

The Local Government Pension Scheme (Amendment) Regulations 2014 on Scheme Governance: the NAPF's response



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Executive Summary

The NAPF welcomes the consultation on new governance regulations for the Local Government Pension Scheme. Our experience of corporate governance indicates that there are a number of key features of effective governance. We believe that these need to be taken into account in the design of and approach to the governance of pension schemes. Stronger governance across the LGPS is 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 of the Scheme.

Governance standards have been improving across the LGPS as funds look to manage increasing financial pressures and regulatory change¹. However, there is a wide variety of practice in the management of LGPS funds across the UK. There are many well-managed LGPS funds, where pension committees have reviewed and improved how they work to strengthen governance arrangements and to achieve a more sustainable fund. However, there are funds where there is scope for significant improvement. Even small improvements in governance standards, with the resulting uplift in investment performance and greater cost-efficiency could make a real impact on funds' funding positions. The NAPF supports the Shadow Scheme Advisory Board's work to develop a matrix of measures of what a 'good' fund looks like. This will enable the sharing of good practice and give local pension boards a framework for assessing their pension committees.

The NAPF recognises that there is a delicate balance to be struck between ensuring consistent governance standards are met, whilst allowing a degree of flexibility to take account of local circumstances. On the whole we believe these regulations strike the right balance. However, in a number of areas the regulations do need strengthening, for example the constitution of the Scheme Advisory Board. Elsewhere, for example the establishment of local pension boards, detailed guidance will be required to ensure consistency of application across the LGPS.

In our response the NAPF makes the follow recommendations:

- Our greatest area of concern is the timescale for implementation of these new requirements and the resources required to meet them.
- The Government should delay the date for full compliance with the regulations 1 April 2016.
- The Scheme Advisory Board should be established as a formal public service body, such as a non-departmental public body (NDPB) with a clear budget and secretariat.
- That administering authorities establish their own procedures for setting up the local pension boards, but that the administering authority cannot have a majority of the employer members on these boards.
- The regulations should not allow pensions committees and the local pensions boards to be the same body. However provision should be made for a local pension board to serve more than one administering authority.

¹ Improving governance in the LGPS, Grant Thornton, November 2013.

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About the NAPF

The NAPF is the voice of workplace pensions in the UK. We speak for over 1,300 pension schemes that provide pensions for over 17 million people and have more than £900 billion of assets. We represent both public and private sector schemes, including over 70% of the local authority pension funds. We also have 400 members from businesses supporting the pensions sector. We aim to help everyone get more out of their retirement savings. To do this we promote policies that add value for savers, challenge regulation where it adds more cost than benefit and spread best practice among our members.

Local pension boards

1. The NAPF's experience of corporate governance indicates that there are a number of key features of effective boards. We believe that these need to be taken into account in the design of and approach to the governance of pension schemes to assist in efficient decision-making that operates effectively in the interests of beneficiaries. These key features include:
 - Individuals around the board table who have sufficient time to devote to the role and so be appropriately informed but who are also sufficiently robust and independent to provide views and take decisions appropriately based on thought-through and debated perspectives.
 - Boardroom behaviour where debate is welcomed and fostered so that a range of views is actively considered around the board table, and issues are discussed openly and accountably.
 - Chairing which draws different views out from relevant individuals so that concerns are brought to the surface and questions are raised and debated, allowing sufficient time for proper debate.
 - A diversity of views and backgrounds around the board table such that a range of perspectives can be reflected and considered in discussions.
 - Active committees to which roles are properly delegated and which are fully accountable for their contributions, keeping the broader board informed as required, and bringing key decisions for active consideration by the full board.
 - A robust succession planning process so that the board is renewed and receives regular new sources of challenge and debate, while maintaining a degree of corporate memory.
 - An open evaluation process so that the board challenges itself to improve and enhance its membership and approach over time.
2. The NAPF supports the requirement to establish local pension boards as one way of ensuring the delivery of some of these features in the LGPS. We believe that such bodies, properly resourced, will provide useful support and constructive scrutiny of the scheme manager function.
3. **The NAPF recommends that administering authorities establish their own procedures for setting up these new bodies.** To ensure sufficient consistency across administering authorities the Scheme Advisory Board should develop detailed guidance on what procedures should be covered and what best practice should look like. The development of such guidance however could limit the time left for the establishment of these boards. The NAPF does not believe that

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authorities should use the existing 101 regime for the establishment of these boards as the 101 requirements² are not compatible with the function and membership of the boards.

4. The regulations for local pension board membership require an equal number of employer and member representatives as per the Act. They also extend the provisions to specifically exclude elected members from being employer representatives. We believe one of the reasons behind this exclusion is enabling boards to have employer representatives (who are typically Councillors) who are not restricted to political term in office. However this restriction may limit the ability, particularly of smaller funds, to attract a sufficient number of employer representatives. One way of resolving this problem would be the establishment of joint boards (discussed below), which would allow for recruitment from a bigger pool of potential representatives.
5. We also understand that another reason for the exclusion is an attempt to ensure that some of the employer representatives come from outside the administering authority. With the increase in the number of participating employers in each fund, for example academies and charities, it is important that there is wider representation in the fund governance structure. However these regulations do not prevent an authority from putting two officers from the authority on the Board as employer representatives and then having three Councillors as 'others', thereby having five members of the board who do, in effect, represent one employer. Whilst we welcome measures that would enable representation across range of employers, we are not convinced that these regulations achieve this. **The NAPF recommends that the regulations state that administering authority cannot have a majority of the employer members on the board.**

Managing conflicts of interest

6. Section 5(4) of the Public Service Pensions Act 2013 requires any person appointed to a pension board to have no conflict of interest, as defined in the Act. The regulations simply replicate this requirement, which is unhelpful as it presents a very high hurdle for administering authorities to overcome. It would have been more useful for the regulations to have adopted some of the language in The Pensions Regulator's (TPR) Public Service Pensions Code. The Code focuses on identifying, monitoring and managing potential conflicts and the need for documented policy and procedures. It also provides some very useful practical guidance, in particular on the types of conflict that may arise in a pension scheme that are different from the usual public authority conflicts.

AGMs

7. The consultation asks whether funds should be required to hold an annual forum with employers and employees. This is generally considered good practice and we support engagement with employers and employees. We recognise the Government's concern that only a limited number currently take place across all funds. However fund engagement with employers and employees can take many forms. **Therefore the NAPF recommends that the regulations specify that**

² The 101 regime requires local government committees to be set up in a specific way and they must meet specific requirements. For example if they are designated as a finance committee they can only be made up of elected members (Councillors) and must have a majority that reflects the political majority of the Council.

some form of physical engagement with employers and employees take place, rather than stipulating just one AGM.

Public Sector Equality Duty

8. The consultation also asks whether the role of the Scheme Advisory Board and local pension boards should be extended to include the Equality Duty. The scheme manager/pension committee will have to have regard to the duty and therefore **it makes sense to extend this requirement to the local pension boards** (who are assisting them in compliance with their duties and regulations).

Combined committee and pension board

9. **The NAPF does not believe that the regulations should allow pensions committees and the local pensions boards to be the same body.** They perform very different functions under the Act. It is the role of local pensions board to ensure that the scheme manager/pensions committee is adhering to the regulations governing the Scheme. It would not be good practice for the same body to be assessing itself for compliance.

Joint Boards

10. However, **the NAPF does believe that provision should be made for a single pension board to serve more than one administering authority.** The NAPF strongly supports the LGPS governance regulations allowing for the creation of Joint Boards, which would not be a dual function entity but a local pensions board overseeing more than one local authority fund. Combining board across administering authorities could help strengthen governance standards across the LGPS, enable further collaboration, including speeding up the development of collaborative investment models, and generating cost savings. It would be particularly useful for smaller funds who may be struggling to recruit sufficient board members with the necessary capacity and expertise. It could also help with the oversight of funds who are not performing as well.

Timescales

11. The NAPF's key concern with these regulations is the timescale. We understand that final regulations will not be in place until the autumn and then Shadow Board will be developing guidance. This gives authorities limited time to establish boards, run elections and undertake training. We also understand that other public sector schemes are struggling to get their governance regulations in place by 1 April 2015. Good governance should not be rushed. It takes time to establish such bodies and ensure that their members have the necessary capacity and expertise to perform their functions well. **Therefore whilst the regulations may come into effect in April 2015 the NAPF urges the Government to give funds until 1 April 2016 to fully comply.**

Scheme Advisory Board

12. The NAPF believes that a properly constituted and resourced Scheme Advisory Board is critical to the successful implementation of the new governance requirements. The SAB will have a broader remit than originally envisaged, which is likely to include investigation of funds that are not performing well. As such it is critical that the SAB has a clear legal status. **The NAPF recommends that the board is established as a formal public service body, such as a non-departmental public body (NDPB) with a clear budget and secretariat.** This would ensure that its status is clear, it will be subject to proper scrutiny and the appointment of its members will have to be conducted in accordance with the Nolan principles, which set out clear guidelines for public service appointments.
13. We agree that the Chair should be appointed by the Secretary of State, but only following an open and transparent appointments process. We agree with the maximum number of board members, but believe this should include voting, and non-voting members. We propose that the regulations require the board to have an equal numbers of employer and member representatives. We also believe the board should have at least one standing practitioner member to provide regular insight into how the Scheme actually runs at a local level. Additional advisors can be called as and when required but should not have a formal role on the board.
14. In order for the Board to carry out its functions it will need to have a separate budget and its own secretariat. The NAPF supports the proposal to fund the Scheme Advisory Board as part of scheme administration costs. We believe that a subscription calculated using membership bands to be the fairest way to achieve this aim. However there should be a structure for how these funds are directed, for example setting out whether these are provided from the funds to DCLG or via another means. This structure would depend on the type of public body. The board should also have a dedicated secretariat. This could either be a secretariat taken from DCLG staff or a support team that the board employs from its own budget.

Further information

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