

**CYNGOR SIR POWYS COUNTY COUNCIL**

**Pensions and Investment Committee  
16<sup>th</sup> July 2015**

**REPORT BY:** Strategic Director of Resources

**SUBJECT:** Fiduciary Duties of Members and Officers

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**REPORT FOR:** Information

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**1 Introduction**

- 1.1 The following advice has been issued by the national LGPS Shadow Scheme Advisory Board for the benefit of Committee members in their roles as 'Trustees' of the Powys Pension Fund, and for relevant Officers of the Fund.

**2 Background**

- 2.1 The Shadow Scheme Advisory Board was established in July 2013. It is the forerunner to the Local Government Pension Scheme Advisory Board, which is established under Section 7 of the Public Service Pensions Act 2013. The Board has been set up prior to the formalisation of the regulations setting out the formal remit of the Scheme Advisory Board, which are expected to come into force shortly.
- 2.2 Last year, the Board sought advice from Counsel on fiduciary duties in the LGPS. Following this, the Board commissioned further advice to cover:
- confirmation of 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 (IORP) Directive 2003.

**3 The benefit guarantee**

- 3.1 The generally accepted position in the LGPS was that the Administering Authority was required to meet benefit payments on a statutory basis regardless of the circumstances of the fund it operates. In the event, Nigel Giffin QC finds that the assumed position is not reflected in the regulations resulting in a potential (if extremely unlikely given the strength of local government finance requirements) circumstance of there being an uncertainty around benefit payments should the funds be unable to meet them. Such a situation, however unlikely, is in the Board's

view untenable and therefore the Board will be asking DCLG to amend regulations in order to clarify the requirement for administering authorities to pay benefits on a statutory basis.

#### 4 The IORP Directive 2003

4.1 In Counsel's view the requirements of article 8 (which sets out that there should be legal separations between sponsoring employers and pension schemes) are met by the regulations but he accepts that regulations could be more explicit on the use of fund monies. The Board will continue to look at the issue of separation between fund and authority and will consider the content of this opinion as part of that work. Notwithstanding, both members of Committee and relevant Officers should ensure that when considering Pension Fund matters all other issues, relating to other non- Pension Fund responsibilities held by them, should be set aside. Fiduciary duty requires that members of Committee and relevant Officers act in the best interests of the Pension Fund as a corporate entity separate from Powys County Council.

4.2 In terms of article 18 (which details how investments should be made in institutions for occupational retirement provision), Counsel makes some suggestions to strengthen regulations to ensure full compliance but reminds Administering Authorities that they should act in accordance with the Directive regardless of the current state of the regulations. The Board will be making recommendations to DCLG for changes to investment regulations which take on board this opinion to ensure that the relevant parts of Article 18 are adopted.

#### 5 Recommendations

5.1 Committee is asked to note the contents of this report and in particular paragraph 4.1.

<b>Recommendation:</b>		<b>Reason for Recommendation:</b>	
• To note the contents of the report.		As per report	
<b>Person(s) To Action Decision:</b>			
<b>Date By When Decision To Be Actioned:</b>			
<b>Relevant Policy (ies):</b>	N/A		
<b>Within Policy:</b>	N/A	<b>Within Budget:</b>	N/A
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<b>Relevant Portfolio Member(s):</b>	Councillor Wynne Jones
<b>Relevant Local Member(s):</b>	