

**FLINTSHIRE COUNTY COUNCIL**

**REPORT TO:**           **CONSTITUTION COMMITTEE**

**DATE:**                 **15 OCTOBER 2014**

**REPORT BY:**         **CHIEF OFFICER (PEOPLE AND RESOURCES) AND  
CHIEF OFFICER, GOVERNANCE**

**SUBJECT:**           **CLWYD PENSION FUND GOVERNANCE**

**1.00 PURPOSE OF REPORT**

- 1.01 To provide Members with a proposal to create a local Pension Board for the Clwyd Pension Fund.
- 1.02 To seek agreement for a recommendation to Council for the Protocol of the Pension Board with a view to it being incorporated into the Council's Constitution.

**2.00 BACKGROUND**

- 2.01 The Clwyd Pension Fund is administered by Flintshire County Council as the administering authority on a "lead authority" basis which is set out in statute following Local Government Reorganisation in 1996. The County Council have previously delegated responsibility for the management of pension issues to the Clwyd Pension Fund Committee with day to day operational matters delegated in the main to the Chief Officer, People and Resources.
- 2.02 The Public Service Pensions Act (PSPA) 2013 introduces a number of changes to public service pension schemes, including a number of key changes impacting on the governance of public service pension schemes. One of the key changes is the requirement for each Administering Authority in the LGPS to create a local Pension Board. The Secretary of State for Communities and Local Government (DCLG) is currently considering how these changes are to be incorporated into the LGPS.
- 2.03 The key elements of the expected regulations relating to local Pension Boards are outlined below:

*Establishment*

- Each LGPS Administering Authority is required to establish a local Pension Board no later than 1 April 2015.
- Where a pension committee already exists as a committee of a local authority (which is the case with most administering authorities), there is an option to create one combined pension committee and Pension Board. However, this will be subject to the Secretary of State's approval because the practical and legal hurdles for doing so are considered extremely

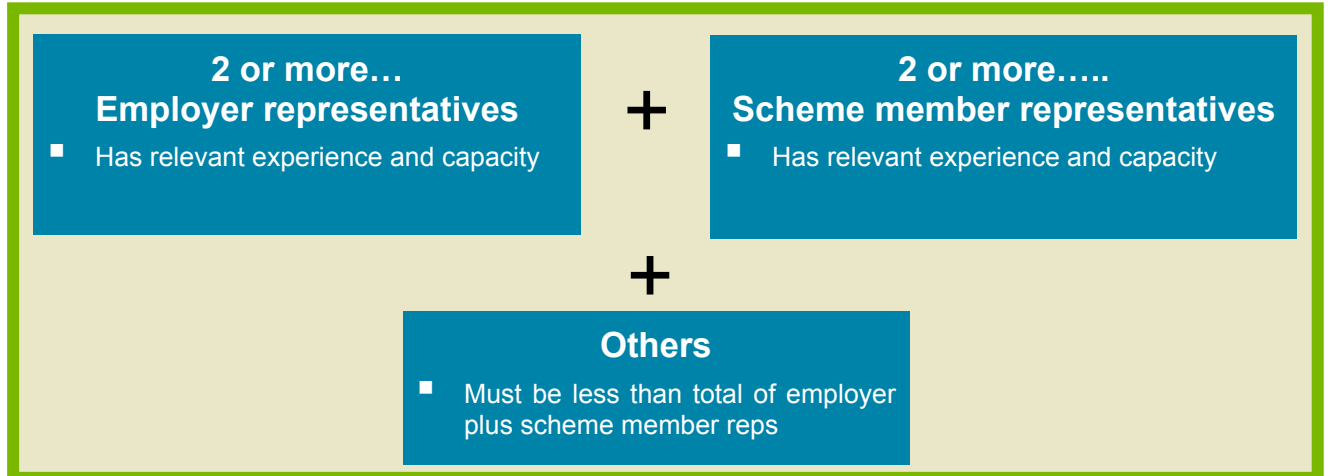
challenging. Accordingly, it is expected all local authority Administering Authorities will be required to create a separate Pension Board (i.e. in addition to any existing Pension Committee).

- The role of the Pension Board is to assist the Administering Authority with securing compliance with regulations and requirements imposed by the Pensions Regulator and assisting in ensuring effective and efficient governance and administration of the Scheme. This has generally been interpreted as the Pension Board having an oversight role but not a decision making role.

#### *Membership*

- There must be equal numbers of scheme member representatives and employer representatives
- It is expected that these cannot be elected members on a Pension Committee or officers involved with the management of the Pension Fund
- There must be at least two of each of these representatives (so a Pension Board must comprise of at least four individuals)
- However, these representatives must have "relevant experience and capacity" as well as meeting an ongoing legal requirement in relation to knowledge of pension matters
- Other members can be appointed to the Pension Board in addition to the representatives but the number of these other members must be less than the total number of representatives

These points are illustrated below:



#### *Conflicts of Interest*

- Each Administering Authority must be satisfied that appointees to a Pension Board do not have a conflict of interest (initially and on an ongoing basis).
- This is defined in the PSPA as ""a financial or other interest which is likely to prejudice the person's exercise of functions as a member of the board (but does not include a financial or other interest arising merely by virtue of membership of the scheme or any connected scheme)".

#### *Procedures*

- Each Administering Authority will be required to determine its own procedures relating to the establishment and operation of the Pension Board.

### **3.00 CONSIDERATIONS**

- 3.01 Accordingly Flintshire County Council must establish a new Pension Board. It is worth noting that local authority legislation, and accordingly the Council's Constitution, does not automatically apply to the new local Pension Boards as they are being established under the Public Service Pensions Act. Accordingly a Protocol detailing how the Pension Board is established and operated must be developed.
- 3.02 The establishment of this Pension Board was considered when the Council established the Pension Fund Committee on 30 April. The structure diagram from that report is attached as Appendix 1 (updated in line with recent management changes).
- 3.03 The proposed Protocol for the Pension Board is attached as Appendix 2. The key elements of the proposals are:
- The Fund's Independent Adviser will Chair the Pension Board
  - There will be two each of scheme member and employer representatives with the appointments being made by the Chief Officer (People and Resources)
  - The Pension Board will meet twice a year
  - Minutes of all meetings will be submitted to the Pension Fund Committee and, therefore, will be public documents
  - An annual report will be submitted to the Pension Fund Committee and Audit Committee and, as such will be a public document, which will also be reproduced in the Fund's Annual Report and Accounts
  - Pension Board meetings will not be open to the general public although attendees will be permitted to attend and address the Board at the discretion of the Chair.
- 3.04 It is considered that this approach will not be out of line with many other Administering Authorities and it is appropriate given:
- the improved level of governance recently introduced through the creation of the Pension Fund Committee and review of the Independent Adviser position,
  - the creation of a Pension Fund Advisory Panel, which consists of senior officers of the Fund, the Fund Actuary, Investment Consultant and Independent Adviser, providing advice to the Pension Fund Committee, and
  - employer and scheme member representatives are already full voting members of the Pension Fund Committee.
- 3.05 Legal and Democratic Services have provided advice and support and will continue to assist with the establishment of the Pension Board in line with the Protocol.

3.06 Subject to the approval of this Committee, the Pension Board Protocol can then be recommended for approval to the Council on 26 November, so as to enable appointments being made and training commencing prior to the latest implementation date of 1 April 2015.

3.07 These recommended changes are subject to final LGPS Regulations. A verbal update will be provided at the Committee if there are any developments affecting the proposals.

#### **4.00 RECOMMENDATION**

4.01 That Members recommend to Council an addition to its Constitution as outlined in Appendix 2 so that the Council, as Administering Authority for the Clwyd Pension Fund, can introduce a local Pension Board as required by the Public Service Pensions Act and LGPS Regulations to assist with ensuring compliance with regulations and to achieve efficient and effective governance.

#### **5.00 FINANCIAL IMPLICATIONS**

5.01 The four representative members of the Pension Board will be entitled to an allowance of £99 per half day meeting (unless they are carrying out these duties as part of their normal working hours), plus any additional expenses. These costs, together with any additional administration costs associated with the Pension Board, can be met from the Clwyd Pension Fund.

#### **6.00 ANTIPOVERTY IMPACT**

6.01 None directly as a result of this report.

#### **7.00 ENVIRONMENTAL IMPACT**

7.01 None directly as a result of this report.

#### **8.00 EQUALITIES IMPACT**

8.01 None directly as a result of this report.

#### **9.00 PERSONNEL IMPLICATIONS**

9.01 None, directly as a result of this report.

#### **10.00 CONSULTATION REQUIRED**

10.01 None, directly as a result of this report.

#### **11.00 CONSULTATION UNDERTAKEN**

11.01 This matter was consulted on with employers and unions as part of the review of the Fund's governance arrangements in the Spring of 2014 to which no negative responses were received.

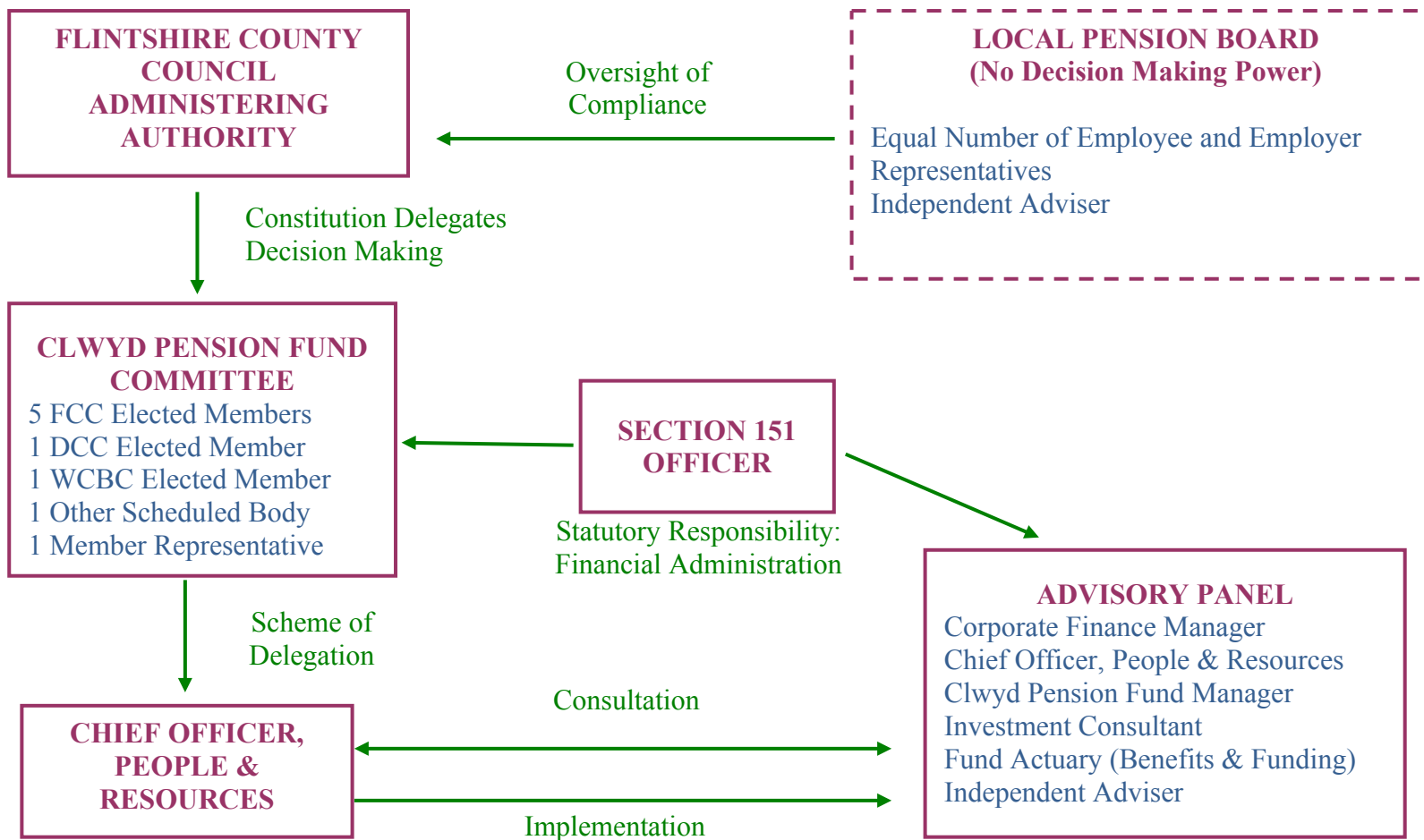
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**LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**

Background Papers:        Constitution Committee Report 26<sup>th</sup> March 2014  
                                     Council Report 30<sup>th</sup> April 2014  
                                     Public Service Pensions Act 2013  
                                     Local Government Pension Scheme Regulations 2013

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## Appendix 1



# **Recommended change to the Constitution relating to the Clwyd Pension Fund**

## ***Addition to PART 2 – ARTICLES OF THE CONSTITUTION***

*The following shall be added at the end of Article 21 (The Pension Fund Committee):*

### **1.5 Clwyd Pension Fund Board**

In accordance with Section 5 of the Public Service Pensions Act 2013, a local Pension Board assists Flintshire County Council in the governance and administration of the Clwyd Pension Fund. The Board's role, members, terms of reference and working arrangements are contained in the attached Protocol.

#### **FLINTSHIRE COUNTY COUNCIL AS LEAD AUTHORITY FOR THE CLWYD PENSION FUND**

#### **PENSION BOARD PROTOCOL**

##### **1) Introduction**

The purpose of this document is to set out the Protocol for the local Pension Board of the Clwyd Pension Fund. The Pension Board is established by Flintshire County Council under the powers of Section 5 of the Public Service Pensions Act 2013 and regulation [106 – to be confirmed] of the Local Government Pension Scheme Regulations 2013. As such, the Constitution of Flintshire County Council does not apply to this Pension Board unless expressly referred to within and permitted by this Protocol.

##### **2) Powers of the Pension Board**

The Pension Board will exercise all its powers and duties in accordance with the law and this Protocol.

##### **3) Role of the Pension Board**

The role of the Pension Board is defined by regulation 106 (1) of the LGPS Regulations as to assist Flintshire County Council as Scheme Manager:

- to secure compliance with the LGPS Regulations and any other legislation relating to the governance and administration of the Scheme, and requirements imposed in relation to the LGPS by the Pensions Regulator
- to ensure the effective and efficient governance and administration of the LGPS by the Clwyd Pension Fund

The Council considers this to mean that the Pension Board is providing oversight of these matters and, accordingly, the Pension Board is not a decision making body in relation to the management of the Pension Fund but merely makes recommendations to assist in such management. The Pension Fund's management powers and responsibilities which have been, and may be, delegated by the Council to committees, sub-committees and officers of the Council, remain solely the powers and responsibilities of those committees, sub-committees and officers including but not limited to the setting and delivery of the Fund's strategies, the allocation of the Fund's assets and the appointment of contractors, advisors and fund managers.

The Pension Board will ensure that in performing their role it is:

- done effectively and efficiently and
- complies with relevant legislation and
- done by having due regard and in the spirit of the Code of Practice on the governance and administration of public service pension schemes issued by the Pensions Regulator and any other relevant statutory or non-statutory guidance.

The Board must provide minutes of each meeting to the following Pension Fund Committee meetings and may make reports and recommendations to the Pension Fund Committee insofar as they relate to the role of the Pension Board. Any such reports or recommendations must be provided 10 working days in advance of the next Pension Fund Committee to the Chief Officer (People and Resources). In addition, an annual report of the Pension Board (as prepared by the Chair of the Pension Board), must be provided to the Chief Officer (People and Resources), the Monitoring Officer, the Pension Fund Committee, and the Audit Committee and be published in the Fund's Annual Report and Accounts.

Where the Board considers that a matter brought to the attention of the Pension Fund Committee has not been acted upon or resolved to their satisfaction, the Pension Board will provide a report to the Monitoring Officer.

#### **4) Composition of the Pension Board**

##### **a) Membership.**

The Pension Board shall consist of 5 members and be constituted as follows:

- i) 2 Employer Representatives;
- ii) 2 Scheme Member Representatives;
- iii) 1 Independent Member.



Substitutes for the Employer or Scheme Member Representatives are not permitted. The Independent Member will have an Alternate who will carry out Pension Board business if the Independent Member is not available to do so.

**b) Eligibility and selection criteria.**

The Chief Officer (People and Resources) will define and keep under review any eligibility and/or selection criteria that will apply to Pension Board members having due regard to the LGPS Regulations and any other relevant Code of Practice and guidance (statutory or otherwise).

**c) Appointment of Members.**

The process for selecting members of the Pension Board is set out below.

*i) Employer Representative*

**Step 1** - Each employer within the Clwyd Pension Fund will be invited to nominate one representative to represent employers on the Pension Board. The Chief Officer (People and Resources) can appoint or reject any nomination made where she/he considers the individual does not appropriately meet the eligibility and/or selection criteria.

**Step 2** - Where Step 1 fails the Chief Officer (People and Resources) will take any other action she/he considers appropriate to appoint suitable Employer Representatives.

*ii) Scheme Member Representatives*

The joint trade unions will be approached to make one nomination of a person to represent scheme members. The Chief Officer (People and Resources) can appoint or reject any nomination made where he considers the individual does not appropriately meet the eligibility and/or selection criteria.

The other Scheme Member Representative will be selected by the Chief Officer (People and Resources) following procedures determined by him/her.

NB: Step 2 for the Employer Representative also applies to the Scheme Member Representative.

*iii) Independent Member and Alternate*

The Independent Adviser (or Alternate) for the Clwyd Pension Fund will be the Independent Member on the Pension Board and the appointment of the Independent Member and his Alternate will be made as part of their contract with Flintshire County Council.

**d) Term of Office**

i) The Employer Representatives are appointed for a period of three years from the date of establishment of the Pension Board or the date of their appointment if later. This period may be extended to up to five years if agreed

by the Chief Officer (People and Resources). It will automatically cease if the individual is no longer in the employment of that employer).

- ii) The Scheme Member Representatives are appointed for a period of three years from the date of establishment of the Pension Board or the date of their individual appointment if later. This period may be extended to up to five years if agreed by the Chief Officer (People and Resources).
- iii) The Independent Member's term of office will be determined by the contract terms for the Clwyd Pension Fund's Independent Adviser.

Any Pension Board member may be re-appointed for further terms following an appointment process.

Term dates may not be exact due to the period of the appointment process. The term of office may therefore be extended for this purpose or other exceptional circumstances by up to three months with the agreement of the Chief Officer (People and Resources).

Other than ceasing to be eligible (as set out above) a Pension Board member may only be removed from office during the term of appointment by the unanimous agreement of the Chief Officer (People and Resources), the Monitoring Officer and the Independent Member. Such reasons may include non-compliance with this Protocol including inappropriate conduct, conflicts of interest, avoidance of training or low meeting attendance.

The removal of the Independent Member requires unanimous agreement from the Chief Officer (People and Resources) and the Monitoring Officer.

#### **e) Quorum**

All Members of the Pension Board are expected to regularly attend meetings. Records of attendance of all Members will be maintained and reported to the Chief Officer (People and Resources) on at least an annual basis.

A meeting of the Pension Board will only be quorate when:

- one Employer Representative and
- one Scheme Member Representative and
- the Independent Member or Alternate

are present. Subject to agreement by the Independent Member this could include remote attendance. A meeting that is (or becomes at any point) not quorate will cease immediately.

#### **f) Chairing**

The Chair of the Pension Board will be the Independent Member (or Alternate). The role of the Chair is to:

- Ensure that all members of the Board show due respect for process, that all views are fully heard and considered and that decisions are democratically made where consensus cannot be reached.
- To uphold and promote the purpose of the Board and to interpret its Protocol when necessary
- Ensure that the Pension Board members have the knowledge and skills as determined in the Fund's Training Policy and other guidance or legislation and maintain a training record.
- Act as professional adviser for the Board or arrange such advice as required subject to agreement by Chief Officer (People and Resources) on such conditions as that officer determines.
- Agree the agenda for each Pension Board meeting.
- Approve minutes for Pension Board meetings.
- Ensure an attendance record is maintained along with advising Flintshire County Council on remuneration and expenses to be paid.
- Advise Flintshire County Council on an appropriate budget for the Board.
- Write reports required by Flintshire County Council on the work of the Board.
- Liaise with the Clwyd Pension Fund Manager on the requirements of the Board, including advanced notice for Flintshire County Council officers to attend and arranging dates and times of Board meetings.
- Other tasks which may be deemed appropriate by Flintshire County Council for the Chair of the Pension Board.
- Other tasks that may be requested by the members of the Pension Board, within the remit of this Protocol and subject to agreement with the Chief Officer (People and Resources)
- To annually review and report on the performance of the Board

The decision of the Chair on all points of procedure and order and the Chair's interpretation of the Protocol shall be final.

#### **g) Voting**

Each Employer and Scheme Member Representative on the Pension Board will have an individual voting right but it is expected the Pension Board will as far as possible reach a consensus.

The Chair of the Pension Board will only vote in the event of an equality of votes. The results of any voting outcomes will be reported in the Board minutes.

## **5) Location and Frequency of Meetings**

The Pension Board will normally meet at the offices of the Clwyd Pension Fund, although the offices of any Employer Representatives could be used with prior agreement of the Chair and at no additional accommodation cost to the Clwyd Pension Fund.

The Board will meet twice in each calendar year. If the Board does not believe that this is sufficient to discharge its duties and responsibilities effectively the Chair can make a request to the Chief Officer (People and Resources) for approval to hold additional meetings.

Urgent business of the Pension Board between meetings may, in exceptional circumstances, be conducted via communications between members of the Pension Board including telephone conferencing and e-mails.

## **6) Remuneration and Expenses**

- a) Subject to b) below, an allowance will be made to both Employer and Scheme Member Representatives for attending meetings relating to Pension Board business (including attending training) at the rates contained in the Schedule of Member Remuneration in Flintshire County Council's Constitution for co-opted members of a Flintshire County Council Committee.
- b) It is hoped that employers of Representatives on the Pension Board will provide appropriate capacity to allow the Representative to perform this role within their normal working day without any reduction in pay. If that is the case, the Representative will not be entitled to any allowance.
- c) All Pension Board members will also be entitled to claim travel and subsistence allowances at the rates contained in the Schedule of Member Remuneration in Flintshire County Council's Constitution.

## **7) Acting in the interests of the entire pension fund**

Though members of the Pension Board include representatives of specific categories of stakeholder (i.e. scheme members and employers) each member is required to have due regard to the Role of the Pension Board as outlined in this Protocol. Accordingly all members are expected to work jointly in the best interest of the entire Pension Fund, rather than representing the interest of any individual stakeholders. This should not prevent Members from sharing their knowledge on how matters might impact specific stakeholders of the Fund.

## **8) Conflicts of Interest**

A conflict of interest is defined in the Public Service Pensions Act as:  
"in relation to a person, means a financial or other interest which is likely to prejudice the person's exercise of functions as a member of the board (but does not include a financial or other interest arising merely by virtue of membership of the scheme or any connected scheme)."

Each member of the Pension Board (as well as any other attendees participating in the meeting) will be expected to declare, on appointment and at each meeting, any interests which may lead to conflicts of interest in the subject area or specific agenda of that Pension Board.

The Chair of the Pension Board must be satisfied that the Board is acting within:

- the conflicts of interest requirements of the Public Service Pensions Act and the LGPS Regulations, and
- in the spirit of any national guidance or code of practice in relation to conflicts of interest at the Pension Board, and
- in accordance with any Clwyd Pension Fund Conflicts of Interest Policy or Procedures that apply to the Board.

Each member of the Pension Board, or a person proposed to be appointed to the Board, (as well as attendees participating in the meeting) must provide the Chair of the Pension Board with such information as he or she reasonably requires for the purposes of demonstrating that there is no conflict of interest.

The Chief Officer (People and Resources) and the Monitoring Officer will jointly adopt the role of ensuring that the Chair of the Pension Board does not have a conflict of interest in the same way as the Chair does in relation to all other Pension Board members.

## **9) Receipt of advice and information**

The Board will be supported in its role and responsibilities by the Independent Member. In addition Pension Board members will receive the final reports, minutes and agendas relating to all Pension Fund Committees and may attend Pension Fund Committee meetings (including during exempt items).

Insofar as it relates to the role of the Pension Board, it may also;

- request and receive information and reports from the Pension Fund Committee or any other body or officer responsible for the management of the Fund
- examine decisions made or actions taken by the Pension Fund Committee or any other body or officer responsible for the management of the Fund.

Any further requests for information and advice are subject to the approval of the Chief Officer (People and Resources) who will be required to consider positively all reasonable requests in relation to the role of the Pension Board whilst being mindful of value for money.

## **10) Knowledge and Skills**

Under the requirements of the Public Service Pensions Act, a member of the Pension Board must be conversant with:

- a) the legislation and associated guidance of the Local Government Pension Scheme (LGPS), and
- b) any document recording policy about the administration of the LGPS which is adopted by the Clwyd Pension Fund.

In addition, a member of the Local Pension Board must have knowledge and understanding of –

- The law relating to pensions, and
- Any other matters which are prescribed in regulations.

It is for individual Pension Board members to be satisfied that they have the appropriate degree of knowledge and understanding to enable them to properly exercise their functions as a member of the Pension Board.

In line with this requirement Pension Board members are required to be able to demonstrate their knowledge and understanding and to refresh and keep their knowledge up to date. Pension Board members are therefore required to:

- participate in training events (a written record of relevant training and development will be maintained)
- undertake a personal training needs analysis or other method to identify gaps in skills, competencies and knowledge.
- comply with the Pension Fund's Training Policy insofar as it relates to Pension Board members.

## **11) Standards of Conduct**

The Flintshire Standard and Part 2 of the Flintshire County Council's Members' Code of Conduct shall apply in relation to the standards of conduct of Pension Board members insofar as they can be reasonably considered to apply to the role of members of the Pension Board, including the non-disclosure of confidential information.

## **12) Administration**

The Pension Fund Manager will agree an agenda with the Chair of the Pension Board prior to each Pension Board meeting. The agenda and any papers for the Pension Board will be issued at least 5 working days (where practicable) in advance of the meeting except in the case of matters of urgency. Draft minutes of each meeting including all actions and agreements will be recorded and circulated to all Board members within 10 working days after the meeting. These draft minutes will be subject to formal agreement by the Chair taking consideration of comments by Board members (which may be done electronically between meetings).

The minutes may, at the discretion of the Chair, 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.

### **13) Access to the Public and publication of Pension Board information**

The Pension Board will not be a meeting of the Council open to the general public. The following will be entitled to attend Pension Board meetings in an observer capacity:

- Members of the Clwyd Pension Fund Committee
- the Chief Officer (People and Resources), the Section 151 Officer, the Pension Fund Manager and the Monitoring Officer
- other officers or advisers of Flintshire County Council or other employers involved with the management of the Pension Fund subject to approval in advance by the Chair, or on request by the Chair
- any other person requested to attend by the Chair
- any other person subject to approval in advance by the Chair.

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

In accordance with the Public Service Pensions Act, Flintshire County Council is required to publish information about the Pension Board including:

- who the Pension Board members are
- representation on the Board
- the role of the Pension Board.

In accordance with good practice, Flintshire County Council may publish other information relating to the Pension Board as considered appropriate from time to time and which may include:

- the agendas and minutes
- training and attendance logs
- an annual report on the work of the Pension Board.

All or some of this information may be published using the following means or other means as considered appropriate from time to time:

- on the Clwyd Pension Fund website,
- on the Flintshire County Council website,
- within the Clwyd Annual Report and Accounts,
- within the Fund's Governance Policy and 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.

#### **14) Accountability**

The Pension Board will be collectively and individually accountable to Flintshire County Council.

#### **15) Review, Interpretation and Publication of Protocol**

This Protocol has been agreed by Flintshire County Council. The Council will monitor and evaluate the operation of the Pension Board and may review this Protocol from time to time.

This Protocol will be incorporated into the Council's Constitution and will be publicly available as part of the Constitution as defined in the Council's Constitution and may be amended by the same means as permitted for the Constitution. It will also form part of the Clwyd Pension Fund's Governance Policy and Compliance Statement which will be made available in accordance with the requirements of the LGPS Regulations.

#### **16) Definitions and Interpretation**

Points of interpretation:

- All references to officers are to officers within Flintshire County Council unless otherwise stated.

The undernoted terms shall have the following meaning when used in this document:

<i>"Pension Board" or "Board"</i>	the local Pension Board for Flintshire County Council, administering authority for the Clwyd Pension Fund as required under the Public Service Pensions Act 2013
<i>"Fund" or "Pension Fund"</i>	Clwyd Pension Fund
<i>"the LGPS Regulations"</i>	The Local Government Pension Scheme Regulations 2013 (as amended)
<i>the Public Service Pensions Act</i>	The Public Service Pensions Act 2013 (as amended)
<i>"Scheme Manager"</i>	Flintshire County Council as administering authority of the Clwyd



Pension Fund.

*“Chair”*

The appointed Chairperson of the Pension Board

*“LGPS”*

The Local Government Pension Scheme

*“Scheme”*

The Local Government Pension Scheme