

# Establishing the LGPS Pension Board

## COUNCIL

Date: 25 February 2015

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### Establishing the LGPS Pension Board

Report of Lead Executive Director

Policy Board Member: Councillor D. Ledger, Deputy Leader of the Council

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### Purpose of report

This report is to enable the Council to comply with its legal obligation as administering authority for the LGPS in Northumberland to establish a LGPS local Pension Board before 1 April 2015. An officer/member Working Group was established by the NCC Pension Fund Panel to make recommendations to Council to implement the requirements contained in new LGPS Governance Regulations to establish a NCC LGPS Pension Board. This report recommends an amendment to the NCC Constitution to establish the Pension Board, and two further updating amendments to the NCC Constitution.

### Recommendation

Council is recommended to:

- (i) endorse the recommendations of the Working Group to establish NCC's LGPS Pension Board, which are described in **paragraph 23** and set out in full in **Appendix 1** to this report;
- (ii) approve such amendments to the Constitution as are necessary in the opinion of the Monitoring Officer to establish NCC's LGPS Pension Board by 1 April 2015, based on the proposed Terms of Reference as set out in Appendix 1; and
- (iii) approve the two further proposed amendments to the Constitution, as set out in **paragraphs 33** and **37** of this report.

### Key issues

1. A new regulatory requirement has been introduced in the Local Government Pension Scheme (LGPS) for each administering authority to establish a local Pension Board (LPB) by **1 April 2015**. In the LGPS, the local Pension Board is responsible for assisting the Scheme Manager in securing compliance with legislation and regulations, and to ensure the efficient and effective governance and administration of the LGPS. The LPB has an oversight role.

2 Creation of the local Pension Board does not change the core role of the administering authority or the way it delegates its LGPS functions. NCC already has a well-established delegated structure for administering the LGPS, with the day to day administration being the responsibility of the section 151 officer, and the decision making role delegated to the NCC Pension Fund Panel, a statutory pensions committee.

3 It is the responsibility of the Council (in its capacity as administering authority for the LGPS) to establish the NCC LGPS Pension Board and amend its Constitution accordingly. In September 2014, the Pension Fund Panel set up a member/officer Working Group to make recommendations to NCC to set the Terms of Reference on which to establish the LPB. The Working Group's recommended changes to the NCC Constitution are set out in **Appendix 1** to this report.

4 The LGPS Governance Regulations set out that each LPB must have **equal numbers of member and employer representatives**, with at least two representatives in each category (i.e. four in aggregate). Voting members of the Pension Fund Panel cannot also be voting members of the LPB. NCC's proposal is to have four representatives on its Pension Board or five if an independent chair is deemed necessary. Paragraph 23, below, and Appendix 1, attached, provide more detail.

5 Two further amendments to the Constitution are proposed in this report:

- to update and clarify the Terms of Reference and Powers of the Pension Fund Panel, including adding a reference to the oversight role of the newly formed NCC LGPS Pension Board, as set out in paragraph 33 below; and
- to update and clarify the terms shown for councillor access to the LGPS, as set out in paragraph 37 below.

## BACKGROUND

*Northumberland County Council is an administering authority under the Local Government Pension Scheme Regulations (meaning a body listed in Part 1 of Schedule 3 of the 2013 LGPS Regulations who maintains a fund within the LGPS). An administering authority is a Scheme Manager as defined by the Public Service Pensions Act 2013.*

### Requirement to establish NCC's LGPS local Pension Board

1 The Public Service Pensions Act 2013 ("the 2013 Act") set out new governance arrangements for all public service schemes with effect from **1 April 2015**, requiring each LGPS fund to have a Scheme Manager and a local Pension Board (LPB) in place.

2 For the LGPS, the Scheme Manager is responsible for administering the Scheme, with a decision making role equivalent to that fulfilled by the existing section 101 pensions committee (i.e. the NCC Pension Fund Panel). In contrast, the local Pension Board is responsible for **assisting the Scheme Manager in securing compliance** with legislation and regulations, and to ensure the **efficient and effective governance and administration** of the LGPS, which is being interpreted as having an oversight role. Establishing a LPB is a new regulatory requirement for LGPS administering authorities.

3 The Scheme Manager is defined as the person responsible for managing or administering the scheme, and the LGPS Governance Regulations provide that for the LGPS, the Scheme Manager is the appropriate administering authority. NCC, as administering authority for the LGPS, already has a well-established delegated structure for administering the LGPS, with the day to day administration being the responsibility of the section 151 officer, and the decision making role delegated to the NCC Pension Fund Panel, a statutory pensions committee.

4 Creation of the local Pension Board does not change the core role of the administering authority or the way it delegates its LGPS functions. The role of the LPB is **to assist**, and its establishment **does not alter** the existing delegations. One of the key drivers behind the introduction of local Pension Boards is to ensure appropriate opportunity for LGPS key stakeholders, being the scheme members and employers, to provide comment on the management of the Scheme.

5 The 2013 Act required DCLG to make governance regulations to enable administering authorities such as NCC to establish their local Pension Boards by 1 April 2015. The final Local Government Pension Scheme (Amendment) (Governance) Regulations 2015 enabling administering authorities to establish LPBs were laid before Parliament on 28 January 2015, much later than originally intended.

6 The LGPS Governance Regulations have been through two rounds of public consultation in draft form, the first in June 2014, and the second in October 2014. The final version of the LGPS Governance Regulations is materially different in some respects from the initial proposals issued by DCLG in June 2014.

7 Key provisions of the LGPS Governance Regulations, relating to the establishment of the LPBs and a national LGPS Advisory Board, will come into force from 20 February 2015. This aims to enable LGPS funds to determine and implement their LPB arrangements ahead of 1 April 2015, when the remaining provisions of the Regulations will take effect.

8 The national LGPS Advisory Board is responsible for providing advice to the Secretary of State for Communities and Local Government on the desirability of making changes to the LGPS, and to administering authorities and LPBs in relation to administration and management of the LGPS and its funds. The LGPS Advisory Board already exists in shadow form and is directly established by the LGPS Governance Regulations themselves.

9 Responsibility for establishing each LPB rests with the administering authority of each LGPS fund, and is mandatory, not optional. LPBs must be established no later than 1 April 2015, which means that the administering authority must have approved the establishment, including the Terms of Reference of the LPB, by 1 April 2015. The Shadow LGPS Advisory Board's "*Guidance on the creation and operation of Local Pension Boards in England and Wales*" issued 28 January 2015 recommends that LPBs should have their first meetings by 1 August 2015. The Guidance can be accessed from the following link: [http://www.lgpsboard.org/images/Guidance/LGPS Board Guidance FINAL PUBLISHED.pdf](http://www.lgpsboard.org/images/Guidance/LGPS_Board_Guidance_FINAL_PUBLISHED.pdf).

10 The expenses of the NCC LGPS LPB will be an administration cost borne by NCC Pension Fund. The national LGPS Advisory Board costs are to be shared between administering authorities, broadly by reference to member numbers.

#### Membership of the LPB

11 The final LGPS Governance Regulations confirm details regarding the required make-up of the LPBs. As well as having **equal numbers of member and employer representatives**, the LPB must have **at least two representatives in each category** (i.e. four in aggregate).

12 In a change from DCLG's original proposals, elected members of local authorities may be appointed to LPBs. However, in the case of an elected member of the administering authority, such appointment may only be as an employer or member representative, and is not allowed at all if he/she is involved in the discharge of the administering authority's functions under the LGPS Regulations 2013 (for example, if he/she is a member of a delegated pensions committee). The same restriction applies to officers of the administering authority with responsibility for pension functions.

13 In an unexpected change from the previous consultation drafts, only member and employer representatives on LPBs can have voting rights. This means that any "other" LPB member who is not a member or employer representative, including any independent chair, does not get a vote.

14 Member and employer representatives must have the "**capacity**" to represent members / employers (as appropriate). The Guidance issued by the Shadow LGPS Advisory Board indicates that the concern here is around time constraints rather than personal qualities. Paragraph 5.14 of the Guidance says: "*It will be important to appoint members who have the time to commit to attend meetings, undertake training and effectively represent employers and members (as appropriate).*"

15 The proposed requirement (in the previous consultation drafts) that member and employer representatives must have appropriate "experience" has been dropped from the final form of the LGPS Governance Regulations, with DCLG acknowledging concerns that this could represent a barrier to LGPS funds finding suitable candidates. However, there is a separate requirement for LPB members to acquire appropriate "knowledge and

understanding” of pensions matters, under the Pensions Act 2004, but this can be satisfied by LPB members undertaking suitable training following appointment.

16 There is no prescribed maximum number of members, and the original proposal that member and employer representatives (in aggregate) must constitute the majority of the LPB has been dropped from the final Regulations.

17 As anticipated, the final LGPS Governance Regulations confirm that an existing section 101 pensions committee of an administering authority may also be the LPB for its LGPS pension fund, but **only if** the administering authority obtains written approval from the Secretary of State. Such approval may be made subject to conditions, and can be revoked if those conditions are breached or if the arrangement ceases to be appropriate. It is not anticipated that this option will be widely used, and NCC does not propose exploring this option, at this stage at least.

#### NCC's proposals to establish a LGPS LPB

18 It is the responsibility of the Council (in its capacity as administering authority for the LGPS) to establish the NCC LGPS LPB. In the last twelve months, the NCC Pension Fund Panel has received information as it has developed about the establishment of the LPB, and in September 2014 it set up a member/officer working group to **make recommendations to NCC** to set the Terms of Reference on which to establish the LPB.

19 The NCC LGPS LPB officer/member Working Group membership is shown below:

	<u>Job title</u>	<u>In his/her capacity as</u>
Karen McWilliam (Group lead)	Public Sector Benefits Consultancy Aon Hewitt (i.e. the NCC Pension Fund's actuary)	Independent LGPS governance expert
Councillor Tony Reid	NCC councillor	Chairman of the Pension Fund Panel
Councillor Andrew Tebbutt	NCC councillor	Member of the Pension Fund Panel
Steven Mason, later substituted by Colin Logan	Lead Executive Director	Section 151 officer
Liam Henry	Legal Services Manager	Monitoring Officer
Jackie Roll	Service Manager - Democracy	Democratic services and governance adviser
Clare Gorman	Principal Accountant (Pensions)	NCC Pension Fund accountant

20 The member/officer Working Group met on 2 October 2014 and made the principal decisions to be incorporated in the recommended Terms of Reference for the NCC LGPS LPB.

21 The decisions made on 2 October were based on the provisions of the first draft Governance Regulations, and Karen McWilliam's knowledge of the anticipated changes to the Regulations "in the pipeline", and the likely terms and tone of the draft Guidance which was published later in October. First draft NCC LGPS LPB Terms of Reference were drawn up late in October. Changes were made to these when the final LGPS Governance Regulations, the final Guidance and sample Terms of Reference were published at the end of January 2015.

22 Please note, the **Pension Fund Panel** (the decision making body) and the NCC LGPS LPB or **Pension Board** (the oversight body) are entirely separate and cannot have overlapping **voting** members. However, the Pension Fund Panel has one employer representative and three member representatives who do not have voting rights on the Pension Fund Panel, and sit instead (on the Panel) as **observers**. The Terms of Reference of the NCC LGPS LPB have been drafted so as to "reuse" the knowledge and expertise of two out of the four observer status representatives on the Pension Fund Panel as two of the **voting** representatives of the Pension Board.

23 The key points incorporated in the NCC LGPS LPB draft Terms of Reference are:

- there are four members of the LPB, or five if an independent chair is deemed necessary;
- only the four members of the LPB (i.e. not the independent chair, if there is one) have voting rights;
- the two employer representatives are (i) a NCC councillor (who does not already sit as a voting member of the Pension Fund Panel), and (ii) the non-voting employer representative who already sits as observer on the Pension Fund Panel;
- the two Scheme member representatives are (i) one of the three non-voting member representatives who already sit as observers on the Pension Fund Panel, and (ii) a pensioner, to be sourced by seeking interest via the annual Pensioner Newsletter; and
- there will be a minimum of two meetings per year, with the option for the Chair of the LPB to call more.

24 A "minimalist approach" has been taken to setting the Terms of Reference, in part to control the costs of operating the NCC LGPS LPB, in part to recognise that the role of the LPB is to *assist* the Scheme Manager not to make the decisions of the Scheme Manager, and finally reflecting the fact that the existing NCC Pension Fund Panel already includes scheme member and employer representatives in observer capacities.

25 The costs of operating the NCC LGPS LPB will be charged to the NCC Pension Fund, and ultimately to the employers that participate in the Fund, including NCC, via the employer contribution rate.

26 The **decision making role** for the LGPS in NCC **remains** with the **Pension Fund Panel**. The introduction of the LGPS LPB does not change the operation of the Pension Fund Panel, nor its role and duties. The Guidance makes clear, in

paragraphs 3.9, 3.10 and 3.11, that the section 101 committee (i.e. the Pension Fund Panel for NCC) remains the decision making body.

- 27 From officer discussions with Tyne and Wear Pension Fund and Durham County Council Pension Fund, both are planning a similar minimalist approach to that proposed by NCC, with a small number of members on their LPBs. Both do not anticipate making changes to the way the existing pensions committees operate.
- 28 To establish the NCC LGPS Pension Board **before 1 April 2015**, the Working Group recommends that Council approves **such amendments to the NCC Constitution as are necessary** in the opinion of the Monitoring Officer, based on the proposed Terms of Reference which are set out in full in **Appendix 1** to this report.

#### Other related changes to the NCC Constitution

29 As part of the work undertaken to make recommendations to Council to establish the NCC LGPS LPB, the opportunity was taken to review the governance arrangements of the Pension Fund Panel itself (as described in the NCC Constitution), and to consider whether the current NCC Constitution requires updating to reflect current practice and/or current LGPS Regulations.

30 **Two further changes** to the NCC Constitution are recommended in this report. These are set out in paragraphs 31 to 38 below, together with the reasons for recommending the changes.

#### Terms of Reference and Powers of the Pension Fund Panel

31 The Terms of Reference and Powers of the Pension Fund Panel included in the current NCC Constitution dated 1 October 2014 (see page 56 of the Constitution) are as follows:

#### Within **Part 3 - MATTERS RESERVED TO ELECTED MEMBERS & COMMITTEE TERMS OF REFERENCE**

##### **16. Pension Fund Panel**

##### **Terms of Reference and Powers**

*To fulfil the administering authority functions contained within the LGPS regulations*

*Principal Duties:*

- *To deal with all matters relating to the investment of the Northumberland County Council's Pension Fund;*
- *To consider and determine applications to be admitted to the Fund from qualifying community organisations;*
- *To consider and determine matters of administration appertaining to the Fund as a whole; and*
- *To appoint independent advisors to the Fund.*

32 The Terms of Reference and Powers of the Pension Fund Panel as currently drafted are wide ranging in relation to investment and administration matters, but include two quite specific powers (relating to community admissions and appointment of advisors) and omit other significant areas of responsibility undertaken by the Pension Fund Panel. Further, the phrase “community organisations” no longer has the meaning it had prior to the introduction of the LGPS Regulations 2013, and needs updating to reflect current LGPS Regulations. The remit of the Pension Fund Panel should also include reference to the newly established NCC LGPS LPB.

33 It is proposed that the remit of the Pension Fund Panel be changed in the NCC Constitution to update it and include some of the more important aspects of the Panel’s functions which are not currently listed. The revised wording has purposefully been kept short and generic because the detailed governance arrangements are described in the Fund’s Governance Policy and Compliance Statement, which is reviewed, updated and changed by the Pension Fund Panel as necessary. It is proposed that the terms shown in italics in paragraph 31 above are replaced with the terms shown in italics below:

### **Part 3 - MATTERS RESERVED TO ELECTED MEMBERS & COMMITTEE TERMS OF REFERENCE**

#### **16. Pension Fund Panel**

##### **Terms of Reference and Powers**

*The Pension Fund Panel has the power to discharge all functions and responsibilities relating to the Council’s role as administering authority for the Northumberland County Council Pension Fund as set out in The Local Government Pension Scheme Regulations 2013 (as amended), the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009 (as amended), and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (as amended).*

*The Panel’s functions include:*

- *Ensuring the proper administration of the Local Government Pension Scheme;*
- *Ensuring appropriate management of the investments of the Northumberland County Council Pension Fund, including keeping under review the Fund’s investment strategy and management structure;*
- *Approving and maintaining administering authority policy statements as required by the Local Government Pension Scheme Regulations including the Funding Strategy Statement, Statement of Investment Principles, Governance Compliance Statement and Communications Strategy;*
- *Making suitable arrangements for the actuarial valuations of the Pension Fund taking into account the covenant risk posed by the participating employers; and*
- *Appointing and reviewing the appointments of investment managers, advisers and consultants.*

*The Northumberland County Council Pension Fund's Governance Policy and Compliance Statement provide further detail of the administering authority's LGPS governance arrangements.*

*NCC LGPS Pension Board provides oversight of the governance and administration of the LGPS. Its Terms of Reference are set out in the Constitution.*

34 The proposed change shown above does not imply any change to the business undertaken by or responsibilities of the Pension Fund Panel, it merely formalises current practice.

### Councillors' Pensions

35 Information relating to councillors' pensions is included in the current NCC Constitution dated 1 October 2014 (see page 195 of the Constitution) as follows:

#### Within **Members' Allowances Scheme 2013**

##### **7. Pensions**

*7.1 The Council supports the principle of members' pensions and a scheme under Section 7 of the Superannuation Act 1972, has been introduced.*

*7.2 Both the basic allowance and the special responsibility allowance shall be treated as amounts in respect of which such pensions are payable.*

36 From April 2003, Regulations were introduced allowing councillors to be members of the LGPS at the discretion of the local authority. In 2009, NCC approved a recommendation to allow its councillors access to the LGPS, with basic and special responsibility allowances treated as pensionable. The wording contained in the NCC Constitution reflects the position following NCC granting councillors access to the LGPS, until 31 March 2014. From 1 April 2014, regulatory changes closed the LGPS to new councillor members, and ended access for existing councillor members at the end of their current term of office. The NCC Constitution has not been changed to reflect the April 2014 regulatory change.

37 It is proposed that information about councillors' pensions be changed in the NCC Constitution to update it for the April 2014 regulatory change, with the terms shown in italics in paragraph 35 above being replaced with the terms shown in italics below:

#### Members' Allowances Scheme 2013

##### 7. Pensions

*7.1 Where a councillor was an active councillor member of the Local Government Pension Scheme before 1 April 2014 he or she can remain in the Scheme until the end of his or her current term of office, with his or her basic allowance and special responsibility allowance treated as pensionable.*

*7.2 A councillor who was not an active councillor member of the Local Government Pension Scheme before 1 April 2014 cannot join the Scheme.*

38 The proposed change shown above updates the Constitution to reflect the current legal position.

## Implications

<b>Policy</b>	The proposed revisions to the NCC Constitution are:  to comply with The Local Government Pension Scheme (Amendment) (Governance) Regulations 2015 (SI 2015 No 57) to establish a NCC LGPS Pension Board with effect from 1 April 2015; and  to update the NCC Constitution for other LGPS related matters.
<b>Finance and value for money</b>	There is a cost associated with establishing and operating the LGPS Pension Board which will be charged to the Northumberland County Council Pension Fund. All amounts charged to the Pension Fund are ultimately paid for via the employer contribution rates paid by the employers participating in the Fund, including NCC.
<b>Legal</b>	None
<b>Procurement</b>	None
<b>Human Resources</b>	None
<b>Property</b>	None
<b>Equalities</b>  (Impact Assessment attached)  Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A <input type="checkbox"/>	None
<b>Risk Assessment</b>	None
<b>Crime &amp; Disorder</b>	None
<b>Customer Consideration</b>	None
<b>Carbon reduction</b>	None
<b>Wards</b>	All

## **Background papers**

- Shadow LGPS Advisory Board's "Guidance on the creation and operation of Local Pension Boards in England and Wales" updated 28 January 2015, (link attached, see paragraph 9 above) and the draft version, published 17 October 2014
- The Local Government Pension Scheme (Amendment) (Governance) Regulations 2015 (SI 2015 No 57)
- The Public Service Pensions Act 2013
- Shadow LGPS Advisory Board's sample Terms of Reference
- Information and analysis from various LGPS pension experts including Aon Hewitt, Hymans Robertson, Barnett Waddingham and Eversheds
- Pension Fund Panel reports
- Advice from Aon Hewitt

## **Report sign off**

	initials
Finance Officer	CL
Monitoring Officer/Legal	LH
Human Resources	n/a
Procurement	n/a
I.T.	n/a
Executive Director	SM
Portfolio Holder(s)	DL

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