

## Good Governance Review:

### Proposed Models for Survey & Proposed Assessment Criteria

#### Summary

**Stage 1 fact-find:** An initial fact-finding stage involving a sample of key stakeholders from across the LGPS has been completed. This has drawn out important issues, themes and ideas for improving LGPS governance and has helped inform the proposed options for consultation and the criteria we propose to assess them.

**Stage 2 survey:** The survey will invite stakeholders to comment on proposed governance models and how they measure against proposed assessment criteria as follows.

Standards	The model enables funds to meet good standards of governance across all areas of statutory responsibility including TPR requirements.
Conflict	The model minimises S151 officer conflicts (including in operational areas such as budgets, resourcing, recruitment and pay policies and in strategic areas such as funding and investment policy)
Representation	The model allows for appropriate involvement in decision making for key stakeholders (including administering authority, non-administering authorities, other employer and member representative)
Clarity	The model delivers clarity of accountability and responsibility for each relevant role
Consistency	The model minimises dependence on goodwill and relationships to deliver statutory responsibilities
Cost	The cost of implementing and running the model is likely to be worthwhile versus benefits delivered.

**Proposed models:** The models proposed for the survey are summarised below. Only models that maintain the link to local democratic accountability are in scope.

**Option 1 – Improved practice:** Introduce guidance or amendments to LGPS Regulations 2013 to enhance the existing arrangements by increasing the independence of the management of the fund.

**Option 2 – Greater ring fencing of the LGPS within existing structures:** Greater separation of pension fund management from the host authority, including budgets, resourcing and pay policies.

**Option 3 – Joint Committee (JC):** Responsibility for all LGPS functions delegated to a JC comprising the administering authority and non-administering authorities in the fund. Inter-authority agreement (IAA) makes JC responsible for recommending budget, resourcing and pay policies.

**Option 4 - Combined Authority (CA):** Establish a CA, a local authority in its own right and a separate legal entity which exists for the sole purpose of administering an LGPS fund.

**Next steps and timescales:** We will conduct an extensive online survey asking for views from over 300 pension fund officers, S151s, elected members, democratic services officers, local pension board chairs, trade unions and others on the range of models above. Every fund will be invited to respond. The survey will be supplemented with phone interviews, face to face meetings with stakeholders, workshops, conferences, webinars and conversations with professional bodies such as CIPFA and the Association of Democratic Services Officers (ADSO). The survey will run from mid-April to the end May and the findings will form the basis for the final report to be brought to the SAB in July. Legal input on the models will be obtained before final SAB decisions in the autumn.

## Purpose

This paper:

- Updates the SAB on progress to date in the Good Governance Review;
- Provides a time table and approach for the completion of the exercise; and
- Asks members of the SAB to approve:
  - the suggested range of options on which further views should be sought; and
  - the assessment criteria which should be applied to the agreed options.

## Background

In January 2019 the SAB commissioned Hymans Robertson to facilitate a review of governance models for the LGPS. The purpose of the exercise is to consider means of further raising standards of governance across the LGPS in a way that means conflicts of interest are identified and managed effectively and that the Scheme remains appropriately resourced, able to deliver its statutory functions and meet regulatory obligations. It was stipulated that any models under consideration would retain current links to local democratic accountability.

## Agreed approach and work to date

Following discussions with the Board's secretariat the following approach was agreed.

## Fact Find

An initial fact find questionnaire issued to a sample of key LGPS stakeholders in a range of roles and representing different types of LGPS funds in terms of size, geography and governance models. The purpose of the fact find was to help identify issues that should be addressed and ideas for improved governance models. This has helped inform the proposed models for the survey and the proposed assessment criteria.

The fact find questionnaire was issued to a sample of:

- Heads/Directors of Pensions at county councils, metropolitan districts Welsh funds and "non-standard" administering authorities;
- Section 151 officers at county councils, London boroughs and at councils that are not LGPS administering authorities;
- Heads of pension functions and pension administration managers at county councils;
- Union representatives; and
- LGPS advisors (non Hymans Robertson).

Completed questionnaires, on occasion supplemented with a follow up telephone call, were received from more than 10 individuals.

The questions asked in the fact find are set out below.

- 1 Please give examples of any barriers in the investment, funding, administration and governance of the LGPS that you have experienced or witnessed.
- 2 Please give examples of potential issues in those same areas that you believe could arise should the same high levels of professionalism, non partisanship, focus and expertise not be available to the authority in the future.

- 3 Are the existing local governance arrangements effective in addressing both current barriers and potential future issues?
- 4 What changes to existing local or scheme wide governance arrangements do you believe would help address the situations described above more effectively?
- 5 What changes in the LGPS's existing governance structure do you believe would enable the scheme to evolve to best meet the challenges of the future?

A summary of some of the key themes from the fact find, grouped according to role, is provided below.

	<b>Examples of Barriers (existing and potential)</b>	<b>Are current arrangements effective?</b>	<b>Respondents' ideas for change</b>
<b>S151 of administering authorities</b>	<p>Lack of continuity leads to lack of expertise in committee members.</p> <p>Shortage of skills and expertise in investment and funding.</p> <p>Engagement, participation of smaller employers.</p> <p>Conflict of interest between fund and council</p>	Yes. Given pooling further structural change would not be welcome.	<p>Committees to have independent members.</p> <p>More structured training.</p> <p>Less local discretions – more national scheme.</p>
<b>S151 non administering authority</b>	<p>Some Heads of Fund/151s lack experience and subject matter expertise.</p> <p>Lack of engagement and understanding.</p> <p>Perception amongst other Employers that the Administering Authority is not neutral or that it is not behaving completely fairly or properly</p>	Structure only goes so far. There is a disparity at present between funds that could be addressed through improved expertise, engagement and accountability.	<p>Clarify on role of Pension Board.</p> <p>Improved information flow.</p> <p>LGPS management to be added to the CIPFA training syllabus</p> <p>“Tight ringfencing of the Pensions function with a senior (not middle ranking) officer directly responsible for all pension related staff. This senior role should have no non Pension functions.”</p> <p>“The issue of neutrality and failing to properly engage with Employers is likely less pronounced and indeed potentially non-existent when there is a clear division between an Administering Authority and the Pension Fund.”</p>

<b>Head of fund/pension manager</b>	Restrictions on recruitment and pay policy	Reliance on goodwill and relationships between officers / S101 committee / S151 officers.	<p>Find ways of reducing dependence on goodwill and relationships to get good outcomes</p> <p>Independent assessment of resources needed to meet statutory and regulatory (TPR) standards</p> <p>Greater ring-fencing of budgets and resourcing policy from administering authority Council</p>
<b>Advisors</b>	<p>Focus on cost only.</p> <p>Council policies can hamper funds.</p>	Some funds work well, but not effective overall.	<p>Pension Committee approval of budget and other policies eg. Recruitment, pay (adopt or develop their own)</p> <p>Fund specific S151 officer.</p> <p>Conflicts of interest policy</p> <p>Own audit/accounts</p> <p>Increased ring-fencing of pensions function</p>
<b>Trade Unions</b>	Fundamental barriers exist	No - major huge conflicts of interest in decision making.	<p>Root and branch reform needed</p> <p>“We believe that there should be LGPS pension authorities with no less than £100bn of assets under management.”</p> <p>“create LGPS pension authorities - <u>separated from the sponsors.</u>”</p> <p>“There should be in-house asset management teams”</p> <p>Governance Boards would be composed of 50% eer reps and 50% member reps</p>

## Criteria

For any suggested model, survey respondents will be asked to quantitatively assess the extent to which the model meets the suggested criteria. In addition, respondents will be offered the opportunity to add a free text comment to explain or further comment on how they feel the model operates under that criterion.

The suggested criteria for the survey are:

Criterion	Explanation	Quantitative Assessment
Standards	The model enables funds to meet good standards of governance across all areas of statutory responsibility including TPR requirements.	1 Strongly Disagree 5 Strongly Agree
Conflict	The model minimises S151 officer conflicts (including in operational areas such budgets, resourcing, recruitment and pay policies and in strategic areas such as funding and investment policy)	1 Strongly Disagree 5 Strongly Agree
Representation	The model allows for appropriate involvement in decision making for key stakeholders (including administering authority, non-administering authorities, other employer and member representative)	1 Strongly Disagree 5 Strongly Agree
Clarity	The model delivers clarity of accountability and responsibility for each relevant role	1 Strongly Disagree 5 Strongly Agree
Consistency	The model minimises dependence on goodwill and relationships to deliver statutory responsibilities	1 Strongly Disagree 5 Strongly Agree
Cost	The cost of implementing and running the model is likely to be worthwhile versus benefits delivered.	1 Strongly Disagree 5 Strongly Agree

There are two further criteria which we believe are important, but which are excluded from the survey.

- **Democratic Accountability** - Under the scope of this work, we have only been asked to consider models which maintain the democratic accountability of the LGPS. Therefore, this is not included as a criterion within the survey as all models considered maintain this link.
- **Legislative Change Required** – We understand that the degree of required legislative change will be a consideration of SAB and MHCLG when they evaluate options for change. However, the changes to legislation required to implement each model are not subjective and will be advised, where required, by Eversheds later in the process. Therefore, we do not intend to include this as a criterion within the survey.

## Governance Models

It is proposed that the following outline LGPS governance models be taken forward for further consideration. In practice, there are elements within each model which may be adjusted and the final design of each model may be refined based on comments from the survey phase.

### Option 1 – Improved practice

Under this model, guidance or amendments to the Local Government Pension Scheme Regulations 2013 are used to enhance the existing LGPS governance arrangements by making more explicit recommendations regarding the operation of the local funds. For example:

- SAB guidance on minimum expected levels of staffing and resourcing;
- SAB guidance on representation on pension committees and expected levels of training for those on pension committees and officers with an LGPS role. Additional guidance could also be considered on the best practice for pension boards;
- Legal clarification on the fiduciary and statutory duties of key individuals within LGPS funds; and
- LGPS regulations set out enhanced process for consulting on FSS and ISS to ensure greater voice for the full range of employers in the fund.

### Option 2 – Greater ring fencing of the LGPS within existing structures

Under this model there would be greater separation of pension fund management from the host authority. The measures suggested would promote the understating that the pension fund budget is different from other areas of the council's budget in that it is funded directly from the pension fund and impacts the long term, but not short term, budgets of all participating employers, not just the administering authority.

### Features

- The pension fund budget is set at the start of the financial year with reference to its own business plan and service needs.
- Any charges to the fund in respect of support services provided by the host authority, for example legal support, HR and procurement is included in the budget up front.
- Pension fund related expenditure then comes directly from the fund. This removes the common practice whereby pension fund expenditure is paid through the host authority's revenue account to be recharged at a later date.
- The section 151 of the administering authority would retain responsibility for the pensions function but recommendations on budget (including administration resources required to meet TPR standards) would be made by a pension fund officer to the pensions committee which would be responsible for agreeing the budget. (Alternatively, the pension fund could have a separate s151 officer to reduce conflicts currently faced by s151s.)\*
- The pension committee would be responsible for agreeing the budget as well as approving any changes to that budget during the financial year.
- The cost of staffing would be met through the fund including any additional costs such as market supplements or redundancy strain.
- Changes to the Audit and Accounting Regulations 2015 could be considered to make the fund accounts legally separate and subject to a separate audit.

In addition to the budget related aspects outlined above further steps could be taken which would give funds greater autonomy over employment policies. The model is analogous to the fund being treated as an internal business unit of the council.

- Staff will continue to be employed by the host council but polices over certain HR matters such as recruitment and the payment of market supplements will be delegated to the pension committee.
- Decisions over other matters pertinent to the fund, for example investment in new administration technology, would also lie with the pension committee.
- Decisions around the structure of the pension function would be for the fund's management team to make with the approval of the pension committee.\*

*\* Further consideration is required as to whether these practices could simply be encouraged by regulatory bodies or whether it is possible and/or desirable to find a mechanism by which these could be mandated.*

### **Option 3 – use of new structures: Joint Committees (JC)**

Joint Committees (JCs) are common and well understood within local government but have not, to date, been used to deliver the LGPS function.

#### **Features**

- The scheme manager function and all LGPS decision making, which currently sits with the administering authority, would be delegated to a section 102 JC. The committee would comprise all the local authorities who currently participate in the fund as employers.
- Consideration could be given to the representation of other employers and scheme members on the JC.
- Assets and liabilities still sit with the existing administering authority.
- Employment of staff and contractual issues dealt with through a lead authority or a wholly owned company. This could be codified within an Inter Authority Agreement (IAA).
- The IAA would stipulate that the budget will be agreed by the JC. s151s of the constituent local authority employers retain a fiduciary duty to the local taxpayer but the IAA would distance them legally from budget setting responsibilities in respect of the pensions function.

### **Option 4 – use of new structures: Combined Authorities (CA)**

Currently only the South Yorkshire Pension Fund uses a combined authority model to deliver the LGPS.

#### **Features**

- Set up an independent structure with the scheme manager function and all decision making passing to the Combined Authority (CA), which would be a local authority in its own right and a separate legal entity. The CA would exist for the sole purpose of administering an LGPS fund and would not have other responsibilities.
- The CA is comprised of councillors from the constituent local authorities in the fund.
- Employment of staff and contractual issues dealt with by the CA.
- Assets and liabilities transferred to the CA.
- Separate accounts based on CIPFA guidance.
- Funded by an element of the contribution rate and by a levy on constituent authorities.

- Officers in CA are responsible only for the delivery of the LGPS function.

### Approach to seeking views

It is proposed that that views should be sought on each of the models outlined within this document. This will be done by means of an online questionnaire, the results of which will not be attributable. The questionnaire will be structured in the following way.

- A summary of the main issues and concerns raised during the fact find stage.
- An explanation of the governance models on which views are sought.
- An explanation of the criteria to be considered when commenting on the governance model options.
- Respondents will then be asked how each of the criteria is met by the proposed models.

Respondents would also be asked if there are any issues, criteria or models that have not been raised that should be considered.

To ensure a wide a range of opinions is captured we will work with LGA and CIPFA to ensure that the questionnaire is sent directly to the section 151 and at least one senior pensions officer at each fund plus the chairs of the pension committee and local pension board. In addition, we will proactively seek the views of other stakeholders including monitoring officers, employer and member representatives, and advisors during the survey period. At least 300 questionnaires will be issued and the survey will be heavily promoted so that anyone with an LGPS role who is not contacted directly can participate.

We will be hosting a series of connected events including at least 2 workshops and a webinar.

We will also actively engage with relevant professional bodies such as CIPFA and Association of Democratic Services Officers (ADSO).

### Timescales

Subject to the SAB approval, we will launch the survey in the week beginning 15<sup>th</sup> April 2019 and close the survey on 31 May 2019. We will prepare a summary of results for the SAB meeting in July.

### Recommendations

The Board is asked to:

- Note the progress to date in delivering the Good Governance Project;
- Approve the criteria outlined in section 1.3.2 to be used in the next stage;
- Approve the models outlined in section 1.3.3 which will form the basis of the next information gathering stage; and
- Approve the approach outlined in section 1.4 for gathering views on the potential options.

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For and on behalf of Hymans Robertson LLP