

SOUTH YORKSHIRE PENSIONS AUTHORITY

4 October 2018

Report of the Clerk and the Fund Director

Governance Arrangements

1) Purpose of the Report

To put in place various immediate and longer term changes to the Authority's governance arrangements in order to deal with conflicts of interest and to fit them to the post pooling world.

2) Recommendations

Members are recommended to:

- a) **Approve the changes to the arrangements for the chairing of the Authority's Boards for the remainder of the current municipal year set out in paragraph 3.3.**
 - b) **Approve the changes to representation on the Border to Coast Joint Committee and the arrangements for handling the Authority's shareholder role for the remainder of this municipal year as set out in paragraph 3.3.**
 - c) **Approve the disestablishment of the Investment Board and the Corporate Planning and Governance Board with effect from the beginning of the next municipal year, with their functions passing to the full Authority.**
 - d) **Approve the establishment of an Audit Committee to meet 3 times per year constituted as described in paragraph 3.10 (b).**
 - e) **Approve the establishment of Staffing, Appointments and Appeals Committee with the role and membership described in paragraph 3.10 (c).**
 - f) **Indicate which of the options outlined in paragraph 3.14 should be pursued in relation to the handling of the Authority's responsibilities as a shareholder in Border to Coast.**
 - g) **Instruct officers to bring forward an amended constitution for adoption at the Authority's next annual meeting.**
 - h) **Approve the institution of an Urgent Business Procedure along the lines set out in para 3.17.**
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3) Background Information

Issues to be addressed

- 3.1 The Authority has recognised for some time that the introduction of investment pooling is likely to result in some changes to its governance arrangements. In addition the recent election of the Authority's Chair as a Non-Executive Director of Border to Coast gives rise to the need for a number of immediate changes in order to avoid conflict of interest issues arising. This report addresses both these immediate issues and proposes longer term changes which, if approved, would come into effect from the next municipal year.

Immediate Issues

- 3.2 The election of the Authority's Chair as a Non-Executive Director of the Border to Coast operating company, while undoubtedly a good result in terms of the composition of the Board and ensuring that the public sector ethos remains a consideration for the company does raise a number of issues which need to be addressed immediately.
- a. As Border to Coast will be the Fund's principal investment manager (at the time of writing managing in excess of 50% of the Fund) it is not appropriate for the Investment Board to be chaired by one of the company's Non-Executives.
 - b. As the Corporate Planning and Governance Board acts as the Authority's Audit Committee it would not represent good governance if it were to be chaired by the Chair of the Authority.
 - c. There would be a conflict of interest if the Chair of the Authority were to act as shareholder in relation to the Authority's interest in Border to Coast.
 - d. An individual elected as a Non-Executive Director of Border to Coast is specifically excluded from membership of the Border to Coast Joint Committee, thus the Authority needs to identify an alternative member to ensure that it is represented.
- 3.3 None of these issues are a reflection on any individual, simply a consequence of the fact that company directors have a duty to act in the best interests of the company which may come into conflict with the interests of the Authority. It is therefore proposed that the following arrangements be put in place for the remainder of this municipal year.
- a. The Vice Chair of the Authority should chair both the Corporate Planning and Governance and Investment Boards.
 - b. The Chair of the Authority will vacate the Chair when matters concerning Border to Coast are discussed at Authority meetings and not take part in any discussion on such matters. Efforts will

be made to structure agendas so that this does not disrupt the flow of the meetings.

- c. The Vice Chair of the Authority will represent the Authority on the Border to Coast Joint Committee and act as the Authority's shareholder in the operator company. Members may also wish to consider nominating a substitute in case the Vice Chair is indisposed and unable to attend a meeting of the Joint Committee.

Longer Term Issues

- 3.4 The Authority's current governance arrangements were designed for a very different organisation to the one that pooling will create. This means that thought needs to be given to how to make the most effective use of the scarcest resource available in the governance process which is the time of elected members, while also giving consideration to the number of meetings which it is practical for officers to support. These proposals assume a change in the Authority's Chair from the next annual meeting.
- 3.5 The most fundamental change brought about by pooling is that the Authority no longer needs to concern itself with operational investment matters needing to concentrate instead on overall performance and funding, and the investment strategy and related issues. Making the comparison with a trustee board in a private sector fund, these would be matters which would be the concern of the whole board and not a subset of it. This leads to the thought that perhaps the whole membership of the Authority should be involved in these issues given that all members are responsible for these matters by virtue of their membership of the Authority.
- 3.6 The current arrangements for the Corporate Planning and Governance Board present an uncomfortable mix of functions which while not in conflict do not necessarily sit well together. Again, it might be expected that the whole collective of elected members would be responsible for overseeing the performance of the Administration service while broader corporate planning issues and risk management would also generally be seen as things that should fall to the Authority as a whole. In addition a considerable overlap has developed between the agendas of the Corporate Planning and Governance Board and the Local Pension Board. In most funds the principal focus of the Local Pension Board is on the administrative arrangements and data quality, related policies and compliance with the Pensions Regulator's Code of Practice 14. Indeed this is very much the expectation being set out by the Pensions Regulator. Officers have been discussing with the Chair and Vice Chair of the Local Pension Board a refocussing of the Board's agenda in this way to give it a distinct focus. Such a move would free space in the agenda of the Authority and its Boards by removing unnecessary detail and allow the Local Pension Board to properly fulfil its role as part of the overall assurance framework to support members of the Authority

in their role. Achieving this sort of change will require some amendments to the Terms of Reference of the Local Pension Board, which following agreement by the Board will be brought forward to the next meeting of the Authority. It will also be proposed that from the next municipal year the meetings of the Local Pension Board are separated from those of the Authority in order to promote more timely interchange of information.

- 3.7 The Audit Committee role is an anomaly and seems to sit with the Corporate Planning and Governance Board because there is no other obvious place to put it. Auditors under their professional standards look to report to “those charged with governance”, which has always proved a difficult concept in the local authority context. Is it the full council or equivalent or is it the Cabinet or Executive which has the power to implement policy. Thus a mix of arrangements have grown up, but the key requirement is that there be a distinct audit committee role within the governance arrangements which should be seen as having independence in some way from the executive functions.
- 3.8 The Authority as a whole is smaller than many pension fund committees in traditional administering authorities which handle all their business within the full committee or with a small investment panel which works with officers on developing strategy and previously on more operational issues. Given this there seems no overriding reason why it would not be possible to effectively engage all members of the Authority in all aspects of its work.
- 3.9 Within the current structure of meetings the only place where the limited range of staffing issues which are not delegated, or on which officers seek members’ views, can be discussed is the full Authority. Most local government organisations have a smaller member body which can discuss these sorts of issues. Similar considerations apply to the small number of appeals in relation to the exercise of discretions which are reserved for member decision.
- 3.10 The proposed approach is as follows:
 - a. To disestablish the two boards and deal with all business apart from Audit Committee matters through the full Authority. The Authority would be able to create time limited working groups to consider specific items in detail if that is deemed necessary.
 - b. To constitute an Audit Committee to comprise the s41 members and one Councillor not from the majority party on the Authority to be chaired by the Vice Chair of the Authority. Using the s41 members as the core of this committee would seem to ensure that it comprises “those charged with governance”, in the sense meant by auditing standards. It is suggested that no more than 3 meetings per year would be required, given that the remit will solely be audit matters, and the approval of the accounts.

- c. To constitute a Staffing, Appointments and Appeals Committee made up of the s41 members and one Councillor not from the majority party on the Authority to be chaired by the Chair of the Authority and with a remit to deal with staffing matters to make specific officer and other appointments (such as the Independent Advisers), and handle appeals which require to be heard by members.
- 3.11 Under this approach the full Authority would meet more frequently (using the dates previously allocated to the two Boards), and meetings would be focussed on particular matters. This latter approach is, in part, intended to ensure that when investment matters are being discussed members will have access to the Independent Advisers. An outline timetable of meetings for the next municipal year is attached to illustrate how this might work. While efforts will be made to hold as much discussion as possible in public it might be that the balance between the open and private parts of Authority meetings will change.
- 3.12 The carving out of a specific Audit Committee function is intended to ensure that this activity retains a clear and distinct place in the Authority's governance and also by engaging the s41 members to ensure that the requirement on auditors to report to "those charged with governance" can be demonstrably met.
- 3.13 Creating the Staffing, Appointments and Appeals Committee in effect gives a clear purpose to the previous Management Committee. This body will meet on an as required basis.
- 3.14 The remaining issue is how to properly address shareholder matters and decision making in relation to shareholder resolutions relating to Border to Coast. Often shareholder resolutions are routine (such as the appointment of auditors) and they should be turned round promptly. In some cases during the development of Border to Coast it has taken several months to secure approval for such routine resolutions by all 12 partners due to the need for the decisions to be taken through the relevant governance processes. To date South Yorkshire has managed to avoid such delays. There would appear to be two options, both of which are based on the assumption that the Chair will be the actual shareholder although they would also work in a situation where an officer was the actual shareholder:
 - a. Either, the Fund Director (or other appropriate officer) advises the Chair on the detailed subject of the resolution and recommends how the Authority's vote should be cast; or
 - b. As option (a), but with additional consultation, either with the Vice Chair or the s41 members.

- 3.15 In both cases the way in which the Authority voted would be reported to the next available meeting. Option (a), above is the current process, although it has evolved rather than having been approved. Neither option is ideal in terms of transparency. However, the nature of the governance processes involved in Border to Coast mean that any more significant issues (for example the budget and business plan) will have been discussed at meetings of the Authority prior to a shareholder resolution being required. As such there is an opportunity for the views of all members to be fed into major decisions regardless of the formal mechanisms for exercising the Authority's voting rights.
- 3.16 Overall the broad approach suggested here should reduce the number of member meetings to be serviced by nearly 40% (5 of the current 13). While this is not in itself particularly significant it will result in some small savings on support costs which can be reinvested elsewhere in the Authority's activities. The freeing up of time within the calendar in this way does provide the opportunity to run more informal sessions for members either for the purposes of learning and development or policy development.
- 3.17 Another item which is absent from the Authority's current governance arrangements is an "urgent business procedure", although there are provisions for dealing with emergencies such as a fire destroying the Authority's offices. It is proposed that in the event of decisions being required to be taken urgently they be taken by the relevant statutory officer (Clerk, Fund Director, Monitoring Officer or Treasurer) in consultation with the Chair and Vice Chair and then be reported at the next meeting of the Authority. There are a small range of occasions when urgent decisions are required, for example in relating to the settlement of legal claims or agreeing to sponsor shareholder resolutions at company AGM's, when it is not possible to convene a meeting of the Authority. Putting in place a procedure of this sort allows issues such as these to be dealt with promptly and in a transparent way.
- 3.18 Informal discussions around these proposed changes have taken place with the new External Auditor in order to ensure that there are no issues from their point of view with the proposed Audit Committee arrangements. In these discussions the Auditors did raise a concern as to whether three meetings per year of the Audit Committee would be sufficient. Following further reflection and discussion with Internal Audit officers feel that this should be sufficient given the scale of the organisation. However, this will be reviewed after 12 months and it is always possible to hold additional meetings if required.

Next Steps and Implementation

- 3.19 Should members accept the proposals set out in this report the next steps will be to prepare a revised constitution for the Authority reflecting the proposed arrangements, to be adopted from the next Annual Meeting.

4) Implications and risks

- Financial – As indicated there may be some small savings in support costs when the detail of the proposals are finalised, however, this is unlikely to be material, and the delivery of financial savings is not the key driver in this exercise.
- Legal – It is a matter for the Authority to determine its own governance arrangements within the framework set out in local government law and having regard to good governance practice. The proposals set out in this report meet both of these criteria.
- Diversity – There are no diversity implications arising from this report.
- Risk – Any change to governance arrangements carries some degree of risk. Arrangements will be put in place when implementing any changes to ensure that risks are appropriately addressed.

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Background papers used in the preparation of this report are available for inspection at the offices of the Authority in Barnsley.

Appendix A

Current Pattern of Meetings (Based on 2018/19)

	Authority	Corporate Planning and Governance Board	Investment Board
April			
May			
June	7 th (Annual Meeting)	14 th	21 st
July		19 th (Accounts)	
August			
September			13 th
October	4 th	18 th	
November	22 nd		
December			13 th
January	17 th (Budget)		
February		14 th	
March	14 th		7 th
Number of Meetings	5	4	4

Total number of meetings 13

Possible Future Pattern of Meetings (Based on 2018/19 for illustration only)

	Authority	Audit Committee
April		
May		
June	7 th (Annual Meeting)	
July		19 th (Accounts, Internal Audit Annual Report)
August		
September	13 th	
October		18 th (Internal Audit Progress, Annual Audit Letter)
November	22 nd	
December		
January	17 th Budget	
February		
March	14 th	7 th (Audit Plans and Progress Reports)
Number of Meetings	5	3

Total number of meetings 8. The Staffing Appointments and Appeals Committee would meet as required.