

Fiduciary duty and the LGPS

Introduction

The Local Government Pension Scheme (LGPS) is a defined benefit scheme governed by the provisions of the Superannuation Act 1972 and Public Service Pensions Act 2013. It provides pension benefits based on salary and length of service.

Arising from its statutory basis the LGPS does not have assigned trustees. Leicestershire County Council (LCC) is the administering authority of the Leicestershire Pension Scheme Fund (the Fund) that has approximately 100,000 members and 200 employers.

LCC has delegated responsibility for decisions relating to the investment of the Fund's assets to the Local Pension Committee. These decisions are taken with the benefit of specialist advice and in accordance with the Investment Strategy Statement.

Members of the Local Pension Committee must make decisions in accordance with general legal principles (fiduciary duty and public law principles) and LGPS legislation.

Fiduciary Duty and Funding Level

The Local Pension Committee has a fiduciary duty to act in the best interests of employers and scheme members. Case law on fiduciary duty explains the duty as the exercise of discretionary power rationally and reasonably and for a proper purpose by reference to relevant legal considerations. This duty can be summarised as achieving what is the best for the financial position of the Fund.

Investment powers must be directed to achieving what is the best for the financial position of the Fund, to ensure the Fund is able to pay benefits.

This is possible through the funding level (the value of assets) the Fund holds and the expected liability it owes to Fund members who are beneficiaries—i.e., receiving pension benefits. This is measured every 3 years. This funding level can change significantly over each three-year period given all the factors that affect the calculation. Key factors include:

- Investment returns in the prevailing 3 years versus expectations
- Future investment return expectations
- Future inflation expectation

The Law on Investment Decisions

This is governed by the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016 (Investment Regulations). They set out the requirement that administering authorities seek proper advice. This is required to be from a person LCC reasonably considers to be qualified by their ability in and practical experience of financial matters. For the Fund this is Hymans Robertson.

Guidance

Statutory guidance was produced by the Department for Communities and Local Government in 2016 and revised in 2017. The guidance set out further information for preparing and maintaining an Investment Strategy Statement as required by the Investment Regulations. The statement is required to detail how, when taking investment decisions, the Fund takes into account non-financial factors such as environmental, social and governance factors (ESG).

APPENDIX D

The Guidance sets out that when making investment decisions the Local Pension Committee must take proper advice and act prudently. This is described as a 'duty to discharge statutory responsibilities with care, skill, prudence and diligence'.

Subject to this, schemes should consider any factors that are financially material to the performance of their investments, including ESG. This includes considerations over the long term, dependent on the time horizon over which the liabilities arise.

Consideration of Environmental Social and Governance (ESG) factors

With regard to ESG considerations the guidance states that the Funds should consider any factor financially material to the performance of their investments, including ESG factors.

Although pursuit of a financial return should be the predominant concern, Funds may take purely non-financial (ie. ethical) considerations into account provided that doing so would not involve significant risk of financial detriment to the Fund and where they have good reason to think that scheme members would support their decision.

To gauge scheme members support, or otherwise, Funds should explain the extent to which the views of local pensions committee and other interested parties (i.e., Fund employers and members) are taken into account when making an investment decision based on non-financial factors and explain the extent to which non-financial factors will be taken into account in the selection, retention and realisation of investments.

Concluding Remarks

The appetite of the Fund for taking risk when making investment decisions is ultimately for local consideration and determination by the Local Pensions Committee subject to the aim and purpose of the Fund. As a reminder this is to maximise the returns from investment returns within reasonable risk parameters.

Therefore, [based on the present law and guidance](#) the Local Pension Committee would not be acting lawfully with regard to approving investment decisions where Hymans Robertson or any successor external advisor believe a decision:

- risks conflict with the fiduciary duty to the Fund
- risks lower investment returns.