGPS.

The provisions here, other than the exclusion of councillors are relatively simple, the key issues will undoubtedly be dealt with in the guidance that will follow and which will need to deal with the practical issues of implementation.

New Regulation 108

These regulations are entirely appropriate, particularly in the context of the increased emphasis placed on this issue by the Pensions Regulator in their draft code of practice 14.

New Regulation 109

No comments.

New Regulation 110

The regulations here are as would have been expected, and again any issues are more likely to be about implementation and actual operation rather than the regulations. This is particularly true of new regulation 110(3). The independence and sovereignty of individual funds is a key facet of LGPS, and these provisions should not be seen as a means of undermining the essentially localist nature of the scheme.

New Regulations 111 and 112

No comments.

New Regulation 113

While we would accept the broad framework of a levy being used to fund the Scheme Advisory Board there are two specific issues here:

a) There needs to be clarity on what is meant by "the number of persons for which the administering authority is the appropriate administering authority". Does this mean membership in an individual fund, or population within the administering authority area? If the former then a clearer form of words is surely available.

b) We would like to see additional safeguards around value for money etc. written into regulation 113(2) (a). We feel that in giving his (or her) approval the Secretary of State should have regard to the views of Administering Authorities expressed on a draft work programme for the Scheme Advisory Board which will reflect the outputs and outcomes to be delivered by the Board with the resources provided by individual funds. This will also ensure that the work of the Board is addressing the needs of the various funds within LGPS.

Turning to the other points on which views are sought:

Joint Pension Boards

We accept the broad premise of one board per fund as set out in the consultation document. However, as the Department accepts in the document there may be cases where the operation of two or more funds is so integrated (the Tri-Borough in London or Northants/Cambridgeshire are both clear examples of such situations) where a single board may be sensible. We would not wish to put unnecessary obstacles in the way of sensible local solutions being developed in such cases.

How a test might be framed to set a bar for allowing a joint board is not entirely clear to us but if there is to be a test then a consent regime involving the Secretary of State similar to that proposed in the draft regulations for a combined s101 Committee and Board seems inevitable.

AGM's, Employer Forums etc.

As a Fund we do hold an annual event which we see as a key part of the accountability framework, and we would continue this regardless of any regulatory requirement. Attendance tends to be from employers, although the individuals are themselves members of the Fund.

Engagement with scheme members through AGM's is more difficult than with employers and we achieve more engagement with members through various roadshows etc. which are focussed around key events such as the publication of benefits statements and regulations changes.

We would support the holding of an annual forum of some sort for all employers within the Fund. We are, though concerned that a similar event specifically targeted at employees would generate very little interest or attendance. For the Lancashire fund such an event would require inviting over 150,000 individuals who are geographically spread across the world. The practicalities of this are formidable and potentially costly. We would therefore ask the Department to consider whether there might be other ways of achieving an important part of the accountability framework without incurring unnecessary cost, examples might include "webcasting" an annual employer event covering the same agenda as an AGM, with the opportunity to ask questions on line.

Public Sector Equality Duty

Given the broad nature of the Public Sector Equality Duty it is difficult to see how the Scheme Advisory Board in advising on changes to the scheme regulations could avoid having regard to the Duty.

As the Duty applies to local authorities in the exercise of all their functions, including those as administering authorities these are already considerations that will be reflected in decision making processes and therefore it is not entirely clear whether it is necessary for an oversight body to need to additionally have regard to something that the administering authority already has to have regard to in making decisions.

Knowledge and Understanding

While we are fully supportive of the CIPFA Knowledge and Skills framework and of the requirement being suggested for membership of a Pension Board we are not clear whether it is actually possible to impose a requirement such as this on members of a s101 committee. There would be a case for similar requirements in relation to a number of committees, for example quasi-judicial committees such as licensing where currently informal agreements between parties are used to achieve the desired objective. We do not feel that singling out Pensions Committees in this way is helpful, and may actually deter some members from putting themselves forward.

The other key question is the scale and depth of knowledge being required under whatever framework is implemented, and certainly a case can be made that there is a mismatch in expectations between the framework and the capacity of elected members to meet the expectations when membership of the Pensions Committee is one of a range of committee assignments they undertake in what the Department has made very clear are voluntary roles. Much clearer guidance on this will be necessary in any formalised arrangement.