

## **Firefighters' Pension Scheme Guidance on the creation and operation of Local Pension Boards in England**

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## **1. Introduction**

- 1.1 The Scheme is a common pension scheme throughout England, administered locally by 46 separate Scheme Managers.
- 1.2 The Scheme is an unfunded public service pension schemes with approximately 36,000 active members.
- 1.3 Scheme Managers are required to establish a new body to be known as a Local Pension Board to assist the Scheme Manager in its role as a 'scheme manager' of the Scheme in accordance with the requirements of the 2013 Act<sup>1</sup>.
- 1.4 This Guidance is designed to assist Scheme Managers in the creation and operation of Local Pension Boards in line with relevant legislation and in particular the 2013 Act and the Regulations, as laid by SI 2014/465 on 5<sup>th</sup> March 2015, in force from 1<sup>st</sup> April 2014<sup>2</sup>
- 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. Scheme Managers are advised to secure their own legal advice on the interpretation and application of the legal framework.
- 1.6 All references in this guidance to 'the regulations' refers to SI 2015/465
- 1.7 Unless otherwise stated, this Guidance is correct as at 12<sup>th</sup> May 2015.

A schedule of terms used in this guidance is in schedule B.

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2013/25/contents>

<sup>2</sup> <http://www.legislation.gov.uk/uksi/2015/465/contents/made>

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

- 2.1 As noted at paragraph 9.2, Local Pension Boards must be established from 1 April 2015. Established in this context means that the Scheme Manager must have approved the establishment of the Local Pension Board and the Local Pension Board's composition and also the terms of reference, in accordance with its constitution. It does not necessarily mean that the Local Pension Board has to be fully operational by this date. However, it is anticipated that a Local Pension Board should be operational within a reasonably practicable period after 1 April 2015 (being no longer than 4 months).
- 2.2 The responsibility for establishing a Local Pension Board rests with the Scheme Manager. This is something the Scheme Manager must do, it is not optional.
- 2.3 For many Scheme Managers, all existing pension functions are likely to be delegated to an officer or a Pension Committee. However, it is open to a Scheme Manager to exercise directly any function which it has delegated.
- 2.4 In light of the fact that the role of the Local Pension Board is to assist the Scheme Manager, the Scheme Manager will need to carefully consider whether the establishment of the Local Pension Board and appointment of its members should be a function undertaken by the Scheme Manager (for example a decision of the Fire and Rescue Authority) rather than by the delegated officer or a Pension Committee which makes decisions about pension matters.
- 2.5 A Scheme Manager is given power under regulation 4A(4) of the Regulations<sup>3</sup> to determine the procedures applicable to its Local Pension Board, including voting rights, the establishment of sub-committees, the formation of joint committees and the payment of expenses. When exercising this power (as provided for in the 2013 Act), the Scheme Manager must do so in accordance with usual local government principles, acting reasonably and within the powers set out in the Regulations.

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<sup>3</sup> 4) Subject to paragraph (5), a scheme manager may determine the procedures applicable to a local pension board, including as to the establishment of sub-committees, formation of joint committees and payment of expenses.

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

- 2.6 Regulation 4B(1)<sup>4</sup> of the Regulations allows the Scheme Manager to determine the membership of the Local Pension Board, including the manner of appointment and removal of Board members and the terms of appointment.
- 2.7 A Local Pension Board must include an equal number of employer and member representatives with a minimum requirement of no less than four in total. In addition, the Regulations do not preclude that other members may also be appointed to the Board.
- 2.8 The requirement that a person representing members should be 'in scheme employment' i.e active only, has been removed in regulation 4B(2)<sup>5</sup>. This means that any person who has the 'capacity to represent members' as noted in paragraphs 2.16 to 2.19 may be a member representative.
- 2.9 No officer or member of a Fire and Rescue Authority who is responsible for the discharge of any function under the Regulations (apart from any function relating to Local Pension Boards or the Scheme Advisory Board) may be a member of a Local Pension Board.
- 2.10 When considering the size of its Local Pension Board, the Scheme Manager will need to consider a number of factors including (without limitation):
- 2.10.1 The size of any existing governing bodies, such as an advisory panel;

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<sup>4</sup> 4B.—(1) Subject to paragraphs (2) to (4) each scheme manager must determine—

(a) the membership of the local pension board; .

(b) the manner in which members of the local pension board may be appointed and removed; .

(c) the terms of appointment of members of the local pension board.

<sup>5</sup> (2) A local pension board must include an equal number, which is no less than 4 in total, of employer

representatives and member representatives and for these purposes the scheme manager must be satisfied that-

(a) a person to be appointed to the local pension board as an employer representative has the capacity to represent the employer; and

(b) a person to be appointed to the local pension board as a member representative has the capacity to represent members.

- 2.10.2 The number of scheme members for which it is the Scheme Manager and any collective arrangements in place for them to make decisions or provide input in relation to Scheme matters;
  - 2.10.3 The cost of establishing and operating the Board; and
  - 2.10.4 The existence or proposal to form any other advisory groups.
- 2.11 As indicated in the Regulator's Code of Practice, the Scheme Manager should consider providing high quality pre-appointment training to proposed members of the Local Pension Board.

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

- 2.12 Each employer or member representative on a Local Pension Board must be able to represent employers or members (as appropriate). It is therefore important that the methodology for appointment ensures that representative Board members are truly representative.
- 2.13 All employers and eligible members must have equal opportunity to be nominated for the role of employer or member representative through an open and transparent process.
- 2.14 The Regulations allow the Scheme Manager to determine the appointment of other Local Pension Board members i.e. members who are not there to represent employers or scheme members, for example where a Scheme Manager wishes to appoint an independent chairperson to the Local Pension Board (see section 2.23)

## Capacity of Representative Members

- 2.15 Regulation 4B(2)(a) and (b) of the Regulations<sup>6</sup> require that the Scheme Manager 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).
- 2.16 It will be important to appoint members who have the relevant experience as well as time to commit to attending meetings and effectively representing employers and members (as appropriate).
- 2.17 Relevant experience may include (without limitation) being a member of the Scheme or having experience of representing scheme members in a similar situation for example being a member or trustee of a private sector defined benefit pension scheme.
- 2.18 The Regulations specify that the Scheme Manager must be satisfied that any person it wishes to appoint as a member of a Local Pension Board does not have a conflict of interest and that once appointed continues not have a conflict of interest. The potential for conflicts of interest is considered in section 5 of this guidance.
- 2.19 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 to ensure all employers and all members are represented.

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<sup>6</sup> 2) A local pension board must include an equal number, which is no less than 4 in total, of employer representatives and member representatives and for these purposes the scheme manager must be satisfied that—  
(a) a person to be appointed to the local pension board as an employer representative has the capacity to represent the employer; and .  
(b) a person to be appointed to the local pension board as a member representative has the capacity to represent members.

## **Appointment of Other Members**

- 2.19 As noted at paragraph 2.9, no officer or member of a Fire and Rescue Authority who is responsible for the discharge of any function under the Regulations (apart from any function relating to Local Pension Boards or the Scheme Advisory Board) may be a member of a Local Pension Board.
- 2.20 The requirement for capacity does not apply to other (i.e. non-representative) members appointed by the Scheme Manager. Nevertheless, the Scheme Manager should have an open and transparent process for the appointment of such members.
- 2.21 Capacity to understand is likely to be a factor the Scheme Manager will take into account when considering who to appoint as non-representative Board members.
- 2.22 Regulation 4A (5)<sup>7</sup> specifies that non representative board members do not have a right to vote.

## **Appointment of a Chair**

- 2.23 The appointment of a chair or deputy chair (where appropriate) is not prescribed by the Regulations. It will be for the Scheme Manager to decide the process for the appointment/s. Consideration should be given to the following options of appointment:
- 2.24 Option 1: An independent chair and deputy chair (where appropriate)
- 2.24.1 In this respect the term independent means having no employment, financial or other material interest in a Fire and Rescue Authority or not being a member of the scheme administered by the Authority.
- 2.24.2 Appoint an independent chair and deputy chair (where appropriate from a short list by:

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<sup>7</sup> (5) No member of a local pension board shall have a right to vote on any question unless that member is an employer representative or a member representative



- An open recruitment process
- The employer and member representatives on the Board following their first meeting
- a panel appointed by the Authority and drawn in equal number from representatives of the Authority and scheme members.

## 2.25 Option 2: Board appointed chair

2.25.1 Appoint a chair and deputy chair (where appropriate) by the employer and member representatives of the Board from amongst their own number.

2.25.2 This could be on a rotating basis with the term of office shared between an employer and a member representative on an equal basis.

## 2.26 Option 3: Fire and Rescue Appointed Chair

2.26.1 The Fire and Rescue Authority appoint a chair and deputy chair (where appropriate).

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

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

#### **Direct Appointment Process**

2.27.1 Selecting employer representatives through existing employer forums, for example political groupings or officer representative bodies.

2.27.2 Selecting member representatives through existing representative organisations for example recognised trade unions, staff committees, member representative committees and voting at member AGMs.

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

2.27.3 Scheme Managers may wish to consider methodologies used by private sector trust based schemes to appoint member-nominated trustees (“MNTs”). MNTs must be selected as a result of a process which involves some or all of the members of the scheme.

2.27.4 Seeking nominations by advertising in local newspapers and on websites.

2.27.5 Developing a shared pool of Local Pension Board members or potential members with neighbouring Scheme Managers.

2.28 The appointment process should be designed to attract people with relevant experience. This could be achieved through publicising the new role and when making future appointments, publicising vacancies as they arise. Scheme Managers should use a variety of routes to encourage people to become involved. Role descriptions should be created to assist with assessing whether an individual has the capacity and understanding for the role.

2.29 When selecting members, proper regard must be given to the obligations of the Scheme Manager in relation to equal opportunities in any recruitment process. In practice, this means having an open transparent process, with a role specification. Depending on the appointment process used by the Scheme Manager, it may also be necessary to have a formal interview process before appointments are made. The interview process should assess the ability of the individual to meet the requirements of the role and make appointment on merit.

2.30 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**

- 2.31 As noted in other sections, the appointment process provides an ideal opportunity for the Scheme Manager 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:
- 2.31.1 disclosing all dual interests and responsibilities which have the potential to become conflicts of interest (see section 4);
  - 2.31.2 committing to attend a minimum number of meetings a year;
  - 2.31.3 committing to undertake and attend the necessary knowledge and understanding training (see section 6); and
  - 2.31.4 undertaking to abide by the Board's terms of reference and wider constitutional documents.

## **Term of Office**

- 2.32 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. However it is recognised that this may not be possible due to local governance arrangements.
- 2.33 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**

- 2.34 As well as dealing with the terms of appointment, the Scheme Manager should also consider the circumstances in which a member of a Local Pension Board should cease to be a member.

- 2.35 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 Scheme Manager should consider suitable provisions if:
- 2.35.1 a member has a conflict of interest which cannot be managed in accordance with the Board's conflicts policy;
  - 2.35.2 a member dies or becomes incapable of acting;
  - 2.35.3 a member who is a member of the Fire and Rescue Authority is appointed to a Pensions Committee;
  - 2.35.4 a member is appointed to the role of an officer of the Fire and Rescue Authority with responsibility for the discharge of functions under the Regulations;
  - 2.35.5 a member wishes to resign, for example how much notice should be given and in what form;
  - 2.35.6 a representative member ceases to represent his constituency, for example if a member representative ceases to be in scheme employment; and
  - 2.35.7 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 Scheme Manager 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 officer of the Fire and Rescue Authority provided there was no conflict of interest. The matter could also be raised with any body which had nominated the individual for appointment.

- 2.36 Where a vacancy arises for a representative member mid-term, the Scheme Manager should consider the process to be used to fill that vacancy.

### **Terms of Reference**

- 2.37 The Scheme Manager when establishing its Local Pension Board should create terms of reference for the Board. The terms of reference are the rules setting out how the Board will be constituted and operate on a day to day basis.

- 2.38 It is worth noting that under regulation 4A(6)<sup>8</sup> 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:

2.38.1 **Function of the Board** – The terms should set out the function of the Board to assist the Scheme Manager to secure compliance and ensure the effective and efficient governance and administration of the Scheme in line with the requirements set out at paragraph 9.22.

2.38.2 **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.

2.38.3 **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 5.10).

2.38.4 **Voting Rights** – The terms should set out the voting rights of the Board members and whether members have equal voting rights and whether the chair (if relevant) has a casting vote.

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<sup>8</sup> (6) A local pension board shall have the power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions.

- 2.38.5 **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 Scheme Manager may reasonably require from time to time to ensure that members do not have a conflict of interest (see section 5).
- 2.38.6 **Appointment of a Chair/Vice-Chair** – the Chair should have the same powers and duties as any other Chair within the Authority’s governance arrangements. The terms should specify whether the Board is to have a chair and/or vice-chair, how they are appointed and whether the chair is to be given a casting vote. The Chair’s responsibilities will include ensuring that the Board meets its purpose, 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. The Chair will also be responsible for ensuring that Board members have the knowledge and understanding set out in paragraph 4.1.2 and review and report on the performance of the Board as agreed with the Scheme Manager.
- 2.38.7 **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 Scheme Manager should also be set out. Scheme Managers may wish to use a shared pool of potential members, for example having access to an agreed pool of senior pension officers from other (possibly neighbouring) authorities.
- 2.38.8 **Role of Officers** – The terms should set out the role of officers of the Scheme Manager to the Board, for example in the provision of secretariat services to the Board or providing pension fund information to the Board.

- 2.38.9 **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 a committee of the Fire and Rescue Authority which is a FOIA public authority, minutes should be carefully dealt with and separated as appropriate into open and closed business, so that open minutes can be promptly published in the Fire and Rescue Authority's FOIA publication scheme (see paragraph 6.11 to 6.20 for further details).
- 2.38.10 **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 Scheme Manager to require a special meeting to be convened on notice.
- 2.38.11 **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.
- 2.38.12 **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.
- 2.38.13 **Attendance Requirements** – The terms should specify the requirements for attending meetings and the consequences of continued failure to attend Board meetings.

- 2.38.14 **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.
- 2.38.15 **Creation of Working Groups/Sub-Boards** – The terms should specify whether the Board has the power to set up working groups or sub-boards and if so on what terms (including terms of reference for those working groups or sub-boards).
- 2.38.16 **Allowances/Expenses** – The terms should specify the policy in relation to the payment of allowances and expenses to Board members (see section 6 of this guidance).
- 2.38.17 **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.
- 2.38.18 **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 3 of this guidance).
- 2.38.19 **Reporting** – The terms should include arrangements for the reporting of information to the Scheme Manager, including direct reporting arrangements where the Board has material concerns (see section 6 of this guidance).



2.38.20 **Data Protection** – The terms should take account of the Fire and Rescue 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 Fire and Rescue Authority’s notification registered with the Information Commissioner from time to time (which should be reviewed and updated as necessary) – see paragraphs 6.16 to 6.17 for further details).

2.39 The terms of reference should be approved by the Scheme Manager. 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.

#### **Other Constitutional Documents**

2.40 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:

2.40.1 A code of conduct (see paragraphs 5.9 to 5.11);

2.40.2 A conflicts policy (see paragraphs 5.40 to 5.41);

2.40.3 A knowledge and understanding policy document (see paragraph 4.6) including a list of the core documents recording policy about the administration of the Fund; and

2.40.4 Policies dealing with data protection, information security, acceptable use (and monitoring) and subject access request (see paragraph 6.17.1).

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

2.41 If a Scheme Manager fails to establish its Local Pension Board from 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 Scheme Manager. There are a number of potential possibilities:

2.41.1 Intervention by the Regulator.

- 2.41.2 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.
- 2.41.3 Complaint to the Local Government Ombudsman or Pensions Ombudsman. A failure by the Scheme Manager to establish a Local Pension Board is likely to constitute maladministration on the part of the Scheme Manager.
- 2.41.4 Adverse comment by the Fire and Rescue Authority's district auditor in the context of the annual audit and management letter and/or by the Fire and Rescue Authority's auditor.
- 2.41.5 Adverse comment by the Scheme Advisory Board.
- 2.41.6 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.

### 3. Joint Boards

Joint Boards may be established, where the administration and management of a Scheme is wholly or mainly shared by two or more Administering Authorities. Such Administering Authorities may establish a joint local pension board, with the approval of the Secretary of State (as provided for through regulation 4A(2)<sup>9</sup> of the Regulations.

Such approval may also be withdrawn if the Secretary of State considers it is no longer appropriate for the Local Pension Board to be a Joint Pension Board.

The Secretary of State will need to be convinced that the majority if not all of the decision making, management, administration and operation of the scheme manager functions of the constituent authorities have been properly delegated to a single body (for example a lead authority or joint committee).

It would not, for example, be possible to evidence to the Secretary of State that the requirements of regulation 4A(2) were met by the following:

- Combining the administration function only across Fire & Rescue Authorities

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<sup>9</sup> (2)Where the administration and management of this scheme is wholly or mainly shared by two or more scheme managers, those scheme managers may establish a joint local pension board if approval in writing has been obtained from the Secretary of State.

## **4. Board Knowledge and Understanding**

### **Legal requirements**

- 4.1 In accordance with section 248A<sup>10</sup> of the 2004 Act (as amended by the 2013 act), every individual who is a member of a Local Pension Board must:
- 4.1.1 be conversant with:
    - 4.1.1.1 the rules of the Scheme, in other words the Regulations and Connected Scheme regulations; and
    - 4.1.1.2 any document recording policy about the administration of the Scheme which is for the time being adopted in relation to the Scheme, and
  - 4.1.2 have knowledge and understanding of:
    - 4.1.2.1 the law relating to pensions; and
    - 4.1.2.2 such other matters as may be prescribed.
- 4.2 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 4.1.1 and the law relating to pensions. Scheme Managers should however recognise that newly appointed members will need additional support and training in the first few months, to help them reach the appropriate level of knowledge and understanding.

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<sup>10</sup> <http://www.legislation.gov.uk/ukpga/2013/25/schedule/4/paragraph/19>

- 4.3 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.<sup>11</sup>

### **General Principles**

- 4.4 Scheme Managers 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.
- 4.5 Knowledge and understanding must be considered in light of the role of a Local Pension Board to assist the Scheme Manager in line with the requirements set out at paragraph 9.22.
- 4.6 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.
- 4.7 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 Scheme Manager or a professional adviser.

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<sup>11</sup> (1) This section applies to every individual who is a member of the pension board of a public service pension scheme.

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

- 4.8 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**

- 4.9 The issue of knowledge and understanding is dealt with in the Regulator's Code of Practice, paragraphs 32 to 56<sup>12</sup>. This Guidance is intended to reflect the principles of the Code of Practice and apply them in a Scheme context.

### **Degree of Knowledge and Understanding**

- 4.10 Being conversant with the rules of the Scheme and any document recording policy about the administration of the Scheme 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 Scheme Manager.
- 4.11 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.
- 4.12 In order to assist the Scheme Manager, it is implicit that members of a Local Pension Board understand the duties and obligations that apply to the Scheme Manager as well as to themselves.
- 4.13 The rules of the Scheme would include the Regulations, connected Scheme regulations and any statutory guidance referred to in the Regulations.

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<sup>12</sup> <http://www.thepensionsregulator.gov.uk/docs/code-14-public-service.pdf>

- 4.14 A Local Pension Board should prepare and keep updated a list of the core documents recording policy about the administration of the Scheme and make sure that the list and documents (as well as the rules of the Scheme) are accessible to its members.
- 4.15 Part 1 **Error! Reference source not found.** of Schedule A of this Guidance contains a list of some documents which are likely to be regarded as recording policy about the administration of the Scheme. This list should not be relied upon as being definitive and actual lists may vary from Scheme Manager to Scheme Manager.
- 4.16 Members of a Local Pension Board should also be aware of the range and extent of overriding law which applies to the Scheme and have sufficient knowledge and understanding of the content and effect of that law to recognise when and how it impacts on their responsibilities.
- 4.17 Part 2 of Schedule A of this Guidance contains a summary of some of the key areas of law relating to pensions generally and the Scheme in particular. This summary should not be relied upon as being definitive list of all the areas of law that members of a Local Pension Board need to know about and understand.
- 4.18 Given the role of the Local Pension Board to assist the Scheme Manager, members of a Local Pension Board should have sufficient knowledge and understanding to challenge any failure by the Scheme Manager to comply with the Regulations and other legislation relating to the governance and administration of the Scheme and/or any failure to meet the standards and expectations set out the Code of Practice.
- 4.19 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 they are 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 their duty to assist the Scheme Manager.

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

- 4.20 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.
- 4.21 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.
- 4.22 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 and Connected Scheme regulations, key Scheme documents and relevant pensions law.
- 4.23 The Scheme Manager should provide (or at least ensure Local Pension Board members have access to) high quality induction (and ongoing) training. 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.
- 4.24 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 of other Scheme Managers to share knowledge and experience.
- 4.25 Given the level of knowledge and understanding that members of a Local Pension Board need to gain, newly appointed members are likely to need additional support and training in the first few months of their appointment in order to competently carry out their responsibilities. 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 4.2).



- 4.26 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.
- 4.27 Part 2 of Schedule A 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 member in undertaking a personal training needs analysis.
- 4.28 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 framework.
- 4.29 Learning programmes should be flexible, allowing members of the Local Pension Board to access specific modules, when necessary or relevant. This will enable them 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.
- 4.30 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. Members of a Local Pension Board should also investigate what other third party learning tools and courses may be available.
- 4.31 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 can also help to ensure that historical and scheme specific knowledge is retained when members of a Local Pension Board change.

## **Demonstrating Knowledge and Understanding**

- 4.32 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.
- 4.33 Members of the Local Pension Board who are appointed for their specific expertise and skills should be able to demonstrate to the Scheme Manager and to their fellow Local Pension Board members that they have the appropriate knowledge and understanding, including any relevant qualifications, from the date of their appointment 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 Scheme Manager should provide access to high quality induction (and ongoing) training to the appointed members of its 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 Scheme and make the list and documents (as well as the rules of the Scheme) 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.

## 5. Conduct of Members and Conflicts of Interest

### Introduction

5.1 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:

5.1.1 Section 5(5)<sup>13</sup> of the 2013 Act<sup>14</sup>, which defines “conflict of interest” for the purpose of a Local Pension Board;

5.1.2 Regulation 4C<sup>15</sup> of the Regulations, which places duties on the Scheme Manager to satisfy itself that Local Pension Board members do not have conflicts of interest on appointment or whilst they are members of the Board;

5.1.3 The 2011 Act, which requires councillors to comply with the code of conduct of their local authority and any code of Conduct of the Authority to disclose interests;

5.1.4 The ‘Nolan Principles’<sup>16</sup>, with which any holder of public office is also expected to comply; and

5.1.5 The expectations contained in the Regulator’s Code of Practice.<sup>17</sup>

5.2 This section of the Guidance takes accounts of the above requirements and gives guidance on how the different duties can be reconciled in a practical way.

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<sup>13</sup> 5)In subsection (4)(a) “conflict of interest”, in relation to a person, means a financial or other interest which is likely to prejudice the person’s exercise of functions as a member of the board (but does not include a financial or other interest arising merely by virtue of membership of the scheme or any connected scheme).

<sup>14</sup> <http://www.legislation.gov.uk/ukpga/2013/25/contents>

<sup>15</sup> 4C.—(1) Each scheme manager must be satisfied that any person to be appointed as a member of a local pension board does not have a conflict of interest

<sup>16</sup> <https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2>

<sup>17</sup> <http://www.thepensionsregulator.gov.uk/docs/code-14-public-service.pdf>

- 5.3 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**

- 5.4 The elected and any co-opted members of a local authority or the Fire and Rescue 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 as well as the Code of conduct for the Fire and Rescue Authority . These codes set out the standards of behaviour expected of individuals in their capacity as councillors or members of the Fire and Rescue Authority.
- 5.5 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.
- 5.6 Both of these requirements will apply to any members of a Local Pension Board who are also councillors of a local authority or a member of a Fire and Rescue Authority. They will not apply to members of a Local Pension Board who are not councillors.

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

- 5.7 The members of a Local Pension Board should have regard to the 'Seven Principles of Public Life' (known as the Nolan Principles<sup>18</sup>), which are:
- 5.7.1 **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.

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<sup>18</sup> <https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2>

- 5.7.2 **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.
  - 5.7.3 **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.
  - 5.7.4 **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.
  - 5.7.5 **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.
  - 5.7.6 **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.
  - 5.7.7 **Leadership** - Holders of public office should promote and support these principles by leadership and example.
- 5.8 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**

- 5.9 When establishing its Local Pension Board, the Scheme Manager 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. A Scheme Manager may wish to effectively adopt some or all of an

existing Code of Conduct for the Local Pension Board or the Code generally followed by members of the Authority. Once adopted, the Local Pension Board should keep this code of conduct under regular review.

- 5.10 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).
- 5.11 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**

- 5.12 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 Scheme Manager. The Local Pension Board does not make decisions in relation to the administration and management of the Fund: these decisions still rest with the Scheme Manager. 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**

- 5.13 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.

- 5.14 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 Regulator’s Code of Practice and apply them in a Scheme context.

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

- 5.15 For the purposes of a member of a Local Pension Board, a ‘conflict of interest’ is defined in section 5(5)<sup>13</sup> 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.

- 5.16 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 Scheme (or any connected scheme).

- 5.17 Therefore, a conflict of interest may arise when a member of a Local Pension Board:

5.17.1 must fulfil their legal duty to assist the Scheme Manager;  
and

5.17.2 at the same time they have:

5.17.2.1 a separate personal interest  
(financial or otherwise); or

5.17.2.2 another responsibility in relation  
to that matter,

giving rise to a possible conflict with their first responsibility  
as a Local Pension Board member.



## **Example of Conflicts of Interest**

5.18 An example of potential conflicts in this context could be:

5.18.1 A finance officer appointed as a member of a Local Pension Board may, from time to time, be required to take or scrutinise 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 take or scrutinise 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.

## **Identifying, Monitoring and Managing Conflicts – The Role of the Scheme Manager**

5.19 The Regulations place a duty on the Scheme Manager 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”.

5.20 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 Scheme Manager with such information as the Scheme Manager reasonably requires to satisfy itself that such person has no conflicts of interest.

5.21 To comply with its duty in relation to conflicts, the Scheme Manager needs to put procedures in place in respect of 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.

5.22 Looking first at the process of appointments, the Scheme Manager should ensure that members of a Local Pension Board are appointed under procedures that require them to disclose any dual 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.

- 5.23 All terms of engagement (for example, appointment letters and any contracts for services) should include a clause requiring disclosure of all dual 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.
- 5.24 As regards the Scheme Manager's ongoing obligation to ensure that members of the Local Pension Board do not have a conflict of interest, the Scheme Manager 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**

- 5.25 Local Pension Boards should cultivate a culture of openness and transparency. The need for continual consideration of conflicts should be recognised. Disclosure of dual interests and responsibilities, which have the potential to become conflicts of interest, should not be ignored.
- 5.26 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. 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.

- 5.27 Local Pension Boards should identify, monitor and manage dual interests and responsibilities which are or have the potential to become conflicts of interest.
- 5.28 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.
- 5.29 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.
- 5.30 A register of interests should provide a simple and effective means of recording and monitoring dual interests and responsibilities.
- 5.31 Local Pension Boards should also capture decisions about how any identified potential conflicts of interest should be managed – ideally, in their register of interests.
- 5.32 Options for managing an actual conflict of interest, should one arise, include:
- 5.32.1 A member withdrawing from the discussion and any decision-making process;
  - 5.32.2 The Board establishing a sub-board to review the issue (where the terms of reference give the power to do so); or
  - 5.32.3 A member resigning from the Board if the conflict is so fundamental that it cannot be managed in any other way.
- 5.33 The Local Pension Board's register of interests should be circulated to the Local Pension Board for ongoing review and should be published (for example, on the Scheme Manager's website). The Local Pension Board should report any concerns to the Scheme Manager and include in an annual report a section on good governance and management of conflicts.
- 5.34 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.

- 5.35 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**

- 5.36 It is important that individual members of the Local Pension Board know how to identify when they have a 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 Scheme Manager in respect of conflicts of interest.
- 5.37 Individual Local Pension Board members should seek professional advice from a nominated officer (for example, the monitoring 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**

- 5.38 A Local Pension Board may need to seek specialist advice or support, for example legal advice. The Board may use an officer of the Fire and Rescue 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 Fire and Rescue Authority.
- 5.39 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**

- 5.40 When establishing its Local Pension Board, the Scheme Manager 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.
- 5.41 The conflicts policy should include as a minimum:
- 5.41.1 examples of scenarios giving rise to conflicts of interest (which may include those set out at paragraph 4.18 above);
  - 5.41.2 how a conflict might arise specifically in relation to a member of a Local Pension Board; and
  - 5.41.3 the process to be followed by members of a Local Pension Board and the Scheme Manager to address a situation where members are subject to a potential or actual conflict of interest.

### **Action Points:**

- A Scheme Manager should prepare a code of conduct and a conflicts policy for its Local Pension Board for approval in accordance with the Scheme Manager'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.

## **6. Reporting**

### **Internal Reporting**

- 6.1 Each Scheme Manager 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 Scheme Manager.
- 6.2 The reporting requirements will be for each Scheme Manager 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 the full Authority or equivalent where appropriate. The agreed reporting requirements should be reflected in the Local Pension Board's terms of reference. As the Scheme Manager is the Authority, it is for the Scheme Manager to determine how it will receive information from the Local Pension Board.
- 6.3 There should also be more frequent reporting (perhaps quarterly or after the Local Pension Board meets) to the Scheme Manager/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.
- 6.4 The Local Pension Board should take responsibility in conjunction with the Scheme Manager for ensuring the necessary reports are prepared and delivered.
- 6.5 A report to the full Authority (or equivalent) or another committee/officer the Scheme Manager has delegated to receive it, could include:
- 6.5.1 a summary of the work of the Local Pension Board;
  - 6.5.2 details of areas reported to the Board to investigate by the Local Pension Board and how they have been dealt with;
  - 6.5.3 details of any conflicts of interest that have arisen in respect of individual Local Pension Board members and how these have been managed;

- 6.5.4 whether there are any risks or other areas of potential concern which the Board wishes to raise with the Scheme Manager (although legal advice to the Local Pension Board should not be shared with a full Authority meeting for the following year; and
  - 6.5.5 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.
- 6.6 The above topics should also form the basis of ongoing regular reports to the Scheme Manager 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.

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

- 6.7 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 Scheme Manager to ensure the effective governance of the Scheme.
- 6.8 The terms of reference would need to identify who such concerns are reported to. This could be to named officer(s), a sub-committee or the full Authority (or equivalent), or combination of these to avoid issues having to be reported immediately to the full Authority.
- 6.9 Escalation via the Scheme Advisory Board or the Responsible Authority where internal channels are not appropriate 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**

- 6.10 All members of the Local Pension Board must provide the Scheme Manager 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 5 of this guidance.

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

- 6.11 The Scheme Manager will need to decide whether or not it wishes to make agendas, reports and minutes of the Local Pension Board available to the public (and indeed whether it would permit someone who is not a member of the Local Pension Board to attend a meeting). If a decision is made to allow some or all papers to be available that must be with the exception of confidential or personal information.
- 6.12 Minutes of meetings should also be available and published in accordance with procedures for other meetings, for example on the website of the Scheme Manager.
- 6.13 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 Scheme Manager, through them).

### **Data Protection**

- 6.14 For legal purposes a Local Pension Board is considered a committee of and part of the Fire and Rescue Authority legal entity. The Fire and Rescue 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.
- 6.15 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 Scheme members from the Scheme Manager).

6.16 The Scheme Manager must already comply with DPA data protection principles and must (amongst other requirements):

6.16.1 **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).

6.16.2 **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.

6.16.3 **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.

6.16.4 **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).

6.17 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 Scheme Manager implement additional measures (also covering their Local Pension Board and their staff and operations), including:

6.17.1 adopting policies such as a data protection policy, information security policy, acceptable use (and monitoring) policy and subject access request policy; and

- 6.17.2 training on key DPA issues, requirements and policy compliance. This should form part of the knowledge and understanding requirements (see paragraph 3).
- 6.18 Given that the Local Pension Board is not considered a separate legal entity, the Fire and Rescue Authority remains the responsible data controller. Accordingly:
  - 6.18.1 The Scheme Manager'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);
  - 6.18.2 The Local Pension Board and Scheme Manager should liaise to understand the Scheme Manager'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; and
  - 6.18.3 The Local Pension Board and Scheme Manager 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**

- 6.19 To be bound by the FOIA a body must be a FOIA public authority. Fire and Rescue Authorities are already FOIA public authorities.
- 6.20 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 Fire and Rescue 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 Scheme Manager under FOIA. The Local Pension Board must liaise with the Scheme Manager to:

- 6.20.1 understand the 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;
- 6.20.2 Agree what details are made available through the Fire and Rescue Authority's publication scheme and so that it can be updated as necessary;
- 6.20.3 Agree what procedure applies in relation to FOIA information requests received by the Local Pension Board and / or received by the Scheme Manager about the Local Pension Board to ensure proper and consistent consultation, action and response within applicable time limits.

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

- 6.21 In accordance with section 70<sup>19</sup> 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:
  - 6.21.1 a duty which is relevant to the administration of the Scheme, and is imposed by or by virtue of an enactment or rule of law, has not been or is not being complied with; and
  - 6.21.2 the failure to comply is likely to be of material significance to the Regulator in the exercise of any of its functions.
- 6.22 This obligation directly applies to each individual who is a member of the Local Pension Board. In addition, it also extends to the Scheme Manager, [participating employers in the Scheme], any person who is

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<sup>19</sup> <http://www.legislation.gov.uk/ukpga/2004/35/section/70>

otherwise involved in the administration of the Scheme, any person who is otherwise involved in advising the Scheme Manager and, in some circumstances, professional advisors of the Scheme Manager.

### **Implementing adequate arrangements**

- 6.23 The Local Pension Board should have effective arrangements in place to meet its duty to report breaches of law. Please refer to paragraphs 234 to 235 of the Code of Practice<sup>20</sup> 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**

- 6.24 The decision whether to report requires two key judgments:
- 6.24.1 Is there reasonable cause to believe there has been a breach of law?
  - 6.24.2 If so, is the breach likely to be of material significance to the Regulator?
- 6.25 Paragraphs 237 to 251 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**

- 6.26 Reports must be submitted in writing. Paragraphs 251 to 259 of the Code of Practice specifies how and the format in which a report should be submitted.
- 6.27 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 Scheme Manager and (where appropriate) the Manager's advisor(s) so that a collective report can be submitted. An exception to this arrangement will apply

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<sup>20</sup> <sup>20</sup> <http://www.thepensionsregulator.gov.uk/docs/code-14-public-service.pdf>

in cases where there is a suspicion or dishonesty or other serious wrongdoing by the Scheme Manager and/or the Manager's advisor(s).

### **Non-compliance**

- 6.28 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<sup>21</sup>. An individual member of a Local Pension Board could be fined up to £5,000.

### **External Reporting - Annual Report**

- 6.29 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 for circulation to Scheme [employers and] members.
- 6.30 The Local Pension Board should consider with the Scheme Manager whether it would be appropriate to detail these activities as part of any annual report the Scheme Manager may issue or to publish its own separate report.

### **External Reporting - The Regulator**

- 6.31 If the Regulator has reasonable grounds to suspect or believe that a member of a Local Pension Board:
- 6.31.1 has misappropriated any assets of the Scheme or is likely to do so; or
  - 6.31.2 has a conflict of interest in relation to the investment of assets of the Scheme,

The Regulator must report the matter to the Scheme Manager. However, given that a Board member should not have access to Scheme assets or be involved in the investment of Scheme assets (especially given that the Scheme is unfunded) then the exercise of this duty should not be applicable to the Scheme.

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<sup>21</sup> <http://www.legislation.gov.uk/ukpga/1995/26/section/10/enacted>

**Action Points:**

- A Scheme Manager should agree the ongoing reporting arrangements between the Local Pension Board and the Scheme Manager.
- A Local Pension Board should understand the Scheme Manager'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 Scheme Manager) the need to publish an annual report of its activities.

## **7. Resourcing and Funding**

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

7.1 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 Scheme Manager and scrutiny committees are entitled.

7.2 As a minimum, the Board will require:

7.2.1 Allowances and expenses for Board members;

7.2.2 Accommodation and administrative support to conduct its meetings and other business;

7.2.3 Training; and

7.2.4 Legal, technical and other professional advice.

7.3 Given the role of a Local Pension Board to assist the Scheme Manager to secure compliance with legal and regulatory matters and to ensure the effective and efficient governance and administration of the Scheme, 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**

7.4 The expenses of a Local Pension Board may 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 Scheme Manager makes provision, payment of allowances and/or expenses to members of the Local Pension Board (see paragraph [2.38.16]).

7.5 The Scheme Manager 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:

7.5.1 allocating a budget which is managed by the Local Pension Board; or

7.5.2 requiring the Local Pension Board to seek approval from the Scheme Manager for expenditure.



7.6 Given the statutory responsibilities of the Local Pension Board and its relationship with the Scheme Manager, it will be a matter for early consideration by the Local Pension Board as to compiling its budget.

7.7 Consideration should be given by the Scheme Manager 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. This may require liaison with the constituent local authorities. In deciding whether to award an allowance, and if so how much, the Scheme Manager 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.

## **8. Background**

### **Scheme Governance Structure**

- 8.1 The Scheme is a statutory unfunded 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. Matters of governance in the Scheme therefore need to be considered on their own merits and with proper regard to the unique legal status of the Scheme.
- 8.2 Each Scheme Manager is responsible for managing and administering the Scheme in relation to any person for which it is the appropriate Fire and Rescue Authority for the purposes of the Regulations. The appropriate authority for a person who is or has been a member of the Scheme (or is entitled to benefits in respect of such a person) is the Fire and Rescue Authority by whom the member was last employed whilst an active member of the Scheme.
- 8.3 How a Scheme Manager delegates its Scheme function is largely a matter for each Scheme Manager. Given that Scheme Managers are all Fire and Rescue Authorities they operate within the arrangements set out in their Constitution and Standing Orders.

### **The Road to Reform**

- 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.
- October 2010: The IPSPC produces its interim report.
- 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.
- February 2012: DCLG issue the Proposed Final Agreement on the benefit design for the Scheme to take effect from 1 April 2015.
- April 2013: The 2013 Act implementing most of the IPSPC's recommendations receives Royal Assent.
- 1 April 2015: The Scheme and its new governance structure come into force.

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

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

- 9.1 The Regulations require each Scheme Manager to establish a Local Pension Board for the purposes of assisting the Scheme Manager in line with the requirements set out in paragraph 9.22.
- 9.2 Local Pension Boards must be established from 1 April 2015 when the Scheme comes into effect. Established in this context means that the Scheme Manager must have approved the establishment of the Local Pension Board and 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 month).
- 9.3 The Regulations set out the requirements relating to the new Local Pension Boards.

### **Governance structure in the Scheme**

- 9.4 Each Scheme Manager is responsible for managing and administering the Scheme in relation to any person for which it is the appropriate Fire and Rescue Authority for the purposes of the Regulations.
- 9.5 Scheme Managers are defined in regulation 4<sup>22</sup> of the 2014 Regulations.
- 9.6 Given that Scheme Managers are all Fire and Rescue Authorities, they operate in accordance with the provisions and delegated authority given to committees and officers as set out in their Constitutions.

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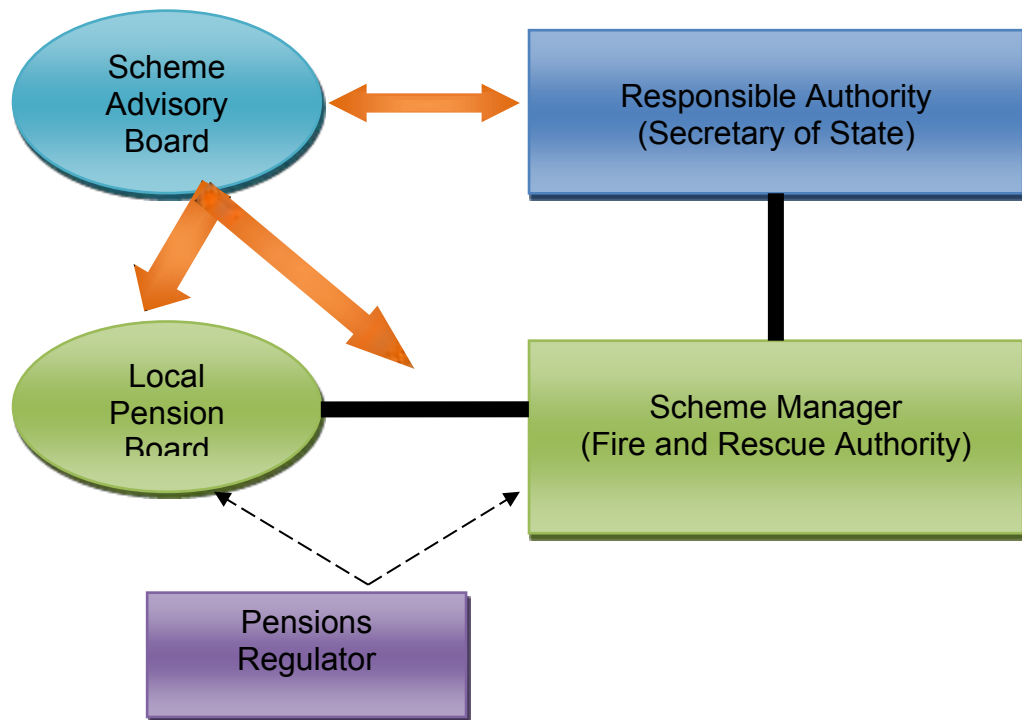
<sup>22</sup> <http://www.legislation.gov.uk/uksi/2014/2848/regulation/4/made>

- 9.7 In some instances, two or more Fire and Rescue Authorities may share their pension administration function, for example through a shared service arrangement, or in other ways. However, where this happens each Fire and Rescue Authority still retains its own individual Scheme Manager status.
- 9.8 However should two or more Fire and Rescue Authorities agree to delegate their scheme manager function to a single entity (for example a joint committee) it is understood that a single pension board may be able to comply with the requirements of the 2013 Act.
- 9.9 The membership structure for the Local Pension Board required by regulation 4A 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 Fire and Rescue 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.
- 9.10 In practice decisions about pensions are delegated in accordance with Section 101 of the 1972 Act to:
- 9.10.1 committees or sub-committees made up of councillors from all the political groups and will be politically balanced; or
  - 9.10.2 officers.
- Some decisions may be reserved for a decision by the full Authority, for example decisions which have an impact on the budget.
- 9.11 The delegation of pension functions varies from Fire and Rescue Authority to Fire and Rescue Authority depending on local circumstances.

### **New governance structure in the Scheme**

- 9.12 From 1 April 2015, the new governance structure of the Scheme can be summarised in the following diagram:

## Post April 2015 Scheme Governance Structure



### The Responsible Authority

9.13 In accordance with section 2<sup>23</sup> 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.

9.14 In the case of the Scheme, the Responsible Authority is the Secretary of State.

### Scheme Manager

9.15 Section 4<sup>24</sup> 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.

<sup>23</sup> <http://www.legislation.gov.uk/ukpga/2013/25/section/2>

<sup>24</sup> <http://www.legislation.gov.uk/ukpga/2013/25/section/4>

- 9.16 The Regulations specify that a Fire and Rescue Authority is responsible for managing and administering the Scheme (and any statutory scheme that is connected with it) in relation to any person for which it is the appropriate Fire and Rescue Authority under the Regulations.
- 9.17 In the case of the Scheme, each Fire and Rescue Authority is therefore a Scheme Manager. 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.
- 9.18 This means in practice that a Fire and Rescue Authority in its capacity as the Scheme Manager is responsible for making all decisions relating to the operation of its part of the Scheme.
- 9.19 The creation of new Local Pension Boards does not change the core role of the Scheme Manager or the way it delegates its pension functions. However, when establishing its Local Pension Board, the Scheme Manager may wish to take the opportunity to review its current delegation structure to see if it remains fit for purpose.
- 9.20 For example, where there is a pensions advisory panel advising an officer or a pension committee which has pensions as part of its functions, the Scheme Manager 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 of the Scheme Manager then reviewed.

### **Local Pension Boards**

- 9.21 Section 5<sup>25</sup> 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 Scheme Manager under the Regulations.

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<sup>25</sup> <http://www.legislation.gov.uk/ukpga/2013/25/section/5>

9.22 Regulation 4A<sup>26</sup> of the Regulations specifies that each Scheme Manager shall establish its own Local Pension Board with responsibility for assisting the Scheme Manager:

9.22.1 to secure compliance with:

9.22.1.1 the Regulations;

9.22.1.2 any other legislation relating to the governance and administration of the Scheme (and any Connected Scheme); and

9.22.1.3 the requirements imposed by the Regulator in relation to the Scheme (and any Connected Scheme), and

9.22.2 to ensure the effective and efficient governance and administration of the Scheme (and any Connected Scheme).

9.23 In support of the Scheme Manager's role to secure compliance at 4A.—(1) Each scheme manager must no later than 1st April 2015 establish a pension board ("a local pension board") responsible for assisting it, the Local Pension Board could:

- Review regular compliance monitoring reports which shall include decisions made under the Regulations
- Review management, administrative and governance processes and procedures in order to ensure they remain compliant with regulations
- Review the compliance of the scheme employer with its duties under the regulations
- Assist with the development of and continually review such documentation as its required by the regulations

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<sup>26</sup> 4A.—(1) Each scheme manager must no later than 1st April 2015 establish a pension board ("a local pension board") responsible for assisting it



- Assist with the development of and continually review scheme member and employer communications as required by regulations
- Monitor complaints and assist with the application of the Internal Dispute Resolution Process
- Review Pensions Ombudsman cases
- Review the implementation of revised policies and procedures following the changes to the Scheme
- 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.
- Review what discretions would be regarded as employer or scheme manager discretions
- Review the outcome of internal and external Audit reports
- Review the compliance of particular cases, projects or process on request of any committees with delegated Scheme Manager functions
- Review the compliance of the scheme employer with its duties under the regulations
- Assist with the development of and continually review such documentation as is required by the regulations
- Assist with the development of and continually review scheme member and employer communications as required by regulations
- Monitor complaints and assist with the application of the Internal Dispute Resolution Process
- Review Pensions Ombudsman cases

- Review the implementation of revised policies and procedures following changes to the Scheme
- 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
- Review employer and scheme manager discretions
- Review the outcome of internal and external Audit reports
- Review the compliance of particular cases, projects or process on request of any committees with delegated Scheme Manager functions

9.24 In support of the Scheme Manager's role to ensure the effective and efficient governance and administration of the Scheme (paragraph 9.22.1.2), the Local Pension Board could:

- Assist with the development of improved customer services
- Monitor performance against key performance indicators
- Monitor Board and committee member/delegated officer personal training needs analysis
- Review the effectiveness of processes for the appointment of advisors and suppliers to the scheme manager
- Review the risk register as it relates to the scheme manager function of the authority
- Assist with the development of improved management, administration and governance structures and policies
- Assist in the development and monitoring of process improvements on request of any committees with delegated Scheme Manager functions

9.25 Assisting the Scheme Manager should be interpreted as helping the Scheme Manager, including doing work requested by the Scheme Manager. However, the Local Pension Board does not replace the Scheme Manager or make decisions which are the responsibility of the Scheme Manager. The remit of the Local Pension Board should be interpreted as covering all aspects of governance and administration of the Scheme.

### **Scheme Advisory Board**

9.26 Section 7<sup>27</sup> 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.

9.27 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 local pension boards in relation to the effective and efficient administration and management of the scheme.

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

9.28.1 In response to a request from the Secretary of State on the desirability of making changes to the Scheme and any connected scheme; and

9.28.2 to the Scheme Managers and Local Pension Boards in relation to the effective and efficient administration and management of the Scheme and any connected schemes.

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<sup>27</sup> <http://www.legislation.gov.uk/ukpga/2013/25/section/7>

9.29 In both cases, the Secretary of State and Scheme Managers or Local Pension Boards (as appropriate) must have regard to advice issued by the Scheme Advisory Board in accordance with section 7(3) of the 2013 Act.

## **10. The Pensions Regulator**

- 10.1 The regulatory powers of the Regulator were extended under section 17<sup>28</sup> and Schedule 4<sup>29</sup> of the 2013 Act to cover some aspects of public service pension schemes, including the Scheme.
- 10.2 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.
- 10.3 The Regulator has a number of statutory objectives including to:
- 10.3.1 protect the benefits of pension scheme members,
  - 10.3.2 promote, and improve understanding of, the good administration of work-based pension schemes; and
  - 10.3.3 maximise compliance with the duties and safeguards of the Pensions Act 2008.
- 10.4 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.
- 10.5 The Regulator has oversight in areas such as those listed in paragraph 10.6 below and may issue codes of practice for public service pension schemes in these areas.
- 10.6 The Regulator has issued the Code of Practice<sup>30</sup> which covers:
- 10.6.1 knowledge and understanding by pension board members (see paragraphs 32 to 56 of the Code of Practice);
  - 10.6.2 conflicts of interest (see paragraphs 57 to 84 of the Code of Practice);

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<sup>28</sup> <http://www.legislation.gov.uk/ukpga/2013/25/section/17>

<sup>29</sup> <http://www.legislation.gov.uk/ukpga/2013/25/schedule/4>

<sup>30</sup> <http://www.thepensionsregulator.gov.uk/docs/code-14-public-service.pdf>

- 10.6.3 reporting breaches of the law (see paragraphs 230 to 263 of the Code of Practice);
  - 10.6.4 information to be published about a scheme (see paragraphs 85 to 92 of the Code of Practice);
  - 10.6.5 internal controls (see paragraphs 93 to 112 of the Code of Practice);
  - 10.6.6 scheme record-keeping (see paragraphs 114 to 139 of the Code of Practice);
  - 10.6.7 maintaining contributions (see paragraphs 140 to 182 of the Code of Practice);
  - 10.6.8 information to be provided to members (see paragraphs 183 to 201 of the Code of Practice) ; and
  - 10.6.9 internal dispute resolution (see paragraphs 203 to 229 of the Code of Practice).
- 10.7 However, only the areas of knowledge and understanding, conflicts of interest and reporting breaches of the law have direct application to Local Pension Boards. The other areas apply to Scheme Managers, although are areas that a Local Pension Board will need to be aware of in order to assist the Scheme Manager in its role.
- 10.8 This Guidance takes into account the principles of the Code of Practice where relevant and applies them to the Scheme.

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

- 10.9 The Regulator will have a range of enforcement powers under the 2013 Act including:
- 10.9.1 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”;

- 10.9.2 the power to issue an 'improvement notice' to a Scheme Manager 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";
- 10.9.3 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";
- 10.9.4 the power to issue a 'report notice' to a Scheme Manager 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;
- 10.9.5 the power to require Scheme Managers and members of Local Pension Boards to produce documents and information;
- 10.9.6 the power to inspect premises;
- 10.9.7 the power to apply for an injunction;
- 10.9.8 the power to apply for restitution where there has been a misuse or misappropriation of any Scheme assets;
- 10.9.9 the power to recover unpaid contributions on behalf of an Scheme Manager; and
- 10.9.10 the power to impose civil penalties for breaches of certain pensions legislation including the duty for Scheme Managers and members of Local Pension Boards to report breaches of the law, the duty for Scheme Managers to report the late payment of employer contributions and the failure to comply with an 'improvement notice' or a 'report notice'.

- 10.10 As noted above, certain powers of the Regulator are limited to contravention of “pensions legislation”. For this purpose, “pensions legislation” has a specific meaning and includes certain pieces of core pensions legislation which apply to both public and private sector schemes (the Pension Schemes Act 1993; parts of the Pensions Act 1995; the Pensions Act 2004; and statutory provisions on pension sharing on divorce). In terms of the legislation contained in the 2013 Act, “pension legislations” only includes sections 5(4)<sup>31</sup> (pension board: conflicts of interest and representation), 6 (pension board: information<sup>32</sup>), 14 (information about benefits<sup>33</sup>) and 16 (records<sup>34</sup>).
- 10.11 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.
- 10.12 The other listed statutory provisions are relevant to the extent that a Local Pension Board is responsible for assisting the Scheme Manager to comply with legislation relating to the governance and administration of the Scheme (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 Scheme Manager**

- 10.13 If the Regulator has reasonable grounds to suspect or believe that a member of a Local Pension Board:
- 10.13.1 has misappropriated any assets of the Scheme or is likely to do so; or
  - 10.13.2 has a conflict of interest in relation to the investment of assets of the Scheme

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<sup>31</sup> <http://www.legislation.gov.uk/ukpga/2013/25/section/5>

<sup>32</sup> <http://www.legislation.gov.uk/ukpga/2013/25/section/6>

<sup>33</sup> <http://www.legislation.gov.uk/ukpga/2013/25/section/14>

<sup>34</sup> <http://www.legislation.gov.uk/ukpga/2013/25/section/16>



the Regulator must report the matter to the Scheme Manager. However, given that a member of Local Pension Board should not have access to Scheme assets or be involved in the investment of Scheme assets (especially given that the Scheme is unfunded) then the exercise of this duty should not be applicable to the Scheme.

## 11. Other guidance

- The Pensions Regulator's Code of Practice note 14 Governance and Administration of public service pension schemes.

<http://www.thepensionsregulator.gov.uk/docs/code-14-public-service.pdf>

- The Pensions Regulator's website:

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

- The Pensions Regulator's Pension Board member toolkit:

<https://trusteetoolkit.thepensionsregulator.gov.uk/>

## SCHEDULE A

### PART 1

**Examples of documents recording policy about the administration of a Fund (please read in conjunction with paragraphs 3.15 and 3.16)**

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 Scheme's website	
2.	<p>Any relevant policies of the Scheme Manager and/or Pension Committee, for example policies on:</p> <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> <li>• reporting breaches</li> </ul>	
3.	The Scheme Manager's internal controls risk register (for the purposes of section 249B of the 2013 Act)	
4.	Any accounting requirements relevant to the Fund	
5.	Any third party contracts and service level agreements	
6.	Any internal control report produced by third party service providers and investment managers	

## PART 2

### Examples of knowledge and understanding of the law relating to pensions

(please read in conjunction with paragraphs 3.17 and 3.18)

1.	<b>Background and Understanding of the Legislative Framework of the Scheme</b>	
	<ul style="list-style-type: none"> <li>• Differences between public service pension schemes like the Scheme 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 Scheme and the main bodies involved including the Responsible Authority, the Scheme Manager, the Scheme Advisory Board, the Local Pension Board and the Scheme employers</li> <li>• An overview of public law and how Scheme Managers are constituted and operate</li> <li>• Scheme and Connected Scheme rules overview (including the Regulations)</li> </ul>	
2.	<b>General pensions legislation applicable to the Scheme</b>	
	<p>An overview of wider legislation relevant to the Scheme 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> </ul>	

	<ul style="list-style-type: none"> <li>• Tax (Finance Act 2004)</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> </ul>	
4.	<b>Role and responsibilities of the Scheme Manager</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> </ul>	
6.	<b>Role and responsibilities of Scheme Employers</b>	
	<ul style="list-style-type: none"> <li>• Automatic Enrolment</li> <li>• Deduction and payment of contributions</li> <li>• Special contributions</li> </ul>	

	<ul style="list-style-type: none"> <li>• Employer decisions and discretions</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> <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> </ul>	
8.	<b>Role of advisors and key persons</b>	
	<ul style="list-style-type: none"> <li>• Officers of the Fire and Rescue Authorities</li> <li>• Auditor</li> <li>• Lawyers</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 Scheme</b>	

	<p>An understanding of the roles and powers of:</p> <ul style="list-style-type: none"><li>• Courts</li><li>• HMRC</li><li>• Information Commissioner</li><li>• Pensions Advisory Service</li><li>• Pensions Ombudsman</li><li>• The Pensions Regulator (including powers in relation to Local Pension Boards)</li></ul>	
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## SCHEDULE B

### Explanation of terms

<b>1972 Act</b>	The Local Government Act 1972.
<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>Code of Practice</b>	The Regulator's [draft] Code of Practice no. 14 entitled " <i>Governance and administration of public service pension schemes</i> ".
<b>Connected Schemes</b>	The Firefighters' Pension Scheme 1992 The Firefighters' Pension Scheme 2006
<b>DCLG</b>	The Department for Communities and Local Government
<b>DPA</b>	Data Protection Act 1998
<b>Fire and Rescue Authority</b>	A fire and rescue authority for an area in England determined in accordance with section 1 of the Fire and Rescue Services Act 2004.
<b>FOIA</b>	Freedom of Information Act 2000
<b>Fund</b>	A Firefighters' Pension Fund maintained by a Scheme Manager for the purposes of regulations 121 to 130 of the Regulations.
<b>IPSPC</b>	Independent Public Service Pensions Commission.
<b>Local Pension Board</b>	The board established to assist the Fire and Rescue Authority as a scheme manager of the



	Scheme.
<b>Pension Committee</b>	Officer, committees or sub-committees to which a Scheme Manager has delegated its pension function.
<b>Regulations</b>	The Firefighters' Pension Scheme (England) Regulations 2014 (as amended from time to time).
<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 Scheme Manager as set out in its constitution and including delegations to officers or committees.
<b>Scheme</b>	The Firefighters' Pension Scheme - a scheme for the payment of pensions and other benefits to or in respect of firefighters working in England.
<b>Scheme Advisory Board</b>	The Firefighters' 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 Scheme, each Fire and Rescue Authority is a Scheme Manager.
<b>Secretary of State</b>	The Secretary of State for Communities and Local Government.