Response by Lothian Pension Fund

General:

LPF is supportive of the draft guidance, which is considered to be sufficiently flexible to suit the current relatively diverse administering arrangements of LGPS Funds in Scotland. LPF is confident in its current compliance with these guidance proposals. Should rationalisation of Pension Funds be implemented, however, then it is considered that there is potential for the guidance to be further prescriptive in narrowing the definition of best practice governance. Similarly, future consideration should be given to whether responsibility for LGPS pension funds should remain with the local administering authority, or whether control should rest with some other body or independently as a stand-alone organisation. The outcome of the Pathfinder Project is therefore awaited with interest.

Request for clarification (as detailed below):

Present position:

The City of Edinburgh Council is the administering authority of the multi-employer Lothian Pension Fund. At present, only elected members of this Council sit and have voting rights on the decision-making Pensions & Trusts Committee.

The following is an extract from the draft guidance (para.23):

Committee Membership and Representation

Under section 57 of the Local Government (Scotland) Act 1973, it is for the appointing council to decide upon the number of members of a committee and their terms of office. They may include committee members who are not members of the appointing council and such members may be given voting rights (see paras 22 and 23) by virtue of section 14 of the Local Government and Housing Act 1989. On this basis, it is open to pension committees to include representatives from employing authorities, scheme member and other lay member representatives, with or without voting rights, provided that they are eligible to be committee members (eligibility rules are set out in section 15 of the Local Government and Housing Act 1989).
Request for clarification re voting powers of LGPS committees of the administering authority

Previous legal advice received by Lothian Pension Fund on the question of voting rights appears now to be contradicted by that issued in the draft guidance, at para.23 above. Specifically, the following points are made:

The City of Edinburgh Council remains as the sole administering authority of LPF. As such, it alone has the statutory remit to control and run the LPF. Therefore, LPF may be considered as part of the finance of this local authority, regardless of the financial input of other local authorities or any other organisation that participates in the fund. To include members from other Scheduled Bodies may breach the Council's obligations in terms of s.57(3) of the 1973 Act.

Although the finance of other local authorities is reflected in the LPF, those finances are pooled together into the LPF itself. Thus, along with the Lothian Buses and Scottish Homes funds, although segregated, those finances are in reality all inextricably part of the same fund. They are subject to the same investment principles in the Funding Strategy Statement, and are ultimately all controlled and pooled together by the City of Edinburgh Council. The assets are all held in the name of the City of Edinburgh Council as LPF is not a legal entity in itself. Such factors would again lead to the view that the LPF is part of this Council's financial structure.

Legislation drafted in the manner of s.57(3) the 1973 Act imposes strict liability on the Council, and therefore LPF is concerned that any breach of this could give rise to legal action.

As a general point, to the fact that although this Council is not bound by the Financial Services Authority Regulations in the administration of the Lothian Pension Fund, it must nonetheless seek to comply with best practice in its administration. The FSA Regulations would suggest that to allow members from neighbouring Councils onto the decision-making pensions Committee would breach good industry practice. For example, the FSA’s Conduct of Business Sourcebook (COBS) 2.1.1 and 9.2.1 both point to the suggestion (although not explicit in the guidance) that all investors should receive equal treatment. At the moment, this Council is giving investors equal treatment, in the sense that they know it is only this Council which administers the Fund. If it were to invite other Councils on to the Committee, this may demonstrate a lack of fairness towards investors, as these sections of COBS insist upon, as the Council may be seen to be favouring some of its biggest partners in the Pension Fund.

Accordingly, LPF respectfully requests legal clarification re voting powers of LGPS committees of the administering authority.