

Report to: Pension Board

Date of meeting: 13 February 2025

By: Chief Finance Officer

Title: Governance Report

Purpose: To provide an update on governance workstreams and changes effecting Local Government Pension Schemes and the East Sussex Pension Fund

RECOMMENDATIONS

The Pension Board is recommended to note this report

1 Background

1.1 This report provides an update to the Pension Board on the steps being taken to adopt good practice and ensure compliance with regulatory requirements for the East Sussex Pension Fund (the Fund or ESPF).

2 Legal and regulatory changes

2.1 On 12 November 2024 the Education and Skills Funding Agency published a policy paper (Appendix 1) announcing that they will guarantee outstanding LGPS liabilities when a further education body closes, in line with the existing guarantee in place for academies. As a result, it is vitally important that to understand who the guarantee now extends to, not least because of the forthcoming valuation in 2025. The Fund may consider whether the funding approach for the employers to whom the guarantee has now been extended should be revised.

2.2 Following the announcement, on 13 November 2024, the Scheme Advisory Board published the following statement on their website:

*“For clarity, the Board Secretariat has sought confirmation from the DfE that this guarantee **does not** cover Higher Education institutions and covers only the organisations that were reclassified as public sector by the Office for National Statistics in November 2022.”*

Consequently, this will strengthen the covenant in the Fund for those employers identified as being affected. The Fund will communicate with those employers and review the implications of these changes.

2.3 Owing to a changing and more nuanced understanding of fiduciary duty, and in light of recent issues of its application in the context of a number of areas, most notably climate change and the ongoing humanitarian issues in the Middle East, the Scheme Advisory Board recently sought an update to Counsel’s opinion on fiduciary duty, having last done so in 2014.

2.4 On 15 January 2025 the Scheme Advisory Board published the updated opinion of Nigel Giffin KC, titled ‘Local Government Pension Scheme: Investments and Non-Financial Considerations’ (Appendix 2). This is intended as a review and update of the opinion given in 2014 titled ‘Duties of Administering Authorities under the Local Government Pension Scheme’ (Appendix 3).

2.5 The most recent opinion examines the impact of mandatory 2016 investment guidance for the LGPS, which included statements detailing that administering authorities should not pursue policies contrary to UK foreign or defence policy, as well as the subsequent court decision that tested those statements. The opinion also examines the government's current proposals for the LGPS. The opinion discusses the distinction between financial and non-financial factors when administering authorities (or, indeed, private sector scheme trustees) make investment decisions. In response to the government's proposals for investing locally, counsel concludes that "a policy of investing so as to boost the local or national economy will normally represent taking account of non-financial factors."

2.6 As announced in the 2024 Autumn Budget, it is the intention that from April 2027 most unused pension funds and death benefits will be included within the value of a person's estate for Inheritance Tax purposes and pension scheme administrators will become liable for reporting and paying any Inheritance Tax due on pensions to HMRC. In the context of the Local Government Pension Scheme this will mean that any death grant payable would always fall within the estate of the deceased member for inheritance tax purposes, and as a result scheme administrators will be responsible for reporting and paying any inheritance tax due. Government commenced a consultation seeking views on the processes required to implement these changes on 30 October 2024. The consultation closed on 22 January 2025. Addressing only the process for implementing the changes, and not the issue of the change itself, the response provided to the consultation makes clear the view that accounting for and paying of inheritance tax, should be the responsibility of the personal representative and not be that of the pension scheme administrator. A copy of the Fund's response to the consultation is attached as Appendix 4.

3 Funding Update

3.1 The Fund Actuary has prepared the indicative quarterly funding update as at 31 December 2024, rolling forward assumptions from the valuation and reflecting actual experience since March 2022, included as Appendix 5. The indicative funding report shows the funding position increase from 120% in June 2024 to 122.4% in December 2024. This does however, represent a minor decrease from the position in March 2022 of 122.8%

4 Conclusion

4.1 The Board is recommended to note this report.

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