

Investment Committee

Hybrid Meeting – 3 March 2025

Item 9 – Paper E

Legal Advice on Fiduciary Duty

1. The Board has received Nigel Giffin KC's updated opinion on the fiduciary duty. The opinion is entitled "Local Government Pension Scheme (LGPS): Investments and Non-Financial Considerations'. This was intended as a review of and update to the [2014 advice](#).
2. The advice was requested before the launch of the Government's 'Fit For the Future' consultation on 14 November 2024, but it was able to address some of the issues raised in that consultation due to the timing of when the advice was eventually received. The updated opinion can be found on the [Legal Opinions and Summaries page](#) of the Board's website.
3. The advice is a substantial document at 36 pages in length and expands on the previous advice in a number of areas, for example:
 - In clarifying how the fiduciary duty owed to employers differs from that owed to scheme members (paragraph 19)
 - How far administering authorities are required to consider environmental, social and governance (ESG) factors in decision making, and state this within the Investment Strategy Statement (ISS) (paragraph 37)
 - A reminder of the need for administering authorities to actually apply the policies set out in their ISS when making investment decisions, and the need to keep the ISS up to date (paragraphs 43-44)
 - Some discussion of how far administering authorities can devolve the implementation of their ESG policy to pools, while confirming that they could not delegate the strategy-setting duty itself to the pool company (paragraphs 46-51)
 - The requirements around consulting members and how their views can be considered when deciding how and which ESG factors are applied (paragraphs 38-42 and 56-62).

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4. Given the length of the advice received, the Secretariat are in the process of producing a summary of the key messages from the advice. That will be available from the Board's website once agreed.
5. The Secretariat are also procuring further legal advice on some specific points around the practicalities of managing the inherent conflicts of interest that arise from the proposals included in the Fit for the Future consultation. This further legal advice aims to provide supplemental, practical advice to administering authorities on how to set up governance and oversight arrangements consistent with the administering authority's fiduciary duty.

Recommendation: That the Committee notes the contents of this report.
