

**Agenda Item No.11 (e)**

**DERBYSHIRE COUNTY COUNCIL**

**COUNCIL**

**8 APRIL 2015**

**REPORT OF THE STRATEGIC DIRECTOR OF CORPORATE  
RESOURCES**

**ESTABLISHMENT OF A LOCAL PENSION BOARD**

**1. Purpose of the Report**

To inform the Council of the need to establish a Local Pension Board for Derbyshire in accordance with the recently published Local Government Pension Scheme requirements.

**2. Information and Analysis**

**2.1 Local Pension Boards**

Derbyshire County Council is responsible for the administration of the Derbyshire Pension Fund, which is part of the Local Government Pension Scheme; the Council is known as the Scheme Manager or Administering Authority. Pension Fund functions are discharged through the Pensions and Investment Committee.

Pension fund arrangements have been the subject of reform in the light of the Hutton Report which gave rise to the Public Service Pensions Act 2013. The Act brought in the new career average (CARE) pension benefits structure with effect from the 1<sup>st</sup> April 2014 and introduced a framework for regulatory oversight by the Pensions Regulator. In addition, the Act has introduced a new governance structure for the Local Government Pension Scheme which comes into force in April 2015.

The new governance structure is being brought into effect by the Local Government Pension Scheme (Amendment) (Governance) Regulations 2015 which were published on the 26<sup>th</sup> January 2015. The Regulations are intended to ensure better governance and improved accountability

in the Local Government Pension Scheme. A new national Scheme Advisory Board is being established to provide advice to both the Secretary of State and to administering authorities such as the County Council. The Regulations also require administering authorities to establish local pension boards by April 2015.

The County Council must, therefore, approve the establishment of a Local Pension Board, its composition and its terms of reference without delay. The statutory guidance accompanying the Regulations clearly recognises that the timescale for establishing pension boards is unrealistic and acknowledges that it will not be possible for the boards to be operational immediately; the guidance anticipates that boards will be operational within a reasonably practicable period after 1<sup>st</sup> April.

The establishment of the Local Pension Board is a matter for the Full Council.

## **2.2 The Role of the Local Pension Board**

Boards will be responsible for “assisting” administering authorities such as the County Council to secure compliance with pension legislation and for ensuring the effective and efficient governance and administration of local pension schemes. They will oversee the work undertaken by the Council, through the Pensions and Investment Committee, in its capacity as the Administering Authority. Assisting the Administering Authority should, in the words of the guidance, “be interpreted as helping the Administering Authority, including doing work requested by the Administering Authority. The role of the Local Pension Board should be interpreted as covering all aspects of governance and administration of the LGPS, including funding and investments.” However, the creation of new local pension boards does not change the core role of administering authorities or the way they delegate their pension functions and so there will be no change to the role of the Investment and Pension Committee.

The Pension Board will be part of the Council rather than a separate legal entity although it will not be a committee for the purposes of the Local Government Act 1972; this is likely to give rise to governance and procedural issues but all administering authorities are in the same position and it will be necessary for processes and procedures to develop nationally over time.

The County Council has flexibility to decide the procedures that apply to the Local Pension Board, including the establishment of sub-

committees and the formation of joint committees (if these were considered to be necessary) and the payment of expenses.

## **2.3 Membership of the Local Pension Board**

It is also for the County Council to determine Board membership, the manner of appointment and removal of members and the terms of appointment of members (and this is dealt with at paragraph 2.5, below). However, the Regulations provide that the Board must include an equal number of employer and member representatives with a minimum requirement of no fewer than four in total. Every person appointed to the Board must have capacity to undertake the role.

The Regulations also allow for the appointment of other, non-representative members. For example, the Council could appoint an independent chair and/or a number of elected Councillors although no Investment and Pensions Committee Member may sit on the Board. Derbyshire County Councillors can only be appointed to the Board in the capacity of either an employer representative or a member representative.

Other persons (not being employer or member representatives) can be appointed to the Board but they will not be entitled to vote. This would apply to an independent chair, if appointed.

The statutory guidance advises that all relevant factors should be taken into account, including the following:-

- (a) The number of scheme members.

Total = 90,000 with 39,000 active members, 25,000 deferred members and 26,000 pensioners.

- (b) The number and size of employers.

Currently 157 employers ranging from local authorities including parish councils, schools, academies, colleges and universities, Registered Social Landlords to the largest group which is now private companies with outsourced local authority contracts

- (c) The breadth and diversity of scheme members and employers.

Ranges from Derbyshire County Council with 19,000 active members to some of the private sector companies which may be large but have few members in our Fund.

- (d) The assets within the Fund and any collective arrangements in place for them to make decisions or provide input in relation to Fund matters. Currently £3.5bn.
- (e) The cost of establishing and operating the Board.
- (f) The existence or proposal to form any other advisory groups.

None at present.

- (g) The scope of the Board's remit and work plan.

The guidance recognises that “the membership structure for the Local Pension Board required by Regulation 107 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 Administering Authorities”. In these circumstances, and given the novel nature of the requirement to establish a Board, it is considered that, at least in the first instance, the Board should have a small membership: the statutory minimum of two employer and two member representatives together with an independent, non-voting Chair. An independent Chair with pensions expertise and experience, at least for the first year of the Board's work, will enable the Board to develop and fulfil its role and this is the approach being adopted by a number of other administering authorities. The Council will, of course, retain the discretion to review the arrangements as the Board develops its role and as best practice evolves across the country.

The guidance states that the methodology for appointment must ensure that employer and member representative board members are truly representative. An open and transparent process for the appointment of Members of the Board must be followed and regard must be had to equal opportunities.

## **2.4 Appointment of Members of the Board**

It is proposed that the Members of the Board will be appointed by the Full Council following a recruitment and selection process which will be managed by officers (the Strategic Director of Corporate Resources, the Director of Legal Services and the Director of Finance or their

nominees) in consultation with the Leader of the Council. The process of selection will involve:-

- The independent Chair. A role profile is being developed and the process of selection will include interviews. This will be the only paid position on the Board (with other Board Members receiving travel expenses only) with the cost being met from the Pension Fund.
- The two employer representatives on the Board will be appointed following an invitation to all Scheme employers to put forward nominations. Again, it is anticipated that the selection of nominees will involve an interview process.
- One of the member representatives will be subject to nomination by the trade unions which are recognised by the Pension Scheme's employers. The other member representative will be selected following invitations for expressions of interest (which process has already begun given the tight timescales) and an interview process.

It is hoped that the Council will be in a position to consider the confirmation of appointments at its meeting in June 2015.

## **2.5 Terms of Reference**

Draft terms of reference for the Board are attached at Appendix 1. The terms of reference include provisions regarding term of office, termination of membership, meeting arrangements etc. Although it is necessary for the Council to approve the terms of reference in order that the statutory requirement to establish the Board may be met, it may well be necessary to refine the terms of reference in due course.

## **2.6 Training**

The national guidance places emphasis on the importance of appointing members to the Local Pension Board who have the time to commit to attend meetings have the capacity to represent the employers or members (as appropriate) of the Pension Fund and, very importantly, to undertake training. The guidance requires administering authorities to offer high quality induction training and relevant ongoing training for Local Pension Board members. The guidance suggests that 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. The Council's Member Development Programme will cover the work of the Board.

## **2.7 Code of Conduct**

In keeping with the guidance, it is proposed that all Board Members, whether or not they are councillors, should be subject to the County Council's Code of Conduct for Members and this is provided for in the terms of reference of the Board.

## **2.8. Pensions and Investment Committee**

The proposals set out in this report were presented to Pensions and Investment Committee on 18 March 2015. The Committee considered that the proposed terms of reference would enable the established Board to provide the assistance to the Administering Authority envisaged by the Act and statutory guidance.

## **3. Financial Considerations**

The expenses of Local Pension Boards are to be regarded as part of the costs of administration of the Pension Fund. It will be important to keep the costs to a minimum while ensuring that the new Board is fit for purpose.

## **4. Other Considerations**

In preparing this report the relevance of the following factors has been considered; financial, legal, prevention of crime and disorder, equality of opportunity; and environmental, health, human resources, property and transport considerations.

## **5. Background Papers**

Files held by the Director of Legal Services and the Director of Finance.

## **6. Recommendations** That the Council:

- 6.1 approves the establishment of a Local Pension Board;
- 6.2 approves the Terms of Reference for the Local Pension Board set out in the appendix to the report; and

- 6.3 notes that a further report will be presented to Council on 3 June 2015 relating to the appointment of Board members.

**Judith Greenhalgh**  
**Director of Corporate Resources**

# The Derbyshire Local Pension Board

## Draft Terms of Reference

### 1. DEFINITIONS AND INTERPRETATION

<b>"Board Member"</b>	means a member of the Board (this includes a reference to an Employer Representative, Member Representative and an Independent Member).
<b>"Chair"</b>	means the appointed Chair of the Pension Board.
<b>"Code of Conduct"</b>	means the code of conduct adopted by the Board i.e. Derbyshire County Council's Code of Conduct for Elected Members.
<b>"Code of Practice"</b>	means The Pensions Regulator's Code of Practice no. 14 entitled <i>"Governance and administration of public service pension schemes"</i> .
<b>"Conflicts of Interest"</b>	is as defined in the Public Service Pensions Act 2013.
<b>"Conflicts of Interest Policy"</b>	means the policy on conflicts of interest as adopted by the Board.
<b>"Deputy Chair"</b>	means the appointed Deputy Chair of the Board.
<b>"Employer Representative"</b>	means a person appointed to the Board for the purpose of representing employers for the Scheme.
<b>"Fund"</b>	means the Derbyshire Pension Fund.
<b>"Independent Members"</b>	means neither an Employer Representative nor a Member Representative.



<b>"Member Representative"</b>	means a person appointed to the Board for the purpose of representing members of the Scheme.
<b>"PSPA"</b>	the Public Service Pensions Act 2013 (as amended).
<b>"Regulations"</b>	The Local Government Pension Scheme (Amendment)(Governance) Regulations 2015
<b>"Reporting Procedure"</b>	means the procedure adopted by the Board setting out the Board's procedure for reporting breaches of law and other matters.
<b>"Scheme Manager"</b>	Derbyshire County Council as the administering authority of the Derbyshire Pension Fund.
<b>"Scheme"</b>	The Local Government Pension Scheme.
<b>"Knowledge and Understanding and Training Policy"</b>	means the training policy as adopted by the Board.

## 2. **POWERS OF THE BOARD**

The Board will exercise all its powers and duties in accordance with the law and these Terms of Reference.

## 3. **FUNCTIONS OF THE BOARD**

### 3.1 The role of the Pension Board is defined by Regulation 106 of the Regulations as to assist the Scheme Manager:

- 3.1.1 to secure compliance with:
  - 3.1.1.1 the Regulations;
  - 3.1.1.2 any other legislation relating to the governance and administration of the Scheme; and
  - 3.1.1.3 any requirements imposed by the Pensions Regulator in relation to the Scheme ; and also
- 3.1.2 to ensure the effective and efficient governance and administration of the Scheme.

### 3.2 The Scheme Manager considers that assisting the Scheme Manager should be interpreted as helping the Scheme Manager, including doing work requested by the Scheme Manager in relation to such aspects of governance and

administration of the Scheme as the Scheme Manager determines. In addition to fulfilling its core statutory role, the Board may assist the Scheme Manager in such additional functions as may be determined by the Scheme Manager.

#### **4. COMPOSITION OF THE PENSION BOARD**

##### **4.1 Membership**

- 4.1.1 The Board shall consist of four voting Board Members, as follows:
- 4.1.1.1 two Employer Representatives; and
  - 4.1.1.2 two Member Representatives.
- 4.1.2 There shall be an equal number of Employer Representatives and Member Representatives.
- 4.1.3 The Scheme Manager may also appoint one Independent Member who, if appointed, shall be the Chair and shall not be entitled to vote.
- 4.1.4 There shall also be a Deputy Chair who shall have the power to vote (see below in relation to his or her appointment).

##### **4.2 Appointment and Removal of Chair and Deputy Chair**

- 4.2.1 The Scheme Manager will appoint the Chair of the Board when the Board is first constituted for a term of one year and thereafter at its discretion.
- 4.2.2 Where the Scheme Manager does not appoint an independent Chair:
- 4.2.2.1 the office of Chair must be filled alternatively from municipal year to year by an Employer Representative and a Member Representative; and
  - 4.2.2.2 where the Chair is an Employer Representative, the Deputy Chair must be a Member Representative, and vice versa.
- 4.2.3 The Chair will ensure that meetings are properly conducted and the decision of the Chair on all points of procedure and order shall be final.
- 4.2.4 The role of the Deputy Chair is to assist the Chair in carrying out his or her functions.

##### **4.3 Term of Office and Removal of Representative Employer and Member Representative Board Members**

- Employer and Member Representatives are appointed for a period of two years from the date of establishment of the Board or the date of their appointment, if later.
- Any Board Member may be re-appointed for further terms following an appointment process.
- An appointment will automatically cease if:

- a Board Member no longer meets the eligibility criteria;
  - a Board Member has a conflict of interest which, in the opinion of the Scheme Manager, cannot be managed in accordance with the Board's Conflicts of Interest Policy;
  - a Board Member dies or, in the opinion of the Board and the Scheme Manager, becomes incapable of acting; and
  - a Board Member wishes to resign, and has given one month's notice in writing to the Scheme Manager (Director of Legal Services).
- If a Board 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, then this will be addressed by the Chair and the Scheme Manager.

#### **4.4 Appointment and Removal of Independent Representative(s)**

- The Independent Members must be neither Employer nor Member Representatives.
- Any Independent Representative's term of office will be determined by separate terms agreed by the Scheme Manager and will be subject to ongoing review as defined in those terms.

### **5. DECISION MAKING AND ADMINISTRATION**

#### **5.1 Notice of Meetings, Agendas and Minutes**

The County Council's normal practice and procedures in accordance with the Local Government Act 1972 will be followed.

#### **5.2 Location and Timing of meetings**

The Board shall as a minimum meet twice each municipal year. The meetings shall normally be held at County Hall in Matlock.

#### **5.3 Quorum and Appointment of Proxies**

- 5.3.1 A meeting of the Board is quorate when at least one Member representative and one Employer representative and, if appointed, the Independent Chair are present.
- 5.3.2 All Members of the Board are expected to regularly attend meetings. Records of attendance of all Members will be maintained.
- 5.3.3 If for any reason a Board Member cannot attend a Board meeting they are not permitted to send a proxy or substitute in their place to attend and vote at the meeting.

#### **5.4 Voting and Decision-making**

- 5.4.1 A decision will require approval of a majority of Board Members present at the meeting.
- 5.4.2 Independent Member[s] [do] not have a voting right.

## 5.5 **Creation of Working Groups/Sub-Boards**

- 5.5.1 The Board has the power to set up working groups or sub-boards on whatever terms the Board determines.
- 5.5.2 If the Board decides to create a working group or sub-board then it will prepare terms of reference for it.

## 6. **BUDGET**

The Board will be provided with adequate resources to fulfil its role.

## 7. **FEES AND EXPENSES**

### 7.1 **Expenses**

- 7.1.1 The expenses of Board Members will be in accordance with the Council's normal policies and will be met from the Pension Fund.

### 7.2 **Fees**

- 7.2.1 Payments to any Independent Member will be in accordance with the terms of their contract.

(It is anticipated that the employers of Representatives on the Pension Board will allow their employees time off to allow the Representatives to perform the role within their normal working day).

## 8. **CONFLICTS OF INTEREST**

- 8.1 The Members of the Board shall always act within these Terms of Reference and in accordance with the Board's Conflict of Interest Policy.

- 8.2 Though Members of the Board include representatives of specific categories of stakeholder (i.e. Scheme members and employers) each Board Member is required to have due regard to the role of the Board as outlined in these Terms of Reference. Accordingly, all Members are expected to work jointly with the key purpose of oversight of the management of the Scheme, putting aside any individual views of any stakeholders. This should not prevent Board Members from sharing their knowledge on how matters might impact specific stakeholders of the Scheme.

- 8.3 The Board must be satisfied that the Board is acting within:

- 8.3.1 the conflicts of interest requirements of the PSPA and the Regulations; and
- 8.3.2 in the spirit of the Code of Practice in relation to conflicts of interest; and
- 8.3.3 in accordance with the Board's Conflict of Interest Policy.

- 8.4 Each Member of the Board, or a person proposed to be appointed to the Board, (as well as attendees participating in the meeting) must provide the Scheme Manager with such information as is required for the purposes of demonstrating that there is no conflict of interest.

## 9. **ADVICE AND INFORMATION**

- 9.1 The Board should request such information, documents and advice from the Scheme Manager that it requires to carry out its functions. The Scheme Manager will be required to consider positively all reasonable requests in relation to the role of the Board whilst being mindful of value for money.

## 10. **KNOWLEDGE AND SKILLS**

- 10.1 Under the requirements of the PSPA, a Member of the Board must be conversant with:

10.1.1 the rules of the Scheme; and

10.1.2 any document recording policy about the administration of the Scheme which is for the time being adopted in relation to the Scheme.

- 10.2 In addition, a Member of the Board must have knowledge and understanding of:

10.2.1 the law relating to pensions; and

10.2.2 any other matters which are prescribed in regulations.

The degree of knowledge and understanding referred to above is that appropriate for the purposes of enabling the individual properly to exercise the functions of a Member of the Board.

11. It is for individual 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 Board and therefore must comply with any Knowledge and Understanding and Training Policy which may be adopted by the Board.

## 12. **STANDARDS OF CONDUCT**

Derbyshire County Council's Code of Conduct for Elected Members shall apply in relation to the standards of conduct of Board Members.

## 13. **REPORTING ON THE BOARD'S ACTIVITIES**

As a committee of the Council, the minutes of meetings of the Board will be received by the Council. In addition, the minutes of the Board will be received by the Pensions and Investment Committee, for information, to facilitate the necessary dialogue between the Board and the Committee.

## 14. **REPORTING BREACHES ETC**

The Board shall report breaches of law in accordance with such reporting procedures as it may adopt.

## 15. **ACCESS TO THE PUBLIC AND PUBLICATION OF PENSION BOARD INFORMATION**

The public will have rights of access to meetings and information in accordance with the Local Government Act 1972.