



Department
for Education

Teachers' Pensions Scheme Pension Board

Legal Requirements

**Summary of the legal requirements and
responsibilities of the Pension Board**

Document Purpose

1. This document is intended to be used as a reference to the legislation relevant to those Pension Boards introduced under scheme reform. The document's purpose is to provide members of the Teachers' Pension Scheme Pension Board (hereafter the Pension Board) and of the Scheme Advisory Board with high level detail of the legal requirements of the scheme as a whole, the requirements that relate to the responsibilities of the scheme manager, and further detail on the requirements that apply to the operation of the Pension Board and its members.
2. The document is intended as a guide only and does not constitute a definitive statement of the law. If there is any doubt as to their legal obligations, Pension Board and Scheme Advisory Board members should seek independent legal advice.

Legislation Relevant to the Teachers' Pension Scheme and the Teachers' Pension Scheme Pension Board

3. The legislation which gives effect to the reformed Teachers' Pension Scheme (the TPS) is the Public Service Pensions Act 2013 (PSPA 2013), and The Teachers' Pension Scheme Regulations 2014 (TPSR 2014).
4. Other Acts and regulations which are relevant to the legal requirements relating to the operation of the scheme and which members of the Pension Board must be aware of are as follows:
5. The Teachers' Pension Regulations (2010) (for members with full and tapered protection)
 - Pensions Act 2004;
 - Pensions Act 1995;
 - Pensions (Increase) Act 1971;
 - The Occupational and Personal Pension Schemes (Disclosure of information) Regulations 2013;
 - The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010;
 - The Occupational and Pension Schemes (Scheme Administration) Regulations 1996;
 - The Occupational Pension Schemes (Contracting-out) Regulations 1996;
 - The Occupational Pension Schemes (Transfer Values) Regulations 1996;
 - The Occupational Pension Schemes (Winding up etc.) Regulations 2005;
 - The Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008;
 - The Public Service Pensions (Information about Benefits) Directions 2014.

- The Pensions Act 2008 and the Employers' Duties (Registration and Compliance) Regulations 2010;
 - The Occupational Pension Schemes (Scheme Administration) Regulations 1996;
 - The Registered Pension Schemes (Provision of Information) Regulations 2006.
 - The Public Service Pensions (Record Keeping and Miscellaneous Amendments) Regulations 2014.
6. The Pensions Regulator has issued a Code of Practice (tPR Code of Practice no 14), covering governance and administration of public service schemes that sets out practical guidance on the requirements of pension legislation and standards of conduct and practice for those who must meet the requirements, which includes members of the Pension Board.
 7. Additionally, members of the Pension Board will be expected to adhere to the Seven Principles of Public Life (formerly known as the Nolan Principles) and the Cabinet Office's Code of Conduct for Board Members of public bodies; both these documents are shared with TPSPB members as part of the appointment process.

Scheme Manager Responsibilities

8. The scheme manager – in the case of the TPS and connected schemes, the Secretary of State for Education – is responsible for managing the TPS and any connected scheme. In general terms this responsibility involves setting the scope and direction of the scheme, the scheme regulations and the overriding scheme policy.
9. Under PSPA 2013, the Secretary of State is responsible for ensuring that the Pension Board is established.
10. The scheme manager is legally responsible for:
 - determining the membership of the Pension Board¹;
 - determining the terms of appointment of the Pension Board members;
 - determining the appointment process for Pension Board members;
 - determining the process for the removal or non-renewal of the appointment of Pension Board members;

Record Keeping

11. It is the scheme manager who is responsible for maintaining records of Pension Board meetings. These records must contain:
 - the date, time and place of Pension Board meetings;
 - the names of all Pension Board members invited to the meeting;

¹ The Pension Board must include equal numbers of members representing the employers and members.

- the names of all attendees at a Pension Board meeting, and the capacity in which they attended;
 - all decisions made at the meeting (this will ensure that there is a clear and transparent audit trail of the decisions made);
12. The scheme manager must also keep records relating to any decision taken by the Pension Board other than at a meeting, including the date, time, and place of the decision and the names of the members who participated in it.
13. Relevant legislation:
- The Public Service Pensions (Record Keeping and Miscellaneous Amendments) Regulations 2014 (regulations 6(1) and 6(2)).
14. tPR Code of Practice no 14 also advises that schemes keep records of key discussions, which may include topics such as compliance with policies in relation to the administration of the scheme, where appropriate.
15. The records of Pension Board meetings and decisions must be kept by the scheme manager for at least 6 years from the end of the scheme year to which they relate.
16. In practice it will be the Pension Board Secretariat that drafts the minutes of meetings, agrees them with the Chair and retains a copy for the scheme manager's records. The Secretariat will also ensure that decisions, particularly those taken between meetings, are properly recorded.

Teachers' Pension Scheme Pension Board

Purpose and Make Up

17. The function of the Pension Board is to assist the scheme manager to secure compliance with the scheme regulations and any other regulations relating to the governance and administration of the TPS and any connected scheme, along with requirements imposed by tPR in relation to the scheme and any connected scheme.
18. Relevant legislation:
- TPSR 2014 (regulation 8(2)).

Pension Board Reporting, Disclosure and Communications

19. PSPA 2013 sets out the information relating to the Pension Board that must be published and kept up-to-date, as follows -
- who the members of the Pension Board are;
 - representation on the Pension Board of members of the scheme or schemes;
 - the matters falling within the Pension Board's responsibility.

20. Relevant legislation:

- PSPA 2013 (section 6)

21. There is no requirement for the Pension Board to publish Board papers, agendas or meeting minutes, but if they are published consideration should be given to whether they should be redacted to the extent that they contain confidential or commercially sensitive information and/or data covered by the Data Protection Act 1998 and if publication would, or would be likely to, be in breach of that Act or of a legally enforceable duty of confidentiality.

22. tPR Draft code of practice no 14 also suggests that the Pension Board publishes:

- any specific roles and responsibilities that a Pension Board member may have²;
- the full terms of reference of the Pension Board³;
- the appointment process for the Pension Board⁴.

Pension Board Conflicts of Interest

23. The scheme manager must be satisfied that any person to be appointed to the Pension Board does not have a conflict of interest, which, where it relates to a person, is defined as:

a financial or other interest which is likely to prejudice the person's exercise of functions as a member of the [Pension Board] (but does not include a financial or other interest arising merely by virtue of membership of the scheme or any connected scheme).

24. It is the responsibility of proposed Pension Board appointees to provide the scheme manager with information that the scheme manager reasonably requires to satisfy him(her)self that there are no conflicts of interest.

25. The scheme manager must also be satisfied from time to time that none of the members of the Pension Board has a conflict of interest; again Pension Board members must provide the scheme manager with information that the scheme manager reasonably requires to satisfy him(her)self that there are no conflicts of interest.

26. Relevant legislation:

- PSPA 2013 (section 5(5) for a definition of “conflict of interest”)
- TPSR 2014 (regulation 10)

27. tPR Code of Practice no 14 provides practical guidance on the management of potential conflicts of interest of Pension Board members and the need to establish

² tPR Code of Practice no. 14 – Governance and administration of public service pension scheme (89)

³ Ibid.

⁴ Ibid.

processes to ensure that management is ongoing and enduring. The Code of Practice offers advice on managing potential conflicts, which includes:

- maintaining a register of interests, to record and monitor dual interests and responsibilities of pension board members⁵;
- circulating the register of interests to Pension Board members for ongoing review⁶;
- capturing and recording decisions on managing potential conflicts of interest⁷;
- having potential conflicts of interest as an opening agenda item at Board meetings, and revisiting the item during the meeting as necessary, to provide an opportunity for all present (Board and non-Board members) to declare any dual interests and responsibilities which may have potential to become conflicts of interest⁸.

28. tPR Code of Practice no 14 also suggests that:

- the scheme should ensure that Pension Board members are appointed under procedures that require them to disclose any dual interests or responsibilities, which could become conflicts of interest and which may adversely affect their suitability for the role, before they are appointed⁹;
- all terms of engagement (for example appointment letters and any contracts for services) should include a clause requiring disclosure of all dual interests and responsibilities which have the potential to become conflicts of interest, as soon as they arise¹⁰;
- key decisions that are likely to be made are identified in advance to allow for an assessment for any potential conflicts of interest, and the scheme notifies Pension Board members as soon as possible and puts in place mitigations to avoid potential conflicts of interest materialising¹¹;
- identification, evaluation and management of dual interests and responsibilities that have the potential to become conflicts of interest should be part of the scheme risk assessment process¹².

Pension Board Knowledge and Training

29. It is the personal responsibility of Pension Board members to ensure 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.

⁵ tPR Code of practice no. 14 – Governance and administration of public service pension scheme (79)

⁶ Ibid.

⁷ Ibid.

⁸ Ibid., (80)

⁹ Ibid., (75)

¹⁰ tPR Code of practice no. 14 – Governance and administration of public service pension scheme (76)

¹¹ Ibid., (77)

¹² Ibid., (78)

30. This means that a Pension Board member must be conversant with:

- the rules of the scheme;
- any document recording [current] policy about the administration of the scheme.

31. Furthermore, members of the Pension Board must have some knowledge and understanding of:

- the law relating to pensions;
- any other matters which are prescribed in the regulations.

32. tPR Code of Practice no 14 outlines practical guidance on the appropriate level of knowledge and understanding that is required of Pension Board members:

Being 'conversant' means having a working knowledge (i.e. a sufficient level of familiarity) of the scheme rules (which... are set out in the scheme regulations) and documents recording policy about the administration of the scheme, so that Pension Board members can use them effectively when carrying out their duties¹³.

33. This will allow Pension Board members to:

- challenge any failure to comply with the scheme rules and legislation relating to the governance and administration of the scheme and/or any failure to meet the standards and expectations set out in any relevant codes of practice issued by the regulator¹⁴;
- challenge any information or advice they are given and understand how that information or advice impacts on any decision for which they are legally responsible.¹⁵

34. In order to ensure that Pension Board members continually meet the legal requirements relating to knowledge of pension law and scheme regulations, it is suggested that:

- Pension Board members should undertake a personal training needs analysis and regularly review their skills, competencies and knowledge to identify gaps or weaknesses;¹⁶
- a training record should be held to document and address any gaps or weaknesses in each Pension Board member's skills, competencies and knowledge¹⁷;

¹³ Ibid., (37)

¹⁴ Ibid., (46)

¹⁵ tPR code of practice no. 14 – Governance and administration of public service pension scheme (47)

¹⁶ Ibid., (52)

¹⁷ Ibid.

- the scheme should keep appropriate records of the learning activities of individual Pension Board members and the board as a whole¹⁸; in practical terms this will be the responsibility of the Pension Board Secretariat.

35. Relevant legislation:

- Section 248A of the Pension Act 2004.

Pension Governance - Internal Controls and Risk Management

36. It is the responsibility of the scheme manager to establish and operate adequate internal controls for the purpose of ensuring that the scheme is being run in accordance with scheme rules and in accordance with the law, employing a risk-based approach to address significant risks that are likely to have a material impact on the scheme¹⁹.

37. Internal controls means:

- arrangements and procedures to be followed in the administration and management of the scheme;
- systems and arrangements for monitoring that administration and management;
- arrangements and procedures to be followed for the safe custody and security of the assets of the scheme.

Pension Governance - Reporting Breaches of the law

38. Pension Board members (amongst others) are required to report breaches of the law to the regulator, as soon as reasonably practicable, if they have reasonable cause to believe that:

- a legal duty which is relevant to the administration of the scheme has not been, or is not being, complied with;
- that failure to comply is likely to be of material significance to tPR in the exercise of its functions.

39. In practical terms the Pension Board Secretariat will ensure that Pension Board members are made aware of their responsibility for reporting breaches, and of the legal requirements and tPR guidance relating to the reporting of breaches.

40. Relevant legislation:

- Pensions Act 2004 (section 70(2))

¹⁸ Ibid., (55)

¹⁹ Ibid., (94 and 97)