

## **The Lothian Pension Fund**

### **Pension Board Constitution**

#### **Introduction**

The City of Edinburgh Council (the “**Scheme Manager**”) is required to establish a Pension Board for the purposes of facilitating the administration of the Lothian Pension Fund, the Lothian Buses Pension Fund, the Scottish Homes Pension Fund and any other Local Government Pension Scheme that it may administer from time to time (the “**Funds**”). The Pension Board has been established under the provisions of the Local Government Pension Scheme (Governance) (Scotland) Regulations 2015 (the “**2015 Regulations**”) and the Public Service Pensions Act 2013.

Further to Regulation 6(6) of the 2015 Regulations, this constitution (the “**Constitution**”) shall supersede any model or other constitution regarding the operation and functioning of the Pension Board associated with the Funds (the “**Pension Board**”).

#### **1. Remit and exercise of functions**

- 1.1 The Pension Board shall carry out its compliance functions (“**Functions**”) strictly within the remit set out in Regulation 5 of the 2015 Regulations.
- 1.2 Members of the Pension Board (“**Members**”) shall have access to and receive all papers provided to the Scheme Manager’s Pensions Committee (the “**Pensions Committee**”) (and any sub-committee) for the purpose of their carrying out the Functions. Members may requisition additional reports from the Scheme Manager in accordance with Regulation 8(3) of the 2015 Regulations to the extent reasonably required for the proper performance of their Functions.
- 1.3 Members shall have a collective duty to act independently in the interests of the members and employer bodies in the Funds. In most cases the interests of these stakeholders in the Funds will be aligned, but where they do diverge the Members shall use their reasonably exercised discretion to take a balanced and proportionate view of the interests of the respective stakeholders in the Funds in the context of the particular circumstances and having regard to any regulation or guidance issued by the UK Pensions Regulator.
- 1.4 Members of the Pension Board shall not participate in the voting, decision making or other business of the Pensions Committee, or the operational activity of the Scheme Manager, other than to input to the discussion and/or consideration of matters by the Pensions Committee to the extent required and appropriate in the performance of their Functions.

## 2. Membership

- 2.1 The membership of the Pension Board will at all times consist of equal numbers of trade union representatives (drawn from trade unions that represent the membership of the Funds) ("**Employee Members**") and scheme employer representatives (drawn from scheduled or admitted bodies that participate in the Funds) ("**Employer Members**") and will comprise:
- a. five Employer Members; and
  - b. five Employee Members.
- 2.2 Members who are appointed to the Pension Board will at all times be required to:
- a. demonstrate the relevant knowledge, understanding and expertise to properly perform the Functions;
  - b. make all reasonable efforts to regularly attend the meetings of the Pension Board;
  - c. make appropriate contributions at Pension Board meetings in the performance of their Functions; and
  - d. comply with the Scheme Manager's Training and Attendance Policy (as amended from time to time).
- 2.3 To the extent that any Member does not comply with the competency criteria set out in paragraph 2.2 above, the Scheme Manager shall have the right to serve notice on the Pension Board to that effect. On receiving notice from the Scheme Manager, the Pension Board shall take action to remove the relevant Member and reappoint a suitable replacement, unless it can demonstrate to the Scheme Manager's reasonable satisfaction that such Member has or will be able to perform the Functions in compliance with such criteria.
- 2.4 At no time shall a Member be appointed or retained who is at that time also a member of the Pensions Committee.
- 2.5 Subject to paragraph 12 herein, no person may be appointed to the Pension Board that, in the Scheme Manager's sole discretion, has a Conflict of Interest. A '**Conflict of Interest**' being a financial or other interest which is likely to prejudice a person's exercise of the Functions as a Member, but does not include a financial or other interest arising merely by virtue of that person being a member of any of the Funds.
- 2.6 Persons other than Members may attend meetings of the Pension Board at its direction and at its chairman's discretion as to numbers and, where the Pension Board and the Pensions Committee will meet concurrently, with the prior approval of the Convener of the Pensions Committee.

### **3. Meetings**

- 3.1 Members participate in a meeting of the Pension Board where it has been called and constituted in accordance with this Constitution and the 2015 Regulations.
- 3.2 The Pension Board shall meet at least quarterly and, in the normal course, to coincide with the meetings of the Pensions Committee. While the statutory roles and function of the Pensions Committee and Pension Board are separate, normal practice will be that both bodies will meet at the same time to consider the same agenda, with the Convener of the Pensions Committee chairing the concurrent meeting.
- 3.3 A majority of the Pension Board may otherwise agree to hold meetings from time to time and will authorise one of the joint secretaries to issue notice of such a meeting and make the necessary arrangements.
- 3.4 No less than 7 days notice of a meeting of the Pension Board must be given to each Member, unless unanimously agreed by the Members, and will usually be given in writing (including in electronic form). Any papers to be considered at or in advance of a meeting of the Pension Board shall be circulated to the Members no less than 5 days before the meeting.
- 3.5 In determining whether a Member is participating in a meeting of the Pension Board it is irrelevant where any Member is or how they communicate with each other. If all of the Members participating in the meeting are not in the same place they may decide that a meeting is to be treated as taking place wherever any of them is.

### **4. Quorum for Members' meetings**

- 4.1 At a meeting of the Pension Board, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- 4.2 The quorum for a Pension Board meeting shall be four Members, comprising at least two Employer Members and two Employee Members.
- 4.3 If the total number of appointed Members for the time being is less than the quorum required, the Members must not take any decision other than a decision to fill any Member vacancies.

## **5. Chairing meetings**

- 5.1 Members will appoint a Member to chair the meetings of the Pension Board during any meeting not held concurrently with a meeting of the Pensions Committee.
- 5.2 Where the Pension Board and the Pensions Committee meet concurrently the Convener of the Pensions Committee will chair the meeting and the chairman of the Pension Board may act as a spokesperson on behalf of the Pension Board (without prejudice to the rights of any other member of the Pension Board to speak at the meeting).
- 5.3 The chairman of the Pension Board will be rotated on an annual basis so that it shall be held in alternate years by:
- a. a person nominated by a majority vote of the Employer Members and subsequently appointed by the Pension Board; and
  - b. a person nominated by the majority vote of the Employee Members and subsequently appointed by the Pension Board.
- 5.4 The chairman of the Pension Board may have their tenure extended for one further year only by the agreement of no less than 80% of the Members of the Pension Board and with approval of the Scheme Manager.
- 5.5 Where the appointed chairman is not participating in a meeting of the Pension Board the participating Members must appoint one of themselves to chair it.

## **6. Decisions by Members**

- 6.1 Subject to Regulation 9 of the 2015 Regulations, decisions by the Members shall be made by either a majority approval at a meeting of the Pension Board or by way of a unanimous written resolution approved (through either signing of the resolution itself or agreement to it in writing by email) by all of the Members at that time.
- 6.2 If the number of votes for and against a proposal are equal the chairman shall have the casting vote, unless the chairman is otherwise excluded from participating in the relevant vote (e.g. should they have a conflict of interest etc.).
- 6.3 Where the Pension Board agree to invoke its right under Regulation 9(1) of the 2015 Regulations to request that the Pensions Committee review a particular decision, such a request (except where the Pensions Committee and Pension Board agree that would not be appropriate) will be made within 10 days of that decision having been made by the Pensions Committee. The Pension Board will only request that a decision of the Pensions

Committee be reviewed where it has reasonable grounds for such review, in accordance with Regulation 9(3) of the 2015 Regulations and that such grounds are within the remit of its Functions.

- 6.4 Where any difference in views between the Pension Board and the Pensions Committee is to be published, pursuant to Regulation 9 of the 2015 Regulations, the Pension Board shall provide the Scheme Manager with a written statement to that effect and give the Scheme Manager and the Pensions Committee a reasonable period of time to consider that statement and respond with any comments.
- 6.5 The Pension Board shall ensure, working together with the Scheme Manager, that any joint secretarial report published pursuant to Regulation 9(3) of the 2015 Regulations does not include any:
- a. incorrect, inaccurate, ambiguous or misleading statements; or
  - b. confidential or sensitive information, the disclosure of which may result in the Scheme Manager being in breach of contract or any applicable law or would be substantially to the financial or other detriment of the Funds and their stakeholders.

## **7. Delegation to individual Members and sub-committees**

- 7.1 Members of the Pension Board may delegate Functions to a particular Member or a sub-committee of Members of the Pension Board for the purpose of attending any sub-committee of the Pensions Committee. It is anticipated that any such sub-committee of the Pension Board will contain a reduced number of Members proportionate to the relevant sub-committee being attended but will at all times be constituted to have equal numbers of Employer Members and Employee Members. Decisions taken by any sub-committee must follow the procedures, in as far as they are applicable, of this Constitution which govern decisions by the Pension Board.

## **8. Secretaries**

- 8.1 The Scheme Manager and the Employee Members shall each appoint a joint secretary of the Pension Board in accordance with Regulation 6(5).
- 8.2 The Scheme Manager shall provide reasonable and appropriate support in order to assist with the administration of the Pension Board, such as the preparation of minutes of meetings (including any decisions, noting conflicts, attendance etc.) of the Pension Board whether held separately or at the same time as the Pensions Committee meetings.

## **9 Appointment and removal of Members**

- 9.1 Any person who is willing to act as a Member and has the requisite level of knowledge, skill and expertise may be appointed as a Member in accordance with the Scheme Manager's Appointment and Nomination Policy (as amended from time to time).
- 9.2 A person ceases to be a Member as soon as:
- a. that person dies or resigns as a Member;
  - b. that person is convicted of a serious criminal or civil offence or is declared bankrupt;
  - c. that person has become physically or mentally incapable of acting as a Member and may remain so for more than three months; or
  - d. the Scheme Manager has issued a notice to the Pension Board pursuant to paragraph 2.3 of the Constitution which the Scheme Manager has confirmed is not to be withdrawn.
- 9.3 A Member may also be removed with the unanimous approval of all other Members of the Pension Board.

## **10 Amending the Constitution**

- 10.1 This Constitution may be amended by the agreement of no less than 80% of the Members of the Pension Board and with the written consent of the Scheme Manager. Any amendments to the Constitution must be made in compliance, and not conflict, with the 2013 Act (where appropriate) and the 2015 Regulations.
- 10.2 Where the Pension Board has agreed to amend the Constitution in accordance with paragraph 10.1 above, but the Scheme Manager has refused to give its consent, the matter may be referred to the National Scheme Advisory Board in Scotland for resolution pursuant to Regulation 6(8) of the 2015 Regulations.

## **11 Costs and Members' expenses**

- 11.1 The Pension Board will liaise with the Scheme Manager to assist the Scheme Manager in budgeting for the likely costs of operating the Pension Board in the subsequent financial years. Any costs associated with the operation and administration of the Pension Board (including the costs of any advisers to be appointed by the Pension Board) will be borne by the Funds, provided that the Pension Board has sought prior approval of the Scheme Manager before incurring such costs.

11.2 The Funds also shall pay and/or reimburse the Members for any reasonable expenses properly incurred in connection with their attendance at meetings of the Pension Board, any sub-committee or training event held in accordance with the Scheme Manager's Training and Attendance Policy provided that the Scheme Manager's prior approval is sought before incurring any such expenses (other than routine costs associated with travelling to and from Pensions Committee meetings) and appropriate receipts are sent to the Scheme Manager evidencing the expenses being claimed for.

## **12 Conflicts of interest**

12.1 Members must declare any potential conflicts of interest at the start of any meeting of the Pension Board.

12.2 If the proposed decision of the Members is particularly concerned with an actual or proposed transaction or arrangement with a person or entity in which the Member is interested, that Member is not to be counted as participating in the decision-making process for quorum of voting purposes, except where:

- a. the remaining Members in attendance unanimously vote that the Member should participate;
- b. the Member's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or
- c. the Member's conflict of interest arises simply by virtue of its role as a representative of either a member or employer group or body.

## **13. Records of decisions**

13.1 Minutes of each meeting of the Pension Board will be prepared, including where the Pension Board and Pensions Committee meet concurrently, which shall include a record of the time and place of the meeting, those attending, any conflicts of interest noted and all decisions made at such meetings by the Members.

13.2 The draft minutes will be approved at the next meeting of the Pension Board, signed by the chairman and copy circulated to the Pensions Committee and the Scheme Manager.

13.3 Notwithstanding the process to prepare and agree the minutes, a summary of the decisions taken at each meeting of the Pension Board will be circulated to the Members and the Pensions Committee within 10 days of that meeting taking place.

13.4 Copies of the agreed minutes of Pension Board meetings shall be retained by the Scheme Manager for no less than 12 years from the date of the decision.

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