

Scottish Local Government Pension Scheme Scheme Advisory Board

Reference of issues to the SAB from local Pension Boards

Introduction

The SAB has been approached by the joint secretaries of the Dumfries and Galloway Pension Fund Board following a difference of opinion between the local pension board and the pension committee. This difference was not resolved, and the matter was referred to the SAB. This is the first time that the SAB has been asked for a view from a local pension board, and so it needs to consider how to respond. This paper sets out principles and a proposed process for the SAB to use to respond to such requests.

Background

Pension committees of administering authorities are responsible for making decisions relating to the fund they administer. However, pension boards meet simultaneously with committees, have full access to the information, and may seek a report from the scheme manager on any aspect of the relevant fund. If at least half of the members of a pension board disagree with a decision of the relevant pension committee, the board may request the pension committee in writing to review that decision.

Regulations (www.legislation.gov.uk/ssi/2015/60/contents/made) allow the SAB to “consider the relevant decision, take a view on the matter and, if considered appropriate, provide advice to the scheme manager or the pension board in relation to the matter.” This does not give the power to the SAB to overturn a decision, but it may give advice to either the scheme manager, or local pension board, or both.

It is difficult to accurately predict the nature of the issues which may be referred to the SAB. However, the SAB may feel more confident in expressing a stronger view on good governance than on, for example, decisions to make specific investments. For example, pension boards, as oversight bodies, have a reasonable expectation that they should be satisfied that decisions are well made and fully justified. The joint secretaries are advised that there is no such commensurate regulation in the English and Welsh LGPS.

Proposal for an approach by the SAB

Natural justice and good governance suggests that if the SAB receives a complaint, then it should make reasonable efforts to investigate the issue before arriving at an opinion. This would include seeking views and relevant information from both the pension board and the pension committee. The SAB is also likely to want to seek

expert advice on the matter. This has the potential to be a time-consuming process, and it is important that it does not derail the other work of the SAB.

Therefore, the following process is proposed:

1. When a reference from a pension board is received, the SAB should be informed.
2. A working group will be formed to investigate the issue, comprising the joint secretaries, one SAB member from the employers' side, one SAB member from the trade union side, and such advisors as the SAB decides are appropriate.
3. The working group should seek views and information from the local pension board, pension committee, and elsewhere as it sees fit.
4. The working group will then report back to the SAB with recommendations.
5. The full SAB will take any final decision on guidance to be issued.
6. There is no right of appeal.
7. The local board, committee, and fund will be informed of the outcome.
8. The outcome will be published on the SAB website and reported on in the SAB Annual Report.

Decision

The SAB is asked to approve this as a general process

The SAB is asked to establish a sub-group to examine the reference from the Dumfries and Galloway Pension Fund Board. That working group should comprise

- The SAB joint-secretaries
- One SAB member each from the employers' side, and the trade union side

And be assisted by

- Two SAB advisors who are fund managers
- The SAB actuarial advisor

and, given that this is the first of its type,

- Invite a SPPA representative to participate

Excerpts from the regulations

Local Government Pension Scheme (Governance) (Scotland) Regulations 2015

Remit of Pension Board

8.—

(1) A Pension Board may, in carrying out its duties under regulation 5, consider any matter concerning pensions it deems relevant to the activities of the relevant fund including—

- (a) any reports produced for the Pension Committee;
- (b) the annual report referred to in regulation 55 of the 2014 Regulations;
- (c) external voting and engagement provisions of the fund in respect of the fund's investments;
- (d) fund performance and administration;
- (e) actuarial reports and valuations in respect of the relevant fund; and
- (f) funding strategy in respect of the relevant fund.

(2) A Pension Board may monitor the investments of the relevant fund and its investment principles and strategy and any guidance to which it is subject.

(3) A Pension Board may seek a report from the scheme manager on any aspect of the relevant fund and the scheme manager must provide such a report within a timescale agreed by the Board and the scheme manager.

Pension Board and Pension Committee differences

9.—

(1) If, in carrying out their duties under regulation 5, at least half of the members of a Pension Board disagree with a decision of the relevant Pension Committee, the Board may request the Pension Committee in writing to review that decision.

(2) The grounds of review referred to in paragraph (1) are that—

- (a) there is evidence or data on which the Pension Committee relied when making their decision which is considered to be unreliable or there is new evidence or data which the Pension Committee did not access or was not aware of at the point of making the decision which is considered material to the decision taken;
- (b) the decision of the Pension Committee is arguably beyond the powers of the 2014 Regulations or otherwise unlawful;
- (c) the decision of the Pension Committee is contrary to a relevant Code of Practice published by the Pensions Regulator; or
- (d) the decision is not in the interest of the continued financial viability of the Scheme or the relevant fund or is against the principles of proper and responsible administration of the Scheme or relevant fund.

(3) If there remains disagreement after the Pension Committee has reviewed its decision, then the difference in view between the Pension Committee and the Pension Board is to be published in the form of a joint

secretarial report on the website for the relevant fund and included in the annual report referred to in regulation 55 of the 2014 Regulations.

(4) Where paragraph (3) applies, the Scheme Advisory Board may (either on its own initiative or at the request of one of the disagreeing parties) consider the relevant decision, take a view on the matter and, if considered appropriate, provide advice to the scheme manager or the Pension Board in relation to the matter.