

Report of the Section 151 Officer

Council – 3rd March 2015

TO ESTABLISH A LOCAL PENSION BOARD AS ADMINISTERING AUTHORITY

Purpose:	To establish a Local Pension Board in line with The Local Government Pension Scheme (Amendment) (Governance) Regulations 2015
Policy Framework:	None
Reason for Decision:	An Administering Authority has to establish a local Pension Board by 1 April 2015 under the above Regulations.
Consultation:	Legal, Finance & Delivery and Access to Services.
Recommendations:	It is recommended that: 1) The proposals for the establishment, membership and initial terms of reference for the City & County of Swansea Pension Fund Local Pension Board as referred to in Appendix 1 of the report be approved and adopted. 2) The Head of Legal has delegated authority to make any amendments to the Constitution as required in relation to the establishment and operation of the Local Pension Board..
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1. Introduction

1.1 The City & County of Swansea is the Administering Authority of the City & County of Swansea Pension Fund which is the Local Government Pension Scheme (LGPS) of the following active employers:

- City & County of Swansea
- Neath Port Talbot County Borough Council
- Cilybebyll Community Council
- Coedffranc Community Council
- Gower College Swansea
- NPTC Group
- Neath Town Council
- Margam Joint Crematorium Committee
 - Pelenna Community Council

- Pontardawe Town Council
- Swansea Bay Port Health Authority
- Swansea City Waste Disposal
- University of Wales Trinity St Davids
- Babtie
- Celtic Community Leisure
- Colin Laver Heating Limited
- Swansea Bay Racial Equality Council
- Wales National Pool
- Capgemini
- NPT Homes
- Grŵp Gwalia

- 1.2 The City & County of Swansea Pension Fund has approximately:
- 15,500 active members (members actively contributing to but not yet drawing a pension)
 - 9,600 deferred members (members who have contributed to, in the past, but not yet drawing a pension)
 - 10,800 pensioner members (members drawing a pension)
 - Assets of £1.3bn

2 Governance Arrangements

- 2.1 Under statute, the Council of the City & County of Swansea has been charged with responsibility for the governance arrangements of the Pension Fund. The Council has delegated that function to the Pension Fund Committee which is a formally recognised committee of Council within the Council's Constitution. This remains unaffected by the Regulation and proposals attached.

3 The Pension Act 2013- Local Pension Boards

- 3.1 Following the introduction of The Pension Act 2013 which largely incorporated the recommendations of Lord Hutton of Furness's public sector pension reform report, the Government have issued Regulations outlining the requirement that LGPS Administering Authorities have to adopt in respect of enhanced governance arrangements.
- 3.2 These arrangements require LGPS Administering Authorities to establish a Local Pension Board no later than 1st April 2015 whose purpose is to assist the Administering Authority in its role as Scheme Manager.. Such assistance is to:
- a) secure compliance with the Regulations and any other legislation relating to the governance and administration of the Scheme
 - b) secure compliance with the requirements imposed in relation to the LGPS by the Pensions Regulator; and
 - c) ensure efficient and effective governance and administration of the LGPS by the Scheme Manager.

- 3.3 Assisting the Administering Authority should 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 Local Pension Board ***does not replace the Administering Authority or make decisions*** which are the responsibility of the Administering Authority under both the Regulations and other overriding legislation.

4 Local Pension Board Requirements

- 4.1 Each Administering Authority is required to determine its own procedures relating to the establishment and operation and Terms of Reference of its Local Pension Board.

The 2015 LGPS Regulations and subsequent guidance outlines the minimum requirements when establishing a Local Pension Board:

4.1.1 Membership

There must be as a minimum 2 employer representatives and 2 scheme member representatives with an optional non voting independent chairperson. There must be an equal number of employer and scheme member representatives.

The guidance states that in establishing membership of its Board, an Administering Authority must consider the number of scheme members and the size and breadth of employers within the scheme. All members and employers must have equal opportunity to be nominated to the role of Local Pension Board member through an open and transparent process.

No Councillor or Officer who has responsibility for discharging any function in relation to the management of the Pension Fund may be elected to the Local Pension Board.

4.1.2 Skills & Knowledge Requirement

In accordance with section 248A of the 2004 Act, every individual who is a member of a Local Pension Board must be conversant with:

- the rules of the LGPS, in other words the Regulations and other regulations governing the LGPS (including the Transitional Regulations, earlier regulations and the Investment Regulations); and
- any document recording policy about the administration of the Fund which is for the time being adopted in relation to the Fund, and
- have knowledge and understanding of:

- the law relating to pensions; and
- such other matters as may be prescribed

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 above and the law relating to pensions. Training will be provided as and when necessary.

4.1.3 Conflicts of Interest

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 Administering Authority. The Local Pension Board does not make decisions in relation to the administration and management of the Fund: Decisions rest with the Administering Authority.

5 The City & County of Swansea Pension Fund – Local Pension Board Proposals

- 5.1 The proposals for the membership and initial terms of reference for the City & County of Swansea Pension Fund Local Pension Board are attached at **Appendix 1** for approval

6 Financial Implications

- 6.1 All reasonable running costs and expenses incurred in establishing the Local Pension Board will be considered and approved by the Section 151 Officer and reported within the annual financial statement of the Pension Fund. These are a recognised cost of the LGPS scheme as outlined by Regulation and will be met in full by the Pension Fund.

7 Legal Implications

- 7.1 The Authority is under a duty to make arrangements for the establishment of a Local Pension Board by 1st April 2015. Failure to do so will be a breach of that duty. The statutory provisions and guidance imposing such a duty on the Authority are as set out in the main body of the Report.

Once the Local Pension Board has been established the Guidance to the Regulations anticipates that the Local Pension Board should be operational within a reasonably practicable period after 1 April 2015 (being no longer than 4 months).

8 Equality Impact Implications

- 8.1 Where appropriate scheme employers and scheme members will be consulted during the appointment process as identified in **Appendix 1**.

Comment [MT1]: I have added this as not sure whether it is practicable to consult all scheme members. Access to Services need to pick this up.

Appendices:

Appendix 1 – Term of Reference

Background papers:

- Local Government Pension Scheme (LGPS) (Amendment) Governance Arrangements 2015 Regulations- Local Pension Boards-

http://www.legislation.gov.uk/uksi/2015/57/pdfs/uksi_20150057_en.pdf

- Local Government Pension Scheme Board Guidance-
<http://www.lgpsboard.org/index.php/about-the-board/board-guidance>

APPENDIX 1

LOCAL PENSION BOARD OF THE CITY & COUNTY OF SWANSEA PENSION FUND TERMS OF REFERENCE

Introduction

1. This document sets out the terms of reference of the Local Pension Board of The City & County of Swansea (the 'Administering Authority') a scheme manager as defined under Section 4 of the Public Service Pensions Act 2013. The Local Pension Board (hereafter referred to as 'the Board') is established in accordance with Section 5 of that Act and under regulation 106 of the Local Government Pension Scheme Regulations 2013 (as amended).
2. The Board is established by the Administering Authority and operates independently of the Pension Fund Committee. Relevant information about its creation and operation are contained in these Terms of Reference.

Interpretation

3. The following terms have the meanings as outlined below:

'the Act'	The Public Service Pensions Act 2013.
'the Code'	means the Pension Regulator's Code of Practice No 14 governance and administration of public service pension schemes.
'the Pension Fund Committee'	means the committee who has delegated decision making powers for the Fund in accordance with Section 101 of the Local Government Act 1972.
'the Fund'	means the Fund managed and administered by the Administering Authority ¹ .
'the Guidance'	means the guidance on the creation and operation of local pension boards issued by the Shadow Scheme Advisory Board.
'the Regulations'	means the Local Government Pension Scheme Regulations 2013 (as amended from time to time), the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (as amended from time to time) including any earlier regulations as defined in these regulations to the extent they remain

applicable and the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009 (as amended from time to time).

'Relevant legislation' means relevant overriding legislation as well as the Pension Regulator's Codes of Practice as they apply to the Administering Authority and the Board notwithstanding that the Codes of Practice are not legislation.

'the Scheme' means the Local Government Pension Scheme in England and Wales.

Statement of purpose

4. The purpose of the Board is to assist the Administering Authority in its role as a scheme manager of the Scheme. Such assistance is to:
 - a) secure compliance with the Regulations, any other legislation relating to the governance and administration of the Scheme, and requirements imposed by the Pensions Regulator in relation to the Scheme and;
 - b) to ensure the effective and efficient governance and administration of the Scheme.

Duties of the Board

5. The Board should at all times act in a reasonable manner in the conduct of its purpose.

Establishment

6. The Board is established on 3rd March 2015 subsequent to approval by Council of the recommendation to establish a Local Pension Board contained in **LGPS (Amendment) Governance Arrangements 2015 Regulation - Local Pension Boards**. Subsequent to its establishment, the Board may establish sub-committees.

Membership

7. The Board shall consist of 6 voting members, as follows:
 - 3 Member Representatives; and
 - 3 Employer Representatives.
8. There shall be an equal number of Member and Employer Representatives.
9. The Chair shall be selected from the existing member/employer representatives on a rotating basis and shall endeavour to reach consensus.

Local Pension Board Member representatives

10. Local Pension Board Member representatives shall either be scheme members or have capacity to represent scheme members of the Fund.
11. Local Pension Board Member representatives should be able to demonstrate their capacity to attend and complete the necessary preparation for meetings and have the necessary skills and knowledge required and participate in training as required.
12. Substitutes shall not be appointed.
13. The 3 Local Pension Board member representatives shall be appointed by nomination from the Joint Trade Unions representing employees who are scheme members of the Fund. If required a competitive selection process will be delegated to the Head of HR and S151 Officer.

Local Pension Board Employer representatives

14. Local Pension Board Employer representatives shall be Councillors, office holders/ senior employees of employers of the Fund or have experience of representing scheme employers in a similar capacity. No Officer or Councillor of the Administering Authority who is responsible for the discharge of any function of the Administering Authority under the Regulations may serve as a member of the Board.
15. Local Pension Board Employer representatives should be able to demonstrate their capacity to attend and have the requisite skills and knowledge and complete the necessary preparation for meetings and participate in training as required.
16. Substitutes shall not be appointed.
17. A total of 3 Local Pension Board employer representatives shall be appointed to the Board, one from each of the following sources:
 - a) One employer representative shall be appointed by the largest employer within the fund (City & County of Swansea).
 - b) One employer representative shall be appointed by the second largest employer within the fund (Neath Port Talbot CBC)
 - c) One employer representative shall be appointed by the Administering Authority where all employers (bar those identified in 17a and 17b above) will have been asked to submit their interest in undertaking the role of employer representative on the Board. In the event that more than one employer expresses an interest outlining their availability, skills and knowledge and lack of conflicts of interest than a competitive interview

process will be undertaken delegated to the Head of HR and S 151 Officer to progress.

Other members

18. No other Members are recommended for appointment to the Board.

Appointment of Chair

19. Subject to the meeting arrangements in paragraphs 35 to 37 below a Chair shall be appointed for the Board as identified below:

- a) At the first meeting of the Board, a Chair shall be elected from their number on a rotating basis for a term of one year, with the role alternating between employer and member representatives on an equal basis. The Chair shall seek to reach decision by consensus and in the event this cannot be reached, this should be so recorded.*

Duties of chair

20. The Chair of the Board:

- (a) Shall ensure the Board delivers its purpose as set out in these Terms of Reference, agree Agenda and clear minutes
- (b) Shall ensure that meetings are productive and effective and that opportunity is provided for the views of all members to be expressed and considered, and
- (c) Shall seek to reach consensus and ensure that decisions are properly put to a vote when it cannot be reached. Instances of a failure to reach a consensus position will be recorded and published.

Notification of appointments

21. When appointments to the Board have been made the Administering Authority shall publish the name of Board members on its pension Fund website, the process followed in the appointment together with the way in which the appointments support the effective delivery of the purpose of the Board.

Terms of Office

- 22. The term of office for Board members is 4 years, following the Local government cycle, however the first term of office may be shorter.
- 23. Extensions to terms of office may be made by the Administering Authority with the agreement of the Board.
- 24. Board membership may be terminated prior to the end of the term of office due to:

- (a) A member representative appointed on the basis of their membership of the scheme no longer being a scheme member in the Fund².
- (b) A member representative no longer being a scheme member or a representative of the body on which their appointment relied.
- (c) An employer representative no longer holding the office or employment or being a member of the body on which their appointment relied.
- (d) A Board member no longer being able to demonstrate to The City & County of Swansea their capacity to attend and prepare for meetings or to participate in required training.
- (e) The representative being withdrawn by the nominating body and a replacement identified.
- (f) A Board member has a conflict of interest which cannot be managed in accordance with the Board's conflict policy.
- (g) A Board member who is an elected member becomes a member of the Committee.
- (h) A Board member who is an officer of the Administering Authority becomes responsible for the discharge of any function of the Administering Authority under the Regulations.

Conflicts of interest

- 25. All members of the Board must declare to the Administering Authority on appointment and at any such time as their circumstances change, any potential conflict of interest arising as a result of their position on the Board.
- 26. A conflict of interest is defined as a financial or other interest which is likely to prejudice a person's exercise of functions as a member of the Board. It does not include a financial or other interest arising merely by virtue of that person being a member of the Scheme.
- 27. On appointment to the Board and following any subsequent declaration of potential conflict by a Board member, the Administering Authority shall ensure that any potential conflict is effectively managed in line with both the internal procedures of the Board's conflicts policy and the requirements of the Code.

Knowledge and understanding (including Training)

- 28. Knowledge and understanding must be considered in light of the role of the Board to assist the Administering Authority in line with the requirements outlined in paragraph 6 above. The Board shall establish and maintain a Knowledge and Understanding Policy and Framework to address the knowledge and understanding requirements that apply to Board members under the Act. That policy and framework shall set out the degree of knowledge and understanding required as well as how knowledge and understanding is acquired, reviewed and updated.

29. Board members shall attend and participate in training arranged in order to meet and maintain the requirements set out in the Board's knowledge and understanding policy and framework.
30. Board members shall participate in such personal training needs analysis or other processes that are put in place in order to ensure that they maintain the required level of knowledge and understanding to carry out their role on the Board.

Meetings

31. The Board shall as a minimum meet 6 monthly
32. Meetings shall normally take place during office hours where practicable at offices of the Administering Authority
33. The Chair of the Board with the consent of the Board membership may call additional meetings.

Quorum

34. A meeting is only quorate when a minimum of 3 persons are present with at least one member and one employer representatives being present.
35. A meeting that becomes inquorate must cease immediately and be reconvened.

Board administration

36. The Chair shall agree an agenda prior to each Board meeting.
37. The agenda and supporting papers will be issued at least 5 clear working days in advance of the meeting except in the case of matters of urgency in line with the Local Government Act 1972.
38. Draft minutes of each meeting including all actions and agreements will be recorded and circulated to all Board members within 10 clear working days after the meeting. These draft minutes will be subject to formal agreement by the Board at their next meeting. Any decisions made by the Board should be noted in the minutes and in addition where the Board was unable to reach a decision such occasions should also be noted in the minutes.
39. The minutes may with the agreement 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 and/or they represent data covered by the Data Protection Act 1998.

40. The Chairman shall ensure that Board members meet and maintain the knowledge and understanding as determined in the Board's Knowledge and Understanding Policy and Framework and other guidance or legislation.
41. The Board Secretary shall arrange such advice as is required by the Board subject to such conditions as are listed in these Terms of Reference for the use of the budget set for the Board.
42. The Board Secretary shall ensure an attendance record is maintained along with advising the Administering Authority on allowances and expenses to be paid under these terms.
43. The Board Secretary shall liaise with the Administering Authority on the requirements of the Board, including advanced notice for officers to attend and arranging dates and times of Board meetings.

Public access to Board meetings and information

44. The Board meetings can be open to the general public (unless there is an exemption under relevant legislation) when the public would be asked to leave.
45. The following will be entitled to attend Board meetings in an observer capacity:
 - (a) *Members of the Pension Fund Committee,*
 - (b) *Any person requested to attend by the Board.*

Any such attendees will be permitted to speak at the discretion of the Chair.

46. In accordance with the Act the Administering Authority shall publish information about the Board to include:
 - (a) The names of Board members and their contact details.
 - (b) The representation of employers and members on the Board.
 - (c) The role of the Board.
 - (d) These Terms of Reference.
47. The Administering Authority shall also publish other information about the Board including:
 - (a) Agendas and minutes
 - (b) Attendance logs
 - (c) An annual report on the work of the Board to be included in the Fund's own annual report.
48. All or some of this information may be published using the following means or other means as considered appropriate from time to time:
 - (a) On the Fund's website.
 - (b) As part of the Fund's Annual Report.

49. 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 and/or they represent data covered by the Data Protection Act 1998.

Expenses and allowances

50. The Administering Authority shall meet the expenses of Board members in line with the Administering Authority's policy on expenses.
51. The Administering Authority shall not pay allowances for Board members

Budget

52. The Board is to be provided with adequate resources to fulfil its role.
The Board will seek approval from the Section 151 Officer for any expenditure it wishes to make.

Core functions

53. The first core function of the Board is to assist the Administering Authority in securing compliance with the Regulations, any other legislation relating to the governance and administration of the Scheme, and requirements imposed by the Pensions Regulator in relation to the Scheme. Within this extent of this core function the Board may determine the areas it wishes to consider including but not restricted to:
- a) *Review management, administrative and governance processes and procedures in order to ensure they remain compliant with the Regulations, relevant legislation and in particular the Code.*
 - b) *Review the compliance of scheme employers with their duties under the Regulations and relevant legislation.*
 - c) *Assist with the development of and continually review scheme member and employer communications as required by the Regulations and relevant legislation.*
 - d) *Monitor complaints and performance on the administration and governance of the scheme.*
 - e) *Assist with the application of the Internal Dispute Resolution Process.*
 - f) *Review the implementation of revised policies and procedures following changes to the Scheme.*
 - g) *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.*
 - h) *Review the complete and proper exercise of employer and administering authority discretions.*
 - i) *Review the outcome of internal and external audit reports.*

- j) *Review draft accounts and Fund annual report.*
- k) *Review the compliance of particular cases, projects or process on request of the Committee.*
- l) *Any other area within the statement of purpose (i.e. assisting the Administering Authority) the Board deems appropriate.*

54. The second core function of the Board is to ensure the effective and efficient governance and administration of the Scheme. Within this extent of this core function the Board may determine the areas it wishes to consider including but not restricted to:

- a) *Assist with the development of improved customer services.*
- b) *Monitor performance of administration, governance and investments against key performance targets and indicators.*
- c) *Monitor internal and external audit reports.*
- d) *Review the risk register as it relates to the scheme manager function of the authority.*
- e) *Assist with the development of improved management, administration and governance structures and policies.*
- f) *Review the outcome of actuarial reporting and valuations.*
- g) *Assist in the development and monitoring of process improvements on request of Committee.*
- h) *Any other area within the statement of purpose (i.e. ensuring effective and efficient governance of the scheme) the Board deems appropriate.*

55. In support of its core functions the Board may make a request for information to the Committee with regard to any aspect of the Administering Authority's function. Any such request should be reasonably complied with in both scope and timing.

56. In support of its core functions the Board may make recommendations to the Committee which should be considered and a response made to the Board on the outcome within a reasonable period of time.

Reporting

57. The Board should in the first instance report its requests, recommendations or concerns to the Committee. In support of this any member of the Board may attend a Committee meeting as an observer.

58. Requests and recommendations should be reported under the provisions of above.

59. The Board should report any concerns over a decision made by the Committee to the Pension Fund Committee subject to the agreement of at least 50% of voting Board members provided that all voting members are present. If not all voting members are present then the agreement should be of all voting members who are present, where the meeting remains quorate.

60. On receipt of a report under paragraph 59 above the Committee should, within a reasonable period, consider and respond to the Board.
61. Where the Board is not satisfied with the response received it may request that a notice of its concern be placed on the website and in the Fund's annual report.
62. Where the Board is satisfied that there has been a breach of regulation which has been reported to the Committee under paragraph 59 and has not been rectified within a reasonable period of time it is under an obligation to escalate the breach.
63. The appropriate internal route for escalation is to the Monitoring Officer and the Section 151 Officer.
64. The Board may report concerns to the LGPS Scheme Advisory Board for consideration subsequent to, but not instead of, using the appropriate internal route for escalation.
65. Board members are also subject to the requirements to report breaches of law under the Act and the Code

Review of terms of reference

66. The Council and Board may review the operation of and Terms of Reference periodically.
67. These Terms of Reference were adopted on 3rd March 2015

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Signed on behalf of the Administering Authority

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Signed on behalf of the Board