



# Pensions Committee

18 March 2015

<b>Report title</b>	Fiduciary Duty in the Local Government Pension Scheme – Counsel’s opinion	
<b>Originating service</b>	Pension Services	
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## Recommendations for noting:

The Committee is asked to note:

1. The contents of the report

## **1.0 Purpose**

- 1.1 To present Counsel's opinion on
- 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 Directive 2003 (IORP 1)

## **2.0 Background**

- 2.1 The LGPS has always been considered one of the safest pension schemes in the UK because it is defined and governed by statute.
- 2.2 In September 2014, the LGA sought clarification on this point from Queen's Counsel in order to determine where the liability for payment of the scheme rests and what would happen should schemes run out of money.
- 2.3 In addition, they sought clarification as to whether the IORP 1 applied to the LGPS scheme.

## **3.0 Counsel's Opinion**

- 3.1 In requesting this advice, the LGA sought to answer 3 specific questions
1. What the rights and duties of the Administering Authority are, as against an employing authority which fails to pay contributions as they fall due?"
  2. What happens if the assets of the fund are insufficient to pay benefits as they fall due?  
Is there an "ultimate guarantor" of the benefits payable to scheme members whether the administering authority, or central government?
  3. What happens if a local authority does run out of money to satisfy all of its obligations as they fall due, so that it is "insolvent" in the everyday sense?
- 3.2 In addressing these questions Counsel determined that in the strict reading of the legislation there is no guarantor to the LGPS and that neither Administrative Authorities or Central Government could be held responsible to pay pension benefits where there is no money to pay. Members of the LGPS would be considered as unsecured creditors with no preferential treatment to be paid their benefits.

Ultimately the last employer in the scheme will be responsible for ensuring benefits are paid.

- 3.3 In providing this advice however, Counsel does not believe that such circumstances could ever occur given the tax raising powers of both local authorities and central government believing there would be legal intervention before the situation became so severe.
- 3.4 In referring to the IORP Directive, Counsel states that the Directive does apply to the LGPS and that in its current form the LGPS is compliant with the requirements it imposes given its separation of the Fund assets from those of the Administering Authority. This prevents one being used by the other in times of financial hardship.

#### **4.0 The Response from the Shadow Advisory Board (SAB)**

- 4.1 In considering Counsel's opinion, the SAB consider the lack of guarantee for the LGPS to be "untenable" and are now proposing to ask DCLG to change the regulations in order to require administering authorities to pay benefits.
- 4.2 In response to the IORP 1, the SAB are further proposing to recommend to DCLG changes to investment regulations which will ensure that relevant parts of the IORP 1 are adopted.
- 4.2 A full copy of Counsel's advice is attached as Appendix One.

#### **5.0 Financial implications**

- 5.1 This report has no direct financial implications. Counsel's opinion deals with some extreme financial scenarios which are considered unlikely to occur. The Fund has appropriate monitoring arrangements in place to ensure that it would be well-positioned to anticipate such developments.

#### **6.0 Legal implications**

- 6.1 This report details some extreme scenarios which, if they came to fruition would have legal implications for the Fund. However, as noted within the report these scenarios are unlikely to occur and as such the report contains no legal implications.

#### **7.0 Equalities implications**

- 7.1 There are no implications

#### **8.0 Schedule of background papers**

- 8.1 EU IORP Directive  
<http://www.pensionseurope.eu/iorp-directive>

#### **9.0 Appendices**

- 9.1 Appendix One - Opinion of Queen's Counsel, Nigel Giffin