

Shadow Advisory Board

Publication of further Counsel's opinion on the LGPS

Background

The Shadow Scheme Advisory Board for the Local Government Pension Scheme (LGPS) in England and Wales was established in July 2013. It is the forerunner to the Local Government Pension Scheme Advisory Board, which is established under Section 7 of the Public Service Pensions Act 2013. The Board has been set up prior to the formalisation of the regulations setting out the formal remit of the Scheme Advisory Board, which are expected to come into force in early 2015.

Last year, the Board sought and published advice from Counsel on fiduciary duty in the LGPS, a copy of which is located [here](#). Following this, further advice has been commissioned to cover:

- confirmation of the requirement to meet benefit payments separate from the status of funds; and
- the interaction between the LGPS and the EU Institutions for Occupational Retirement Provision (IORP) Directive 2003.

This advice is available as a PDF document [here](#).

The benefit 'guarantee'

The generally accepted position in the LGPS was that the Administering Authority was required to meet benefit payments on a statutory basis regardless of the circumstances of the fund it operates. In the event, Nigel Giffin QC finds that the assumed position above is not reflected in the regulations resulting in a potential (if extremely unlikely given the strength of local government finance requirements) circumstance of there being an uncertainty around benefit payments should the funds be unable to meet them.

Such a situation, however unlikely, is in the Board's view untenable and therefore the Board will be asking DCLG to amend regulations in order to clarify the requirement for administering authorities to pay benefits on a statutory basis.

The IORP

In Counsel's view the requirements of article 8 (which sets out that there should be legal separations between sponsoring employers and pension schemes) are met by the regulations but he accepts that regulations could be more explicit on the use of fund monies and that model structures such as South Yorkshire present no possible issues for compliance. The Board will continue to look at the issue of separation between fund and authority and will consider the content of this opinion as part of that work.

In terms of article 18 (which details how investments should be made in institutions for occupational retirement provision), Counsel makes some suggestions to strengthen regulations to ensure full compliance but reminds Administering Authorities that they should act in accordance with the Directive regardless of the current state of the regulations. The Board will be making recommendations to

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DCLG for changes to investment regulations which take on board this opinion to ensure that the relevant parts of Article 18 are adopted, reflecting the legal views provided by the Law Commission and Michael Furness QC.

22 January 2015