Guidance note

This note sets out some background in relation to the East Sussex Pension Fund (ESPF) including its approach to Environmental, Social and Corporate Governance. The note also sets out a summary of the duties of the Local Government Pension Scheme (LGPS) Administering Authorities.

1. Key Numbers for the East Sussex Pension Fund

1.1. The primary Fund objective is to provide pension and lump sum benefits for members on their retirement and/or benefits on death, before or after retirement, for their dependants, on a defined benefits basis.

1.2. The ESPF membership of **74,900 individuals** comprises:

a. 20,400 pensioners, who receiving their pensions

b. 23,600 active members, who are in employment and making monthly contributions to the Fund

c. 30,900 deferred members, who have previously made contributions to the Fund and have accrued benefits which will be payable on retirement, but who are not now contributors to the Fund.

d. There are **133 employer** organisations, including East Sussex County Council.

1.3. The Fund maintains a diverse range of **investments totalling £3.63bn** (31 March 2019) to manage risk and investment returns to meet current and future liabilities.

2. East Sussex Pension Fund Approach to Environmental Social and Corporate Governance (ESG) investment

2.1. The Investment Strategy Statement is in place, which includes a Responsible Investment Policy, which commits to “evaluate and manage carbon exposure in order to mitigate risks to the Fund from climate change”.

2.2. Exposure to Fossil Fuels within the total portfolio has been assessed at 4.2%.

2.3. The Fund maintains a position of engagement/influence through fund managers rather than exclusion. Information of the Fund’s equity voting is reported on an annual basis.

2.4. The Fund is a signatory to the UK Stewardship Code and a member of Local Authority Pension Fund Forum. In 2018, the Fund was shortlisted in the LAPFF Investment Awards for best approach to ESG/Impact Investing.

2.5. ACCESS Pool: actively involved in the developing the pool’s approach to ESG, giving a presentation to the ACCESS Joint Committee on the Fund’s ESG approach.

2.6. ESG matters are factored into Pension Board and Pension Committee discussions and Fund Manager reports.

2.7. Training has been provided to Pension Board and Pension Committee on ESG issues.

3. Duties of the of LGPS Administering Authorities.

3.1. Case law on ethical investment has confirmed the following principles:

a. Subject to obeying the law, the duty of the trustees towards their beneficiaries is paramount. Trustees should exercise their powers in the best interests of the present and future beneficiaries of the trust.

b. When the purpose of the trust is to provide financial benefits for the beneficiaries the best interests of the beneficiaries are normally their best financial interests. It follows therefore that the trustees’ power must be exercised so as to yield the best return for the beneficiaries, judged in relation to the risks of the investments in question.

c. Trustees must put on one side their own personal interests and views when under a trust. If investments of any type would be more beneficial to the beneficiaries than other investments, the trustees must not refrain from making the investments by reason of the views that they hold.

d. Benefit has a very wide meaning, and there are circumstances in which arrangements which work to the financial disadvantage of a beneficiary may overall be for his benefit when considered by reference to the expectations of all beneficiaries. Such cases are likely to be very rare.

e. Trustees have a duty to consider the need for diversification of investments.

f. There is a duty on the trustee to seek advice on matters which the trustee does not understand, such as making investments, and on receiving that advice to act with the same degree of prudence. Acting in good faith and sincerity is not enough.

3.2. In 2014 The Local Government Association on behalf of the LGPS Shadow Scheme Advisory Board obtained legal advice about whether and to whom a LGPS Administering Authority owes a fiduciary duty and how the wider functions, aims or objectives of the administering authority should influence the discharge of its LGPS investment duties.

3.3. The advice was that:

a. In managing a LGPS fund, the administering authority has both fiduciary duties and public law duties (which are in practice likely to come to much the same thing).

b. The administering authority owes fiduciary duties, both to the scheme employers and to the scheme members.

c. The administering authority's power of investment must be exercised for investment purposes, and not for any wider purposes. Investment decisions must therefore be directed towards achieving a wide variety of suitable investments, and to what is best for the financial position of the fund (balancing risk and return in the normal way).

d. However, the precise choice of investment may be influenced by wider social, ethical or environmental considerations, so long as that does not risk material financial detriment to the fund. In taking account of any such considerations, the administering authority may not prefer its own particular interests to those of other scheme employers and should not seek to impose its particular views where those would not be widely shared by scheme employers and members (nor may other scheme employers impose their views upon the administering authority).

3.4. The advice cited two examples:

a. An administering authority may choose to take into account the public health implications of tobacco investment but only if the result of such consideration is the replacement of these investments with assets producing a similar return.

b. An administering authority may take account of social housing needs but only if an investment in such stands up as an investment in its own right and can demonstrate that it is not preferring its own interests over other scheme employers in making the investment.

3.5. In 2017 the Law Commission published its report Pension Funds and Social Investment having been asked to look at how far pension funds may or should consider issues of social impact when making investment decisions. Set out in the report (p38) is the Commission's view, based on case law, that if trustees wish to take into account non-financial factors when setting investment strategies and making investment decisions they should apply two tests, both of which must be met:

a. Trustees should have good reason to think that scheme members would share the concern; and

b. The decision should not involve a risk of significant financial detriment to the fund.