

## Wiltshire Pension Fund Board

# Protocol 2B

## LOCAL PENSION BOARD OF WILTSHIRE COUNCIL TERMS OF REFERENCE

### Introduction

1. This document sets out the Terms of Reference of the Local Pension Board of Wiltshire Council (the “Administering Authority”) being a scheme manager as defined under Section 4 of the Public Service Pensions Act 2013. The Local Pension Board (the “Board”) is established under Section 5 of that Act and 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 Committee. Relevant information about its creation and operation are contained in these Terms of Reference.
3. The Board is not a committee constituted under Section 101 of the Local Government Act 1972 and therefore has no general duties, responsibilities or powers assigned to such committees or to any sub-committees or officers under the constitution, or scheme of delegation of the Administering Authority applying to the Board unless expressly included in this document.
4. Except where approval has been granted under Regulation 106(2) of the Regulations the Board shall be constituted separately from any committee or sub-committee constituted under Section 101 of the Local Government Act 1972 with delegated authority to execute the function of the Administering Authority.

### Interpretation

5. 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 and any successor Codes of Practice.

**'the Committee'** means the Wiltshire Pension Fund Committee which has delegated decision making powers for the Fund in accordance with Section 101 of the Local Government Act 1972.

**'the Fund'** means the Wiltshire Pension Fund managed and administered by the Administering Authority.

**'the Guidance'** means the guidance on the creation and operation of local pension boards issued by the 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 Code 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.

**'Other Member'** means a person who does not have a pre-existing employment, financial or other material interest in either the Administering Authority or any scheme employer in the Fund and is not a consultant or adviser of the Fund in the last 5 years from the date of the advertisement and they are not a member of the Fund or a Wiltshire Councillor. Membership is defined as any status holding an existing liability.

### **Statement of purpose**

6. 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) monitor 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**

7. The Board should always act in a reasonable manner in the conduct of its purpose. In support of this duty all Board members shall make declarations on the register of interests of the Administering Authority in accordance with its code of conduct.

### **Establishment**

8. The Board was established on 1 April 2015 after approval by Full Council at its meeting on 24 February 2015 (minute 22).

### **Membership**

9. The Board shall consist of 6 voting members, as follows:

3 Member Representatives (as set out in paragraph 13 and appointed in accordance with paragraphs 17 to 22 below); and

3 Employer Representatives (as set out in paragraph 23 and appointed in accordance with paragraphs 24 to 33 below).

10. There shall be an equal number of Member and Employer Representatives.

11. There shall also be an independent chairman who is not entitled to vote.

12. The Board will also have access to an independent governance adviser.

### **Member representatives**

13. Member representatives shall either be scheme members or have capacity to represent scheme members of the Fund. At least one member representative should be an active member of the Wiltshire Pension Fund.

14. Member representatives should be able to demonstrate their capacity to attend and complete the necessary preparation for meetings and participate in training as required.

15. Substitutes shall not be appointed.

16. The 3-member representatives shall be appointed following a transparent recruitment process. Of these a minimum of 1-member representative and a maximum of 2-member representatives shall be nominated from a recognised trade union. At least 1-member representative position should be open to all Fund members and be approved by the Administering Authority (rather than the Committee) based on the process outlined below.

**For the member representatives:**

17. The Administering Authority (rather than the Committee) will administer the appointment process as follows:

18. The Administering Authority shall advertise the member representative role, including information on where to access a nomination pack for each of the 3-member groups. The Administering Authority shall also notify all employer organisations and registered trade unions in writing of the vacancies, including information on where to access a nomination pack for each of the member groups. The nomination pack will include these Terms of Reference, details of the member representative role, a nomination form and instructions for application. The Administering Authority anticipates that any nominations it receives for a trade union representative will have also compiled with that trade union's nomination process. The closing date for receipt of nominations by the Administering Authority will initially be four weeks from the date of advertisement or notice, but where subsequent rounds of nomination are sought this period can alter, as legitimate circumstances dictate.

19. The Administering Authority's Director of Legal & Governance and the Administering Authority's Director Finance, s151 (or their nominated representatives) will score all nominations returned by the deadline against criteria relating to each nominee's ability to meet the capacity requirements of the role, to produce a winning candidate.

21. Where no nominations are submitted in the initial round of advertising for a role, one subsequent request for nominations will be made to the relevant member group and if there is still no success, an advert to a wider member group will take place regardless of their trade union membership, or if they are an active or non-active scheme member. If suitable nominations are still not received, Pension Fund Officers will be entitled to approach suitable individuals who they believe may be suitable members to serve a term of office on behalf of a member group. Approval of a suitable individual will be required from Administering Authority's Director of Legal & Governance and the Administering Authority's Director Finance, s151 (or their nominated representatives). A recommendation will then be made to full council for the appointment to the Board.

22. Full Council/the Standards Committee on behalf of the Council will appoint the member representative(s) of the Board.

**For the Employer representatives**

23. Employer representatives shall be suitable office holders of employers within the Fund or have experience of representing scheme employers in a similar capacity. No officer of Wiltshire Council who is responsible for the discharge of any function of the Administering Authority under the Regulations may serve as a member of the Board.

24. Employer representatives should be able to demonstrate their capacity to attend and complete the necessary preparation for meetings and participate in training as required.

25. Substitutes shall not be appointed.

26. The employer representative(s) shall be appointed following a transparent recruitment process which should be open to employer organisations of the relevant group and be approved by the Administering Authority (rather than the Committee) based on the process outlined below.

27. The Administering Authority (rather than the Committee) will administer the appointment process as follows:

28. To ensure that the employer representative(s) are truly representative of the employer organisations within the Fund, whilst also being given equal opportunity for nomination, employer organisations within the Fund will be divided into three groups based on organisation size (by number of employees) for nomination purposes:

Group 1: Wiltshire Council:

Group 2: Swindon Borough Council and Wiltshire Police: and

Group 3: all other employer organisations within the Fund.

29. The Administering Authority shall publish information on where to access a nomination pack for each employer group. The nomination pack will include these Terms of Reference, details of the employer representative role, a nomination form and instructions for application. Each employer within the group will be invited to put forward one suitable nominee using the prescribed nomination form, which must be returned to the Administering Authority within four weeks of the date of the invitation. However, where subsequent rounds of nomination are sought this period can be altered, as legitimate circumstances dictate.

30. The Administering Authority's Director of Legal & Governance and the Administering Authority's Director Finance, s151 (or their nominated representatives) will score the nomination(s) returned by the deadline against criteria relating to each nominee's ability to meet the capacity requirements of the role, to produce a winning candidate from an employer group.

32. Where no nominations are submitted in the initial round of advertising the role, one subsequent request for nominations will be made to the relevant employer group, following which a third request will be made to the wider employer group. If suitable nominations are still not received Pension Fund Officers will be entitled to approach employer representatives who they believe may be suitable representatives to serve a term of office on behalf of an employer group.

33. Full Council/the Standards Committee on behalf of the Council will appoint the employer representative(s) of the Board.

#### **Other Members**

34. One other member shall be appointed to the Board to act as independent chair by the agreement of both the Administering Authority and the Board.

35. Other members do not have voting rights on the Board.

#### **Appointment of chair**

36. The Administering Authority (rather than the Committee) will administer the appointment process as follows:

37. The independent chair shall be appointed by the Administering Authority but shall count as an 'Other' member under paragraphs 34 to 35 above.

38. The Administering Authority shall advertise the role of chair on the Fund website, the Wiltshire Council job vacancy website and such other appropriate media as it thinks fit, including information on where to access a nomination pack. The nomination pack will include these Terms of Reference, details of the role or chair, a nomination form and instructions for application. The closing date for receipt of nominations by the Administering Authority will be four weeks from the date of advertisement. However, where subsequent rounds of nomination are sought this period can be altered, as legitimate circumstances dictate.

39. The Administering Authority will score all nominations returned by the deadline against criteria relating to each nominee's ability to meet the relevant experience and capacity requirements of the role, to produce a shortlist of nominees.

40. Shortlisted nominees will be invited to an interview by the Administering Authority's Director of Legal & Governance and the Administering Authority's Director Finance, s151 (or their nominated representatives). A recommendation will then be made to Full Council/the Standards Committee on behalf of the Council for the appointment of the chair to the Board based on criteria relating to ability to meet the experience and capacity requirements of the role.

41. Full Council will ratify the chair to the Board. However, the appointment of the chair shall be subject to the passing of a motion to confirm by a majority of the employer and member representatives of the Board.

42. The Board will appoint the vice chair from amongst its remaining voting members. There being no requirement to alternate between an employer representative and a member representative on an annual basis.

#### **Duties of chair**

43. The chair of the Board:

- (a) Shall ensure the Board delivers its purpose as set out in these Terms of Reference :
- (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 and won by a simple majority where consensus cannot be reached. Instances of a failure to reach a consensus position will be recorded and published.

#### **Independent governance adviser**

44. The Administering Authority will procure the services of the independent governance adviser in accordance with Part 11 of the Administering Authority's constitution, having regard to the best interests of the purpose of the Fund. The role will be re-tendered periodically and be consistent with the wider procurement strategy of the Fund as a whole.

45. In this respect the term independent means being able to demonstrate that they can act impartially having no material interest in either Wiltshire Council or any scheme employer in the Fund other than for this role; and not being a member of the LGPS in the Fund.

#### **Notification of appointments**

46. When appointments to the Board have been made the Administering Authority shall publish the name of Board members and the process followed in their appointment, together with the way in which the appointments support the effective delivery of the purpose of the Board.

### **Terms of Office**

47. The term of office for Board members is 4 years, for other members the term can be a maximum of 5 years, where agreed with the Administering Authority.

48. On completion of a Board member's term the nomination process will be undertaken as outlined above and incumbents may seek re-appointment as part of this process. However, an extension to terms of office may be made by the Administering Authority with the agreement of the Board.

49. Board membership may be terminated prior to the end of the term of office if:

(a) there exists a conflict of interest in relation to a Board member which cannot be managed within the internal procedures of the Board:

(b) a Board member becomes incapable of acting:

(c) a Board member becomes responsible for the discharge of any function of the Administering Authority under the Regulations (apart from any function relating to Local Pension Boards or the Scheme Advisory Board), for instance by being appointed to the Committee or accepting employment in relation to the Fund:

(d) a Board member resigns:

(e) a member representative ceases to be a member of the body or scheme on which their appointment relied:

(f) an employer representative ceases to hold the office, employment or membership of the body on which their appointment relied:

(g) a councillor ceases to represent their constituency; or

(h) the Administering Authority (at its sole discretion) determines that a member is no longer able to demonstrate his or her capacity to attend and prepare for meetings or to participate in required training

### **Conflicts of interest**

50. 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 because of their position on the Board.

51. 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 that person being a member of the Scheme.

52. On each appointment to the Board and following any subsequent declaration of potential conflict, the Administering Authority shall ensure that any potential conflict is effectively managed in line with the internal procedures of the Administering Authority, the requirements of the Act, the requirements of the Code and the requirements of Relevant Legislation on conflict of interest for Board members.

### **Knowledge and understanding (including Training)**

53. Knowledge and understanding must be considered in light of the role of the Board to assist the Administering Authority 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.

54. Board members shall attend and participate in training arranged to meet and maintain the requirements set out in the Board's Knowledge and Understanding Policy and Framework.

55. Board members shall participate in such personal training needs analysis or other processes that are put in place to ensure that they maintain the required level of knowledge and understanding to carry out their role on the Board.

56. Failure to attend training or participate in the processes referred to above may lead to removal from the Board.

### **Meetings**

57. Meetings of the Board will be held at least four times a year.

58. The Board will meet at the Administering Authority's main offices, or another location to be agreed by the chair. Meetings will be held during normal working hours at times to be agreed by the chair.

59. The chair of the Board may call additional meetings with the consent of voting members of the Board. Urgent business of the Board between meetings may, in exceptional circumstances, be conducted via communications between members of the Board including telephone conferencing and emails.

### **Quorum**

60. A meeting is only quorate when at least 50% of voting members are present and with at least one scheme member and employer member representative present.

61. A meeting that becomes inquorate may continue but any decisions will be non-binding.

### **Board administration**

62. The chair shall agree with the Administering Authority's Democratic Services team (the 'Board Secretary') an agenda prior to each Board meeting.

63. The agenda and supporting papers will be issued at least 5 working days in advance of the meeting except in the case of matters of urgency.

64. Draft minutes of each meeting including all actions and agreements will be recorded and circulated to all Board members within 10 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.

65. 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 2018.

66. The Board Secretary 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.

67. 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.

68. 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**

69. The Board meetings will be open to the public (unless there is an exemption under relevant legislation which would preclude part (or all) of the meeting from being open to the public). The Board is subject to the Access to Information Procedure Rules in Part 5 of the Administering Authority's constitution and the publication requirements of the Act.

70. The following will be entitled to attend Board meetings in an observer capacity, and may speak with the permission of the chair:

- (a) Members of the Board:
- (b) The Administering Authority's Director Finance, s151:
- (c) The Administering Authority's Head of Wiltshire Pension Fund:
- (d) All Officers of the Wiltshire Pension Fund's Senior Management Team:
- (e) The Administering Authority's Corporate Director of Resources & Deputy Chief Executive:
- (f) The Administering Authority's Cabinet member for finance; and
- (g) Any person requested to attend by the Board.

71. In accordance with the Act the Administering Authority shall publish information about the Board to include:

- (a) The names of Board members.
- (b) The representation of employers and members on the Board.
- (c) The role of the Board.
- (d) These Terms of Reference.

72. The Administering Authority shall also publish other information about the Board including:

- (a) Agendas and minutes
- (b) Training and attendance logs
- (c) An annual report on the work of the Board to be included in the Fund's own annual report.

73. 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; and
- (c) As part of the Governance Compliance Statement.

74. 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 2018.

#### **Expenses and allowances**

75. Any Wiltshire Councillor appointed to the Board will be entitled to receive expenses in accordance with the Administering Authority's constitution (Members' Allowance Scheme).



76. The independent governance adviser will be paid in accordance with the contract concluded with the Administering Authority.

77. Allowances and reimbursement of expenses for all non-Wiltshire Councillor members of the Board will be decided by the Administering Authority.

### **Budget**

78. The expenses of the Board falls as a cost to the Fund. Therefore, the Committee will, via its delegation from Full Council, approve the allocation of an annual budget for the Board which is adequate to fulfil its role as part of its budget setting process. The budget will be managed by and at the discretion of the Board. The budget shall allow for:

- a) accommodation and administrative support to conduct its meetings and other business:
- b) training:
- c) legal, technical and other professional advice; and
- d) other contractual arrangements, as approved by Committee as part of the annual budget.

79. The Board may make requests to the Administering Authority's Director Finance, s151 to approve any additional expenditure required to fulfil its obligations which will then be charged to the Fund budget.

### **Functions**

80. The first function of the Board is to assist the Administering Authority in securing compliance with the Regulations, other legislation relating to the governance and administration of the Scheme and requirements imposed by the Pensions Regulator in relation to the Scheme. Within the extent of this function the Board may determine the areas it wishes to consider including but not restricted to:

- a) Regular compliance monitoring of reports which shall include reports to, and decisions made by the Committee, under the Regulations:
- b) Management, administrative and governance processes and procedures to ensure that they remain compliant with the Regulations, Relevant Legislation and in particular the Code:
- c) The compliance of scheme employers with their duties under the Regulations and Relevant Legislation:
- d) Reviewing such documentation as is required by the Regulations including the Governance Compliance Statement, Funding Strategy Statement and Investment Strategy Statement:
- e) Reviewing scheme members and employers' communications as required by the Regulations and Relevant Legislation:
- f) Monitoring complaints and performance on the administration and governance of the scheme.
- g) The Internal Dispute Resolution Process:
- h) Pensions Ombudsman cases:
- i) 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:
- j) The complete and proper exercise of employer and administering authority discretions:
- k) The outcome of internal and external audit reports: and
- l) The draft accounts and Fund annual report.

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

- a) Monitor performance of administration, governance and investments against key performance targets and indicators:
- b) Review the effectiveness of processes for the appointment of advisors and suppliers to the Administering Authority:
- c) Monitor investment costs including custodian and transaction costs:
- d) Monitor internal and external audit reports:
- e) Review of the risk register as it relates to the scheme manager function of the Administering Authority:
- f) Review the outcome of actuarial reporting and valuations: and
- g) Provide advice and make recommendations when required to the Committee on areas that may improve the effectiveness and efficient operation and governance of the Fund.

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

83. 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.

### **Reporting**

84. The Board is accountable solely to the Administering Authority for the operation of its functions.

85. The Board will submit reports to the Committee as often as the Board deems necessary, typically through the minutes of its meetings. The Board should also 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.

86. The Board should report any concerns over a decision made by the Committee to the Committee subject to the agreement of at least 50% of voting Board (as detailed in paragraph 60)

87. The Local Pension Board via its annual report will detail its work over the preceding 12 months. Such reports will include:

- a) a summary of the work undertaken since the last report:
- b) the work plan for last year and the programme for the next 12 months:
- c) areas raised to the Board to be investigated since the last report and how they were dealt with:
- d) details of training received since the last report and planned:
- e) details of all expenses and costs incurred over the past 12 months and projected for the next year; and
- f) details of any conflicts of interest identified since the last report and how they were dealt with .

88. On receipt of a report under paragraph 85 and 86 above the Committee should, within a reasonable period, consider and respond to the Board.

89. 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.

90. Where the Board is satisfied that there has been a breach of regulation which has been reported to the Committee under paragraph 85 and 86 and has not been rectified within a reasonable period the Board is under an obligation to escalate the breach.

91. The appropriate internal route for escalation is to the Administering Authority's Director Finance, s151 Officer.

92. The Board may report concerns to the LGPS Scheme Advisory Board for consideration after, but not instead of, using the appropriate internal route for escalation.

93. Board members are also subject to the requirements to report breaches of law under the Act and the Code, and the whistleblowing provisions set out in the Administering Authority's whistleblowing policy.

#### **Review of Terms of Reference**

94. These Terms of Reference shall be reviewed on each material change to those parts of the Regulations and relevant scheme guidance covering Local Pension Boards and at least every 5 years.

#### **Protocol 2B**

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