

# **Local Government Pension Scheme (LGPS)**

## **Guidance on the creation and operation of Local Pension Boards in England and Wales**

Last updated: 28 January 2015

1	INTRODUCTION.....	2
2	BACKGROUND.....	5
3	LEGISLATIVE BACKGROUND AND STRUCTURE OF GOVERNANCE ARRANGEMENTS FROM 2015 .....	7
4	THE PENSIONS REGULATOR.....	14
5	CONSTITUTION AND MEMBERSHIP OF A LOCAL PENSION BOARD .....	18
6	BOARD KNOWLEDGE AND UNDERSTANDING.....	32
7	CONDUCT OF MEMBERS AND CONFLICTS OF INTEREST .....	39
8	REPORTING .....	48
9	RESOURCING AND FUNDING.....	58
10	OTHER POSSIBLE STRUCTURES .....	61
11	OTHER GUIDANCE .....	64
	SCHEDULE A .....	65
	SCHEDULE B .....	67
	SCHEDULE C.....	74

## 1. Introduction

- 1.1 The LGPS is a common pension scheme throughout England and Wales, administered locally by 90 separate Administering Authorities.
- 1.2 In the context of the UK public service pension schemes, the LGPS is the largest funded occupational pension scheme in the UK.
- 1.3 Administering Authorities are required to establish a new body to be known as a Local Pension Board to assist the Administering Authority in its role as the Scheme Manager of its Fund in accordance with the requirements of the 2013 Act.
- 1.4 This Guidance is designed to assist Administering Authorities in the creation and operation of Local Pension Boards in line with relevant legislation and in particular the 2013 Act and the Regulations.
- 1.5 This Guidance should not be taken as a definitive interpretation of legislation and it should always be read in conjunction with the relevant legislation. Administering Authorities are advised to secure their own legal advice on the interpretation and application of the legal framework.
- 1.6 Unless otherwise stated, this Guidance is correct as at 28 January 2015.
- 1.7 The following is an explanation of defined terms used in this Guidance:

<b>1972 Act</b>	The Local Government Act 1972.
<b>1989 Act</b>	The Local Government & Housing Act 1989.
<b>2000 Act</b>	The Local Government Act 2000.
<b>2004 Act</b>	The Pensions Act 2004.
<b>2011 Act</b>	The Localism Act 2011.
<b>2013 Act</b>	The Public Service Pensions Act 2013.
<b>Administering Authority</b>	A body listed in Part 1 of Schedule 3 of the Regulations who maintains a fund within the LGPS.
<b>Code of Practice</b>	The Regulator's Code of Practice no. 14 entitled " <i>Governance and administration of public service</i> "

	<i>pension schemes”</i> .
<b>DCLG</b>	The Department for Communities and Local Government.
<b>DPA</b>	Data Protection Act 1998.
<b>FOIA</b>	Freedom of Information Act 2000.
<b>Investment Regulations</b>	The Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009.
<b>IPSPC</b>	Independent Public Service Pensions Commission.
<b>LGPS</b>	The Local Government Pension Scheme - a scheme for the payment of pensions and other benefits to or in respect of persons working in local government service in England and Wales or for other bodies that participate in the LGPS.
<b>Local Pension Board</b>	The board established to assist the Administering Authority as the Scheme Manager for each Fund.
<b>Pension Committee</b>	A committee or sub-committee to which an Administering Authority has delegated its pension function.
<b>Regulations</b>	The Local Government Pension Scheme Regulations 2013 (as amended).
<b>Regulator</b>	The Pensions Regulator.
<b>Responsible Authority</b>	The Secretary of State for Communities and Local Government being the person who makes regulations for a pension scheme established under section 1 of the 2013 Act.
<b>Rules of Procedure</b>	The rules governing the decision making process of the Administering Authority as set out in its constitution.

<b>Scheme Advisory Board</b>	The Local Government Pension Scheme Advisory Board established under the Regulations.
<b>Scheme Manager</b>	A person or body responsible for managing or administering a pension scheme established under section 1 of the 2013 Act. In the case of the LGPS, each Fund has a Scheme Manager which is the Administering Authority.
<b>Secretary of State</b>	The Secretary of State for Communities and Local Government.
<b>Transitional Regulations</b>	The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014.

## 2. **Background**

### **LGPS Governance Structure Prior to April 2015**

- 2.1 The LGPS is a statutory funded public service pension scheme. It differs in legal status from trust based pension schemes in the private sector because it is established under statute and not set up under a trust. It also differs from most other statutory public service pension schemes which are unfunded schemes. Matters of governance in the LGPS therefore need to be considered on their own merits and with proper regard to the unique legal status of the LGPS.
- 2.2 Prior to 1 April 2015, the LGPS has had a relatively straightforward governance structure which includes the Secretary of State and the Administering Authority.
- 2.3 Each Administering Authority is responsible for managing and administering the LGPS in relation to any person for which it is the appropriate administering authority under the Regulations. The Administering Authority is responsible for maintaining and investing its own Fund within the LGPS.
- 2.4 How an Administering Authority delegates its LGPS function is largely a matter for each Administering Authority. The majority of Administering Authorities are local authorities and therefore operate in accordance with local government law. However some Administering Authorities are not local authorities such as the Environment Agency, the London Pensions Fund Authority and the South Yorkshire Pensions Authority. Such bodies operate in accordance with their own legal constitutions.

### **The Road to Reform**

- 2.5 June 2010: Lord Hutton of Furness is appointed by Government to chair the IPSPC and undertake a fundamental structural review of public service pension provision and to make recommendations to the Chancellor and Chief Secretary to the Treasury on future pension arrangements.
- 2.6 October 2010: The IPSPC produces its interim report.
- 2.7 March 2011: The IPSPC produces its final report making 27 recommendations for the reform of public service pension schemes including:

- properly constituted, trained and competent pension board with member nominees, responsible for meeting good standards of governance including effective and efficient administration;
- a pension policy group for each public service pension scheme at national level for considering major changes to scheme rules; and
- independent oversight of the governance, administration and data transparency of public service pension schemes.

2.8 December 2011: Following a meeting in November 2011, the Local Government Association and lead members and officials from GMB, UNISON and Unite conclude that discussions should be progressed with the aim of reaching agreement on a set of high level principles for the LGPS.

2.9 May 2012: The Local Government Association, GMB, UNISON and Unite announce the outcome of their negotiations on new LGPS proposals to take effect from 1 April 2014.

2.10 April 2013: The 2013 Act implementing most of the IPSPC's recommendations receives Royal Assent.

2.11 April 2014: The new career-average LGPS comes into force.

2.12 April 2015: The new governance structure for the LGPS and other public service pension schemes come into force.

### **3. Legislative background and structure of governance arrangements from 2015**

#### **Legislative requirements for governance in the LGPS**

- 3.1 The Regulations require each Administering Authority to establish a Local Pension Board for the purposes of assisting the Administering Authority in line with the requirements set out in paragraph 3.27.
- 3.2 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, its 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).
- 3.3 The Regulations set out the requirements relating to the new Local Pension Boards.

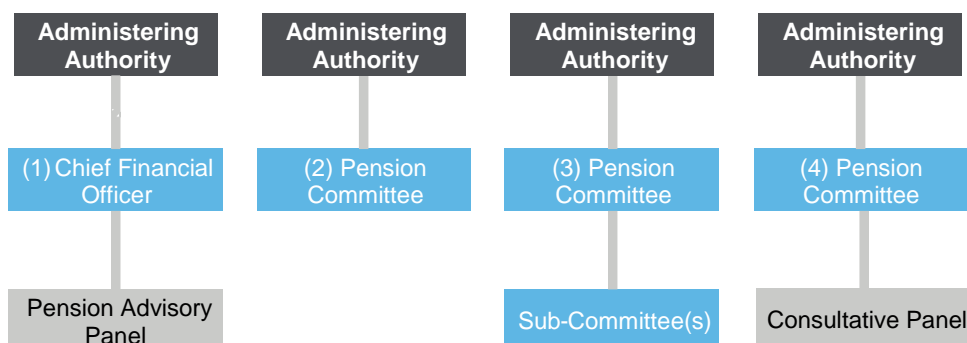
#### **Governance structure in the LGPS**

- 3.4 Each Administering Authority is responsible for managing and administering the LGPS in relation to any person for which it is the appropriate administering authority under the Regulations. The Administering Authority is responsible for maintaining and investing its own Fund for the LGPS.
- 3.5 Administering Authorities are defined in Part 1 of Schedule 3 of the Regulations.
- 3.6 The majority of Administering Authorities are local authorities and therefore operate in accordance with local government law requirements. However some Administering Authorities are not local authorities such as the Environment Agency, the London Pensions Fund Authority and the South Yorkshire Pensions Authority. Such bodies operate in accordance with their own legal constitutions.
- 3.7 In some instances, two or more Administering Authorities may share their administration function, for example through a shared service arrangement, or in other ways. However, where this happens each local authority still retains its own individual Administering Authority status and therefore legal responsibility for its own Fund.



- 3.8 The membership structure for the Local Pension Board required by regulation 107 of the Regulations does not fit neatly into the standard arrangements which exist for decision making on pensions issues and existing established governance arrangements for Administering Authorities. This section of the Guidance sets out the general legal provisions which will assist in placing the Local Pension Board in the context of decision making on wider pensions and financial matters.
- 3.9 For local authority Administering Authorities it is not permissible for decisions about pension allowances or the amount of pension to be paid to employees to be an executive decision (see The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and The Local Authorities Executive Arrangements (Functions and Responsibilities) (Wales) Regulations 2001. This means that the executive (usually cabinet or the elected mayor) cannot make decisions in relation to LGPS matters, for example, how to exercise discretions under the Regulations.
- 3.10 This means in practice that decisions about pensions are delegated in accordance with Section 101 of the 1972 Act to:
- 3.10.1 committees or sub-committees made up of that Administering Authority's councillors from all the political groups and will be politically balanced (and some of these committees or sub-committees also have additional co-opted members such as employer and scheme member representatives); or
  - 3.10.2 Administering Authority officers.
- Some decisions will be reserved for full council, for example decisions which have an impact on the budget.
- 3.11 Regulation 105 also provides that Administering Authorities may delegate functions under the Regulations. This confirms the authority in Section 101 of the 1972 Act.
- 3.12 The delegation of pension functions varies from Administering Authority to Administering Authority depending on local circumstances. The Regulations require an Administering Authority's governance compliance statement to set out whether the Authority delegates its functions and the detail of the delegation given. This includes the terms, structure and operation of the delegation, the frequency of meetings, membership and voting rights.

3.13 Examples of delegation structures used by Administering Authorities can be summarised as follows:



### ***Governance compliance statements***

3.14 To ascertain how an individual Administering Authority actually delegates its pension function it is necessary to review its governance compliance statement. Each Administering Authority must have in place a statement setting out whether the Administering Authority delegates its functions, or part of its functions under the Regulations to a committee, a sub-committee or an officer of the authority.

3.15 Where the Administering Authority does delegate its functions, the statement must include:

- 3.15.1 the terms, structure and operational procedures of the delegation;
- 3.15.2 the frequency of any committee or sub-committee meetings;
- 3.15.3 whether such a committee or sub-committee includes representatives of scheme employers or members, and if so, whether those representatives have voting rights;
- 3.15.4 the extent to which a delegation, or the absence of a delegation, complies with guidance given by the Secretary of State and, to the extent that it does not so comply, the reasons for not complying; and
- 3.15.5 details of the terms, structure and operational procedures relating to the Local Pension Board.

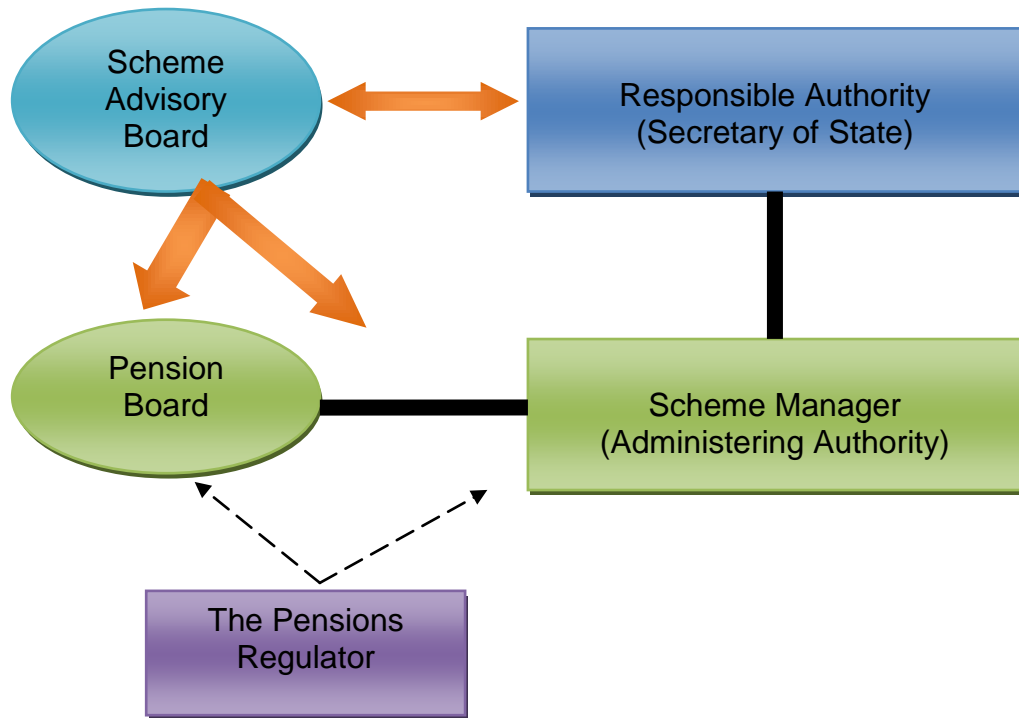
3.16 Current governance compliance statements will need to be revised to include the new information referred to in paragraph 3.15.5. The

Administering Authority will firstly need to consult with such persons as it thinks necessary about the revised statement and then publish it once it has been revised.

### **New governance structure in the LGPS**

3.17 From 1 April 2015, the new governance structure of the LGPS can be summarised in the following diagram:

#### ***Post April 2015 LGPS Governance Structure***



#### ***The Responsible Authority***

3.18 In accordance with section 2 of the 2013 Act, each pension scheme established under section 1 of the 2013 Act must have a 'responsible authority' which is the person who may make regulations for that scheme.

3.19 In the case of the LGPS, the Responsible Authority is the Secretary of State.

#### ***Administering Authority/Scheme Manager***

3.20 Section 4 of the 2013 Act requires that, in the case of a pension scheme established under section 1 of that Act, regulations must provide for a 'scheme manager'. The scheme manager is the person who is responsible for managing or administering the scheme.

- 3.21 The Regulations specify that the ‘scheme manager’ responsible for the local administration of pensions and other benefits payable under the LGPS shall be each Administering Authority.
- 3.22 In the case of the LGPS, each Fund therefore has a Scheme Manager which is the Administering Authority. This contrasts with other public service pension schemes administered on a national basis, such as the Teachers’ Pension Scheme, where there is a single scheme manager for the whole scheme.
- 3.23 As noted at paragraph 3.4 an Administering Authority is responsible for managing and administering the LGPS in relation to any person for which it is the appropriate administering authority under the Regulations. The Administering Authority is responsible for maintaining and investing its own Fund for the LGPS. This means the Administering Authority is responsible for making all decisions relating to the operation of the Fund.
- 3.24 The creation of new Local Pension Boards does not change the core role of the Administering Authority or the way it delegates its pension functions. However, when establishing its Local Pension Board, the Administering Authority may wish to take the opportunity to review its current delegation structure to see if it remains fit for purpose.
- 3.25 For example, where there is an advisory panel advising a Pension Committee, the Administering Authority may wish to consider the extent to which the advisory panel’s functions are superseded by the new Local Pension Board. An existing panel of this nature is not a Local Pension Board and should not be re-badged as such. A new Local Pension Board should be properly established and the existing arrangements then reviewed.

### ***Local Pension Boards***

- 3.26 Section 5 of the 2013 Act requires that, in the case of a pension scheme established under section 1 of that Act, regulations must provide for the establishment of a board with responsibility for assisting the scheme manager(s) in relation to specified matters. In turn, this has resulted in the requirement for Local Pension Boards for each Administering Authority in the LGPS under the Regulations.

3.27 Regulation 106(1) of the Regulations specifies that each Administering Authority shall establish its own Local Pension Board with responsibility for assisting the Administering Authority:

3.27.1 to secure compliance with:

3.27.1.1 the Regulations;

3.27.1.2 other legislation relating to the governance and administration of the LGPS; and

3.27.1.3 the requirements imposed by the Regulator in relation to the LGPS, and

3.27.2 to ensure the effective and efficient governance and administration of the LGPS.

3.28 Assisting the Administering Authority should be interpreted as helping the Administering Authority, including doing work requested by the Administering Authority. The role of the Local Pension Board should be interpreted as covering all aspects of governance and administration of the LGPS, including funding and investments. However, the Local Pension Board does not replace the Administering Authority or make decisions which are the responsibility of the Administering Authority under both the Regulations and other overriding legislation. The Administering Authority can choose to delegate duties to the Local Pension Board within the parameters of the Regulations.

3.29 The role and remit of a Local Pension Board is considered in more detail in Schedule A.

3.30 Regulation 106(9) of the Regulations specifies that the expenses of a Local Pension Board shall be regarded as part of the costs of administration of the Fund. This is considered in more detail in section 9, Resourcing and Funding.

### ***Scheme Advisory Board***

3.31 Section 7 of the 2013 Act requires that, in the case of a pension scheme established under section 1 of that Act, regulations must provide for the establishment of a board with responsibility for providing advice to the responsible authority, at the authority's request, on the desirability of

changes to the scheme. The responsible authority must have regard to such advice.

3.32 Where a scheme has more than one scheme manager (and accordingly there is more than one pension board for the scheme), regulations may also provide for the Scheme Advisory Board to provide advice (on request or otherwise) to the scheme managers or the scheme's pension boards in relation to the effective and efficient administration and management of the scheme or any pension fund of the scheme.

3.33 In turn, Section 7 has resulted in the requirement for the Scheme Advisory Board for the LGPS under the Regulations. The Scheme Advisory Board for the LGPS is established by the Regulations and is responsible for providing advice:

3.33.1 to the Secretary of State on the desirability of making changes to the LGPS; and

3.33.2 to the Administering Authorities and Local Pension Boards in relation to the effective and efficient administration and management of the LGPS and the Funds.

3.34 In both cases, the Secretary of State and Administering Authorities (including those with delegated responsibility, i.e. Pension Committees (or sub-committees) and Officers) or Local Pension Boards must have regard to advice issued by the Scheme Advisory Board in accordance with section 7(3) of the 2013 Act.

## 4. **The Pensions Regulator**

- 4.1 The regulatory powers of the Regulator were extended under section 17 and Schedule 4 of the 2013 Act to cover some aspects of public service pension schemes, including the LGPS.
- 4.2 The Regulator is an existing body corporate established by the 2004 Act. Prior to 1 April 2015, the Regulator regulated occupational and personal pension schemes provided primarily through private sector employers.
- 4.3 The Regulator has a number of statutory objectives including to:
  - 4.3.1 protect the benefits of pension scheme members,
  - 4.3.2 promote, and improve understanding of, the good administration of work-based pension schemes,
  - 4.3.3 maximise compliance with the duties and safeguards of the Pensions Act 2008; and
  - 4.3.4 minimise any adverse impact on the sustainable growth of an employer (in relation to the exercise of the Regulator's functions under Part 3 of the Pensions Act 2004 only).
- 4.4 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.
- 4.5 The Regulator has oversight in areas such as those listed in paragraph 4.6 below and may issue codes of practice for public service pension schemes in these areas.
- 4.6 The Regulator has issued the Code of Practice which covers:
  - 4.6.1 knowledge and understanding required by pension board members (see paragraphs 33 to 60 of the Code of Practice);
  - 4.6.2 conflicts of interest and representation (see paragraphs 61 to 91 of the Code of Practice);
  - 4.6.3 reporting breaches of the law (see paragraphs 241 to 275 of the Code of Practice);
  - 4.6.4 publishing information about schemes (see paragraphs 92 to 99 of the Code of Practice);

- 4.6.5 internal controls (see paragraphs 101 to 120 of the Code of Practice);
  - 4.6.6 scheme record-keeping (see paragraphs 122 to 146 of the Code of Practice);
  - 4.6.7 maintaining contributions (see paragraphs 147 to 186 of the Code of Practice);
  - 4.6.8 providing information to members (see paragraphs 187 to 211 of the Code of Practice) ; and
  - 4.6.9 internal dispute resolution (see paragraphs 213 to 240 of the Code of Practice).
- 4.7 However, only the areas of knowledge and understanding, conflicts of interest and representation and reporting breaches of the law have direct application to Local Pension Boards. The other areas apply to Administering Authorities, although there are areas that a Local Pension Board will need to be aware of in order to assist the Administering Authority.
- 4.8 This Guidance takes into account the principles of the Code of Practice where relevant and applies them to the LGPS.
- 4.9 For the avoidance of doubt the powers of the Regulator were not extended to cover areas such as the funding and investment of Funds.

### **The Regulator's Powers**

- 4.10 The Regulator will have a range of enforcement powers under the 2013 Act including:
- 4.10.1 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”;
  - 4.10.2 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”;



- 4.10.3 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";
  - 4.10.4 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;
  - 4.10.5 the power to require Administering Authorities and members of Local Pension Boards to produce documents and information;
  - 4.10.6 the power to inspect premises;
  - 4.10.7 the power to apply for an injunction;
  - 4.10.8 the power to apply for restitution where there has been a misuse or misappropriation of any Fund assets;
  - 4.10.9 the power to recover unpaid contributions on behalf of an Administering Authority; and
  - 4.10.10 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'.
- 4.11 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, "pensions legislation" only includes sections 5(4) (pension board: conflicts of interest and representation), 6 (pension board: information), 14 (information about benefits) and 16 (records).

- 4.12 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.
- 4.13 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.

### **Reporting Local Pension Board Members to the Administering Authority**

- 4.14 If the Regulator has reasonable grounds to suspect or believe that a member of a Local Pension Board:
- 4.14.1 has misappropriated any assets of the Fund or is likely to do so;  
or
  - 4.14.2 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.

## **5. Constitution and Membership of a Local Pension Board**

- 5.1 As noted at paragraph 3.2, 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, its 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).
- 5.2 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.
- 5.3 For many Administering Authorities, all existing pension functions are likely to be delegated to a Pension Committee or an officer. However, it is open to an Administering Authority to exercise directly any function which it has delegated.
- 5.4 In light of the fact that the role of the Local Pension Board is to assist the Administering Authority, the Administering Authority will need to carefully consider the establishment of the Local Pension Board and the appointment of its members. It should therefore be a function undertaken by the Administering Authority (for example full council) rather than by the delegated Pension Committee or officer.
- 5.5 An Administering Authority is given power under regulation 106(6) of the Regulations to determine the procedures applicable to its Local Pension Board, including 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.
- 5.6 Regulation 106(2) of the Regulations provides that where a local authority Administering Authority delegates its pension functions to a Pensions Committee, then with Secretary of State approval, the Pensions Committee may also undertake the role of the Local Pension Board. Please see section 10 of this guidance for further details.

## **Membership of a Local Pension Board**

- 5.7 A Local Pension Board must include an equal number of employer and member representatives with a minimum requirement of no fewer than four in total. In addition, the Regulations do not preclude that other members may also be appointed to the Board.
- 5.8 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 the Local Pension Board of that authority.
- 5.9 The officers of the Administering Authority who would be precluded from being a member of the Local Pension Board would be any officer named in the scheme of delegation for that Administering Authority, for example the section 151 officer and the head of investments. It would also be appropriate to consider whether officers of the Fund at a senior level, who are not named in the formal scheme of delegation but who are responsible for discharging functions under the Regulations should also be precluded from being a member of the Local Pension Board.
- 5.10 Where an elected member of the Administering Authority is appointed as a member of the Local Pension Board this can only be as either an employer or member representative under the provisions of regulation 107(3)(b).
- 5.11 When determining the size of its Local Pension Board, the Administering Authority should consider the capacity of the Board to undertake its role in assisting the Administering Authority with the governance and administration of the scheme. The Administering Authority will need to consider a number of factors including (without limitation):
- 5.11.1 the number of scheme members, the number and size of employers;
  - 5.11.2 the breadth and diversity of scheme members and employers,
  - 5.11.3 the assets within the Fund and any collective arrangements in place for them to make decisions or provide input in relation to Fund matters;
  - 5.11.4 the cost of establishing and operating the Board;
  - 5.11.5 the existence or proposal to form any other advisory groups; and

5.11.6 the scope of the Board's remit and workplan.

- 5.12 As indicated in the Code of Practice the Administering Authority should consider providing high quality pre-appointment training to proposed members of the Local Pension Board.

### **Appointment of Local Pension Board Members**

- 5.13 Each employer or member representative on a Local Pension Board will potentially represent a significant range of employers or members (as appropriate). It is therefore important that the methodology for appointment ensures that representative Board members are truly representative.
- 5.14 All employers and members within a Fund must have equal opportunity to be nominated for the role of employer or member representative through an open and transparent process.
- 5.15 The Regulations also allow for the appointment of other Local Pension Board members i.e. members who are not there to represent employers or scheme members, this would include for example where an Administering Authority wishes to appoint an independent chairperson to the Local Pension Board.

### **Capacity of Representative Members**

- 5.16 Regulation 107 of the Regulations also requires that the Administering Authority must ensure that any person it wishes to appoint as an employer or member representative has the capacity to represent the employers or members (as appropriate) of the Fund.
- 5.17 It will be important to appoint members who have the time to commit to attend meetings, undertake training and effectively represent employers and members (as appropriate).
- 5.18 Whilst it is the responsibility of those members appointed to have the capacity to represent employers and members respectively consideration should also be given by employers to reasonable time off or 'facilities time' to allow employees who are members of the Local Pension Board to effectively carry out their role. Administering Authorities should highlight to employers the work needed to carry out the role to encourage employers to allow for reasonable time off for Local Pension Board members. Administering Authorities could for example reimburse employers who provide their employees (who are members of the Board) with paid time off

for and to attend Board meetings. See section 9 for more information on the resourcing of Local Pension Boards. In addition whilst no member of the Board should be better or worse off by undertaking a role on the Local Pension Board the Administering Authority should encourage policies which enable active participation on the Board and therefore help in developing an effective Board.

- 5.19 The Regulations specify a Local Pension Board member should not have a conflict of interest, and then go on to clarify that a financial or other conflict of interest will not arise merely by virtue of a member of a Local Pension Board being a member of the LGPS and/or Fund. The potential for conflicts of interest is considered in section 7 of this guidance.
- 5.20 An individual's ability to properly represent the interests of employers or members (as appropriate) and channel information back to those persons effectively should also be a key factor in selecting members of the Local Pension Board. This needs to take account of the wide range of membership of the Fund to ensure all employers and members are represented.

### **Appointment of Other Members**

- 5.21 As noted at paragraph 5.8, 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 the Local Pension Board of that authority.
- 5.22 The requirement for capacity does not explicitly apply to other (i.e. non-representative) members appointed by the Administering Authority. Nevertheless, the Administering Authority should have an open and transparent process for the appointment of such members.
- 5.23 As noted at paragraph 5.10 an elected member of the Administering Authority cannot be appointed to the Local Pension Board as an 'other member'.
- 5.24 Where an Administering Authority decides to appoint an independent chair to the Board, that chair would be considered an 'other member'.

## **The Process for Appointing Employer and Member Representatives**

- 5.25 The methodology for appointing employer and member representatives is not prescribed by the Regulations. It will therefore fall to each Administering Authority to establish an appropriate process. Options may include (but are not limited to):

### **Direct Appointment Process**

- 5.25.1 Selecting employer representatives through existing employer forums, for example nominations and voting at employer AGMs.
- 5.25.2 Selecting member representatives through existing representative organisations for example recognised trade unions, staff committees, member representative committees, pensioner organisations or nominations and voting at member AGMs (this could include active, deferred and pensioner members of the scheme).

### **Two Stage Nomination and Selection Process**

- 5.25.3 Administering authorities may wish to consider methodologies used by private sector trust based schemes to appoint member-nominated trustees (“MNTs”). MNTs must be:
- 5.25.3.1 nominated as the result of a process which includes at least all the active and pensioner members of the scheme (or an organisation which adequately represents them); and
  - 5.25.3.2 selected as a result of a process which involves some or all of the members of the scheme.
- 5.25.4 Seeking nominations by advertising in local newspapers and on websites (including employer and member representative bodies websites).
- 5.25.5 Encouraging partner organisations or admission bodies to nominate members.
- 5.26 When selecting members, proper regard must be given to the obligations of the Administering Authority in relation to equal opportunities in any recruitment process. In practice, this means having an open and

transparent process, with a role specification. Depending on the appointment process used by the Administering Authority, it may also be necessary to have a formal interview process before appointments are made (if for example more nominations are received than available places on the Board). The interview process should assess the ability of the individual to meet the requirements of the role and make appointment on merit.

- 5.27 It is also important to ensure that those who are appointed have a range of experience so that there is a good balance and breadth of experience on the Local Pension Board.

### **Making Appointments**

- 5.28 As noted in other sections, the appointment process provides an ideal opportunity for the Administering Authority to obtain confirmation from the appointee in the form of a written undertaking that they understand the requirements of the role and to commit to those requirements, for example by:

- 5.28.1 disclosing all interests and responsibilities which have the potential to become conflicts of interest (see paragraph 7.36);
- 5.28.2 committing to attend a minimum number of meetings a year;
- 5.28.3 committing to undertake and attend the necessary knowledge and understanding training (see paragraph 6.23); and
- 5.28.4 undertaking to abide by the Board's terms of reference and wider constitutional documents.

### **Term of Office**

- 5.29 Consideration should be given to the term of office so that experience is retained on the Local Pension Board. This could be by a proportion of members retiring on a rolling basis so that the Local Pension Board has the benefit of gaining new members with new experience whilst also retaining existing experienced members and stability for the Local Pension Board.
- 5.30 The ability of members to seek re-appointment for a further term needs to be considered. Given the complexity of the subject matter there is a case for renewing membership over an extended period.



## Termination

- 5.31 As well as dealing with the terms of appointment, the Administering Authority should also consider the circumstances in which a member of a Local Pension Board should cease to be a member.
- 5.32 Clearly this will arise at the expiry of a member's term of office, although there may well be other circumstances in which a member's term of office may end, for example the Administering Authority should consider suitable provisions if:
- 5.32.1 a member has a conflict of interest which cannot be managed in accordance with the Board's conflicts policy;
  - 5.32.2 a member dies or becomes incapable of acting;
  - 5.32.3 a member who is a councillor of the Administering Authority is appointed to a Pensions Committee;
  - 5.32.4 a member is appointed to the role of an officer of the Administering Authority with responsibility for the discharge of functions under the Regulations;
  - 5.32.5 a member wishes to resign, for example how much notice should be given and in what form;
  - 5.32.6 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
  - 5.32.7 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. The Administering Authority should consider who would decide this, whether the member should be given an opportunity to change their behaviour and how much notice should be given and in what form. Where issues of this nature arise, the chair of the Local Pension Board should have lead responsibility for an initial informal discussion with the member about the concerns. It would be helpful for the chair of the Local Pension Board to be supported and advised by professional advisers with that discussion. This could be an Administering Authority officer provided there was no conflict

of interest. The matter could also be raised with any body which had nominated the individual for appointment.

- 5.33 Where a vacancy arises for a representative member mid-term, the Administering Authority should consider the process to be used to fill that vacancy.

### **Terms of Reference**

- 5.34 The Administering Authority when establishing its Local Pension Board should create terms of reference for the Board on the basis that the Board is a stand-alone body. The terms of reference are the rules setting out how the Board will be constituted and operate on a day to day basis. The terms of reference for a Local Pension Board should be reviewed periodically and at each material change in regulations impacting on Local Pension Boards.

- 5.35 It is worth noting that under regulation 106(8) of the Regulations a Local Pension Board shall have the general power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. However, as a minimum a Board's terms of reference should include areas such as:

5.35.1 **Function of the Board** – The terms should set out the function of the Board to assist the Administering Authority to secure compliance and ensure the effective and efficient governance and administration of the LGPS in line with the requirements set out at paragraph 3.27 and Schedule A.

5.35.2 **Membership** – This should include the number of each category of Board member (including other representatives), the appointment and selection process, term of office and procedures for termination of office.

5.35.3 **Code of Conduct** – The terms of reference should refer to the requirement for the Local Pension Board to have a code of conduct for its members and that members of the Board should abide by the code (see paragraph 7.9).

5.35.4 **Voting Rights** – The terms should set out that employer and member representatives of the Board have equal voting rights. The terms should also indicate where the chair is from either the employer or member representatives whether the chair has a

casting vote. It should be noted that other members do not have voting rights on the Board.

- 5.35.5 **Conflict of Interests** – The terms should refer to the requirement for the Board to always act within the terms of reference. The Local Pension Board should have a conflicts policy for its members and that members should abide by the policy and provide information that the Administering Authority may reasonably require from time to time to ensure that members do not have a conflict of interest (see paragraph 7.40).
- 5.35.6 **Appointment of a Chair/Vice-Chair** – The terms should specify whether the Board is to have a chair and/or vice-chair and if so specify the roles of the chair and/or vice-chair, how they are appointed and whether the chair is to be given a casting vote (only where the chair is from the member or employer representatives on the Local Pension Board). This should include the leadership responsibilities of the chair to ensure that meetings are properly conducted, decision making is clear and professional advice is followed. It will also set out the role of the chair in agreeing the agenda and approving the minutes for each meeting.
- 5.35.7 **Role of Advisors** – The terms should set out the role of professional advisers, or other advisors to the Board and the process for their appointment and agreeing their fees. In addition the process for the Board accessing existing advisors to the Administering Authority should also be set out. Administering Authorities may wish to use a shared pool of potential advisors, for example having access to an agreed pool of senior pension fund officers from other (possibly neighbouring) authorities.
- 5.35.8 **Role of Officers** – The terms should set out the role of officers of the Administering Authority to the Board, for example in the provision of secretariat services to the Board or providing pension fund information to the Board.
- 5.35.9 **Administration, Papers, Communication and Obtaining Information** – The terms should specify the terms for notice of Board meetings, the circulation of papers in advance of meetings, how meetings are to be run, the decision making process, recording minutes of meetings, a procedure for dealing with urgent items of business and the publication of information if considered relevant.

In addition where specific information may be required by the Board details of where such information may be obtained from should be provided to the Board. As the Local Pension Board is considered a committee of the Administering Authority for certain overriding statutory purposes such as FOIA and the Administering Authority is a FOIA public authority, minutes should be carefully dealt with and separated as appropriate into open and closed business, so that open minutes (including agendas and relevant papers) can be promptly published in the Administering Authority's FOIA publication scheme (see paragraph 8.22 to 8.23).

- 5.35.10 **Organisation of meetings:** The terms should specify how meetings will be organised. It is anticipated that meetings will take place separately from those of the Pension Committee. Should both bodies choose to meet at the same time to consider the same agenda, the terms should specify how those concurrent meetings are chaired as well as acknowledging that the statutory roles and function of the Pension Committee and the Board are separate
- 5.35.11 **Number of Meetings** – The terms should specify whether there should be a minimum number of meetings in a year. The frequency of Pension Committee meetings may serve as a useful benchmark for how often the Board should meet. There should also be an ability for a specified number of Board members or the Administering Authority to require a special meeting to be convened on notice.
- 5.35.12 **Location and time of meetings** – The terms should specify any restrictions in relation to the time (for example, during working hours only), and location of meetings and whether the meetings are to be public or not. Decisions about the time and location of meetings should be made whilst also being aware of the capacity requirements placed upon Board members.
- 5.35.13 **Quorum** – The terms should specify a quorum for meetings and in particular whether the quorum should include a minimum number of employer and member representatives.
- 5.35.14 **Attendance Requirements** – The terms should specify the requirements for attending meetings and the consequences of continued failure to attend Board meetings.

- 5.35.15 **Role of Substitutes** – The terms should specify whether members are allowed to send substitutes to meetings where they are unable to attend themselves. This may be more appropriate for employer and member representatives. Training requirements should also be considered where substitutes are permitted.
- 5.35.16 **Creation of Working Groups/Sub-Committees** – The terms should specify whether the Board has the power to set up working groups or sub-committees and if so on what terms (including terms of reference for those working groups or sub-committees).
- 5.35.17 **Allowances/Expenses** – The terms should specify the policy in relation to the payment of allowances and expenses to Board members (see section 9 of this guidance for further information).
- 5.35.18 **Budget** – The terms of reference should also set out a process for the Local Pension Board to have access to a budget for specified purposes, for example seeking professional advice, training for members, accommodation costs or meeting the costs of any claim for expenses and the timetable for approving that Budget.
- 5.35.19 **Knowledge and Understanding** – The terms should refer to the requirement for the Board to have a policy and framework to meet the knowledge and understanding requirements of the 2004 Act (see section 6 of this guidance).
- 5.35.20 **Reporting** – The terms should include arrangements for the reporting of information to the Administering Authority, including direct reporting arrangements where the Board has material concerns (see section 8 of this guidance). In addition the methods used to communicate to scheme members and employers should be included.
- 5.35.21 **Data Protection** – The terms should take account of the Administering Authority's role as a 'data controller' under data protection legislation and any policies, such as a data protection policy, with which it must comply as well as ensuring personal data processing by the Local Pension Board is within the Administering Authority's notification registered with the Information Commissioner from time to time (which should be reviewed and updated as necessary) – see paragraphs 8.17 to 8.21 for further details.

- 5.36 The terms of reference should be approved by the Administering Authority. The terms of reference should also be formally adopted by the Local Pension Board once it is established. This would normally be expected to occur at the Board's first meeting.

### **Chair of the Local Pension Board**

- 5.37 As per 5.34.6 the appointment of a chair/vice chair should be detailed in the Local Pension Board's terms of reference.

- 5.38 A chair could be appointed in a number of ways including:

5.38.1 a chair may be appointed by the employer and member representatives of the Board from amongst their own number or on a rotating basis with the term of office shared between an employer and a member representative on an equal basis.

5.38.2 an independent chair may be appointed by the Administering Authority. Such a chair would count in the number of other representatives on the Board. An independent chair would have no pre-existing employment, financial or other material interest in either the Administering Authority or any scheme employer in a fund or funds administered by the Administering Authority or would not be a scheme member of the LGPS in a fund administered by the Administering Authority. The appointment of an independent chair should be subject to the passing of a motion to confirm this by a majority of the employer and member representatives of the Board.

- 5.39 In their role the Chair of the Board:

5.39.1 shall ensure the Board delivers its purpose as set out in the Board's terms of reference,

5.39.2 shall ensure that meetings are productive and effective and that opportunity is provided for the views of all Board members to be expressed and considered, and

5.39.3 shall seek to reach consensus and ensure that decisions are properly put to a vote when that cannot be reached ensuring that instances of a failure to reach a consensus position will be recorded and published.

- 5.40 Where an Administering Authority appoints an independent chair consideration should be given to a clause within their contract for the role where they must agree to treat any confidential information as such and not to use for any potential financial or material gains.

### **Other Constitutional Documents**

- 5.41 In addition to the terms of reference a Board is likely to have other key documents which would be included in its wider constitution. These may include:

5.41.1 A code of conduct (see paragraphs 7.9 to 7.11);

5.41.2 A conflicts policy (see paragraphs 7.40 to 7.41);

5.41.3 A knowledge and understanding policy document (see paragraph 6.8) including a list of the core documents recording policy about the administration of the Fund; and

5.41.4 Policies dealing with data protection, information security, acceptable use (and monitoring) and subject access request (see paragraph 8.21).

### **Failure to Establish a Local Pension Board**

- 5.42 If an Administering Authority fails to establish its Local Pension Board by 1 April 2015, or having done so the Board fails to exercise its role, the question then arises as to what steps might be taken and by whom to challenge the action or lack of action of the Administering Authority. There are a number of potential possibilities:

5.42.1 Intervention by the Regulator.

5.42.2 Intervention by legal action - In principle an action by way of judicial review could be launched to ensure compliance where there has been failure to comply with a statutory obligation. It will be necessary to consider who might have interest or standing to bring such an action. Potentially this could be a body or person who has been denied representation by the failure to establish the Local Pension Board.

5.42.3 Complaint to the Local Government Ombudsman or Pensions Ombudsman. A failure by the Administering Authority to establish a

Local Pension Board is likely to constitute maladministration on the part of the Administering Authority.

5.42.4 Adverse comment by the Administering Authority's external auditor in the context of the Annual Audit letter.

5.42.5 Adverse comment by the Scheme Advisory Board.

5.43 The Secretary of State has overarching responsibility for the Scheme as the Responsible Body - with a clear interest in the successful implementation of local pension boards.

**Action Points:**

- Administering Authority to have approved the establishment (including Terms of Reference) of the Local Pension Board by 1 April 2015.
- The Local Pension Board must be operational (i.e. had its first meeting no later than 4 months after the 1 April 2015).



## 6. **Board Knowledge and Understanding**

### **Legal requirements**

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

6.1.1 be conversant with:

6.1.1.1 the rules of the LGPS, in other words the Regulations and other regulations governing the LGPS (including the Transitional Regulations, earlier regulations and the Investment Regulations); and

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

6.1.2 have knowledge and understanding of:

6.1.2.1 the law relating to pensions; and

6.1.2.2 such other matters as may be prescribed.

6.2 A Local Pension Board member should be aware that their legal responsibilities begin from the date they take up their role on the Board and so should immediately start to familiarise themselves with the documents as referred to in paragraph 6.1.1 and the law relating to pensions.

6.3 In accordance with section 248A, the knowledge and understanding requirement applies to every individual member of a Local Pension Board rather than to the members of a Local Pension Board as a collective group.

### **General Principles**

6.4 Administering Authorities should also take account of this Guidance to support them in understanding the requirement and to enable them to help members of the Local Pension Board to meet their knowledge and understanding obligations.

6.5 Administering Authorities should make appropriate training available to Local Pension Board members to assist them in undertaking their role and where possible support all members of the Board in undertaking that training. Where Local Pension Board members do not demonstrate their

capacity to attend and complete training then the Administering Authority may need to consider whether that Local Pension Board member has the capacity to undertake their role on the Board. See paragraph 5.31.7 for further information.

- 6.6 Knowledge and understanding must be considered in light of the role of a Local Pension Board to assist the Administering Authority in line with the requirements set out at paragraph 3.27.
- 6.7 However, members of a Local Pension Board clearly need to understand the duties and obligations of the Administering Authority, including funding and investment matters, in order to be able to assist it.
- 6.8 Once created, a Local Pension Board should establish and maintain a policy and framework to address the knowledge and understanding requirements that apply to its members. Where the Pensions Committee has an existing knowledge and understanding policy already in place, it may be sensible to see if this could be incorporated to cover both the Pensions Committee and the Local Pension Board to avoid unnecessary duplication. However the knowledge and understanding requirements of a Local Pension Board and a Pension Committee may differ, especially given the former's statutory requirements.
- 6.9 The Local Pension Board may wish to designate a person to take responsibility for ensuring that the knowledge and understanding framework is developed and implemented. This could be a member of the Local Pension Board or an external person, for example an officer of the Administering Authority or a professional adviser.

### **Knowledge and Understanding for Pension Committee Members**

- 6.10 The legal requirement for knowledge and understanding for members of a Local Pension Board does not apply to members of a Pension Committee. However, the requirement serves as a useful benchmark for the knowledge and understanding that a member of a decision-making Pension Committee should have.

### **The Regulator's Code of Practice**

- 6.11 The issue of knowledge and understanding is dealt with in the Regulator's Code of Practice (see paragraphs 34 to 60 of the Code of Practice). This Guidance is intended to reflect the principles of the Code of Practice and apply them in a LGPS context.

## **Degree of Knowledge and Understanding**

- 6.12 Being conversant with the rules of the LGPS and any document recording policy about the administration of the Fund means having a working knowledge (i.e. a sufficient level of familiarity) of them so that members of a Local Pension Board can use them effectively when carrying out their role of assisting the Administering Authority.
- 6.13 In particular members of a Local Pension Board should understand the rules and documents in enough detail to know where they are relevant to an issue and where a particular provision or policy may apply.
- 6.14 In order to assist the Administering Authority, it is implicit that members of a Local Pension Board understand the duties and obligations that apply to the Administering Authority as well as to themselves.
- 6.15 The rules of the LGPS would include:
- 6.15.1 the Regulations;
  - 6.15.2 the Investment Regulations; and
  - 6.15.3 the Transitional Regulations (including any earlier Regulations as defined in the Transitional Regulations to the extent they remain applicable),
- and any statutory guidance referred to in these regulations.
- 6.16 A Local Pension Board should prepare and keep updated a list of the core documents recording policy about the administration of the Fund and make sure that the list and documents (as well as the rules of the LGPS) are accessible to its members.
- 6.17 Part 1 of Schedule B of this Guidance contains a list of documents which are likely to be regarded as recording policy about the administration of a Fund. This list should not be relied upon as being definitive and actual lists are likely to vary from Fund to Fund. This Schedule has been added to this guidance to assist Administering Authorities and Local Pension Boards to quickly identify documents which record policy about the administration of a Fund.
- 6.18 Members of a Local Pension Board should also be aware of the range and extent of overriding law which applies to the LGPS and have sufficient

knowledge and understanding of the content and effect of that law to recognise when and how it impacts on their role, responsibilities and duties.

- 6.19 Part 2 of Schedule B of this Guidance contains a summary of some of the key areas of law relating to pensions generally and the LGPS in particular. This summary should not be relied upon as being a definitive list of all the areas of law that members of a Local Pension Board need to know about and understand. This Schedule been added to this guidance to assist Administering Authorities and Local Pension Boards to quickly identify key areas of law that may be relevant.
- 6.20 Given the role of the Local Pension Board to assist the Administering Authority, members of a Local Pension Board should have sufficient knowledge and understanding to challenge any failure by the Administering Authority to comply with the Regulations and other legislation relating to the governance and administration of the LGPS (which should be interpreted as including the Regulations and other legislation relating to investment and funding matters) and/or any failure to meet the standards and expectations set out the Code of Practice.
- 6.21 Members of a Local Pension Board should have a breadth of knowledge and understanding that is sufficient to allow them to understand fully any professional advice the Local Pension Board is given. Members should be able to challenge any information or advice they are given and understand how that information or advice impacts on any decision relating to the Local Pension Board's duty to assist the Administering Authority.

### **Acquiring, Reviewing and Updating Knowledge and Understanding**

- 6.22 A Local Pension Board's knowledge and understanding policy and framework should provide for the acquisition and retention of knowledge and understanding for its members.
- 6.23 Members of the Local Pension Board should commit sufficient time in their learning and development alongside their other duties. Training is an important part of the individual's role and will help to ensure that they have the necessary knowledge and understanding to effectively meet their legal obligations to assist the Administering Authority.
- 6.24 Members of the Local Pension Board must be aware that their knowledge and understanding responsibilities technically begin from the date they take up their post. Therefore, members should immediately start to familiarise

themselves with the Regulations, key Fund documents and relevant pensions law.

- 6.25 The Administering Authority should offer high quality induction training and should provide relevant ongoing training for Board members. This could be included in the normal training programme for members of the Pensions Committee as well as a specific training programme for the Local Pension Board.
- 6.26 It may also be useful for the Local Pension Board to have shared training events with the Pensions Committee and/ or Pension Committees and Local Pension Boards from other Funds to share knowledge and experience.
- 6.27 There must be a practical recognition that it will take a newly appointed member a reasonable period to attain the required full level of knowledge and understanding (see paragraph 6.1). Consideration should also be given to permitting newly appointed Local Pension Board members to overlap with the outgoing member to allow them to shadow that Board member for at least one Board meeting (where possible) as well as providing them with high quality induction training.
- 6.28 A Local Pension Board's knowledge and understanding policy and framework should require its members to undertake a personal training needs analysis and regularly review their skills, competencies and knowledge to identify gaps or weaknesses.
- 6.29 Part 2 of Schedule B contains examples of areas of knowledge and understanding that a member of a Local Pension Board might be expected to have. These examples may assist a Board member in undertaking a personal training needs analysis.
- 6.30 A personalised training plan should then be used to document and address these promptly. This would be supported by any person the Local Pension Board has designated to implement the knowledge and understanding policy and framework.
- 6.31 Learning programmes should be flexible, allowing members of the Local Pension Board to update particular areas of learning where required and acquire new areas of knowledge in the event of any change. For example, members of the Local Pension Board who take on new responsibilities in

their role will need to have knowledge and understanding which is relevant to carry out those new responsibilities.

- 6.32 Learning programmes should deliver the appropriate level of detail to ensure that Local Pension Board members have the required level of knowledge and understanding specific to the LGPS.
- 6.33 The Regulator will be providing an e-learning programme which has been developed to meet the needs of all members of public sector scheme pension boards, whether or not they have access to other learning. It is not anticipated that this e-learning module alone would provide the sufficient level of LGPS specific training required for Local Pension Board members.
- 6.34 Members of a Local Pension Board and the Administering Authority should investigate what other third party learning tools and courses are available both for initial training requirements and any ongoing training needs identified for members of the Local Pension Board. Administering Authorities and Local Pension Boards should contact relevant advisors to identify any training resources being made available. For example the LGPC Secretariat will be providing training events for Local Pension Board members with details available from their website.
- 6.35 Once a Local Pension Board is in operation and new appointments are made in the future, mentoring by existing members could also be considered. This could also help to ensure that historical and scheme specific knowledge is retained when members of a Local Pension Board change.

### **Demonstrating Knowledge and Understanding**

- 6.36 The Local Pension Board should keep appropriate records of the learning activities of individual members and the Local Pension Board as a whole. This will assist members in demonstrating their compliance, if necessary, with the legal requirement and how they have mitigated risks associated with knowledge gaps. For example a good external learning programme will maintain records of the learning activities of individuals on the programme or of group activities, if these have taken place, which can be provided to the Local Pension Board.

**Action Points:**

- Once established a Local Pension Board should adopt a knowledge and understanding policy and framework (possibly in conjunction with the Pensions Committee if appropriate).
- A Local Pension Board should designate a person to take responsibility for ensuring that the knowledge and understanding policy and framework is developed and implemented.
- The Administering Authority should offer access to high quality induction training and provide relevant ongoing training to the appointed members of the Local Pension Board.
- A Local Pension Board should prepare (and keep updated) a list of the core documents recording policy about the administration of the Fund and make the list and documents (as well as the rules of the LGPS) accessible to its members.
- Members of a Local Pension Board should undertake a personal training needs analysis and put in place a personalised training plan.

## **7. Conduct of Members and Conflicts of Interest**

### **Introduction**

- 7.1 There are various legal requirements which need to be considered to make sure that sound governance principles are followed, and in particular that conflicts of interest are properly managed. These include:
- 7.1.1 Section 5(5) of the 2013 Act, which defines “conflict of interest” for the purpose of a Local Pension Board;
  - 7.1.2 Regulation 108 of the Regulations, which places duties on the Administering Authority to satisfy itself that Local Pension Board members do not have conflicts of interest on appointment or whilst they are members of the Board;
  - 7.1.3 The 2011 Act, which requires councillors to comply with the code of conduct of their local authority and to disclose interests;
  - 7.1.4 The ‘Seven Principles of Public Life’, also known as the ‘Nolan Principles’, with which any holder of public office is also expected to comply; and
  - 7.1.5 The expectations contained in the Code of Practice.
- 7.2 This section of the Guidance takes account of the above requirements and gives guidance on how the different duties can be reconciled in a practical way.
- 7.3 The importance of following these requirements needs to be clearly appreciated at the outset. Failure to follow applicable codes of conduct or declare a conflict of interest can impact on good governance in various ways. For example, such failure may result in a Local Pension Board actually acting improperly, may lead to a perception that the Local Pension Board has acted improperly, or may result in a challenge to the work carried out by the Board.

### **Codes of Conduct and Disclosure of Interests for Councillors**

- 7.4 The elected and co-opted members of a local authority (referred to as “councillors” for the purposes of this section of the Guidance) are governed by their local authority’s code of conduct for councillors. This code is required of every local authority by the 2011 Act and sets out the standards of behaviour expected of individuals in their capacity as councillors.



7.5 In addition, there is a legal obligation for councillors to disclose, in a register maintained by the authority's monitoring officer, certain pecuniary interests, as defined in regulations made under the 2011 Act.

7.6 Both of these requirements will apply to any members of a Local Pension Board who are also councillors of a local authority (whether that is the Administering Authority or another local authority). They will not apply to members of a Local Pension Board who are not councillors unless they are specifically adopted in terms of reference or other policy document to apply to the other members of the Local Pension Board.

### **Seven Principles of Public Life**

7.7 The members of a Local Pension Board should have regard to the 'Seven Principles of Public Life' (known as the Nolan Principles), which are:

7.7.1 **Selflessness** - Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.

7.7.2 **Integrity** - Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

7.7.3 **Objectivity** - In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

7.7.4 **Accountability** - Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

7.7.5 **Openness** - Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands it.

7.7.6 **Honesty** - Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to

resolve any conflicts arising in a way that protects the public interest.

**7.7.7 Leadership** - Holders of public office should promote and support these principles by leadership and example.

7.8 As members of a publicly-funded body involved in the discharge of public business, all members of a Local Pension Board should comply with these principles in the exercise of their functions. They require the highest standards of conduct.

### **Code of Conduct for Local Pension Boards**

7.9 When establishing its Local Pension Board, the Administering Authority should prepare and approve a code of conduct for the Board to adopt. The code of conduct should set out the standards of behaviour expected of members, incorporating the Seven Principles. An Administering Authority may wish to effectively adopt some or all of an existing Code of Conduct for the Local Pension Board. Once adopted, the Local Pension Board should keep this code of conduct under regular review.

7.10 The code of conduct should also make reference to the need for members of the Local Pension Board who are councillors to comply with any separate code of conduct and disclosure requirements which apply to them in their capacity as councillors (in other words, the Local Pension Board's code should make it clear that it is not an exhaustive statement of the standards of behaviour required of Board members).

7.11 It is important that individual members of the Local Pension Board are familiar with and understand the importance of following the principles in the Board's code of conduct, and the Board should arrange appropriate training for members on this issue.

### **Conflicts of Interest – General Comments**

7.12 As an introductory point, although there is a requirement for Local Pension Board members not to have a conflict of interest, it is important to note that the issue of conflicts of interest must be considered in light of the Local Pension Board's role, which is to assist the Administering Authority. The Local Pension Board does not make decisions in relation to the administration and management of the Fund: these rest with the Administering Authority. As a result, it is not anticipated that significant conflicts will arise in the same way as would be the case if the Board were

making decisions on a regular basis (compared, for example, to a Pensions Committee). Nevertheless, steps need to be taken to identify, monitor and manage conflicts effectively.

### **The Regulator's Code of Practice on Conflicts of Interest**

- 7.13 The Regulator has a particular role in relation to members of a Local Pension Board and conflicts of interest. Whilst members of a Local Pension Board may be subject to other legal requirements, when exercising functions as a member of a Local Pension Board, the Regulator expects the requirements which specifically apply by virtue of the 2013 Act to be met and the standards of conduct and practice set out in its Code of Practice to be complied with.
- 7.14 The Code of Practice offers guidance about managing potential conflicts and the identification, monitoring and management of actual conflicts. This Guidance is intended to reflect the principles of the Code of Practice and apply them in a LGPS context.

### **What is a Conflict of Interest?**

- 7.15 For the purposes of a member of a Local Pension Board, a 'conflict of interest' is defined in section 5(5) of the 2013 Act as a financial or other interest which is likely to prejudice a person's exercise of functions as a member of a Local Pension Board.
- 7.16 The 2013 Act also specifies that a conflict does not include a financial or other interest arising merely by virtue of that person being a member of the LGPS and/or Fund (or any connected scheme).
- 7.17 Therefore, a conflict of interest may arise when a member of a Local Pension Board:
- 7.17.1 must fulfil their legal duty to assist the Administering Authority;  
and
  - 7.17.2 at the same time they have:
    - 7.17.2.1 a separate personal interest (financial or otherwise); or
    - 7.17.2.2 another responsibility in relation to that matter,  
  
giving rise to a possible conflict with their first responsibility as a Local Pension Board member.

## **Examples of Conflicts of Interest**

- 7.18 Some examples of potential conflicts in this context would include:
- 7.18.1 A finance officer appointed as a member of a Local Pension Board may, from time to time, be required to review a decision which may be, or appear to be, in opposition to another interest or responsibility. For example, they may be required as a member of the Local Pension Board to review a decision which involves the use of departmental resources to improve scheme administration, whilst at the same time being tasked, by virtue of their employment, with reducing departmental spending.
  - 7.18.2 A member representative who works in the Administering Authority's internal audit department may be required as part of his work to audit the Fund. For example, the employee may become aware of confidential breaches of law by the Fund which have not yet been brought to the attention of the Local Pension Board.
  - 7.18.3 An employer representative from the private sector may also have a conflict of interest as a decision-maker in their own workplace. For example, if an employer representative is drawn from a company to which the Administering Authority has outsourced its pension administration services and the Board are reviewing the standards of service provided by it.

## **Identifying, Monitoring and Managing Conflicts – The Role of the Administering Authority**

- 7.19 The Regulations place a duty on the Administering Authority to satisfy itself that those appointed to its Local Pension Board do not have an actual conflict of interest prior to appointment and “from time to time” thereafter.
- 7.20 There is a corresponding duty on any person who is proposed to be appointed to a Local Pension Board, and on an appointed member of a Local Pension Board, to provide the Administering Authority with such information as the Administering Authority reasonably requires to satisfy itself that such person has no conflicts of interest.
- 7.21 To comply with its duty in relation to conflicts, the Administering Authority needs to put procedures in place in respect of the appointment of members and establish policies to be included in the Board's constitution to ensure

that interests are declared, potential conflicts are identified and members of the Board are trained and receive advice on conflicts. In doing so, the Administering Authority may wish to delegate its duty in relation to conflicts to a particular officer or officers, for example, the monitoring officer.

- 7.22 Looking first at the process of appointments, the Administering Authority should ensure that members of a Local Pension Board are appointed under procedures that require them to disclose any interests or responsibilities, which could become conflicts of interest and which may adversely affect their suitability for the role, before they are appointed. The appointment process should facilitate scrutiny of potential areas of difficulty by eliciting relevant information. The fact an individual could potentially have a conflict of interest at some point in the future should not preclude an individual being appointed provided he or she does not have an actual conflict of interest when appointed.
- 7.23 All terms of engagement (for example, appointment letters and any contracts for services) should include a clause requiring disclosure of all interests and responsibilities which have the potential to become conflicts of interest, as soon as they arise. All interests and responsibilities disclosed should be recorded.
- 7.24 As regards the Administering Authority's ongoing obligation to ensure that members of the Local Pension Board do not have a conflict of interest, the Administering Authority will need to keep appointments under review and also monitor whether appointed members have potential conflicts of interest and are declaring them appropriately. This could be achieved by requesting reports from the Local Pension Board, perhaps annually.

### **Identifying, Monitoring and Managing Conflicts – The Role of the Local Pension Board**

- 7.25 Local Pension Boards should cultivate a culture of openness and transparency. The need for continual consideration of conflicts should be recognised. Disclosure of interests and responsibilities, which have the potential to become conflicts of interest, should not be ignored.
- 7.26 The Local Pension Board should ensure that its members have a clear understanding of their role and the circumstances in which they may find themselves in a position of conflict of interest, and should know how potential conflicts should be managed. Many Local Pension Board members are likely to be familiar with the concept of a conflict of interests

and it should not be difficult to adapt established procedures to meet the obligations in the 2013 Act and the Regulations.

- 7.27 Local Pension Boards should identify, monitor and manage dual interests and responsibilities which are or have the potential to become conflicts of interest.
- 7.28 Local Pension Boards should evaluate the nature of any dual interests and responsibilities and assess the impact on their operations and good governance were a conflict of interest to materialise.
- 7.29 When seeking to prevent a potential conflict of interest becoming detrimental to the conduct or decisions of a Local Pension Board, the Board should consider obtaining professional legal advice when assessing any option.
- 7.30 A register of interests should provide a simple and effective means of recording and monitoring dual interests and responsibilities.
- 7.31 Local Pension Boards should also capture decisions about how any identified potential conflicts of interest should be managed – ideally, in their register of interests.
- 7.32 Options for managing a potential conflict of interest from becoming an actual conflict of interest, include:
  - 7.32.1 a member withdrawing from the discussion and any decision-making process;
  - 7.32.2 the Board establishing a sub-board to review the issue (where the terms of reference give the power to do so); or
  - 7.32.3 a member resigning from the Board if the conflict is so fundamental that it cannot be managed in any other way.
- 7.33 The Local Pension Board's register of interests should be circulated to the Local Pension Board for ongoing review it should be made available to the Administering Authority and it should be published (for example, on the Fund's website). The Local Pension Board should report any concerns to the Administering Authority and include in an annual report a section on good governance and management of conflicts.
- 7.34 Conflicts of interest should be included as an opening agenda item at Local Pension Board meetings, and revisited during the meeting where

necessary. This provides an opportunity for those present, including non-Board members, to declare any dual interests and responsibilities, which have the potential to become conflicts of interest, and to minute discussions about how they will be managed so as to prevent an actual conflict arising.

- 7.35 Local Pension Boards should take time to consider what key decisions are likely to be made during, for example, the year ahead and identify and consider any conflicts of interest that may arise in respect of these future decisions.

### **Considering Conflicts of Interest – Responsibilities of Board Members**

- 7.36 It is important that individual members of the Local Pension Board know how to identify when they have a potential conflict of interest which needs to be declared and which may also restrict their ability to participate in meetings or decision-making. They also need to appreciate that they have a legal duty under the Regulations to provide information to the Administering Authority in respect of conflicts of interest.

- 7.37 Individual Local Pension Board members should seek professional advice from a nominated officer (for example, the monitoring officer or the chief finance officer) or external advisers where necessary and the importance of doing so should be emphasised in the Local Pension Board's conflicts policy.

### **Managing Adviser and Officer Conflicts**

- 7.38 A Local Pension Board may need to seek specialist advice or support, for example legal advice. The Board may use an officer of the Administering Authority or a third party adviser. However, in both cases the Board should be confident that such advice is independent and any potential or actual conflicts are disclosed by the officer or adviser on a timely basis to the Board. For example, an adviser may have a conflict of interest if he or she (or the same firm) is also advising the Administering Authority.

- 7.39 The risk to the Local Pension Board is that the adviser does not provide, or is not seen to provide, independent advice. Where there is likely to be a conflict of interest in giving advice, the Board should consider carefully whether it is appropriate to appoint the adviser in the first place. It may also be necessary to consider carefully whether they should take steps to remove an adviser who has already been appointed.

### **Conflicts Policy**

7.40 When establishing its Local Pension Board, the Administering Authority should prepare and approve a conflicts policy for the Board to adopt. The conflicts policy should cover the points discussed in the preceding paragraphs relating to the identification, monitoring and management of potential conflicts of interest (including adviser conflicts). Once adopted, the Local Pension Board should keep this policy under regular review.

7.41 The conflicts policy should include as a minimum:

7.41.1 examples of scenarios giving rise to conflicts of interest (which may include those set out at paragraph 7.18 above);

7.41.2 how a conflict might arise specifically in relation to a member of a Local Pension Board; and

7.41.3 the process to be followed by members of a Local Pension Board and the Administering Authority to address a situation where members are subject to a potential or actual conflict of interest.

**Action Points:**

- An Administering Authority should prepare a code of conduct and a conflicts policy for its Local Pension Board for approval in accordance with the Administering Authority's constitution and at the first meeting of the Local Pension Board. The Local Pension Board should keep these under regular review.
- Training should be arranged for officers and members of a Local Pension Board on conduct and conflicts.
- A Local Pension Board should establish and maintain a register of interests for its members.



## 8. Reporting

### Internal Reporting

- 8.1 Each Administering Authority has the prime responsibility for establishing its Local Pension Board and it is therefore appropriate and consistent with good governance for the Local Pension Board to report to the Administering Authority.
- 8.2 The reporting requirements will be for each Administering Authority to determine and could include reporting and communicating with a range of individuals and decision making bodies. This could include communication with internal and external audit as well as reporting to the audit committee, scrutiny or a corporate resources committee, as well as full council or equivalent where appropriate. The agreed reporting requirements should be reflected in the Local Pension Board's terms of reference.
- 8.3 There should also be more frequent reporting (perhaps quarterly or after the Local Pension Board meets) to the Administering Authority/Pension Committee and the chief finance officer and/or monitoring officer for example, this could be achieved through sharing the minutes of Board meetings in a timely manner.
- 8.4 The Local Pension Board should take responsibility in conjunction with the Administering Authority for ensuring the necessary reports are prepared and delivered.
- 8.5 Whilst the process for internal reporting will need to be determined locally, the following examples may assist Administering Authorities and Local Pension Boards when formalising their reporting lines:
- 8.5.1 The Local Pension Board should in the first instance report its requests, recommendations or concerns to the Administering Authority/Pension Committee based on the remit of the Board (see paragraph 3.27 and Schedule A).
  - 8.5.2 The Local Pension Board could report any concerns over a decision made by the Pension Committee to that Committee within a reasonable period of the decision coming to the Board's attention.

- 8.5.3 On receipt of a report from the Local Pension Board the Pension Committee should consider and respond to it within a reasonable period.
  - 8.5.4 The Local Pension Board could report any concerns over a decision made by the Pension Committee to that Committee and where it considers that a decision was in breach of the Regulations (or overriding legislation) they may seek to challenge that decision. Such requests for a motion to review or challenge a decision must be subject to the agreement of the majority of the voting Board members.
  - 8.5.5 The Pension Committee should within a reasonable period, consider and respond to a motion to review or in the case of a motion to challenge to revisit the original decision.
  - 8.5.6 Where the Local Pension Board is satisfied that there has been a breach of the Regulations which has been reported to the Pension Committee which has not been rectified within a reasonable period of time the Local Pension Board is under an obligation to escalate the breach using the appropriate route for reporting breaches within that Administering Authority.
  - 8.5.7 In addition where the Board fail to reach consensus on a decision this should be recorded as such and noted in the minutes of the meeting.
- 8.6 A report to full council (or equivalent) or another committee/officer the Administering Authority has delegated to receive it, could include:
- 8.6.1 a summary of the work of the Local Pension Board;
  - 8.6.2 details of areas reported to the Board to be investigated by the Local Pension Board and how they have been dealt with;
  - 8.6.3 details of any conflicts of interest that have arisen in respect of individual Local Pension Board members and how these have been managed;
  - 8.6.4 whether there are any risks or other areas of potential concern which the Board wishes to raise with the Administering Authority (although legal advice to the Local Pension Board should not be shared with a full council meeting and nor should a summary of

it, since once legal advice goes beyond the intended 'client' and / or confidentiality is lost, privilege will be waived and this would also have an impact on the availability of the FOIA exemption for legally privileged information);

8.6.5 details of training received and future training needs;

8.6.6 the work plan for the last year and a draft of the work plan for the following year; and

8.6.7 details of any expenses and other costs incurred by the Local Pension Board and anticipated expenses for the forthcoming financial year. These costs will be met as part of the administration costs of the Fund.

8.7 The above topics should also form the basis of ongoing regular reports to the Administering Authority/Pension Committee who should be asked to comment on the draft work plan, for views on how complaints and risks reported to the Board have been managed and confirm that the Local Pension Board is acting within its terms of reference and in accordance with good governance principles.

8.8 Information being reported from the Local Pension Board should also be communicated to members and employers of the scheme to encourage engagement and promote a culture of transparency.

### **Escalation by the Local Pension Board of more serious concerns**

8.9 The terms of reference for the Local Pension Board should include procedures for the Local Pension Board to report concerns which are sufficiently serious to be reported directly at a higher level, or where a concern has been raised with the Pension Committee and the Local Pension Board consider the Pension Committee have not taken appropriate action to rectify the issue (or appropriate action within a reasonable time period). Such concerns may include a fundamental breach of the Regulations or a fundamental failure by the Administering Authority to ensure the effective governance of the Fund.

8.10 The terms of reference would need to identify to whom such concerns are reported to. This could be to named officer(s), a sub-committee or Council (or equivalent), or combination of these to avoid issues having to be reported immediately to full Council.

- 8.11 Escalation via the Scheme Advisory Board or the Responsible Authority where internal channels are not appropriate or considered to have failed may also be an option used by the Local Pension Board. In addition it may be appropriate to report serious concerns to the Regulator.

#### **Internal Reporting - Conflicts of interest**

- 8.12 All members of the Local Pension Board must provide the Administering Authority with such information it reasonably requires for the purposes of satisfying itself that none of the members of the Local Pension Board has a conflict of interest. This is considered in more detail in section 7 of this guidance.

#### **Internal Reporting - Record-keeping**

- 8.13 Where the Local Pension Board is established as a local authority committee with the Secretary of States consent, in accordance with regulation 106(2) of the Regulations, the usual provisions about transparency in respect of access to information and reports will apply. In that case, the terms of reference for the Local Pension Board should include provisions dealing with the provision of agendas and reports in advance of Local Pension Board meetings and making those publically available (with the exception of confidential or personal information).
- 8.14 As a Local Pension Board is considered a committee of local government it should consider publishing information as would be required by committees of local government. The Regulator's Code of Practice advises that the Local Pension Board should consider publishing reports, agendas, papers and minutes, see paragraph 97 of that Code for further information. Any confidential or personal information should not be published.
- 8.15 Minutes of meetings should also be available and published in accordance with procedures for other meetings, for example on the website of the Administering Authority.
- 8.16 All papers and records should be prepared to minimise personal data, to separate all general confidential information and should be drafted wherever possible as if they may be made public (whether directly or, if received by the Administering Authority, through them).

## Data Protection

- 8.17 For legal purposes a Local Pension Board is considered a committee of and part of the Administering Authority legal entity (but a Local Pension Board is not a committee created under section 101 of the 1972 Act). The Administering Authority is and remains the data controller responsible for DPA compliance, including for processing carried out by the Local Pension Board, where processing is carried out as a data controller, or where personal data use by the Local Pension Board is not carried out for and on behalf of any other separate legal entity.
- 8.18 Since the Local Pension Board is not a separate legal entity processing personal data, it cannot be a data controller itself under the DPA (even to the extent that the Local Pension Board independently uses personal data of its Board members, processes information about its relationships with other individuals and scrutinises records containing personal data of Fund members from the Administering Authority).
- 8.19 The Administering Authority must already comply with DPA data protection principles and must (amongst other requirements):
- 8.19.1 **Notification** – notify the DPA regulator, the Information Commissioner’s Office (“ICO”), of all of the purposes for which they may be using personal data (including Local Pension Board purposes) and renew this annually (unless exempt).
  - 8.19.2 **Fair and lawful processing** – provide privacy notices to individuals whose personal data is processed (including by the Local Pension Board) in most but not all cases.
  - 8.19.3 **Disclosures** – if using data processors (service providers using personal data on behalf of the Local Pension Board), have an appropriate written contract in place containing legally required and ICO recommended provisions to protect personal data.
  - 8.19.4 **Transfers** – not directly or indirectly ‘export’ personal data to a country outside the European Economic Area and European Commission’s ‘white list’ countries unless “adequate safeguards” have been put in place (such as entering into a data transfer agreement on the basis of the EU Commission’s model clauses).
- 8.20 To better comply with the ICO’s expectations and evidence compliance with data protection principles, it is recommended that (to the extent not yet done)

the Administering Authority implement additional measures (also covering their Local Pension Board and their staff and operations), including:

- 8.20.1 adopting policies such as a data protection policy, information security policy, acceptable use (and monitoring) policy and subject access request policy; and
  - 8.20.2 training on key DPA issues, requirements and policy compliance. This should form part of the knowledge and understanding requirements (see paragraph 6.1 for further information).
- 8.21 Given that the Local Pension Board is not considered a separate legal entity, the Administering Authority remains the responsible data controller. Accordingly:
- 8.21.1 the Administering Authority's notification registered with the Information Commissioner should be reviewed and, if necessary amended to cover proposed personal data processing by the Local Pension Board (failure to have a current up to date notification being a criminal offence);
  - 8.21.2 the Local Pension Board and Administering Authority should liaise to understand the Authority's requirements and controls and policies for data protection compliance so that the Local Pension Board is aware of them and can comply with them (avoiding duplication and inconsistency of approach) and where necessary so that appropriate changes can be made to such requirements, controls and policies before adoption and implementation by the Local Pension Board;
  - 8.21.3 the Local Pension Board and Administering Authority should be able to discuss and agree appropriate procedures for dealing with material data protection compliance issues, such as a potential security breach.

### **Freedom of Information**

- 8.22 To be bound by the FOIA a body must be a FOIA public authority. Administering Authorities are already FOIA public authorities.
- 8.23 Local Pension Boards are not legal entities in their own right and so cannot be FOIA public authorities in their own right (and do not meet any of the FOIA public authority criteria as a Local Pension Board at present). However, Local

Pension Boards will be part of that same legal entity as the Administering Authority, and so the Local Pension Board will already be part of that FOIA public authority. Accordingly, information records created or obtained by the Local Pension Board will be accessible from it, or any part of its Administering Authority under FOIA. The Local Pension Board must liaise with the Administering Authority to:

- 8.23.1 understand the Authority's requirements and controls and policies for FOIA compliance so that the Local Pension Board is aware of them and can comply with them (avoiding duplication and inconsistency of approach) and, where necessary so that appropriate changes can be made to such requirements, controls and policies before adoption and implementation by the Local Pension Board;
- 8.23.2 agree what details are made available through the Administering Authority's publication scheme and so that it can be updated as necessary;
- 8.23.3 agree what procedure applies in relation to FOIA information requests received by the Local Pension Board and / or received by the Administering Authority about the Local Pension Board to ensure proper and consistent consultation, action and response within applicable time limits.

### **External Reporting - Breaches of Law**

- 8.24 In accordance with section 70 of the 2004 Act, certain individuals must report to the Regulator as soon as reasonably practicable where that individual has reasonable cause to believe that:
  - 8.24.1 a duty which is relevant to the administration of the LGPS, and is imposed by or by virtue of an enactment or rule of law, has not been or is not being complied with; and
  - 8.24.2 the failure to comply is likely to be of material significance to the Regulator in the exercise of any of its functions.
- 8.25 This obligation directly applies to each individual who is a member of the Local Pension Board. In addition, it also extends to the Administering Authority, participating employers in the LGPS, any person who is otherwise involved in the administration of the LGPS, any person who is otherwise

involved in advising the Administering Authority and, in some circumstances, professional advisors of the Administering Authority.

### **Implementing adequate arrangements**

- 8.26 The Local Pension Board should have effective arrangements in place to meet its duty to report breaches of law. Please refer to paragraphs 245 to 246 of the Code of Practice as to the procedures that should be established and operated to ensure that members of the Local Pension Board are able to meet their legal obligations.

### **Judging whether a breach must be reported**

- 8.27 The decision whether to report requires two key judgments:
- 8.27.1 Is there reasonable cause to believe there has been a breach of law?
  - 8.27.2 If so, is the breach likely to be of material significance to the Regulator?
- 8.28 Paragraphs 248 to 262 of the Code of Practice provides guidance as to what is meant by 'reasonable cause' and how to judge whether a breach is likely to be of 'material significance' to the Regulator.

### **Submitting a report to the Regulator**

- 8.29 Reports must be submitted in writing. Paragraphs 263 to 271 of the Code of Practice specifies how and the format in which a report should be submitted.
- 8.30 The requirement to report applies to all those subject to the reporting duty who become aware of a breach that is likely to be of material significance to the Regulator; it is not automatically discharged by another party reporting the breach. However, in practice, where the Local Pension Board considers there has been a breach it may be appropriate to inform and review this with the Administering Authority and (where appropriate) the Fund advisor(s) so that a collective report can be submitted. Details on how such a report should be submitted can be found in the Regulator's Code of Practice (paragraphs 263 to 271). An exception to this arrangement will apply in cases where there is a suspicion or dishonesty or other serious wrongdoing by the Administering Authority and/or the Fund advisor(s).



## **Non-compliance**

- 8.31 Failure to comply with the obligation imposed to report breaches of law without 'reasonable excuse' is a civil offence under section 10 of the Pensions Act 1995. An individual member of a Local Pension Board could be fined up to £5,000.

## **External Reporting - Annual Report**

- 8.32 It would be good practice for the Local Pension Board to consider publishing an annual report of the Local Pension Board's activities for that year.
- 8.33 The Local Pension Board should consider with the Administering Authority whether it would be appropriate to detail these activities as part of the Fund's annual report.

## **External Reporting - Governance Compliance Statement**

- 8.34 Section 6 of the 2013 Act requires a scheme manager to publish information about its pension board.
- 8.35 In terms of the LGPS, this requirement is dealt with under regulation 55 of the Regulations which requires the Administering Authority to include within its governance compliance statement details of the terms, structure and operational procedures relating to its Local Pension Board. This Governance Compliance Statement must be published by the Administering Authority.
- 8.36 Current governance compliance statements will need to be revised to include this new information. The Administering Authority will firstly need to consult with such persons as it thinks necessary about the revised statement and then publish it once it has been revised.

## **External Reporting - The Regulator**

- 8.37 If the Regulator has reasonable grounds to suspect or believe that a member of a Local Pension Board:
- 8.37.1 has misappropriated any assets of the Fund or is likely to do so;  
or
  - 8.37.2 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 Board member 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.

**Action Points:**

- An Administering Authority should agree the ongoing reporting arrangements between the Local Pension Board and the Administering Authority.
- A Local Pension Board should understand the Administering Authority's requirements, controls and policies for FOIA compliance so that the Local Pension Board is aware of them and can comply with them.
- A Local Pension Board should put in place arrangements to meet the duty of its members to report breaches of law.
- A Local Pension Board should consider (with its Administering Authority) the need to publish an annual report of its activities.
- An Administering Authority should consult on, revise and publish its governance compliance statement to include details of the terms, structure and operational procedures relating to its Local Pension Board.

## 9. **Resourcing and Funding**

### **Resourcing of Local Pension Boards**

- 9.1 It is appropriate that a Local Pension Board is given adequate resources to fulfil its task, in the same way that statutory officers of the Administering Authority and scrutiny committees are entitled.
- 9.2 As a minimum, the Board will require:
- 9.2.1 allowances and expenses for Board members (where this has been agreed and confirmed in the Board's terms of reference);
  - 9.2.2 accommodation and administrative support to conduct its meetings and other business;
  - 9.2.3 training; and
  - 9.2.4 legal, technical and other professional advice (where required).
- 9.3 Regulation 106(8) provides that the Board has the power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. In line with the provisions of this regulation when determining its budget, consideration will need to be given to whether the Board requires an allocation for using advisors. Advisors, if used may be called upon on an adhoc or ongoing basis to assist in areas of technical, legal or policy matters. Such advisors would not be members of the Local Pension Board.
- 9.4 Given the role of a Local Pension Board to assist the Administering Authority to secure compliance with legal and regulatory matters and to ensure the effective and efficient governance and administration of the LGPS, the need for the Local Pension Board to seek its own legal, technical and other professional advice cannot be discounted.

### **Funding of Local Pension Boards**

- 9.5 Regulation 106(9) of the Regulations specifies that the expenses of a Local Pension Board shall be regarded as part of the costs of administration of the Fund.
- 9.6 These expenses will include (but are not limited to) the cost of secretarial support and any necessary advisory support, overheads attaching to the arranging of meetings and, if the Administering Authority makes provision,

payment of allowances and/or expenses to members of the Local Pension Board (see paragraph 5.34.17).

- 9.7 The Administering Authority will also need to give early consideration to how the arrangements for meeting the Local Pension Board's expenditure will be administered. The options include:
- 9.7.1 allocating a budget which is managed by the Local Pension Board; or
  - 9.7.2 requiring the Local Pension Board to seek approval from the Administering Authority for expenditure.
- 9.8 Given the statutory responsibilities of the Local Pension Board and its relationship with the Administering Authority, it will be a matter for early consideration by the Local Pension Board as to compiling its budget.
- 9.9 In considering the budget for a Local Pension Board that budget should also set out to whom the Local Pension Board will be financially accountable to. This would be expected to be the Administering Authority (rather than the Pensions Committee). In addition a timetable for approving the Local Pension Board's budget should be set out in the Board's terms of reference.
- 9.10 Consideration should be given by the Administering Authority to whether or not members of the Local Pension Board are paid allowances or reimbursed expenses. One option would be to set levels of allowance in a similar way to the elected members allowances scheme, perhaps with regard to allowances for co-opted members, and in accordance with established processes for declaring allowances which have been received in an open and transparent way. In deciding whether to award an allowance, and if so how much, the Administering Authority may wish to consider some or all of the following matters:
- whether the Board members are carrying out duties (including preparation and/or training) during personal time or whether it is during a period of authorised paid absence,
  - whether a Board member who has taken on the role of Chair is carrying out a range of additional responsibilities that merit additional payment,

- whether an annual or per meeting allowance is more appropriate, and how a per meeting allowance should be extended to attendance at training and
- whether employers whose staff sit on a Local Pension Board and spend work time on Local Pension Board matters wish to reclaim that cost from the Local Pension Board through allowances/expenses.

## 10. **Other possible structures**

### **Combining a Local Pension Board and a Pension Committee**

- 10.1 Where an Administering Authority discharges its pensions functions through a committee, it can, with the approval of the Secretary of State, appoint the existing committee as the Local Pension Board.
- 10.2 Where an Administering Authority chooses to use an existing committee (subject to the approval of the Secretary of State) careful consideration will need to be given to the membership of the committee so that it complies with the requirement in regulation 107 of the Regulations, to designate an equal number of employer and member representatives and to include at least two employer and two member representatives. These individuals must have the capacity to represent members and employers, as appropriate. Officers or members who have responsibilities for functions under the Regulations cannot be appointed. It is likely that the employee representatives will be co-opted members.
- 10.3 As well as complying with the Regulations, a Local Pension Board which is established as a local authority Pensions Committee will be subject to general requirements in the 1972 Act and the 1989 Act. We have summarised in Schedule C the key legal requirements which need to be considered where an authority wishes to seek approval from the Secretary of State to use an existing committee. This is a complex area and any authority intending to follow this route will need to take legal advice from their monitoring officer to make sure the plans comply with the different legal duties and their own Constitution.
- 10.4 At first sight it might seem attractive to combine the functions of a Local Pension Board and a Pension Committee to enable the Board to be included in existing decision making processes, including delegation to officers and publication of agendas and minutes. However, in practice it may be difficult to meet the requirements of the 1972 Act, the 1989 Act, the 2013 Act and the Regulations when combining a Local Pension Board and a local authority Pension Committee.
- 10.5 Firstly, if the Local Pension Board is to be a Pension Committee this can only be where written approval has been obtained from the Secretary of State.

- 10.6 Secretary of State approval may be given subject to such conditions as the Secretary of State thinks fit and equally may be withdrawn if such conditions are not met. The Secretary of State may also withdraw approval if in his or her opinion it is no longer appropriate for the Local Pension Board to be the Pension Committee.
- 10.7 Where an Administering Authority has delegated pension functions to more than one committee and it does not wish to create a separate Local Pension Board, it will be necessary to determine which of its committees is most appropriate to undertake the function of the Board.
- 10.8 It will also be necessary to review the membership of the existing Pension Committee as regulation 107 of the Regulations says that the Pension Committee must designate at least two employer and two member representatives to act as Local Pension Board members.
- 10.9 If the Local Pension Board is to be a Pension Committee, it is difficult to see how the Local Pension Board can effectively and objectively fulfil its statutory function of assisting itself (as the Pensions Committee) to secure compliance with legal and regulatory matters and to ensure the effective and efficient governance and administration of the LGPS (which is the prime responsibility of the Pension Committee).

### **Joint Pension Boards**

- 10.10 Where the administration and management of a scheme is wholly or mainly shared by two or more Administering Authorities, those Administering Authorities may establish a joint local pension board, with the approval of the Secretary of State.
- 10.11 In practice there are no current situations which meet the requirement of regulation 106(3).
- 10.12 In order to meet the regulation two or more Administering Authorities will have to demonstrate to the Secretary of State that either the entirety or the significant elements of the management and administration (including investments) are formally delegated (with appropriate legal arrangements) to a single body. For example, this could be best evidenced by the existence of a joint committee established under section 102 of the 1972 Act which exercises the functions on behalf of constituent authorities.
- 10.13 In support of the above the Administering Authorities will need to provide documentary evidence of the existence of and the delegations to the joint

committee. Such evidence should also include details of how such a joint pension board fully represents the members and employers of all the constituent Administering Authorities as well as the structure of the reporting lines necessary to ensure that all relevant stakeholders fully aware of the work of the Joint Pension Board.

10.14 Where the Secretary of State is satisfied by this evidence then approval for the formation of a Joint Pension Board to cover the functions of the constituent Administering Authorities may be granted.

10.15 Secretary of State approval may be given subject to such conditions as the Secretary of State thinks fit and equally may be withdrawn if such conditions are not met. The Secretary of State may also withdraw approval if in his or her opinion it is no longer appropriate for the Local Pension Board to be a Joint Pension Board.



## 11. **Other guidance**

- The Pensions Regulator's Code of Practice no. 14 Governance and Administration of public service pension schemes.

<http://www.thepensionsregulator.gov.uk/public-service-schemes/regulating-public-service-pension-schemes.aspx>

- The Pensions Regulator's website:

[www.thepensionsregulator.gov.uk](http://www.thepensionsregulator.gov.uk)

- Dedicated Public Service Pension Scheme area on the Pensions Regulator's website:

[www.thepensionsregulator.gov.uk/public-service-schemes.aspx](http://www.thepensionsregulator.gov.uk/public-service-schemes.aspx)

- The Pensions Regulator's Pension Board member toolkit:

[www.trusteetoolkit.com/arena/index.dfm](http://www.trusteetoolkit.com/arena/index.dfm)

## **SCHEDULE A**

### **Example of a remit of a Local Pension Board**

Administering Authorities should remember that the Local Pension Board does not replace the Administering Authority or make decisions or carry out other duties which are the responsibility of the Administering Authority.

The first core function of the Board is to assist the Administering Authority in securing compliance with the 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. Within this extent of this core function the Board may determine the areas it wishes to consider including but not restricted to:

- a) Review regular compliance monitoring reports which shall include reports to and decisions made under the Regulations by the Committee.
- b) Review management, administrative and governance processes and procedures in order to ensure they remain compliant with the Regulations, relevant legislation and in particular the Code of Practice.
- c) Review the compliance of scheme employers with their duties under the Regulations and relevant legislation.
- d) Assist with the development of and continually review such documentation as is required by the Regulations including Governance Compliance Statement, Funding Strategy Statement and Statement of Investment Principles.
- e) Assist with the development of and continually review scheme member and employer communications as required by the Regulations and relevant legislation.
- f) Monitor complaints and performance on the administration and governance of the scheme.
- g) Assist with the application of the Internal Dispute Resolution Process.
- h) Review the complete and proper exercise of Pensions Ombudsman cases.

- i) Review the implementation of revised policies and procedures following changes to the Scheme.
- j) Review the arrangements for the training of Board members and those elected members and officers with delegated responsibilities for the management and administration of the Scheme.
- k) Review the complete and proper exercise of employer and administering authority discretions.
- l) Review the outcome of internal and external audit reports.
- m) Review draft accounts and scheme annual report.
- n) Review the compliance of particular cases, projects or process on request of the Committee.
- o) Any other area within the core function (i.e. assisting the Administering Authority) the Board deems appropriate.

The second core function of the Board is to ensure the effective and efficient governance and administration of the Scheme. Within this extent of this core function the Board may determine the areas it wishes to consider including but not restricted to:

- a) Assist with the development of improved customer services.
- b) Monitor performance of administration, governance and investments against key performance targets and indicators.
- c) Review the effectiveness of processes for the appointment of advisors and suppliers to the Administering Authority.
- d) Monitor investment costs including custodian and transaction costs.
- e) Monitor internal and external audit reports.
- f) Review the risk register as it relates to the scheme manager function of the authority.
- g) Assist with the development of improved management, administration and governance structures and policies.
- h) Review the outcome of actuarial reporting and valuations.

- i) Assist in the development and monitoring of process improvements on request of Committee.
- j) Assist in the development of asset voting and engagement processes and compliance with the UK Stewardship Code.
- k) Any other area within the core function (i.e. ensuring effective and efficient governance of the Scheme) the Board deems appropriate.

In support of its core functions the Local Pension Board may make a request for information to Committee with regard to any aspect of the Administering Authority function. Any such request should be reasonably complied with in both scope and timing.

In support of its core functions the Local Pension Board may make recommendations to Committee which should be considered and a response made to the Board on the outcome within a reasonable period of time.

**\*Schedule A has been added as an example only - it should not be considered an exhaustive list and full consideration should be given locally to the remit of the Local Pension Board.**

## Schedule B

### PART 1

**Examples of documents recording policy about the administration of the scheme (please read in conjunction with paragraphs 6.16 and 6.17)**

1.	Member booklets, announcements and other key member and employer communications, which describe the Fund's policies and procedures (including any separate AVC guides) including documents available on the Fund's website	
2.	Any relevant policies of the Administering Authority and/or Pension Committee, for example policies on: <ul style="list-style-type: none"> <li>• conflicts of interests</li> <li>• record-keeping</li> <li>• data protection and freedom of information</li> <li>• internal dispute resolution procedure</li> </ul>	

	<ul style="list-style-type: none"> <li>reporting breaches</li> </ul>	
3.	The Administering Authority's governance compliance statement (as required by regulation 55 of the Regulations)	
4.	The Administering Authority's funding strategy statement (as required by regulation 58 of the Regulations)	
5.	The Administering Authority's pension administration statement (as required by regulation 59 of the Regulations)	
6.	The Administering Authority's discretionary policy statement (as required by regulation 60 of the Regulations)	
7.	The Administering Authority's communications policy statement (as required by regulation 61 of the Regulations)	
8.	The Administering Authority's statement of investment principles (as required by regulation 12 of the Investment Regulations)	
9.	The Administering Authority's internal controls risk register (for the purposes of section 249B of the 2013 Act)	
10.	The Fund's actuarial valuation report and rates and adjustment certificate (as required by regulation 62 of the Regulations)	
11.	The Fund's annual report and accounts (as required by regulation 57 of the Regulations) including any summary report (as required by regulation 56 of the Regulations)	
12.	Any accounting requirements relevant to the Fund	
13.	Any third party contracts and service level agreements	
14.	Any internal control report produced by third party service providers and investment managers	
15.	The Fund's standard form of admission agreement and bond and related policies and guidance	

## PART 2

### Examples of knowledge and understanding of the law relating to pensions (please read in conjunction with paragraphs 6.18 and 6.19)

1.	<b>Background and Understanding of the Legislative Framework of the LGPS</b>	
	<ul style="list-style-type: none"> <li>• Differences between public service pension schemes like the LGPS and private sector trust-based schemes</li> <li>• Role of the IPSPC and its recommendations</li> <li>• Key provisions of the 2013 Act</li> <li>• The structure of the LGPS and the main bodies involved including the Responsible Authority, the Administering Authority, the Scheme Advisory Board, the Local Pension Board and the LGPS employers</li> <li>• An overview of local authority law and how Administering Authorities are constituted and operate</li> <li>• LGPS rules overview (including the Regulations, the Transitional Regulations and the Investment Regulations)</li> </ul>	
2.	<b>General pensions legislation applicable to the LGPS</b>	
	<p>An overview of wider legislation relevant to the LGPS including:</p> <ul style="list-style-type: none"> <li>• Automatic Enrolment (Pensions Act 2008)</li> <li>• Contracting out (Pension Schemes Act 1993)</li> <li>• Data protection (Data Protection Act 1998)</li> <li>• Employment legislation including anti-discrimination, equal treatment, family related leave and redundancy rights</li> <li>• Freedom of Information (Freedom of Information Act 2000)</li> <li>• Pensions sharing on divorce (Welfare Reform and Pensions Act 1999)</li> <li>• Tax (Finance Act 2004)</li> </ul>	

	<ul style="list-style-type: none"> <li>• IORP Directive</li> </ul>	
3.	<b>Role and responsibilities of the Local Pension Board</b>	
	<ul style="list-style-type: none"> <li>• Role of the Local Pension Board</li> <li>• Conduct and conflicts</li> <li>• Reporting of breaches</li> <li>• Knowledge and understanding</li> <li>• Data protection</li> </ul>	
4.	<b>Role and responsibilities of the Administering Authority</b>	
	<ul style="list-style-type: none"> <li>• Membership and eligibility</li> <li>• Benefits and the payment of benefits</li> <li>• Decisions and discretions</li> <li>• Disclosure of information</li> <li>• Record keeping</li> <li>• Internal controls</li> <li>• Internal dispute resolution</li> <li>• Reporting of breaches</li> <li>• Statements, reports and accounts</li> </ul>	
5.	<b>Funding and Investment</b>	
	<ul style="list-style-type: none"> <li>• Requirement for triennial and other valuations</li> <li>• Rates and adjustments certificate</li> <li>• Funding strategy statement</li> <li>• Bulk transfers</li> <li>• Permitted investments</li> </ul>	

	<ul style="list-style-type: none"> <li>• Restrictions on investments</li> <li>• Statement of investment principles</li> <li>• CIPFA guidance</li> <li>• Appointment of investment managers</li> <li>• Role of the custodian</li> </ul>	
6.	<b>Role and responsibilities of Scheme Employers</b>	
	<ul style="list-style-type: none"> <li>• Explanation of different types of employers</li> <li>• Additional requirements for admission bodies</li> <li>• Automatic Enrolment</li> <li>• Deduction and payment of contributions</li> <li>• Special contributions</li> <li>• Employer decisions and discretions</li> <li>• Redundancies and restructuring (including the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006)</li> <li>• TUPE and outsourcing (including Fair Deal and the Best Value Authorities Staff Transfers (Pensions) Direction 2007)</li> </ul>	
7.	<b>Tax and Contracting Out</b>	
	<ul style="list-style-type: none"> <li>• Finance Act 2004</li> <li>• Role of HMRC</li> <li>• Registration</li> <li>• Role of 'scheme administrator'</li> <li>• Tax relief on contributions</li> <li>• Taxation of benefits</li> </ul>	



	<ul style="list-style-type: none"> <li>• Annual and lifetime allowances</li> <li>• Member protections</li> <li>• National Insurance</li> <li>• Contracting out (Pensions Scheme Act 1993)</li> <li>• Impact of abolition of contracting out in 2016</li> <li>• VAT and investments</li> </ul>	
8.	<b>Role of advisors and key persons</b>	
	<ul style="list-style-type: none"> <li>• Officers of the Administering Authority</li> <li>• Fund actuary</li> <li>• Auditor</li> <li>• Lawyers</li> <li>• Investment managers</li> <li>• Custodians</li> <li>• Administrators – in house v. third party</li> <li>• Procurement of services</li> <li>• Contracts with third parties</li> </ul>	
9.	<b>Key Bodies connected to the LGPS</b>	
	<p>An understanding of the roles and powers of:</p> <ul style="list-style-type: none"> <li>• Courts</li> <li>• Financial Services Authority</li> <li>• HMRC</li> <li>• Information Commissioner</li> <li>• Pensions Advisory Service</li> </ul>	

	<ul style="list-style-type: none"><li>• Pensions Ombudsman</li><li>• The Pensions Regulator (including powers in relation to Local Pension Boards)</li></ul>	
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## **SCHEDULE C**

### **Summary of Legal Provisions to consider where an Administering Authority wishes to use an existing pensions committee as its Local Pension Board**

If you wish to use your existing pensions committee as the Local Pension Board you should take legal advice to ensure that the following provisions are complied with:

1. The provisions of Section 101 – Section 107 of the Local Government Act (the 1972 Act) which provides for the arrangements for the discharge of functions by local authorities. This enables non-executive functions to be discharged by a committee, a sub-committee, a joint committee, another local authority or delegated to officers.
2. Section 102 (3) of the 1972 Act allows for people other than elected members to be co-opted to a committee. This is not permitted where a committee is responsible for regulating or controlling the finances of a local authority.
3. Section 102 (4) allows a local authority to appoint an advisory committee.
4. Section 106 provides for the procedures and quorum of meetings to be determined in Standing Orders or where provisions are not made in Standing Orders for the committee to determine its procedures.
5. Section 13 of the Local Government and Housing Act 1989 describes the voting rights for co-opted members of committees and gives rights of voting to co-opted members in specified circumstances. The general proposition is that co-opted members do not have voting rights. The provisions in section 13 which make exceptions to this rule are complex and their application will differ depending on whether functions are discharged by a committee or sub committee and whether a committee is decision making or advisory. There are exceptions for advisory committees and also where committees are established in accordance with regulations under the Superannuation Act 1972 (i.e. co-opted members have voting rights on these committees) and the Public Service Pensions Act 2013.
6. The provisions of regulation 106 (establishment) and regulation 107 (membership) of the LGPS Regulations 2013 (as amended) relating to Local Pension Boards.