

Responsible Investment Advisory Group (RIAG)

MEETING – 3 FEBRUARY 2025

ITEM 4 PAPER C

Legal Advice on Fiduciary Duty

1. The Board has received Nigel Giffin KC's updated opinion on the fiduciary duty in the context of the LGPS. This was intended as a review of and update to Nigel's [2014 advice](#) and is entitled "Local Government Pension Scheme: Investments and Non-Financial Considerations".
2. The advice was sought ahead of 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. The updated opinion can be found on the [Legal Opinions and Summaries page](#) of the Scheme Advisory Board's website.
3. The advice 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 members (see para 19)
 - How far administering authorities are required to consider ESG factors in decision making, and to record this in their Investment Strategy Statement (ISS) (see para 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 (see paras 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 (see paras 46-51)
 - The requirements around consulting members and how their views can be taken into account in deciding how and which ESG factors are applied (paras 38-42 and 56-62).
4. The Secretariat is considering whether any further advice on specific points would be helpful and would **welcome any views from the Group on this**.
5. The Group is also **invited to consider** whether the Board could helpfully provide supplemental, practical advice to administering authorities on how to act consistently with this guidance. For example, around best practice in consulting with members to establish their ESG approach.
