

Response to a consultation on proposed changes to the Avon Pension Fund governance arrangements

Introduction

The Local Pension Board (LPB) is grateful for the opportunity to comment on draft proposals to change the current governance arrangements for the Avon Pension Fund (APF), including the LPB's own role and its relationship with the Pensions Committee (PC). This response is based on the paper discussed by the PC in December 2018. It provides feedback on the proposals, and presents other governance options and recommendations, for the consideration of the PC and BANES Council.

Legal context

The LPB is an independent statutory body established by the 2013 Public Service Pensions Act (PSPA). Its remit under the LGPS 2013 Regulations is to assist the LGPS fund Administering Authority (AA) BANES Council to:

- 1) Secure compliance with LGPS regulations and other legislation relating to the governance and administration of the scheme;
- 2) Secure compliance with requirements imposed on the scheme by the Pensions Regulator (TPR);
- 3) Ensure the effective and efficient governance and administration of the scheme.

Under the LGPS 2013 Regulations LPB's have the power to do anything which is calculated to facilitate, or is conducive or incidental to the discharge of their functions.

Members of LPBs have a legal requirement to have knowledge and understanding of LGPS and to undertake on-going training to fulfil their duties. If they fail to fulfil their role, individual LPB members are held personally responsible and can be fined by the Pensions Regulator. Accordingly the advice of the LPB should carry weight in the decision making process of both the PC and BANES Council as the statutory LGPS AA.

However the LPB fully recognises its statutory role is scrutiny and advisory only and BANES Council is the statutory LGPS AA decision-making body in respect of the governance of the APF. Consequently whatever the outcome of this consultation, the LPB will always use its best endeavours to assist the PC and BANES Council fulfil its statutory LGPS role.

APF governance

With assets in excess of £5bn the APF is one of the largest LGPS pension funds in England and Wales, and its membership and assets are set to continue to grow as new staff are recruited by current employers and by the addition of new employers such as academies. Having very robust formal governance is absolutely fundamental to the long-term financial sustainability of APF and quality of pension services received by its current 110,000 members.

The LPB concurs that there is a growing complexity of legislative requirements (eg Public Service Pensions Act, MIFID, asset pooling, GMPs, GDPR) and associated regulatory oversight of LGPS pension funds (eg. TPR, SAB, GAD, MHCLG, FRC, CIPFA). This looks set to continue and increase going forward.

BANES, as an LGPS AA, has a legal duty to ensure that the fund's governance, asset management and administration of members' pension benefits are all effective and efficient by having elected PC members, LPB members, and senior staff with the required level of knowledge, expertise and experience to fulfil their statutory roles.

Having an innovative APF staff recruitment and reward strategy, continuous training and retention incentives such as internal promotion, with clear succession planning of the most knowledgeable and experienced staff is vital to the quality and efficacy of the fund governance by the PC and BANES. Without this there would be serious governance risk for BANES Council.

The LPB supports the importance of the fund's governance and management arrangements operating in a very formal, open and highly transparent manner; and the need for high quality decision making processes and efficient information dissemination for PC/LPB members and APF members respectively.

PC role

Because of the strategic importance of fund governance the PC should consider some further actions before finalising recommendations to BANES Council on what, when, and how to make any changes to the current APF governance arrangements.

This is to ensure the changes the PC recommends to BANES Council will demonstrably and materially improve the APF governance, its cost-effectiveness and quality of services to APF fund members.

By way of example, it is widely recognised as good practice (eg by TPR) that before deciding to make governance changes fiduciaries responsible for UK pension funds should:

a) Ensure they have received formal training on their statutory governance requirements and seek refresher training if there has been new legal or regulatory developments (EG. 2013 Public Service Pensions Act, 2014 LGPS regulations, 2015 TPR and SAB guidance, 2019 MHCLG guidance). Also in the LGPS context it may be worth the APF reviewing and adopting best practice exhibited by leading/award winning funds.

b) Commission independent external effectiveness assessment of their governance. This is to identify what is working well (that does not need changing), and what is working less well where some governance adjustments may be needed. This approach has been used by a number of other LGPS funds to objectively review the strengths and weaknesses of their current governance. There are number of credible service providers including Aon, Hymans Robertson, Barnett Waddington, KPMG, and CIPFA. The time and costs of this are not excessive and the results could be invaluable.

c) Request an options appraisal on the pros and cons and costs and savings and benefits of alternative governance arrangements for reasons of objectivity – some examples are provided later in this response to assist the PC and BANES. The PC may want to seek technical or legal advice from the S151 Officer or Monitoring Officer before the final PC recommendations are considered by BANES Council.

APF officer response: *The Committee have been continuously trained over long periods and clearly understand their roles. The Fund prides itself on having an open and transparent culture, with broad representation and evolves its governance arrangements*

in response to material changes in circumstances, which is what the constitutional changes currently proposed are trying to achieve -recognise known changes to the scheme (Brunel) and stakeholders (creation and growth of academies) and accommodate these changes.

LPB feedback on the proposals

With the growth of the number of academies in the APF the LPB supports the academy sector being represented on the PC.

It is noted the APF appointed 3 independent PC members with pensions/investment expertise before there was a legal requirement in 2015 for the AA to establish a LPB to provide it with independent advice. The use and cost of having 3 (and 4 proposed) independent PC members could arguably result in some possible duplication of the advisory role of the LPB, and the funds other professional advisors. **APF officer response:** *The independent members are members of the committee not advisors. The fund already has commissioned advisors and formally contracts them*

Before reducing the elected member representation and increasing the number (and cost) of using an additional un-elected, non-APF employer with APF voting powers, it is recommended the PC seek legal advice on the lawfulness of having four unelected independent voting PC members making any financial decisions on behalf of BANES Council. **APF officer response:** *The Council has the power to delegate authority to Committees of its making and composition including the appointment of co-opted members*

On adding an informal BPP working party, it is widely accepted good governance involves having and using formal structures. An informal group could lead to an ambiguity risk in respect of PC decision-making. It is recommended that if a new informal decision making group is added to the funds governance structures, it should operate in accordance with public sector openness and transparency principles. **APF officer response:** *Agreed. Avon Pension Fund Committee will remain the decision maker in respect of all matters concerning the Fund and the Council will make decisions in respect of the Brunel Company in line with its shareholder rights and obligations..*

If the proposals are agreed they will result in the need for additional training costs and time commitment from some existing elected members, a new academy member, and new unelected independent member. APF officer time and funding will need to be set aside to provide training, advice, and services to them – even if most information and business is done by using e-information portals, virtual meetings, and tele-conferences. **APF officer response:** *Agreed but not materially significant.*

It is recommended that the PC should seek a formal assurance from the S151 Officer that any proposed governance changes, including PC members and APF officer time and training and IT needs, have been fully-costed, and the financial value of any efficiency savings generated will be captured, so they can be re-allocated by the PC for other legitimate purposes. It might also be helpful for the Monitoring Officer to assure the PC and BANES Council there will be no reduction in the openness and transparency of APF decision making for the beneficiaries of APF and taxpayers. **APF officer response:** *The Committee operates within the governance arrangements set out by the Council as the Administrative Authority for the Fund. The technology already exists, is used by officers but not utilised in supporting the meeting arrangements of the committee and will have minimum impact on resources*

Other governance options

In light of this and other consultees responses, the PC may wish to vary the December 2018 proposals and or consider other options to improve the funds governance and its efficiency by

1) PC and IP only make legally required approvals for LGPS and BPP Ltd

Under this option the legally required routine decisions (ie annually, periodically, or triennially) and process for any urgent decisions for APF and BPP would be specified and fully integrated into the PC and/or IP Terms of Reference and Scheme of Delegation to PC/IP Chairs and BANES Officers – with no need for an informal or formal BPP working party. **APF officer response:** *It is not clear what is being suggested here. Only BPP can make decisions in respect of BPP. Matters in respect of the Shareholder agreement are made by the Council or under existing delegations. The key point is that BPP is a work in progress which continues to develop and which impacts all member funds. The purpose of the sub group is to consider material issues as they may affect Council or Fund during this development and ongoing and advise accordingly – the sub group will not have decision making powers, as these still reside with Pensions Committee and or Council as necessary or officers through existing delegations.*

The justification for this is that the LGPS regulations only require each AA to make a limited number (c20) approvals (vis the APF statutory strategies, policy statements, actuarial valuations to set employer contributions, and annual reports and accounts). The BPP shareholder agreement also has a limited number of decisions required by the shareholder funds, with agreed provisions and processes for handling urgent business.

Adopting this option would reduce the number and volume of PC/IP information papers/reports, and enhance the focus on statutory approvals, with all day-to-day operational matters being delegated to APF officers. Such streamlined decision-making, with very clear and robust legally required delegations to the PC or IP (for urgent business to PC/IP Chairs and senior officers) is an approach some other LGPS funds are adopting. **APF officer response:** *Officers already have full delegation for operational matters. The Committee take decisions which require their approval but also agree policy and strategy developments and need to monitor progress to ensure strategies etc remain fit for purpose, The purpose of the proposed change is to delegate some of these monitoring functions to Pension Board and Investment Panel to allow the Committee to focus on policy and strategy and thus remove unnecessary duplication.*

2) Elected member decision making supported by enhanced specialist professional advice

Rather than using 3 (4) independent members for professional advice, the PC may also wish to consider the governance model successfully used by other LGPS funds to help ensure their PC's receive consistent high quality professional advice (over several local election and valuation cycles) from the fund's actuary, investment consultant, governance adviser and legal advisor. Their advice and comment on APF officers' recommendations could be included in PC decision papers, or they could be asked to attend specific PC meetings (on request to minimise costs) depending on the PC decisions being taken. They would, of course, not be permitted to vote on any financial or investment decisions, which continue to be reserved for elected PC members. **APF**

officer response: *Independent members do not give advice. The Fund has independent consultants who provide advice and attend meetings on a regular basis. .*

3) Combined PC and LPB

Another governance option the PC may wish to consider is combining the roles of the PC and LPB. This would reduce the total number of meetings required and save officer time and APF costs (>20k). The national LGPS SAB has published legal advice on how a combined PC/LPB can be established and BANES would need to ensure necessary legal requirements were met. This option has been adopted and approved by Government for at least two other LGPS funds (Hampshire and Hackney) and is under consideration by the Environment Agency PF (part of BPP). These funds have satisfied both the avoidance of conflict of interest requirements and the equal numbers of employer and scheme member representatives required by law. **APF officer response:** *There would seem to be inherent difficulties in merging the role of PC and Board not least because of conflicts of interest and the need for equal representation of employers and members which in Avons case could disenfranchise some Employer group if there were a merger. It is not clear exactly how the Funds quoted operate but they are structured differently and it may be useful to understand how these models develop over the next few years.*

4) Joint LPBs

Another option for the APF PC and LPB to consider is to develop joint working with other LPBs, maybe in the BPP family, which could save some APF officer time and costs. This option is being taken forward by some LGPS funds in other asset pools that have shared service arrangements or outsourced fund administration. Using common LGPS compliance reporting formats for fund administration, benefit payments and fund accounting would significantly increase the opportunity for comparative inter-fund benchmarking, and could deliver individual fund performance improvements. Establishing formal joint LPB working would require agreement on each fund's employer and scheme member representation, agreed reporting lines and also the approval of Government. The PC should note the Home Office is encouraging joint LPBs for Fire Fighters Pension Scheme. **APF officer response:** *An interesting option but difficult to integrate as there is no single model for either Pensions Committees or Pensions Boards - can usefully suggest this in feedback to SAB on Governance review.*

Proposed changes to the LPB role

The statutory role of the LPB was set out on page 1 of this response. The LPB has no decision-making responsibilities and its role is to provide scrutiny and advice only - which the PC can accept or reject.

The LPB is committed to monitoring the implementation of the APF administration strategy and to provide advice and recommendation to the PC in respect of legal compliance. In order for the LPB to fulfil its statutory duties, the LPB anticipates it would be a consultee on any future changes to the APF administration strategy (and other APF draft statutory strategies, statements and reports) to provide its independent advice and recommendations for the PC and BANES Council. **APF officer response:** *The LPB will for obvious reasons be a consultee on the administration strategy, however on other matters it will be a consultee as directed by regulation or directed within its Terms of reference or by Committee – not necessarily as a matter of course. Its remit is governance not strategic or policy direction development and it is not required to be a consultee on all matters to undertake its functions.*

It is noted that the current APF LPB terms of reference omits some elements of the national LGPS SAB guidance on the setting up and operation of LPBs. For example the SAB guidance states that the role of the LPB should be interpreted as covering all aspects of the governance and administration of the LGPS, including funding and investments. LGPS investment regulation 7 requires the AA to take into account LPB views on certain investment decisions. The 2019 statutory guidance on asset pooling also makes specific reference to the important role of LPBs on investment governance.

APF officer response: *The SAB guidance clearly states that the role of the LPB “does not replace the Admin authority or make decisions or carry out other duties which are the responsibility of the admin authority”. The guidance also indicates the Board may “consider” functions but clearly there is no obligation. The purpose of the proposed changes to ToR is to avoid unnecessary duplication which will clearly improve efficiency and remove ambiguity. Section 7 states – “the authority must consult such persons as it considers appropriate as to the proposed contents of its investment strategy”*

*The DCLG guidance states that in the ISS “explain the extent to which the views of their local pension board and other interested parties who they consider may have an interest will be taken into account when making an investment decision based on **non- financial factors”***

The LPB already has the ability to examine all matters in respect of compliance and governance so complies with the expectations of SAB.

It is recommended that it would be helpful for the PC and BANES Council to use the SAB guidance and national template when updating the terms of reference for the APF LPB, and make clear reference to the LPB role on fund investments. **APF officer response:** *See comments above*

It is recommended that the PC new terms of reference should also specifically include a statement that the PC will formally consider the LPB advisory recommendations (for example in the LPB minutes and LPB Annual Report) and if it disagrees with LPB it should formally respond and explain its reasoning to the LPB. The LPB recommends that its Annual Report is submitted to the AGM of BANES Council. **APF officer response:** *The annual report is submitted to the Council – it cannot be submitted to the AGM practically due to timing. The LPB should formally make recommendations to the Committee. The PC ToR will reflect the fact that the LPB may make recommendations.*

Future process

During 2019 the national LGPS SAB is undertaking a project to recommend good governance structures that accommodate LGPS functions within democratically accountable LA framework in a way that ensures conflicts of interest are both addressed and managed to improve fund governance on these topics.

It is recommended that BANES Council should in 2020 commission an independent external effectiveness review of the funds governance to take into account the recommendations of the project above and the completion (as required by Government) of asset pooling. **APF officer response:** *The fund will consider the conclusions and any recommendations of the SAB review.*

Such a review should propose further changes if any are required, either from a legal, regulatory or operational perspective. For example the vast majority of APF

investments are likely to be managed by BPP, and so it would be logical to review the need for and role of the IP, and to check and ensure the PC's oversight of BPP is robust.
APF officer response: *The Fund naturally reviews governance as changes occur including as the transition evolves (the IP ToR have already been revised).*

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