

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Pension Fund Panel and Board
Date:	27 July 2021
Title:	Governance – Fiduciary duties
Report From:	Director of Corporate Operations

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Purpose of this Report

1. The purpose of this report is to share legal advice commissioned by the ACCESS pool on the fiduciary duties within the Local Government Pension Scheme (LGPS) and pension committees of LGPS Administering Authorities.

Recommendation

2. That the Panel and Board note the contents of the report and use it to assist them in discharging their fiduciary duties in respect of the Hampshire Pension Fund.

Fiduciary duty legal advice

3. The last two years have seen initiatives including the Ministry for Housing Community & Local Government's (MHCLG) informal pooling consultation and the Scheme Advisory Board's (SAB) consultation on draft Responsible Investment Guidance. From the perspective of the ACCESS Authorities, these initiatives were viewed as raising issues and concerns around the Government's and SAB's interpretation of fiduciary duties.
4. To assist ACCESS Authorities in considering initiatives of this type, led by the Norfolk Pension Fund, the services of Paul Newman QC have been sought, and his opinion has been used to inform responses to MHCLG and the SAB's consultations. On the basis of this engagement, on behalf of the Norfolk Pension Fund, colleagues at Squire Patton Boggs have drafted a series of questions and answers around the issue of fiduciary duties. This document has been shared with Paul Newman, who made a small number of presentational amendments, and is included at Exempt Annex 1. The advice

was obtained on behalf of the ACCESS Authorities and is being shared with individual pension committees on the understanding that it is only shared further on a confidential basis. The document has also been shared with officers from the Local Government Association, who support the SAB, along with Nigel Giffen - the QC generally used by the SAB, as a precursor for a future meeting to discuss these issues.

5. Members are asked to note the contents of the report included in the Exempt Annex 1 and use it to assist them in discharging their fiduciary duties in respect of the Hampshire Pension Fund. In particular, attention is drawn to paragraph 2.7 of the advice and the following summary of factors committee members should take into account when making investment decisions.

Climate Change Impact Assessments

6. Hampshire County Council utilises two decision-making tools to assess the carbon emissions and resilience of its projects and decisions. These tools provide a clear, robust, and transparent way of assessing how projects, policies and initiatives contribute towards the County Council's climate change targets of being carbon neutral and resilient to the impacts of a 2°C temperature rise by 2050. This process ensures that climate change considerations are built into everything the Authority does.
7. The Pension Fund itself has a negligible carbon footprint, but it recognises that the companies and other organisations that it invests in will have their own carbon footprint and a significant role to play in the transition to a lower carbon economy. Therefore the Pension Fund recognises the risk that environmental, social and governance (ESG) factors including the impact of climate change can materially reduce long-term returns. The Pension Fund has a role to play as an investor, in ensuring that its investment managers are suitably considering the impact and contribution to climate change in their investment decisions and acting as a good steward to encourage these companies to play their part in reducing climate change. This is explained further in the Pension Fund's RI policy [InvestmentStrategyStatementincludingRIpolicy.pdf](#) (hants.gov.uk).
8. For the investment portfolios that can report carbon footprint data, the Pension Fund collates and reports this to the RI sub-committee, and reports at the Fund level in the Fund's RI annual update and Task Force on Climate Change Financial Disclosure (TCFD) report <https://documents.hants.gov.uk/pensions/TCFD-report.pdf>. By reviewing the Pension Fund's investment portfolios' carbon footprints, the Fund can identify those that are very low already, such as the Baillie Gifford Long-term Global Growth (LTGG) portfolio, or where it can work with its investment managers to reduce the carbon footprint whilst maintaining the investment returns required to pay pensions. The balance of the Pension Fund's priorities to make the necessary financial returns to pay pensions whilst considering

environmental, social and governance factors is addressed in this report on the Fund's fiduciary duty.

REQUIRED CORPORATE OR LEGAL INFORMATION:**Links to the Strategic Plan**

Hampshire maintains strong and sustainable economic growth and prosperity:	no
People in Hampshire live safe, healthy and independent lives:	no
People in Hampshire enjoy a rich and diverse environment:	no
People in Hampshire enjoy being part of strong, inclusive communities:	no
OR	
This proposal does not link to the Strategic Plan but, nevertheless, requires a decision because of the ongoing management of the Hampshire Pension Fund.	

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

DocumentLocation

None

EQUALITIES IMPACT ASSESSMENTS:

1. Equality Duty

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant protected characteristic that are connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

2. Equalities Impact Assessment:

Equality objectives are not considered to be adversely affected by the proposals in this report as the proposals do not directly affect scheme members.