

EXTRACT - LOCAL GOVERNMENT PENSION SCHEME, GOVERNANCE COMPLIANCE STATEMENTS

STATUTORY GUIDANCE – NOVEMBER 2008

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7. Trustees of private sector schemes ensure better scheme security, prevent employer-led actions which could undermine a scheme's solvency and seek to ensure that investment and other decisions are both prudent and fair. While the public law framework applying to LGPS schemes will require similar standards of behaviour and practice by members of pension committees, who in this respect also fulfil a fiduciary role, a key distinction to be made is that LGPS benefits are established and paid under statute. Administering authorities are therefore subject to a statutory obligation that they are required to meet, irrespective of their scheme's investment performance or general funding position.

As such, scheme members in the LGPS are not subject to the same type of benefit risk as those in trust-based pension schemes. The entitlements and benefits payable to scheme members in trust based schemes are, potentially at least, more volatile and dependent ultimately on the effectiveness and stewardship of their trustees working as they must under the constraints of the employers' overall covenant standing behind the scheme. This perceived risk to security was the main motivation for the inclusion of the member-nominated trustee provisions in the Pensions Act 1995 as a result of which the principle that scheme beneficiaries should be part of the decision-making process became established. But even member nominated trustees must act in the interest of the beneficiaries and must not take decisions out of self-interest or because they have in mind a particular agenda. The Pensions Act 2004 simply extends that status.

8. On the one hand, elected councillors have legal responsibilities for the prudent and effective stewardship of LGPS funds and in more general terms, have a clear fiduciary duty in the performance of their functions. **However, it is equally clear that the beneficiaries of the scheme have an interest in the beneficial title to the assets and the legal right to require that the assets are held and managed on their behalf in accordance with the governing legal instrument, in this case, the LGPS regulations.** In this respect, elected councillors have a duty of care that goes beyond the strict fiduciary duty to employers and tax payers. Although there is no one single model in operation throughout the 89 LGPS fund authorities in England and Wales, most funds are managed by a formal committee representing the political balance of that particular authority. Under section 101 of the Local Government Act 1972, a local authority can delegate their pension investment functions to the Council, committees, sub-committees or officers, but there are a small number of LGPS fund authorities which are not local authorities and therefore have their own, distinct arrangements.

10. Under section 102 of the Local Government Act 1972, it is for the appointing council to decide upon the number of members of a committee and their terms of office. They may include committee members who are not members of the appointing council and such members may be given voting rights by virtue of section 13 of the Local Government and Housing Act 1989. **On this basis, it is open to pension committees to include representatives from district councils, scheme members and other lay member representatives, with or without voting rights,** provided that they are eligible to be

committee members (eligibility rules are set out in section 15 of the Local Government and Housing Act 1989).

20. The number of stakeholders affected by the local management of the pension scheme and governance of pension funds is vast and it is accepted that it would be impractical to expect individual committee structures to encompass every group or sector that has an interest in the decisions that fall to be made under the scheme's regulations. **The following principles are therefore intended to ensure that the composition of committees, both formal and secondary, offers all key stakeholders the opportunity to be represented.** For example, deferred and pensioner scheme members clearly have an interest in the performance of pension committees but it would be impractical in many cases to expect them to have direct representation on a committee. Instead, there is no reason why a representative of active scheme members couldn't also act on behalf of deferred and pensioner scheme members. Similarly, a single seat in the committee structure could be offered to somebody to represent the education sector as a whole, rather than having individual representatives for FE Colleges, Universities, academies, etc.

22. It is important to emphasise that it is no part of the fund authority's remit to administer the selection process for lay members sitting on main or secondary committees or to ensure their attendance at meetings, unless they wish to do so. Their role is to determine what sectors or groups are to be invited to sit on LGPS committees or panels and to make places available. Effective representation is a two-way process involving the fund authorities providing the opportunity and the representative bodies initiating and taking forward the selection process under the general oversight of the fund authority.