

## **Extracts from the Constitution – Local Pension Board’s Terms of Reference**

### **The Essex Pension Fund Advisory Board**

#### **1. Introduction**

The Essex Pension Fund Advisory Board was appointed by Essex County Council (the Scheme Manager and Administering Authority to Essex Pension Fund) on 10 February 2015 as its Local Pensions Board in accordance with section 5 of the Public Service Pensions Act 2013 and Part 3 of the Local Government Pension Scheme Regulations 2013. As such, Parts 3 and 4 of the Constitution of Essex County Council do not apply to this Pension Fund Advisory Board unless expressly referred to within and permitted by these Terms of Reference and Rules of Procedure. The Pension Fund Advisory Board is referred to in these terms of reference as ‘the Board’.

In these terms of reference:

“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”, “Council” and “ECC” means Essex County Council

“TPR” means The Pensions Regulator

The Board will exercise all its powers and duties in accordance with legislation and these Terms of Reference and Rules of Procedure. The Board shall have the power to do anything which is considered to facilitate, or is conducive or incidental to, the discharge of its functions.

#### **2. Remit of the Board**

The Board has the following remit:

(A) To assist the Scheme Manager:

- to secure compliance with the 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 TPR

(B) To assist the Scheme Manager to ensure the effective and efficient governance and administration of the LGPS for the EPF.

In doing this, the Board:

- a) shall assist the Scheme Manager with such matters as the LGPS regulations and guidance may specify.
- b) shall be a “critical friend” to the PSB and the ISC.

- c) may provide oversight of decisions made by the PSB and ISC to ensure that due process has been followed.
- d) may review any decision made by or on behalf of the Scheme Manager or any action taken by the Scheme Manager.
- e) shall comment on and assist in identifying and managing breaches of the law in relation to EPF matters.
- f) at the invitation of the PSB, may also undertake other tasks, including (but not limited to):
  - assisting the PSB by reviewing aspects of the performance of EPF – for 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 EPF Member and Employer communications;
  - reviewing published policies to ensure they remain fit for purpose and are complete;
  - reviewing EPF annual reports;
  - being part of any consultation process with the purpose of adding value to that process based on, for example, their representation of Employers and EPF Members;
  - discussing strategic matters such as communications where requested by the PSB.
- g) shall provide such information as is requested to other bodies including but not limited to the LGPS Scheme Advisory Board and TPR and provide an annual report of the work of the Board to the Scheme Manager.
- h) will prepare a record of each meeting which will normally be published no later than 12 working days following the meeting using the appropriate systems of the Scheme Manager.
- i) must provide a record of each meeting to the following PSB meeting and may make reports and recommendations to the PSB insofar as they relate to the role of the Board (see "Reporting and Escalation").

The Board is not a decision-making body in relation to the management of the EPF but makes recommendations to assist in such management. The EPF's management powers and responsibilities which have been, and may be, delegated by the Council to committees, sub-committees and officers of the Council, remain solely the powers and responsibilities of those committees, sub-committees and officers. The Board operates independently of the PSB.

Though Members of the Board include representatives of specific categories of stakeholder (i.e. EPF Members and Employers) each Member is required to

have due regard to the Remit of the Board as outlined above. Accordingly, all Members are expected to work jointly in the best interest of the EPF, rather than representing the interest of any individual stakeholders or organisations. This should not prevent Members from sharing their knowledge on how matters might impact specific stakeholders of the EPF.

### **3. Appointment and Membership of the Board**

(A) The Board shall consist of nine Members and be constituted as follows:

- (i) four Employer representatives made up of one 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) and
  - 4. all other Employers
- (ii) four Scheme Member representatives of which:
  - one will be nominated by the trade unions and
  - the rest will be drawn from the total EPF active, deferred and pensioner membership
- (iii) one independent Chairman.

(B) The Employer representatives in 3(A)(i)1, 2 and 3 above will be appointed by the respective authorities referred to in each of those clauses.

(C) The Employer representative as per clause 3A(i)(4) above, and Scheme Member representatives, and the Independent Chairman will be appointed through a clear and transparent process as determined by an Appointments Panel which will consist of:

- (i) the Chairman of the PSB
- (ii) the Scheme Member representative from the PSB
- (iii) the Director for Essex Pension Fund

and will be advised by the Independent Governance and Administration Adviser for EPF.

The Appointments Panel will also be supported by Officers of the EPF as considered as appropriate by the Appointments Panel.

The Appointments Panel will define any eligibility and/or selection criteria that will apply to Board Members within the scope of this procedure, beyond those already included in these Terms of Reference and Rules of Procedure, having due regard to the LGPS Regulations and any other relevant Code of Practice and guidance. The Appointments Panel will have the power to appoint or reject any nomination or applicant where they consider the

individual does not meet the eligibility and/or selection criteria. Should any of the Appointments Panel members be unable to undertake their responsibilities they, or the remainder of the Appointments Panel in their absence, may delegate a suitable alternate to undertake Appointments Panel responsibilities on their behalf.

- (D) Where any Employer, other than ECC, has a representative on the PSB or ISC, that Employer will not be permitted to also have a representative on the Board.
- (E) No Officer of ECC 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.
- (F) No Member of the PSB or ISC may be appointed to the Board.
- (G) All Scheme Member and Employer representatives must have the capacity to represent their EPF Members and Employers as appropriate
- (H) The Board shall appoint a Vice Chairman annually from amongst its Members at the first meeting of the Board after each annual meeting of the Council. This will be done by a nomination process followed by a show of hands from those in attendance at that first meeting.

#### **4. Term of Office**

- (A) Employer representative appointments will expire after a period of four years from the date of establishment of the PAB or the date of their appointment if later. This period may be extended to up to six years if agreed by the Director for Essex Pension Fund. It will automatically cease if the individual is no longer in the employment of that Employer, no longer holds office in relation to that Employer or is no longer an elected member of that Employer, as appropriate.
- (B) Scheme Member representative appointments will expire after a period of four years from the date of establishment of the PAB or the date of their individual appointment if later. This period may be extended to up to six years if agreed by the Director for Essex Pension Fund. It will automatically cease if the individual is no longer a trade union representative or representative of EPF Members (in accordance with the criteria set by the Appointments Panel).
- (C) The Independent Chairman's appointment will expire after a period of four years from the date of establishment of the PAB or the date of their individual appointment if later. This period may be extended to up to six years if agreed by the Appointments Panel.
- (D) Any Board Member, including the Independent Chairman, may be re-appointed for further terms following an appointment process.
- (E) The Term of Office may be extended by up to six months if considered necessary for the purpose of the appointment process, for example, due to the timing of local authority elections, with the agreement of the Director for Essex Pension Fund.

(F) In relation to Scheme Members representatives who are appointed by the Appointments Panel, other than ceasing to be eligible (as set out above) a Board Member may only be removed from office during the term of appointment by the unanimous agreement of the Appointments Panel. Such reasons may include non-compliance with this Terms of Reference and Rules of Procedure including inappropriate conduct, conflicts of interest, avoidance of training or low meeting attendance, not having the capacity to represent their members or for any other reason not meeting the criteria required to be a Board Member.

(G) The removal of the Independent Chairman requires unanimous agreement from the Appointments Panel.

## **5. Meetings of the Board**

(A) The Board shall have a quorum of 4 including at least the Chairman or Vice-Chairman, 1 Employer representative and 1 Scheme Member representative. A meeting that is (or becomes at any point) inquorate will only continue if the Chairman (or Vice-Chairman) decides it should and in relation to items of business as agreed by the Chairman (or Vice-Chairman). Attendance will be recorded and monitored by the EPF.

(B) Substitutes will not be permitted.

(C) Meetings will normally be held at the offices in County Hall, Chelmsford.

(D) Following such procedure as determined by the Chairman, urgent business of the Board between meetings may in exceptional circumstances between Members of the Board including telephone conferencing and e-mails.

(E) The Board will normally meet a minimum of twice in each calendar year.

(F) It is expected that voting by the Board will only be in exceptional circumstances and the Board will, as far as possible, reach a consensus. Each Scheme Member representative and Employer Member representative will be entitled to vote where voting is considered necessary by the Chairman.

(G) Where voting is considered necessary by the Chairman, 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.

(H) The results of any voting outcomes will be recorded in the Board meeting record.

(I) The Independent Chairman of the Board will not be entitled to vote.

(J) Meetings of the Board are not open to the general public. The following will be entitled to attend Board meetings as observers and may be asked to present information or answer questions by the Board. Comments may

also be made by these persons subject to permission to speak being granted by the Chairman:

- i. Members of the PSB and ISC
- ii. The Executive Director, Finance and Technology (section 151 Officer), the Director for Essex Pension Fund, the other Officers holding managerial positions for EPF, and the Monitoring Officer
- iii. Other Officers or Advisers of the EPF or the Scheme Manager with responsibilities in relation to matters being considered by the Board or providing support to the Board including carrying out the administration for the Board
- iv. Other Employers participating in the EPF subject to approval in advance by the Chairman, or on request of the Chairman
- v. Any other person requested to attend by the Chairman
- vi. Any other person subject to approval in advance by the Chairman.

## **6. Chairing**

The role of the Chairman is to:

- (A) Ensure that all Members of the Board show due respect for process, that all views are fully heard and considered and that decisions are democratically made where consensus cannot be reached.
- (B) To uphold and promote the purpose of the Board and to interpret its Terms of Reference and Rules of Procedure when necessary.
- (C) Ensure that Board Members have the facilities and make appropriate efforts to achieve the knowledge and skills as determined in the EPF Knowledge and Skills Strategy and other guidance or legislation and ensure a training record is monitored and maintained.
- (D) Act as professional adviser for the Board or arrange such advice as required subject to agreement by the Director for Essex Pension Fund on such conditions as that officer determines.
- (E) Agree the agenda for each Board meeting.
- (F) Approve records of each Board meetings.
- (G) Ensure an attendance record is maintained to allow the Scheme Manager to make arrangements for remuneration and expenses to be paid.

- (H) Agree with the Scheme Manager an appropriate budget for the Board, which is ratified by the Board before being formally approved by the Scheme Manager along with the EPF Annual Budget.
- (I) Write reports required by the Scheme Manager on the work of the Board.
- (J) Liaise with the Director for Essex Pension Fund on the requirements of the Board, including advanced notice for Scheme Manager officers to attend and arranging dates and times of Board meetings.
- (K) To provide guidance on all points of procedure and order, and the Chairman's interpretation of these Terms of Reference and Rules of Procedure shall be final.
- (L) Other tasks which may be deemed appropriate by the Scheme Manager for the Chairman of the Board.
- (M) To commission advice or work on behalf of the Board.
- (N) To liaise with the Chairmen of the PSB and ISC as deemed appropriate.
- (O) Other tasks that may be requested by the members of the Board, within the remit of these Terms of Reference and Rules of Procedure and subject to agreement with the Director for Essex Pension Fund.
- (P) To annually review and report on the activities of the Board.

## **7. Reporting and Escalation**

- (A) Where the Board wish to make a recommendation to the PSB or ISC they should do so in writing to the Director for Essex Pension Fund. The recommendation will normally be considered at the next available meeting of the body concerned. The next available meeting will normally be the first meeting which takes place 20 days after the recommendation is issued.
- (B) As permitted by clause 2, the Board may review any decision made by or on behalf of the Scheme Manager or any action taken by the Scheme Manager. Where the Board has reviewed a decision or action and believe the wrong decision has been made or wrong course of action has been taken and wish this decision or action to be escalated, the following process shall be followed:

Stage 1: The Board may refer a decision or action to the original decision maker or responsible person if at least 3 Employer representatives and 3 Scheme Member representatives believe that one or more of the following applies:

1. the decision maker/responsible person was not authorised to make the decision or take the action in question;
2. the decision/action was in breach of legislation and/or regulations;

3. the decision maker/responsible person did not follow professional advice given (or did not 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 or take the action did not follow one or more of the following principles:
  - (i) the decision-maker/responsible person did not ask themselves the right question(s);
  - (ii) the decision-maker/responsible person 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/responsible person did not take into account all relevant facts;
  - (iv) the decision-maker/responsible person arrived at a perverse decision or took a perverse action (e.g. a decision or action which no reasonable decision-maker/responsible person could have reached).
5. New material has come to light that might have resulted in a different outcome provided that the original decision or action has not yet been irrevocably implemented.

Stage 2: If the Board is dissatisfied with the response of the decision maker/appropriate person, it will seek the advice of the Director for Essex Pension Fund (unless the Director was the original decision maker).

Stage 3: Where the decision-maker/appropriate person in question is the Director for Essex Pension Fund and the Board remains dissatisfied with the response or resolution from the Director for Essex Pension Fund it will seek the joint advice of the ECC's section 151 Officer and ECC's Monitoring Officer.

Stage 4: Where the Board remains dissatisfied with the joint response from the Executive Director, Finance and Technology and ECC's Monitoring Officer. The Board will seek the advice of the National LGPS Advisory Board (and shall inform the Director for Essex Pension Fund, ECC's section 151 Officer and ECC's Monitoring Officer that it has done so).

## **8. Standards and Conflicts of Interest**

A conflict of interest is defined in the Public Service Pensions Act 2013 as: "in relation to a person, means a financial or other interest which is likely to prejudice the person's exercise of functions as a member of the board (but does not include a financial or other interest arising merely by virtue of membership of the scheme or any connected scheme)."

- (A) The Board shall adopt a policy for identifying and managing potential conflicts of interest.



- (B) Members of the Board must provide, as and when requested by the Scheme Manager, such information as the Scheme Manager requires to identify all potential conflicts of interest and ensure that any member of the Board or person to be appointed to the Board does not have a conflict of interest at appointment or whilst a member of the Board.
- (C) Parts 24.1 to 24.5 of the ECC's Members' Code of Conduct shall apply in relation to the standards of conduct of Board Members insofar as they can be reasonably considered to apply to the role of members of the Board, including the non-disclosure of confidential information.
- (D) Members of the Board must adhere to the requirements of the EPF Procedure for Monitoring and Reporting Breaches of the Law and should be mindful of the individual legal requirements in relation to reporting breaches of the law in relation to EPF matters.

## **9. Knowledge and Understanding**

Under the requirements of the Public Service Pensions Act 2013, a member of the Board must be conversant with:

- a) the legislation and associated guidance of the LGPS, and
- b) any document recording policy about the administration of the LGPS which is adopted by the EPF.

In addition, a member of the Board must have knowledge and understanding of:

- The law relating to pensions; and
- Any other matters which are prescribed in regulations.

It is for individual Board Members to be satisfied that they have the appropriate degree of knowledge and understanding to enable them to properly exercise their functions as a member of the Board.

In line with this requirement Board Members are required to be able to demonstrate their knowledge and understanding and to refresh and keep their knowledge up to date. Board Members are therefore required to:

- participate in training events (a written record of relevant training and development will be maintained);
- undertake a personal training needs analysis or other method to identify gaps in skills, competencies and knowledge; and
- comply with the EPF Knowledge and Skills Strategy insofar as it relates to Board Members.

## **10. Remuneration and Expenses**

(A) Subject to (B) below, an allowance may be made to Scheme Member representatives for attending meetings relating to Board business (including attending training) at a rate of £100 per meeting lasting from 2 hours to 4 hours, or £200 per meeting lasting over 4 hours. These rates are as at April

2019 and shall be increased by the annual increase in the Consumer Prices Index each April thereafter.

(B) It is hoped that Employers of Scheme Member representatives on the Board will provide appropriate capacity to allow the representative to perform this role within their normal working day without any reduction in pay or leave. If that is the case, the representative will not be entitled to any allowance.

(C) Employer and Scheme Member representatives shall be entitled to claim travel and subsistence allowances at the rates contained in the Schedule of Member Allowances in Scheme Manager's Constitution.

(D) The Chairman shall be paid remuneration and expenses as determined by the Appointments Panel. The Chairman will be expected not to claim all or part of the remuneration if the duties are carried out within their normal working day of other paid employment without any reduction in pay.

### **11. Receipt of advice and information**

The Board will be supported in its role and responsibilities by the Independent Chairman and by EPF Officers who will provide a secretariat role. In addition, Board Members will receive the final reports, minutes and agendas relating to all PSB and ISC and may attend PSB and ISC meetings (including during exempt items).

Insofar as it relates to the role of the Board, the Board may also:

- (A) request and receive information and reports from the PSB, ISC or any other body or officer responsible for the management of the EPF;
- (B) examine decisions made or actions taken by the PSB, ISC or any other body or officer responsible for the management of the EPF; and
- (C) may attend all or any part of a PSB or ISC meeting (including during exempt items) unless they are asked to leave as a result of a conflict of interest.

The Secretariat will provide such information as is requested that is available without unreasonable work or costs. Any requests for information and advice that have not been provided by the Secretariat are subject to the approval of the Director for Essex Pension Fund who will be required to consider positively all reasonable requests in relation to the role of the Board whilst being mindful of value for money.

### **12. Administration**

The Chairman will agree an agenda with the Secretariat prior to each Board meeting. The agenda and any papers for the Board will be issued at least 5 working days (where practicable) in advance of the meeting except in the case of matters of urgency. Draft records of each meeting including all actions, decisions and matters where the Board was unable to reach a decision will be recorded and normally circulated to all Board Members within 12 working days

after the meeting. These draft records will be subject to formal agreement by the Chairman taking consideration of comments by Board Members (which may be done electronically between meetings).

The records of the meetings may, at the discretion of the Chairman, 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.

The Board must comply with the General Data Protection Regulation and the Scheme Manager's data protection policy. It must also adhere to the Scheme Manager's requirements, controls and policies for Freedom of Information Act compliance.

### **13.Accountability**

The Board will collectively and individually be accountable to ECC, as the Scheme Manager to the EPF.

### **14.Review, Interpretation and Publication of Terms of Reference and Rules of Procedure**

These Terms of Reference and Rules of Procedure have been agreed by ECC. The Council will monitor and evaluate the operation of the Board and may review this Terms of Reference and Rules of Procedure from time to time.

These Terms of Reference and Rules of Procedure is incorporated into the Council's Constitution and published on the Council's website and may be amended by the same means as permitted for the Constitution. It will also form part of the EPF's Governance Policy and Compliance Statement which will be made available in accordance with the requirements of the LGPS Regulations.

### **15.Publication of Board information**

In accordance with the Public Service Pensions Act 2013, Essex County Council is required to publish information about the Board including:

- who the Board Members are;
- representation on the Board; and
- the role of the Board.

In accordance with good practice, ECC may publish other information relating to the Board as considered appropriate from time to time and which may include:

- the agendas and meeting records;

- training and attendance logs; and
- an annual report on the work of the Board.

All or some of this information may be published using the following means or other means as considered appropriate from time to time:

- on the EPF website – [www.essexpensionfund.co.uk](http://www.essexpensionfund.co.uk);
- on the ECC website – <http://www.essex.gov.uk>;
- within the EPF Annual Report and Accounts; and
- within the EPF's Governance Policy and Compliance Statement.

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.