

DRAFT

Annex B – Part 2 - Proposed Pension Board Terms of Reference

10. Pension Board
<i>Introduction</i>
<p>(i) The Pension Board is established by East Sussex County Council (ESCC) under the powers of Section 5 of the Public Services Pensions Act 2013 and regulation 106 of the Local Government Pension Scheme (LGPS) Regulations 2013 ("the LGPS regulations" which includes such regulations as govern the Local Government Pension Scheme from time to time). ESCC is the scheme manager (and administering authority) to the East Sussex Pension Fund (ESPF).</p> <p>(ii) The East Sussex Pension Fund Board was appointed by East Sussex County Council (the Scheme Manager and Administering Authority to East Sussex Pension Fund) as its Local Pensions Board in accordance with section 5 of the Public Service Pensions Act 2013 and Part 3 of the Local Government Pension Scheme Regulations 2013. As such, Parts 4 Rules of Procedure (Council's procedural Standing Orders) sub-parts 1, 2, 3, 4, 5 and 6 of the Constitution of East Sussex County Council do not apply to this Pension Fund Board unless expressly referred to within and permitted by these Terms of Reference and Rules of Procedure.</p> <p>The Board will exercise all its powers and duties in accordance with legislation and these Terms of Reference and Rules of Procedure. The Board shall have the power to do anything which is considered to facilitate, or is conducive or incidental to, the discharge of its functions.</p>
<i>Powers of the Pension Board</i>
<p>(iii) The Pension Board will exercise all its powers and duties in accordance with the law and this Terms of Reference.</p> <p>(iv) ESCC considers this to mean that the Pension Board is providing oversight of these matters and, accordingly, the Pension Board is not a decision-making body in relation to the management of the Fund but instead can make recommendations to assist in such management. The Fund's management powers and responsibilities which have been, and may be, delegated by ESCC to committees, sub-committees and officers of ESCC, remain solely the powers and responsibilities of those committees, sub-committees and officers including but not limited to the setting and delivery of the Fund's strategies, the allocation of the Fund's assets and the appointment of contractors, advisors and fund managers. The Pension Board operates independently of the ESPF</p>

Pension Committee.
(v) The Pension Board will ensure that in performing their role it:
<ul style="list-style-type: none"> ▪ is done effectively and efficiently and ▪ complies with relevant legislation and ▪ is done by having due regard and in the spirit of The Pensions Regulator's Code of Practice and any other relevant statutory or non-statutory guidance.
<i>Objectives and role of the Pension Board</i>
(vi) The role of the Pension Board is defined by the LGPS Regulations as being to assist the Scheme Manager (ESCC as Administering Authority) to:
<ul style="list-style-type: none"> • secure compliance with the LGPS Regulations and any other legislation relating to the governance and administration of the LGPS and requirements imposed in relation to the LGPS by the Pensions Regulator • ensure the effective and efficient governance and administration of the LGPS. This should be interpreted as covering all aspects of governance and administration of the LGPS including funding and investments.
(vii) In doing this the Pension Board:
<ul style="list-style-type: none"> • shall assist the Scheme Manager with such matters as the LGPS Regulations and guidance may specify • shall seek assurance that due process is followed with regard to the Pension Committee and may review any decisions made by or on behalf of the Scheme Manager or action taken by the Scheme Manager • shall seek assurance that any identified issues raised by Pension Board members are considered. • shall comment on and assist in identifying and managing breaches of the law in relation to ESPF matters. • shall make representations and recommendations to the Pension Committee as appropriate and shall consider and, as required, respond to any Government / Responsible Authority or Scheme Advisory Board requests for information or data concerning the Fund. • may also undertake other tasks, including (but not limited to): <ul style="list-style-type: none"> ○ assisting the Pension Committee by reviewing aspects of the performance of the ESPF – for example by reviewing the risk management arrangements within ESPF (although the Pension Committee will remain accountable for risk management); ○ reviewing administration standards or performance or review efficacy of ESPF member and employer communications;

<ul style="list-style-type: none"> ○ reviewing published policies to ensure they remain fit for purpose and are complete;
<ul style="list-style-type: none"> ○ reviewing ESPF annual reports;
<ul style="list-style-type: none"> ○ being part of any consultation process with the purpose of adding value to that process based on, for example, their representation of employers and ESPF members;
<ul style="list-style-type: none"> ○ discussing strategic matters such as communications where requested by the Pension Committee.
<ul style="list-style-type: none"> ● will produce an annual report which is shared with the Scheme Manager. It will outline the work of the Pension Board throughout the scheme year, which will help to –
<ul style="list-style-type: none"> <ul style="list-style-type: none"> ○ inform all interested parties about the work undertaken by the Pension Board
<ul style="list-style-type: none"> <ul style="list-style-type: none"> ○ assist the Pension Board in reviewing its effectiveness and identifying improvements in its future operations.
<ul style="list-style-type: none"> ● shall carry out an annual self-assessment of the effectiveness of the Pension Board, and produce a report on this which will be shared with the Pension Committee.
<ul style="list-style-type: none"> ● must provide a record of each meeting to the following Pension Committee meeting and may make reports and recommendations to the Pension Committee insofar as they relate to the role of the Pension Board
<ul style="list-style-type: none"> ● shall assist in considering whether the East Sussex Pension Fund is being managed in accordance with the LGPS and other relevant legislation, including consideration of cases that have been referred to the Pension Regulator and/or the Pension Ombudsman; recommending changes to processes, training and/or guidance where necessary.
<ul style="list-style-type: none"> ● shall monitor administrative processes and support continuous improvements.
<ul style="list-style-type: none"> ● will ensure the scheme administrator supports employers to communicate the benefits of the LGPS to scheme members and potential new members.
<p>Membership</p>
<p>(viii) The Pension Board shall consist of:</p>
<p>a) 3 employer representatives - employer representatives that can offer the breadth of employer representation for the ESPF.</p>
<p>b) 3 scheme member representatives – member representatives nominated to ensure a broad representation of scheme membership (active, deferred, and pensioners) to include:</p>
<p>a. two will be nominated by the trade unions, and</p>

b. the rest will be drawn from the total ESPF active, deferred and pensioner membership.
c) 1 Independent Chair.
(ix) The Pension Board shall be chaired by an Independent Chair.
(x) Substitutes for Board members are not permitted.
(xi) The Quorum of the Board will be 3 Members, excluding the Independent Chair. To be quorate the meeting must include at least one employer representative and one scheme member representative.
(xii) The Board has the power to set up working groups
<i>Appointment of members of the Pension Board</i>
(xiii) The appointment process has been approved by the Governance Committee
(xiv) All appointments to the Pension Board shall be by the Governance Committee under delegated authority from the County Council, including the Independent Chair. The Vice Chair will alternate between scheme member representatives and employer representatives at each meeting. The Vice Chairs will be nominated from the existing Board members whenever one of the existing Vice Chairs is replaced.
(xv) Appointments to the Pension Board shall be managed, wherever possible, so that appointment and termination dates are staggered such that there remains continuity for one meeting to the next.
<i>Term of office</i>
(xvi) Employer representative appointments will expire after a 4 year period from their date of appointment by the Governance Committee or such time as resolved by the Governance Committee. The Governance Committee may agree an extension to this period by up to a further 2 years after which there shall be a further appointment process. Reappointment of existing members is permitted. Appointment will automatically cease if the individual is no longer in the employment of that employer, no longer holds office in relation to that employer or is no longer an elected member of that employer, as appropriate.
(xvii) Scheme member representative appointments will expire after a 4-year period from their date of appointment by the Governance Committee or such time as resolved by the Governance Committee. The Governance Committee may agree an extension to terms of office up to a further 2 years after which there shall be a further appointment process. Reappointment of existing members is permitted. Appointment will automatically cease if the individual is no longer a trade union representative or representative of ESPF members (in accordance with the criteria set by the Governance Committee).
(xviii) The Independent Chair appointment will expire after a period of 4 years from their date of appointment by the Governance Committee. The Governance Committee may agree an extension to terms of office by up to a further 2 years after which there shall be a further appointment process. Reappointment of the Independent Chair is permitted.
(xix) Term dates may not be exact due to the period of the appointment process. The term of office may therefore be extended for

<p>this purpose or other exceptional circumstances by up to three months with the agreement of the Governance Committee.</p>
<p>(xx) A Pension Board member who wishes to resign shall submit their resignation in writing to the Independent Chair. A suitable notice period must be given, of at least 1 month, to enable a replacement member to be found.</p>
<p>(xxi) The role of the Pension Board members requires the highest standards of conduct and the ESCC Code of Conduct for Members will apply to the Pension Board's members. ESCC Standards Committee will monitor and act in relation to the application of the Code.</p>
<p>(xxii) Poor performance will result in corrective action being taken, and in exceptional circumstances the removal of the Pension Board member by the Governance Committee.</p>
<p>(xxiii) Removal of the Independent Chair will be by the Governance Committee.</p>
<p>Chairing</p>
<p>(xxiv) It will be the role of the Chair to -</p>
<ul style="list-style-type: none"> • Settle with officers the agenda for a meeting of the Pension Board
<ul style="list-style-type: none"> • Manage the meetings to ensure that the business of the meeting is completed
<ul style="list-style-type: none"> • Ensure that all members of the Pension Board show due respect for process and that all views are fully heard and considered
<ul style="list-style-type: none"> • Strive as far as possible to achieve a consensus as an outcome
<ul style="list-style-type: none"> • Ensure that the actions and rationale for decisions taken are clear and properly recorded
<ul style="list-style-type: none"> • Uphold and promote the purpose of the Pension Board, and to ensure that meetings are properly conducted and professional advice is followed
<ul style="list-style-type: none"> • To use their expertise and experience and liaise with the Head of Pensions to arrange such advice as required subject to agreement by the Head of Pensions on such conditions as that officer determines
<ul style="list-style-type: none"> • Sign the minutes of each Pension Board meeting following approval by the Board
<ul style="list-style-type: none"> • Prepare with the Head of Pensions an appropriate budget for the Pension Board's consideration before being formally considered by the Scheme Manager along with the ESPF Annual Budget
<ul style="list-style-type: none"> •
<ul style="list-style-type: none"> • Liaise with officers and advisors on the requirements of the Pension Board, including advanced notice for Scheme

Manager officers to attend and arranging dates and times of Board meetings
<ul style="list-style-type: none"> • Provide guidance on all points of procedure and order at meetings having regard to advice from officers • Other tasks which may be deemed appropriate by the Scheme Manager for the Independent Chair of the Pension Board • • Liaise with the Chair of the Pension Committee as deemed appropriate • Other tasks that may be requested by the Board, within the remit of these Terms of Reference and subject to agreement with the Head of Pensions • Annually review and report on the activities of the Pension Board. • Commission a triennial review of LGPS & public pension fund non-statutory best practice guidance (referencing the SAB & other relevant bodies deemed relevant by the Board) which then brings recommendations to the Committee (when appropriate) for amendments to the operation of the Fund.
<i>Support arrangements and administration</i>
(xxv) ESCC officers will provide governance, administrative and professional support to the Pension Board, and ESCC Member Services will provide secretariat support to the Pension Board, and as such will ensure that:
<ul style="list-style-type: none"> • meetings are timetabled for at least four times per year • adequate facilities are available to hold meetings • an annual schedule of meetings is produced • suitable arrangements are in place to hold additional meetings if required • papers are distributed 5 clear working days before each meeting except in exceptional circumstances • draft minutes of each meeting are normally circulated 7 working days following each meeting including all actions, decisions and matters where the Pension Board was unable to reach a decision will be recorded. • Final reports, minutes and agendas relating to the Pension Committee are shared appropriately with the Board.
(xxvi) The records of the meetings may, at the discretion of the Board, be edited to exclude items on the grounds that they would either involve the likely disclosure of exempt information as specified in Part 1 of Schedule 12A of the Local Government Act 1972 or it being confidential for the purposes of Section 100A (2) of that Act.
(xxvii) The minutes and any consideration of the Pension Board shall be submitted to the Pension Committee.
(xxviii) The Pension Board must comply with the General Data Protection Regulation and the Scheme Manager's data protection policy. It must also adhere to the Scheme Manager's requirements, controls and policies for Freedom of Information Act compliance.

<i>Expert advice and access to information, including the Pension Committee</i>
(xxix) The Pension Board will have access to professional advice and support provided by officers of ESCC and, via them and where appropriate, advisers to the ESPF. In addition, Pension Board members will receive the final reports, minutes and agendas relating to the Pension Committee, save where the Committee expressly decides otherwise such as where an item is exempt, although this is anticipated to be in exceptional cases.
(xxx) Insofar as it relates to its role, the Pension Board may also:
<ul style="list-style-type: none"> • request information and reports from the Pension Committee or any other body or officer responsible for the management of the Fund
<ul style="list-style-type: none"> • examine decisions made or actions taken by the Pension Committee or any other body or officer responsible for the management of the Fund.
<ul style="list-style-type: none"> • access independent professional advice from actuaries, other independent advisers, and investment managers as required, where there are major matters being considered, i.e. investment strategy, triennial valuation, etc.,
<ul style="list-style-type: none"> • access to professional advice regarding non-major decisions will require the approval of the Pension Committee for additional resources
<ul style="list-style-type: none"> • attend all or any part of a Pensions Committee meeting unless they are asked to leave by the Committee or as a result of a conflict of interest.
(xxxi) ESCC officers will provide such information as is requested that is available without incurring unreasonable work or costs.
<i>Knowledge and Skills</i>
(xxxii) Pension Board members will be required to have the ‘capacity’ to carry out their duties and to demonstrate a high level of knowledge and of their role and understanding of:
<ul style="list-style-type: none"> • the scheme rules (i.e. regulations)
<ul style="list-style-type: none"> • the schemes administration policies
<ul style="list-style-type: none"> • the Public Service Pensions Act (i.e. being conversant with pension matters relating to their role) and the law relating to pensions.
(xxxiii) A programme of updates and training events will be organised by ESPF officers.
(xxxiv) It is for individual Pension Board members to be satisfied that they have the appropriate degree of knowledge and understanding to enable them to properly exercise their functions as a member of the Pension Board.
(xxxv) In line with this requirement, Pension Board members are required to be able to demonstrate their knowledge and understanding and to refresh and keep their knowledge up to date. Pension Board members are therefore required to
<ul style="list-style-type: none"> ▪ participate in training events (a written record of relevant training and development will be maintained)

- undertake a personal training needs analysis or other means of identifying any gaps in skills, competencies and knowledge relating to Pension Board matters.
- comply with the Fund's Knowledge and Skills Policy insofar as it relates to Pension Board members.

Standards and Conflicts of Interest

(xxxvi) A conflict of interest is defined in the Public Service Pensions Act 2013 as:

“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 Pension Board (but does not include a financial or other interest arising merely by virtue of membership of the scheme or any connected scheme).”

(xxxvii) The Public Service Pensions Act 2013 requires that members of the Pension Board do not have conflicts of interests. As such all members of the Pension Board will be required to declare any interests and any potential conflicts of interest in line with legal requirements in the Public Service Pensions Act 2013 and the Pension Regulator’s code. These declarations are required as part of the appointment process, as well as at regular intervals throughout a member’s tenure.

(xxxviii) The Pension Board shall adopt a policy for identifying and managing potential conflicts of interest.

(xxxix) Members of the Pension Board must provide, as and when requested by the Scheme Manager, such information as the Scheme Manager requires to identify all potential conflicts of interest and ensure that any member of the Pension Board or person to be appointed to the Pension Board does not have a conflict of interest at appointment or whilst a member of the Pension Board.

(xl) Part 5(1) of ESCC Code of Conduct shall apply in relation to the standards of conduct of Pension Board members, insofar as they can be reasonably considered to apply to the role of members of the Board, including the non-disclosure of confidential information.

(xli) Members of the Pension Board must adhere to the requirements of the ESPF Procedure for Monitoring and Reporting Breaches of the Law and should be mindful of the individual legal requirements in Section 70 of the Pensions Act 2004 relation to reporting breaches of the law in relation to ESPF matters.

Access to the Public and Publication of Pension Board information

(xlii) Members of the public may attend the Pension Board meeting and receive papers, which will be made public in accordance with the Access to Information Rules in ESCC's Constitution.

(xliii) In accordance with the Public Service Pensions Act 2013, ESCC is required to publish information about the Pension Board and up-to-date information will be posted on the ESPF website showing:

- Names of and information regarding the Pension Board members

<ul style="list-style-type: none"> • How the scheme members and employers are represented on the Pension Board
<ul style="list-style-type: none"> • Responsibilities of the Pension Board as a whole
<ul style="list-style-type: none"> • Full terms of reference and policies of the Pension Board and how it operates.
<p>(xlv) In accordance with good practice, ESPF may publish other information relating to the Pension Board as considered appropriate from time to time and which may include:</p>
<ul style="list-style-type: none"> • the agendas and meeting records
<ul style="list-style-type: none"> • training and attendance logs
<ul style="list-style-type: none"> • an annual report on the work of the Pension Board.
<p>(xlv) All or some of this information may be published using the following means or other means as considered appropriate from time to time:</p>
<ul style="list-style-type: none"> • on the ESPF website – https://www.eastsussex.gov.uk/yourcouncil/pensions/members/
<ul style="list-style-type: none"> • on the ESCC website – http://www.eastsussex.gov.uk,
<ul style="list-style-type: none"> • within the ESPF Annual Report and Accounts,
<ul style="list-style-type: none"> • within the ESPF’s Governance Policy and Compliance Statement.
<p>(xlvi) Information may be excluded on the grounds that it would either involve the likely disclosure of exempt information as specified in Part 1 of Schedule 12A of the Local Government Act 1972 or it being confidential for the purposes of Section 100A(2) of that Act.</p>
<p><i>Expense reimbursement, remuneration and allowances</i></p>
<p>(xlvii) All Pension Board members will be entitled to claim travel and subsistence allowances for attending meetings relating to Pension Board business (including attending training) at rates contained in the Members' Allowances Scheme in the ESCC's Constitution. In addition, scheme member representatives may be paid an allowance equivalent to the co-optees' allowance in the ESCC Scheme of Members' Allowances in relation to time spent at meetings and training events relating to their role as a ESPF Pension Board member, unless they are attending they are attending during their normal working day without a reduction in pay or leave (in which case no allowance will be paid for that time).</p>
<p>(xlviii) The Independent Chair’s remuneration will be approved by the Governance Committee following consultation with the Chair of the Pension Committee.</p>
<p>(ii) All costs will be recharged to the Fund.</p>
<p><i>Accountability</i></p>
<p>(i) The Pension Board collectively and members individually are accountable to the Scheme Manager (ESCC), the Pensions</p>

Regulator, and the Local Government Pension Scheme Advisory Board. The Local Government Pension Scheme Advisory Board will advise the Responsible Authority (in the case of the LGPS the MHCLG) and the Scheme Manager. The Pensions Regulator will also be a point of escalation for whistle blowing or similar issues.

Decision Making Process

(li) Employer representatives and scheme member representatives have voting rights, albeit the Pension Board is expected to operate on a consensus basis. The Independent Chair does not have voting rights.

(lii) In the event of an equal number of votes being cast for or against a proposal there shall be no casting vote but the proposal shall be considered to have been rejected. The Scheme Manager shall be alerted when a decision is reached in this manner.

Reporting and escalation

(liii) The Pension Board must provide minutes of each meeting to the following Pension Committee meetings and may make reports and recommendations to the Pension Committee insofar as they relate to the role of the Pension Board. Any such reports or recommendations must be provided in advance of the next Pension Committee meeting to the S151 Officer.

(liv) An annual report of the Pension Board must be provided to the S151 Officer, the Monitoring Officer, the Pension Committee, and the Audit Committee and be published in the Fund's Annual Report and Accounts.

(lv) Where the Pension Board considers that a matter brought to the attention of the Pension Committee has not been acted upon or resolved to their satisfaction, the Pension Board will provide a report to the Monitoring Officer.

(lvi) The Breaches Register will be presented at each meeting and considered by the Pension Board who may make recommendations to the Pension Committee.

Review, Interpretation and Publication of Terms of Reference and Rules of Procedure

(lvii) These Terms of Reference have been agreed by ESCC. The Council will monitor and evaluate the operation of the Pension Board and may review these Terms of Reference and Rules of Procedure from time to time.

(lviii) These Terms of Reference are incorporated into the Council's Constitution and published on the Council's website and may be amended by the same means as permitted for the Constitution. It will also form part of the ESPF's Governance Policy and Compliance Statement which will be made available in accordance with the requirements of the LGPS Regulations.