

Background and Purpose

1. Essex County Council is the administering authority for the Essex Pension Fund – the name for the Local Government Pension Scheme (LGPS) in Essex. On 28 January 2015, long anticipated new regulations were laid before Parliament which require the Council to establish a Local Pension Advisory Board by 1 April 2015.
2. A statutory body, the new Local Pension Advisory Board will not have decision making powers. The Board will not replace the existing decision making structure of the Essex Pension Fund. This report asks the Council to make the changes to the Constitution which are needed in consequence of the creation of the new Board (which is to be known as the Essex Pension Fund Advisory Board (PAB)). These changes, summarised at appendix 1, have been considered and agreed by the existing Essex Pension Fund Board and are recommended to the Council.

Current Governance Arrangements

3. Management of the Essex Pension Fund is currently delegated to two bodies:
 - a. the Essex Pension Fund Board, which includes County Councillors, representatives of other employers and of pension scheme members, and
 - b. the Investment Steering Committee, a committee of the Council.
4. The Council currently appoints six members to the Investment Steering Committee who in turn are the County Council's representatives on the Essex Pension Fund Board. The Investment Steering Committee reports quarterly to the Essex Pension Fund Board on investment matters. The Essex Pension Fund Board reports annually to the Council.

Origins of the requirement for the new Pension Advisory Board (PAB)

5. A board of this nature with stakeholder representation was one of the recommendations of Lord Hutton's 2011 report of the Independent Public Services Pension Commission. This was followed by the Public Service Pension Act 2013 and the LGPS Regulations laid at the end of January 2015.

Terms of Reference of the new Pension Advisory Board (PAB)

6. The proposed terms of reference and procedural rules are at appendix 2 and reflect the new PAB's statutory role to assist the Council in meeting all legal requirements in connection with the management of the Essex Pension Fund and the LGPS. It must also assist the Council to comply with the regulatory requirements imposed by the Pensions Regulator. The terms of reference also include a number of other matters which the existing Essex Pension Fund Board considers will help the Fund get the most benefit from the PAB. These are listed in paragraphs 2(F) and 2(H) of appendix 2.

Composition of the new Pension Advisory Board (PAB)

7. The Regulations require the new PAB to be composed of an equal number of representatives of employers and representatives of members of the pension scheme (ie current or previous employees or pensioners). The new PAB can also include other non-voting members.
8. The Regulations prevent an Elected Member from being a member of both the new PAB and either the existing Essex Pension Fund Board or the Investment Steering Committee. The existing Essex Pension Fund Board proposes that this restriction should apply to all members of the PAB not just Elected Members.
9. The proposed composition of the new PAB is:
 - a. Four members representing employers, one appointed by each of the following:
 - i. Essex CC
 - ii. Borough, City and Districts
 - iii. Unitary Councils
 - iv. Other employers
 - b. Four members representing pension scheme members as follows:
 - i. One will be nominated by the Trade Unions
 - ii. Three will be drawn from the three categories of scheme membership:
 1. active members (i.e. employees currently paying into the scheme),
 2. members with deferred benefits (i.e. former employees who have not yet reached pension age); and
 3. pensioners.
 - c. An independent non-voting Chairman.
10. The existing Essex Pension Fund Board considered and supports a proposal from Norfolk County Council in relation to the appointment of an interim PAB Chairman. Under this reciprocal arrangement the Head of the Norfolk Pension Fund would be Chairman of Essex PAB, and in turn the Director of the Essex Pension Fund would be Chairman of the Norfolk Local Pension Advisory Board.
11. It will be necessary to have an appointment process for appointment of the other members of the Board. It is proposed that the existing Essex Pension Fund Board should have delegated authority to agree the process and to make appointments in accordance with this process.
12. The existing Essex Pension Fund Board proposes that arrangements for the PAB, including those of interim Chairman, are reviewed within two years.

Impact on other parts of Scheme Governance

13. It is proposed to make the following changes to the current governance arrangements:
 - a. Increase the size of the Investment Steering Committee from 6 to 7 (this will continue to reflect the political balance of the Council)
 - b. Rename the existing 'Essex Pension Fund Board' as the 'Essex Pension Fund Strategy Board' (PSB) to reflect its strategic role.
 - c. In light of the membership arrangements for the new PAB reduce the size of the PSB from 14 to 11, with the new composition of the Board to be as set out in appendix 1.

Recommendations:

1. That the Constitution be amended with effect from the date of the annual meeting of the Council in May 2015, to
 - a. replace existing 'Essex Pension Fund Board' with 'Essex Pension Fund Strategy Board' wherever it appears;
 - b. change the size of the Essex Pension Fund Strategy Board to 11 members and the size of the Investment Steering Committee to 7 members;
 - c. Insert the following text at the end of paragraph 8.1 of the Constitution: "The Essex Pension Fund Advisory Board is included as a statutory body created by the full Council."
 - d. include appendix 2 as paragraph 8.1.9 of the Constitution
 - e. amend paragraph 8.1.6 of the Constitution (which defines the membership of the Essex Pension Fund Board) to say:

Membership: 11 members consisting of seven Members of the Council, one member representing Borough, City and District Councils in Essex, one member representing Southend-on-Sea and Thurrock Unitary Councils, one member representing other Employing Bodies nominated by the Employer Forum and one member representing Scheme Members nominated by Unison.

2. That the Essex Pension Fund Advisory Board (PAB) be created as the Council's Local Pension Advisory Board with the membership, terms of reference and procedural rules as set out at Appendix 2. Furthermore the PAB's interim Chairman will be the Head of the Norfolk Pension Fund in line with the reciprocal arrangement that requires the Director for Essex Pension Fund to be the Chairman of the Norfolk Local Pension Advisory Board.
3. That the existing Essex Pension Fund Board be authorised to
 - a. Approve the manner of appointment of Employer and Member representatives members of the PAB
 - b. Agree the appointment of members of the PAB in accordance with the arrangements set out in appendix 2 or as approved by the Board.
4. That the Monitoring Officer be authorised to make necessary changes to the Constitution in consequence to these changes.

Appendix 1

Table 1 - Existing Arrangements	Investment Steering Committee (ISC)	Essex Pension Fund Board
Essex County Council	6	6
Borough, City and District Councils		2
Unitary Councils		2
Police & Crime Commissioner		1
Fire Authority		1
Smaller employers		1
Trade Unions		1
Total	6 *	14
<p>Note: * In addition to the six members of the Committee there are two ISC Observers who are permitted to speak at the meeting. One observer represents employers and one represents members of the pension scheme. All Board Members are able to attend to ISC meetings.</p>		

Table 2 - Proposed arrangements	Investment Steering Committee (ISC)	Pension Strategy Board (PSB)	Pension Advisory Board (PAB)
Essex County Council	7	7	1
Borough, City and District Councils		1	1
Unitary Councils		1	1
Smaller Employers (including Police & Fire)		1	1
Trade Unions		1	1
Scheme Members (active members, members with deferred benefits and pensioners)			3
Independent PAB Chairman (non-voting)			1
Total	7 *	11 **	9
<p>Note * In addition to the seven members of the Committee there will be four ISC Observers permitted to speak at ISC meetings. One observer will represent employers, 1 will be appointed by trade union and 2 will be appointed by the PAB (1 from employer representatives and 1 from scheme member representatives) ** In addition to the 11 members of the PSB it is proposed that the PAB will appoint two PSB observers permitted to speak at PSB meetings (1 from employer representatives and 1 from scheme member representatives) All ISC, PSB & PAB Members will be able to attend meetings of the other bodies.</p>			

Appendix 2

THE ESSEX PENSION FUND ADVISORY BOARD

TERMS OF REFERENCE AND RULES OF PROCEDURE

1. Introduction

The Essex Pension Fund Advisory Board is appointed by Essex County Council as its Local Pensions Board in accordance with section 5 of the Public Service Pensions Act 2013 (PSPA13) and Part 3 of the Local Government Pension Scheme Regulations 2013. It is referred to in this document as 'the Board'

In this document:

"CoP" means any Code of Practice on Governance issued by tPR

"EPF" means the Essex Pensions Fund

"ISC" means the Investment Steering Committee

"LGPS" means the Local Government Pension Scheme

"PSB" means the Essex Pension Fund Strategy Board"

"Scheme Manager" means Essex County Council

"tPR" means the Pensions Regulator

2. Remit of the Pensions Advisory Board

The Board has the following remit:

- (A) To assist Essex County Council (ECC) Administering Authority as Scheme Manager –
 - to secure compliance with the Local Government Pension Scheme (LGPS) regulations and any other legislation relating to the governance and administration of the LGPS
 - to secure compliance with requirements imposed in relation to the LGPS by the Pensions Regulator (tPR)
- (B) To secure the effective and efficient governance and administration of the LGPS for the EPF
- (C) To help ensure that the EPF is managed and administered effectively and efficiently and complies with the CoP.
- (D) To assist the Scheme Manager with such matters as the scheme regulations may specify.
- (E) To–
 - be a 'critical friend' to the PSB and the Investment Steering Committee.
 - provide oversight of decisions made by the PSB to ensure that due process has been followed.
- (F) The Pensions Advisory Board may review any decision made by or on behalf of the Scheme Manager.

Stage 1: The Board may refer a decision to the original decision maker if at least 3 employer representatives and 3 scheme member representatives believe that one or more of the following applies:

- 1 The decision maker was not authorised to make the decision in question;
- 2 The decision was in breach of legislation and/or regulations;

- 3 The decision maker did not follow professional advice given (or didn't take professional advice) and it is believed that this could result in a materially bad outcome for the EPF;
- 4 The approach to making the decision did not follow one or more of the following principles:
 - (i) The decision-maker did not ask themselves the right question(s);
 - (ii) The decision-maker did not direct themselves correctly in law; in particular did not adopt a correct interpretation of the legislation and regulations relevant to the EPF;
 - (iii) The decision-maker did not take into account all relevant facts;
 - (iv) The decision-maker arrived at a perverse decision (i.e. a decision which no reasonable decision-maker could have reached).
- 5 New material has come to light that which might have resulted in a different outcome provided that the original decision has not yet been irrevocably implemented.

Stage 2: If the Board is dissatisfied with the response of the decision maker, it will seek the advice of the Director of EPF (unless the Director was the original decision maker).

Stage 3: Where the decision-maker in question is the Director of EPF or the Pensions Advisory Board remains dissatisfied with the response or resolution from the Director of EPF it will seek the advice of the National Local Government Pension Scheme Advisory Board (and shall inform Essex County Council's section 151 Officer that it has done so).

(G) The Board will adopt a policy statement on reporting breaches identified under (F).

(H) At the invitation of the PSB, the Board may also undertake other tasks, including (but not limited to) –

- Assisting the PSB by reviewing aspects of the performance of the EPF– for example by example by reviewing the risk management arrangements within EPF (although the PSB will remain accountable for risk management)
- reviewing administration standards or performance or review efficacy of scheme member and employer communications
- reviewing published policies to ensure they remain fit for purpose and are complete
- reviewing EPF annual reports
- consider producing a Board annual report in accordance with requirements, guidance and general accountability to stakeholders
- being part of any consultation process with the purpose of adding value to that process based on, for example, their representation of employers and scheme members
- discussing strategic matters such as communications where requested by the Pensions Strategy Board.

(I) Appointing Observers to attend meetings of the PSB and the ISC.

3. Appointment and membership of the Pensions Advisory Board

(A) The Board shall consist of 9 members and be constituted as follows:

- (i) Four employer representatives made up of 1 from each of the following groups of employers in the EPF:
 1. Essex County Council (an elected member)
 2. The District, City and Borough Councils of Essex (an elected member)
 3. Southend on Sea and Thurrock Unitary Authorities (an elected member)
 4. All other employers.

- (ii) Four scheme member representatives of which 1 will be nominated by the trade unions and the rest drawn from the total scheme membership (active, deferred and pensioner members);
 - (iii) 1 independent Chairman.
- (B) Employer and scheme member representatives will be appointed through a clear and transparent process as determined by the PSB. The Independent Chairman will be appointed by the PSB.
- (C) Where any employer, other than Essex County Council, has a representative on the PSB, that employer will not be permitted to also have a representative on the Board.
- (D) No officer of Essex County Council who is either responsible for discharging any function in relation to the LGPS regulations or has delegated decision making authority in relation to LGPS matters may be a member of the Board.
- (E) No member of the PSB may be appointed to the Board.

4. Meetings of the Board

- (A) The Board shall have a quorum of 3 including the Chairman, 1 employer representative and 1 scheme member representative.
- (B) Substitutes will not be permitted
- (C) Meetings will normally be held at the offices in County Hall and will be held in public
- (D) All Board Members will be entitled to vote unless otherwise stated in the LGPS Regulations.
- (E) In the event of an equal number of votes being cast for or against a proposal there shall be no casting vote but the proposal shall be considered to have been rejected.
- (F) The PSB may appoint observers who will normally be entitled to speak on any item at a meeting of the Board.

5. Standards and Conflicts of Interest

- (A) The Board shall adopt a policy for identifying conflicts of interest.
- (B) Members of the Board must provide the Scheme Manager with such information as it requires to ensure that any member of the Pensions Advisory Board or person to be appointed to the Board does not have a conflict of interest.
- (C) The Board will comply with the EPF training policy and training opportunities will as far as possible be shared with the PSB and Investment Steering Committee.
- (D) The Board will, after consulting the Scheme Manager's Monitoring Officer, adopt a code of conduct to which all members will be required to abide.

6. Review

- (A) The Board will undertake an annual review process to assess its performance with a view to seeking continuous improvement in the Board's performance. The first review will take place no later than 1 October 2016.
- (B) The Board will commence a review of its efficacy after the first 18 months to determine whether it is meeting the needs of EPF's stakeholders and in time for any changes to be made in May 2017.

7. Publication of Board information

Information will be posted on the EPF website (www.essexpensionfund.co.uk).