Local Government Pension Scheme (England and Wales) new governance arrangements: a response by the National Association of Pension Funds

August 2013

About the NAPF

The National Association of Pension Funds is the leading voice of workplace pension provision in the UK. We represent 1,300 pension schemes from all parts of the economy and 400 businesses providing essential services to the pensions industry. We represent both public and private sector schemes, including over 70% of the local authority pension funds. Our members provide pensions for 16m people and collectively hold assets of around £900 bn. Our main objective is to ensure there is a secure and sustainable pensions system in the UK.

Introduction

1. The NAPF welcomes the consultation on new governance arrangements, as proper and more uniform governance will be crucial to the on-going success of the reforms to funded public sector pension provision. It will be important to ensure that structures are in place to protect member interests and to ensure efficient and effective governance.

2. Before getting into our substantive response, we wanted to point out the timing of the consultation, over an 8 week period that includes the summertime holiday months will hobble local authorities and funds from developing full responses. Funds have been given minimal opportunity to engage with their committees and other interested parties concerning these proposals. The discussion paper states that implementation of the new governance arrangements is not scheduled until later in 2014, so there would appear to be ample time for a more considered discussion than the current timeframe allows. We hope that this consultation is just the beginning of the discussion concerning the roles of pension boards and the LGPS advisory board.

Discussion

Role of the pension boards

3. Our primary concern in this consultation is with the role of pension boards. The statute (clause 4, Public Service Pensions Act 2012) contemplates one manager per scheme, assisted by a pension board that provides advice and oversight. To apply this structure to each of the 89 administering authorities, however, may result in inefficiencies, especially where a fund is already governed by a committee.

4. One suggestion in the consultation paper is to require schemes that are currently managed by a statutory committee to be managed by the pension board instead. However, this could not

only result in a differing role for the pensions board in the local governments context as compared to the role in other public sector schemes; it could even lead to differing roles for the pension boards in different local government schemes, depending on the governance structure at present. Where there is currently a statutory committee governing the scheme, the pension board would manage; where the scheme is not currently managed by a statutory committee, the pension board would oversee the manager. Abolition of the statutory committee would presumably allow a local authority to designate a non-board manager and avail itself of a pension board for the purposes of oversight, but still the regulations governing pension boards would need to address two differing functions. We believe that this will lead to confusion.

5. Some uniformity of governance among schemes is desirable, and so given the choices presented in the consultation paper, we would prefer that pension boards retain their role as overseers of the managers. The composition of the pension board, wherein some members are specifically designated to represent members and some are designated to represent employers, is more useful where the board functions in an oversight capacity. The managers should be expert, and should balance the needs of members and employers rather than representing one or the other. In private sector occupational pension schemes some trustees are member-nominated, but they have the same duty to balance interests of members and employers as other trustees.

6. The requirement to staff two boards could indeed lead to a resource issue with many funds as there may not be a sufficient supply of informed personnel to take on each function. However, inasmuch as members of statutory committees are themselves often performing more of an oversight role than a decision-making role, there may be more sense in disbanding the statutory committee, delegating the management function to an expert person or body, and migrating appropriate members of the statutory committee to the pension board, subject to the statutory requirements regarding composition of the pension board.

7. We believe that any regulations promulgated by DCLG should be written with this result in mind. In an oversight capacity, the role of the board will be clear and consistent and the break with old and sometimes ineffective habits will be more complete. The other alternative – a governing statutory committee that also has an oversight role – risks entrenchment of the status quo and a blurring of responsibilities.

8. We do think that there is a case to be made for local authority funds to share a pension board, although it would seem that DCLG believes that this is not the intent of the current statutory language. We do not agree that a prohibition on shared pension boards automatically follows from the language of the statute, and moreover there would seem to be some strong arguments for shared pension boards. There may be economic considerations that stop local authority schemes from consolidating altogether, but oversight by a shared pension board could increase uniformity of management and potentially would increase resources and expertise available to pension boards so that they could do a better job for all.

Response to questions

Q1. What period, after new governance regulations are on the statute book, should be given for scheme managers/administering authorities to set up and implement local pension boards?

In light of the number of local elections scheduled for 2014, we think it would make sense to delay establishment of pension boards until the new representatives have had time to bed in.

Q2. How long after new governance regulations are on the statute book should the national scheme advisory board become operational?

Given the existence of the Shadow Advisory Board we would suggest that this timescale be set to that for the pension boards.

Q3. Please give details of any such "connected" scheme that you are aware of.

We are not aware of any.

Q4. Are there any schemes connected to the main Local Government Pension Scheme, other than an injury or compensation scheme, that the new Scheme regulations will need to refer to in setting out the responsibilities of scheme managers?

We are not aware of any.

Q5. What "other matters", if any, should we include in Scheme regulations to add to the role of local pension boards?

It's difficult to say when the role of the boards have not been thoroughly explored and decided. Assuming that they will engage in oversight only, rather than managing the funds, it would be useful to give some guidance as to where they are to report problems that they uncover – to the local authorities, obviously, but in what circumstances should they report to the Pensions Regulator.

Q6. Should Scheme regulations make it clear that nobody with a conflict of interest, as defined, may be appointed to or sit on a pension board?

This is already required by the legislation. More crucial will be the definition of conflict. It will be difficult to recruit persons who have no interests that could be said to conflict. Therefore, clear regulations setting forth interests that will not be considered to pose a conflict with an individual's role as pension board member will be important.

Q7. Should Scheme regulations prescribe the type of information that may be "reasonably required"?

Perhaps a list of the sorts of information that can be considered relevant should be provided, although guidance may be a more appropriate place for this. Some thought should be given to whether some sorts of information will be considered off-limits. For example, potential board members may balk if non-relevant personal financial information is required.

Q8. Although not required by the Act, should Scheme regulations prescribe a minimum number of employer and employee representatives?

We think that this would be useful. More than one of each should be required to ensure sufficient discussion and breadth of expertise. The exact number will depend on whether, and how, a quorum for decision would be configured, assuming that the pension board will have some powers that will require decisions to be made. It might also make sense to have a maximum number to avoid the board becoming a talking shop. However, the number of persons will depend on the role of the board and the size of the scheme or schemes that are served.

Q9. Should the new Scheme regulations require local pension boards to be a body separate from the statutory committee or for it to be combined as a single body?

We believe that the pension boards should perform the same function for all LGPS schemes regardless of their current governance arrangements. As explained in our discussion above, it makes sense for the boards to retain the oversight role exclusively, as envisioned by the statute for other public service schemes. To combine the management and oversight roles would dilute the impact of the oversight role and do little to improve performance of the management role.

Q10. Apart from what is required under the Act, what other elements of local pension boards should be set out in the new Scheme regulations?

As discussed above, once the role of the pension board is fixed, the board will probably require some powers, and some general rules as to how decisions are made and meetings are conducted. We can see merit in a few regulations that can be the basis of a broadly uniform definition of the business of the pension board as well as how it will be conducted.

Q11. Apart from what is required under the Act, what other elements of local pension boards should be left to local determination?

The number of members, the frequency of meetings, payment (if any) of pension board members, and use for local authority projects should probably be left to the administering authorities.

Q12. Should the new Scheme regulations prevent any incumbent scheme member representative being moved from a statutory committee to the local pension board (if the committee and the board are not one and the same body)?

No. Statutory committees are the likely best place for recruitment of knowledgeable persons to the pension boards. This is not to say that the membership of the statutory board should automatically transfer over.

Q13. Should the new Scheme regulations include a requirement for each local pension board to publish an annual statement of its work and for this to be sent to the relevant scheme manager, all scheme employers, the scheme advisory board and Pensions Regulator?

We do not think an annual report necessarily makes sense in the first year of operation. Thereafter, a short report of activities would be helpful; in particular it would be a useful way for pension boards to see what others are doing. Perhaps the format of the report could to some extent be dictated by regulations for ease of comparison.

Q14. Apart from the training and qualification criteria that may be covered by the Pensions Regulator in a code of practice, are there any specific issues that we should aim to cover in the new Scheme regulations as well?

It may be that if the pension boards retain an oversight role only, TPR Codes and attention should concentrate on the qualifications and understanding of the managers. We believe that professionalism in the management of local funds is important.

Q15. Should Scheme regulations simply replicate the wording of the Act? If not, what specific areas of work should the new Scheme regulations prescribe?

We believe that the suggested addition, regarding recommendations on cost management, would be useful.

Q16. Should Scheme regulations include a general provision enabling the scheme advisory board to advise the Secretary of State on the desirability of changes to the Scheme as and when deemed necessary?

This seems sensible. Indeed, this should be one of the primary functions of the board.

Q17. Are there any specific areas of advice that Scheme regulations should prohibit the scheme advisory board from giving?

We do not have any suggestions at this time.

Q18. What options (if any other, please describe) would be your preference for establishing membership of the scheme advisory board?

We would favour the first of the options presented. The Secretary of State could appoint a small membership panel the remit of which would be to nominate and appoint initial members of the board, including the Chairperson.

Q19. Should Scheme regulations require the Secretary of State to approve any recommendation made for the position of Chair?

Please see the response to Q24.

Q20. Should Scheme regulations prescribe tenure of office? If so, what should the maximum period of office be and should this also apply to the Chair of the board?

Please see the response to Q24.

Q21. Should Scheme regulations make provision for board members, including the Chair, to be removed in prescribed circumstances, for example, for failing to attend a minimum number of meetings per annum? If so, who should be responsible for removing members and in what circumstances (other than where a conflict of interest has arisen) should removal be sought?

Please see the response to Q24.

Q22. Should Scheme regulations prescribe a minimum number of meetings in each year? If so, how many?

Please see the response to Q24.

Q23. Should Scheme regulations prescribe the number of attendees for the board to be quorate? If so, how many or what percentage of the board's membership should be required to be in attendance?

Please see the response to Q24.

Q24. Rather than make specific provision in Scheme regulations, should the matters discussed at Q19 to Q23 be left as matters for the scheme advisory board itself to consider and determine?

Yes, we think it makes sense to leave some flexibility as to these matters and to see how the responsibilities of the board evolve.

Q25. Should the scheme advisory board be funded by a voluntary subscription or mandatory levy on all Scheme pension fund authorities?

There would be fairness issues with a voluntary subscription and therefore we support a mandatory subscription.

Q26. What would be your preferred manner of legal constitution of the scheme advisory board and how should Scheme regulations deal with the issue of personal liability protection for board members?

We do not have a position at this time.

Further information

For further information please contact:

Helen Forrest, Head of policy and advocacy
Helen.forrest@napf.co.uk
0207 601 1700

Penny Pilzer, Policy Consultant
Penny.pilzer@napf.co.uk
0207 601 1700