

Report for ACTION
Item Number: 4



<b>Contains Confidential or Exempt Information</b>	NO - Part I
<b>Title</b>	Adoption of Terms of Reference for the Berkshire Pension Board
<b>Responsible Officer(s)</b>	Kevin Taylor
<b>Contact officer, job title and phone number</b>	Kevin Taylor Deputy Pension Fund Manager 01628 796715
<b>Member reporting</b>	n/a
<b>For Consideration By</b>	Berkshire Pension Fund Board
<b>Date to be Considered</b>	3 August 2015
<b>Implementation Date if Not Called In</b>	n/a
<b>Affected Wards</b>	None
<b>Keywords/Index</b>	<i>Insert relevant key words</i>

### Report Summary

The purpose of this report is to request the Board to adopt the Terms of Reference previously approved by the Berkshire Pension Fund Panel of the Royal Borough of Windsor & Maidenhead in its capacity as Administering Authority to the Royal County of Berkshire Pension Fund.

### If recommendations are adopted, how will residents, fund members and other stakeholders benefit?

Benefits to residents, fund members and other stakeholders and reasons why they will benefit	Dates by which they can expect to notice a difference
1. Better governance and administration of the Pension Fund	Ongoing

### 1. Details of Recommendations

The Berkshire Pension Board had to be established in accordance with the requirements of the Public Service Pensions Act 2013 and the Local Government Pension Scheme Regulations 2013 (as amended) by 1 April 2015. The Terms of Reference have been approved by the Berkshire Pension Fund Panel and the Pension Board is now required to formally adopt the Terms of Reference as attached to this report.

**RECOMMENDATION:** That the Pension Board adopts the attached Terms of Reference.

## **2. Reason for Recommendation(s) and Options Considered**

To enable the Pension Board to operate in line with its agreed Terms of Reference.

## **3. Key Implications**

The Pension Board is required to operate in line with The Pensions Regulator's Code of Practice and other statutory legislation. Failure to do so could leave the Borough open to challenge.

## **4. Financial Details**

There are no financial implications in agreeing to these Terms of Reference as all costs relating to the Pension Board are met by the Pension Fund.

## **5. Legal Implications**

Should these Terms of Reference not be adopted the Borough would not meet its statutory obligations to have an operational Pension Board within 4 months from 1 April 2015. This may lead to a number of potential possibilities including the intervention of the Pensions Regulator, a judicial review, a complaint to the Local Government or Pensions Ombudsman for maladministration or an adverse comment by the Administering Authority auditor or national Scheme Advisory Board.

## **6. Value For Money**

Not applicable.

## **7. Sustainability Impact Appraisal**

There are no known implications.

## **8. Risk Management**

The Terms of Reference need to be adopted to ensure the Borough fulfils its statutory obligations.

## **9. Links to Strategic Objectives**

Linked to strategic objectives of the Pension Fund in accordance with overriding pension scheme regulations.

## **10. Equalities, Human Rights and Community Cohesion**

There are no known implications.

## **11. Staffing/Workforce and Accommodation implications:**

None.

## **12. Property and Assets**

None.

**13. Any other implications:**

None.

**14. Consultation**

Not applicable.

**15. Timetable for Implementation**

Must be agreed at this meeting to meet statutory deadline.

**16. Appendices**

See attached Terms of Reference.

**17. Background Information**

Local Government Pension Scheme Regulations 2013 (as amended), The Pensions Regulators Code of Practice, Shadow Scheme Advisory Board guidance.

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## TERMS OF REFERENCE FOR PENSION BOARD MEMBERS

### 1 *Introduction*

This document sets out the Terms of Reference of the local Pension Board of the Royal Borough of Windsor & Maidenhead (the 'Administering Authority') a scheme manager as defined under Section 4 of the Public Service Pensions Act 2013. The local Pension Board is established in accordance with Section 5 of that Act and under regulation 106 of the Local Government Pension Scheme Regulations 2013 (as amended).

The Pension Board is established by the Administering Authority and operates independently of the Pension Fund Panel and Pension Fund Advisory Panel. Relevant information about its creation and operation are contained in these Terms of Reference.

The Pension Board is not a committee constituted under Section 101 of the Local Government Act 1972 and therefore no general duties, responsibilities or powers assigned to such committees or to any sub-committees or officers under the constitution, standing orders or scheme of delegation of the Administering Authority apply to the Board unless expressly included in this document.

The Pension Board has been constituted separately to the Pension Fund Panel and the Pension Fund Advisory Panel and regulation 106(2) of the Local Government Pension Scheme Regulations 2013 (as amended) does not apply.

### 2 *Interpretation*

The following terms have the meanings as outlined below:

<b>'the Act'</b>	The Public Service Pensions Act 2013.
<b>'the Administering Authority'</b>	means the Royal Borough of Windsor & Maidenhead.
<b>'the Code'</b>	means the Pension Regulator's Code of Practice No. 14, governance and administration of public service pension schemes.
<b>'the Pension Fund'</b>	means the Royal County of Berkshire Pension Fund managed and administered by the Administering Authority.
<b>'the Pension Fund Panel'</b>	means the 'committee' who has delegated decision making powers for the Pension Fund in accordance with Section 101 of the Local Government Act 1972.
<b>'the Regulations'</b>	means the Local Government Pension Scheme Regulations 2013 (as amended), the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations

2014 (as amended) including any earlier regulations as defined in these regulations to the extent that they remain applicable and the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009 (as amended).

**‘Relevant legislation’**

means relevant overriding legislation as well as the Pension Regulator’s Codes of Practice as they apply to the Administering Authority and the Pension Board notwithstanding that the Codes of Practice are not legislation.

**‘the Scheme’**

means the Local Government Pension Scheme in England and Wales.

### **3 *Statement of Purpose***

The purpose of the Pension Board is to assist the Administering Authority in its role as a scheme manager of the Scheme. Such assistance is to:

- a) Secure compliance with the Regulations, any other legislation relating to the governance and administration of the Scheme and requirements imposed by the Pension Regulator in relation to the Scheme; and
- b) To ensure the effective and efficient governance and administration of the Scheme.

### **4 *Duties of the Pension Board***

The Pension Board should at all times act in a reasonable manner in the conduct of its purpose. In support of this duty, Pension Board members should be subject to and abide by the code of conduct for Pension Board members.

### **5 *Establishment***

The Pension Board is established in accordance with the Administering Authority’s Constitution as approved at a meeting of the Constitution Sub-Committee on 20 February 2015. Subsequent to its establishment the Pension Board may establish sub-committees.

### **6 *Membership***

In accordance with section 5(4)(c) of the Public Service Pensions Act 2013 the Pension Board is required to include employer representatives and member representatives in equal numbers.

The Pension Board shall consist of an Independent Chairperson (who does not have voting rights) and 6 voting members, as follows:

3 Scheme Member Representatives; and

3 Scheme Employer Representatives.

There shall be other representatives as required from time to time who are not entitled to vote.

For clarity, “Scheme Employer Representatives” means persons appointed to the Board for the purpose of representing Scheme employers for the Scheme and “Scheme Member Representatives” means persons appointed to the Board for the purpose of representing members of the Scheme.

Members of the Pension Board will commit to attending all scheduled meetings. Attendance records will be maintained (and published) in line with a schedule set out in Appendix 4 of this handbook.

## **7**     ***Scheme Member Representatives***

Scheme member representatives will be appointed from the overall scheme membership including active, deferred and retired members, following a transparent recruitment process open to all Scheme members and approved by the Administering Authority.

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

## **8**     ***Scheme Employer Representatives***

Scheme employer representatives shall be office holders or senior employees of the 6 Unitary Authorities in Berkshire as they represent the majority of the Scheme membership. No officer responsible for the discharge of any function of the Administering Authority under the Regulations may serve as a member of the Pension Board.

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

Substitutes may be appointed and must be named and must undertake the same training as full members.

## **9**     ***Appointment of Chair***

An Independent Chair shall be appointed for the Pension Board by the Administering Authority but shall count as an 'other' member and therefore does not have voting rights. In this respect the term independent means having no pre-existing employment, financial or other material interest in either the Administering Authority or any Scheme employer in the Pension Fund or not being a member (active, deferred or retired) of the Local Government Pension Scheme in Berkshire.

## **10**    ***Duties of the Chair***

The Chair to the Pension Board:

- a) Shall ensure the Pension 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 when it cannot be reached. Instances of failure to reach a consensus position will be recorded and published.

## **11**    ***Notification of Appointments***

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

## **12**    ***Terms of Office***

The term of office for Pension Board members is initially 1 year.

Extensions to terms of office may be made by the Administering Authority with the agreement of the Pension Board.

Pension Board membership may be terminated prior to the end of the term of office due to:

- a) A Scheme member representative appointed on the basis of their membership of the Scheme no longer being a member of the LGPS in Berkshire;
- b) A Scheme member representative no longer being a Scheme member or a representative of the body on which their appointment relied;
- c) A Scheme employer representative no longer holding the office or employment or being a member of the body on which their appointment relied;
- d) A Pension Board member no longer being able to demonstrate to the Administering Authority their capacity to attend and prepare for meetings and to participate in required training;
- e) The representative being withdrawn by the nominating body and a replacement identified;
- f) A Pension Board member has a conflict of interest which cannot be managed in accordance with the Pension Board's conflict policy;
- g) A Pension Board member who is an officer of the Administering Authority becomes responsible for the discharge of any function of the Administering Authority under the Regulations.

### **13 Conflicts of Interest**

All members of the Pension Board must declare to the Administering Authority on appointment and at any such time as their circumstances change, any potential conflicts of interest arising as a result of their position on the Pension Board.

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 Pension Board. It does not include a financial or other interest arising merely by virtue of that person being a member of the Scheme.

On appointment to the Pension Board and following any subsequent declaration of a potential conflict by a Pension Board member, the Administering Authority shall ensure that any potential conflict is effectively managed in line with both the internal procedures of the Pension Board's conflict policy and the requirements of the Code.

### **14 Knowledge and Understanding (including Training)**

Knowledge and understanding must be considered in light of the role of the Pension Board to assist the Administering Authority in line with the requirements outlined in paragraph 3 above. The Pension Board shall establish and maintain a Knowledge and Understanding Policy and Framework to address the knowledge and understanding requirements that apply to Pension Board members under the Act. That policy and framework shall set out the degree of knowledge and understanding required as well as how the knowledge and understanding is acquired, reviewed and updated.



Pension Board members shall attend and participate in training arranged in order to meet and maintain the requirements set out in the Pension Board's knowledge and understanding policy and framework.

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

## **15 Meetings**

The Pension Board will meet 4 times each year.

Meetings shall normally take place between the hours of 10.00 and 14.00 at the offices of the Royal County of Berkshire Pension Fund.

As part of each meeting the Board will decide the need or otherwise for non-members to be invited to future meetings of the Board to give advice or guidance on matters arising from issues raised during the course of Pension Board meetings.

The Chair of the Pension Board with the consent of the Pension Board membership may call additional meetings. Urgent business of the Pension Board between meetings may, in exceptional circumstances, be conducted via communication between members of the Pension Board including telephone conferencing and emails.

## **16 Quorum**

A meeting is only quorate when at least 50% of both Scheme member and Scheme employer representatives are present. For actions to be agreed the Chairperson must be in attendance. A meeting that becomes inquorate may continue but any decisions will be non-binding.

## **17 Sub-groups**

There may be occasion to undertake sub-group meetings to complete a specific piece of work, or where data or preparation needs to be undertaken by a specific section of the Board. Any formed sub-groups will report to the main Pension Board who will agree and lead on the strategic direction of the activity being undertaken.

## **18 Board Administration**

An officer employed in the Democratic Services department of the Administering Authority shall provide all secretarial services to the Pension Board.

The Chairperson of the Pension Board will agree an agenda prior to each meeting which, along with supporting papers, will be issued at least 10 working days (where practicable) in advance of the meeting except in the case of matters of emergency.

Each Pension Board member will provide an email address for circulation of all Pension Board documents all of which be provided electronically wherever possible and only in paper format upon request.

Draft minutes of each meeting including all actions and agreements will be recorded and circulated to all Pension Board members within 5 working days after the meeting. These draft minutes will be subject to formal agreement by the Pension Board at their next meeting. Any decisions made by the Pension Board should be noted in the minutes and in addition where the Pension Board was unable to reach a decision such occasions should also be noted in the minutes.

The minutes may with the agreement of the Pension 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 1998.

The Pension Board Chairperson shall ensure that Pension Board members meet and maintain the knowledge and understanding as determined in the Pension Board's Knowledge and Understanding Policy and Framework and other guidance and legislation.

The Pension Board Chairperson shall arrange such advice as is required by the Pension Board subject to such conditions as are listed in these Terms of Reference for use of the budget set for the Pension Board.

The Pension Board Chairperson shall ensure an attendance record is maintained along with advising the Administering Authority on allowances and expenses to be paid under these terms.

The Pension Board Secretary shall liaise with the Pension Board Chairperson and the Administering Authority on the requirements of the Pension Board, including advance notice for officers to attend and arranging dates and times of Pension Board meetings.

### **19 Public access to Pension Board meetings and information**

The Pension Board meetings can be open to the general public (unless there is an exemption under relevant legislation which would preclude part (or all) of the meeting from being open to the general public).

The following will be entitled to attend Pension Board meetings in an observer capacity:

- a) Members of the Pension Fund Panel or Pension Fund Advisory Panel;
- b) Any person requested to attend by the Pension Board.

Any such attendees will be permitted to speak at the discretion of the Chairperson

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

- a) The names of Pension Board members and their contact details;
- b) The representation of Scheme employers and Scheme members on the Pension Board;
- c) The role of the Pension Board;
- d) These Terms of Reference.

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

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

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 Pension Fund's own website;
- b) As part of the Pension Fund's Annual Report and Accounts;
- c) As part of the Governance 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 and/or they represent data covered by the Data Protection Act 1998.

## **20 Expenses and Allowances**

The Pension Fund may meet the expenses of the Pension Board with the administering authority's policy on expenses. The Chair to the Pension Board will be remunerated on a time spent basis.

## **21 Budget**

The Pension Board is to be provided with adequate resources to fulfil its role. In doing so the budget for the Pension Board will be met from the Pension Fund. The Pension Board will seek approval from the Administering Authority for any items of expenditure over and above the normal expenses and allowances set out in paragraph 20 above.

The Pension Board will access all shared information and have certain resources made available through the Berkshire Pension Fund website as maintained and facilitated by the scheme manager.

## **22 Reporting**

The Pension Board should in the first instance report its requests, recommendations or concerns to the Pension Fund Panel. In support of this any member of the Pension Board may attend a meeting of the Pension Fund Panel as an observer.

The Pension Board should report any concerns over a decision made by the Pension Fund Panel to the Pension Fund Panel subject to the agreement of at least 50% of voting Pension Board members providing that all voting members are present. If not all voting members are present then the agreement should be of all voting members who are present where the meeting remains quorate.

On receipt of a report from the Pension Board setting out concerns over a decision they have made, the Pension Fund Panel should, within a reasonable period, consider and respond to the Pension Board.

Where the Pension Board is not satisfied with the response received it may request that a notice of its concern be placed on the Pension Fund's website and in the Pension Fund's annual report.

Where the Pension Board is satisfied that there has been a breach of regulation which has been reported to the Pension Fund Panel and has not been rectified within a reasonable period of time it is under an obligation to escalate the breach.

The appropriate internal route for escalation is to the Monitoring Officer.

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

## **23 Core functions**

The first function of the Pension Board is to assist the Administering Authority in securing 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. Within this extent of this core function the Pension Board may determine the areas that it wishes to consider including, but not restricted to:

- a) Review regular compliance monitoring reports which shall include reports to and decisions made under the Regulations by the Pension Fund Panel;
- b) Review management, administrative and governance processes and procedures in order to ensure they remain compliant with the Regulations, relevant legislation and in particular the Code;
- c) Review the compliance of Scheme employers with their duties under the Regulations and relevant legislation;
- d) Assist with the development of and continually review such documentation as is required by the Regulations including the Governance Compliance Statement, Funding Strategy Statement and Statement of Investment Principles;
- e) Assist with the development of and continually review Scheme member and Scheme employer communications as required by the Regulations and relevant legislation;
- f) Monitor complaints and performance on the administration and governance of the Scheme;
- g) Assist with the application of the Internal Disputes Resolution Procedures;
- h) Review the complete and proper exercise of Pensions Ombudsman cases;
- i) Review the implementation of revised policies and procedures following changes to the Scheme;
- j) Review the arrangements for the training of Pension Board members and those elected members and officers with delegated responsibilities for management and administration of the Scheme;
- k) Review the complete and proper exercise of Scheme employer and Administering Authority discretions;
- l) Review the outcome of internal and external audit reports;
- m) Review draft accounts and Pension Fund annual report;
- n) Review the compliance of particular cases, projects or processes on request of the Pension Fund Panel;

- o) Any other area within the statement of purpose (i.e. assisting the Administering Authority) the Pension Board deems appropriate.

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

- a) Assist with the development of improved customer services;
- b) Monitor the performance of administration, governance and investments against key performance targets and indicators;
- c) Review the effectiveness of processes for the appointment of advisors and suppliers to the Administering Authority;
- d) Monitor investment costs including custodian and transaction costs;
- e) Monitor internal and external audit reports;
- f) Review the risk register as it relates to the Scheme manager function of the Administering Authority;
- g) Assist with the development of improved management, administration and governance structures and policies;
- h) Review the outcome of actuarial reporting and valuations;
- i) Assist in the development and monitoring of process improvements on request from the Pension Fund Panel;
- j) Assist in the development of asset voting and engagement processes and compliance with the UK Stewardship Code;
- k) Any other area within the statement of purpose (i.e. ensuring effective and efficient governance of the Scheme) the Pension Board deems appropriate.

In support of its core functions the Pension Board may make a request for information to the Pension Fund Panel with regard to any aspect of the Administering Authority's function. Any such request should be reasonably complied with in both scope and timing.

In support of its core functions the Pension Board may make recommendations to the Pension Fund Panel which should be considered and a response made to the Pension Board on the outcome within a reasonable period of time.

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

These Terms of Reference shall be reviewed on each material change to those parts of the Regulations covering local Pension Boards and may be amended, varied or modified in writing after consultation and agreement by Board members. They will be reviewed annually to ensure continuing regulatory compliance and ongoing development of the Board members.

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Signed on behalf of the Administering Authority

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Signed on behalf of the Pension Board