

FALKIRK COUNCIL

**Subject: LOCAL GOVERNMENT PENSION SCHEME
GOVERNANCE COMPLIANCE STATEMENT**
Meeting: INVESTMENT COMMITTEE
Date: 16 June 2011
Author: CHIEF FINANCE OFFICER

1. INTRODUCTION

- 1.1 The Scottish Public Pensions Agency (SPPA) has issued Circular SPN/LG 3/2011 containing the statutory Guidance in respect of the Governance Compliance Statement required to be produced under Reg 27 of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 (SSI 2008/228). The Guidance sets out a number of best practice principles against which Councils must measure their LGPS governance arrangements.

2. BACKGROUND

- 2.1 A significant item in the Guidance relates to stakeholder (fund employers and unions) right of representation on the main Investment Committee and with potential voting rights. There has been longstanding pressure and lobbying by stakeholders to achieve this and the relevant forum to consider this has been the tripartite Scottish Local Government Pensions Advisory Group (SLOGPAG).
- 2.2 SPPA issued draft Guidance in November 2010. The Council in its response, which broadly supported improved corporate governance arrangements, highlighted two particular concerns:
- “The key concern this Council has with the proposals is the contradiction between allowing lay members voting rights on the main decision-making committee and the legal final responsibility which only elected Members have for the stewardship and management of the Fund. The Consultation notes the latter but makes no attempt to deal with this core and substantive anomaly and to that degree is seriously flawed.
 - In terms of Paragraphs 35 and 26 (Access) we would disagree that equal access be granted to committee papers. There are clearly matters which are dealt with under exempt business due to their confidential nature where decisions require to be taken by those with executive responsibility and not in a wider forum prior to the main committee.”

- 2.3 The review and revision necessitated by the new Guidance provides an opportunity to “tidy up” related matters and perhaps most notably making clear that the Investment Committee is responsible for not only dealing with investment matters but also the administration side of the Pension Fund. In consequence, a more appropriate title for the Committee may be the Pensions Committee. Proposals on this with an appropriate scheme of delegation will be brought before this Committee for consideration prior to engagement with Council.
- 2.4 The status of Falkirk Council’s current governance arrangements relative to the Guidance is appended. In common with other Councils, there will be changes required in the current arrangements and the direction of travel is relatively clear. Section 4 of this report maps out a way forward.
- 2.5 The Scottish Government will keep the Guidance under review and revise it as appropriate to reflect emerging developments such as Lord Hutton’s review and the Pathfinder project.

3. THE STATUTORY GUIDANCE

- 3.1 The Guidance sets out 18 best practice principles and these are appended as a copy of Annex A to the SPPA Circular. The following paras focus on what are regarded as the more problematic principles and appropriate commentaries are made.
- 3.2 (d) *That where a secondary committee or panel has been established, at least one seat on the main committee is allocated for a member from the secondary.*

Law & Administration Services have confirmed that the Council does have the power to appoint lay members to its Committees. Consideration will need to be given to determining how this place or places is allocated from the secondary committee or panel (it is proposed hereafter to use the term Panel to more clearly differentiate it from the main Investment (or Pension) Committee). Whilst the Guidance makes clear that it is not the responsibility of the Administering Authority to determine this, it will by necessity have a role in co-ordinating and facilitating the selection process. Rotation may be a sound practice to adopt, albeit experience gained in this very specialist area is a counter-balancing consideration.

- 3.3 (e) *That all key stakeholders are afforded the opportunity to be represented within the main or secondary committee structure. These include:-*

- i) employing authorities (including non-scheme employers, e.g. admitted bodies);*
- ii) scheme members (including deferred and pensioner scheme members)*
- iii) where appropriate, independent professional observers, and*
- iv) expert advisors (on an ad-hoc basis)*

There needs to be some thought given to how best the requirement of deferred and pensioner scheme members may best be captured. The Guidance suggests this may be dealt with by an existing stakeholder sitting on the Panel. Moreover, the role, scope and appropriateness of independent professional advisers and expert advisers needs to be assessed – from where are they to be accessed?

- 3.4 (f) *That where lay members sit on a main or secondary committee, they are treated equally in terms of access to papers and meetings, training and are given full opportunity to contribute to the decision making process, with or without voting rights.*

Lay members sitting on the Investment (Pension) Committee will have full entitlement to all agenda and related papers and the right to access the same training as other members.

- 3.5 (i) *The policy of individual administering authorities on voting rights is clear and transparent, including the justification for not extending voting rights to each body or group represented on main LGPS committees.*

In terms of voting rights, Members will note the concerns expressed on the draft Guidance in this regard as presented at para 2.2 above. Were voting rights to be granted, Members would still retain a majority. Whilst there is the option to not grant voting rights, it is clear that the spirit of the Guidance is that such rights would be granted.

- 3.6 (n) *That an administering authority's secondary committee or panel meet at least twice a year and is synchronised with the dates when the main committee sits.*

Given that the thrust of the Guidance is to facilitate greater involvement of stakeholders in decision-making, there is an argument for the Panel to meet quarterly to align with the Investment (Pension) Committee. It would make sense for the Panel to meet before the Committee to allow a proper minute reflecting the views of the former to be considered by the Committee when taking its decisions.

- 3.7 (p) *That subject to any rules in the Council's constitution, all members of main and secondary committees or panels have equal access to committee papers, documents and advice that falls to be considered at meetings of the main committee.*

This cross relates to comments at paras 3.4 and 3.6. To make the operation of the Panel streamlined and effective, it needs to be properly constituted with a membership drawn from the wider Investment Forum. This will control the circulation of Committee papers. In turn, communication arrangements for those not sitting on the panel would need to be devised.

- 3.8 (q) *That administering authorities have taken steps to bring wider scheme issues within the scope of their governance arrangements.*

This relates to comments at para 2.3 with respect to the range of Committee responsibilities and consequent change in the Committee's title (to Pension Committee) and appropriate adjustment to the Scheme of Delegation.

4. PROPOSED WAY FORWARD

- 4.1 This Section is in two parts. The first deals with officers' suggestions as to how the problematic issues considered in section 3 may best be taken forward in practical terms. The second part maps out a process and timetable for advancing the revised governance arrangements and developing the Governance Compliance Statement.

4.2 Suggested Operational Approach

Subject to Member agreement, the following framework for engaging with stakeholders is suggested:-

- a) There will be two lay Members from the Panel, selected by the Panel, to sit on the Investment (Pension) Committee.
- b) One member will represent the employers and the other will be a union representative for the employees.
- c) These two lay Members will have full voting rights on the Investment (Pensions) Committee.
- d) The Panel will meet quarterly shortly before the Investment (Pensions) Committee.
- e) The Panel will be formally constituted with its membership drawn from the wider Investment Forum to facilitate its effective functioning. Effective communications will need to be established with those stakeholders (primarily small employers) which will not sit on the Panel.

4.3 Process and Timetable

<u>Action</u>	<u>Date</u>
a) Submit this report with a covering report, which will reflect the decisions reached by this Investment Committee, to Council to seek approval to progress matters.	Council Meeting 22/06/11
b) Engage with stakeholders on the Guidance and on the basis of the operating framework agreed by Investment Committee in June and approved by Council.	Summer
c) Report back to Investment Committee on the outcome of the stakeholder consultation and propose an amended operating framework if necessary.	November
d) Report Investment Committee's proposed operating framework to Council.	December
e) Officers advise stakeholders of outcome and action the approved framework.	December/March
f) Investment (Pension) Committee considers updated Governance Compliance Statement.	February 2012
g) First meeting of Investment (Pension) Committee with new Panel member(s) and new Panel.	After May elections

5. CONCLUSIONS

- 5.1 The Statutory Guidance challenges Councils' current corporate governance arrangements. It is somewhat prescriptive in the principles that Councils are now required to implement. Moreover, there is a requirement to produce a Governance Compliance Statement which assesses the status of a Council relative to the principles. The attached Compliance Statement shows Falkirk Council's current position, but in common with other Councils, there will be a clear direction of travel over the coming months to achieve full compliance. The proposed way forward set out in section 4.2 of this report is consistent with this.

6. RECOMMENDATIONS

- 6.1 The Investment Committee is invited to:-

- (i) Note the new Statutory Guidance
- (ii) Approve the current appended Corporate Governance Compliance Statement
- (iii) Agree to recommend to Council that the proposals set out in section 4.2 should be consulted on.

Acting Chief Finance Officer

Date: 7 June 2011

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LIST OF BACKGROUND PAPERS

NIL