

## **Scheme Advisory Board (SAB) Statement on Fiduciary Duty and dealing with lobbying**

### **Purpose of this statement**

As one of the largest funded pension schemes in the world it is important that the LGPS continues to hold itself to the highest standards of stewardship and governance.

Discussion around the content of responsible investment policies is not new and the majority of lobbying and decision-making is done in a respectful, thoughtful and transparent manner. However, the Board is aware that LGPS administering authorities (AAs) are dealing with increasing levels and extreme forms of lobbying about how LGPS funds are invested. The Board has decided to make this statement to make clear its view on the flexibility decision makers have to respond to lobbying; the standards of behaviour expected when discussing what can be emotionally charged issues, and where to go for support if those standards are not being met.

### **What kinds of Environmental, Social and Governance (ESG) considerations are appropriate?**

When decision makers exercise their LGPS investment responsibilities, the primary purpose must be to achieve the required returns in an appropriately risk-managed way to pay pensions when they become due, minimising the need for additional funding in the future. AAs need to invest the contributions they collect from employers and employees in the best interests of those scheme members and employers.

The phrase “best interests” in the context of pension scheme investments will typically mean “the best financial interests” of scheme members and this is referred to as the fiduciary duty. Value, risk and yield of investments should therefore drive an AA’s decisions. AAs also have a duty to scheme employers to invest competently so as not to unnecessarily inflate the contributions needed from them in the future. Because of these duties, financial factors must always be taken into consideration by AAs in setting their investment strategy.

Under the [LGPS Investment Regulations 2016](#) AAs are required to include in their investment strategy a policy on how ESG considerations are taken into account in the selection, non-selection, retention and realisation of investments. AAs may choose to clarify in their Investment Strategy Statements what they believe to be material financial risks and how they take these into account. Consideration of non-financial factors is also permitted, the amount of weight (if any) attached to such factors is at the discretion of the administering authority. AAs may do so only where it would not lead to significant financial detriment and where it would have the support of the scheme beneficiaries.

Increasingly, the distinction between financial and non-financial factors is becoming

more difficult to maintain. For example, the consequences of climate change (both physical and financial) are now widely seen as material financial risks and are no longer seen as just a responsible or sustainable investment concern. The distinction between financial and non-financial factors can also become blurred when systemic risks or benefits are considered, e.g. investors signalling to the market their preference for sustainable, longer-term, value-adding companies. A recent [report](#) produced by the Financial Markets Law Committee recognised that it is appropriate for decision makers to “situate their pension fund within the wider economy” and take into account factors like sustainability and business ethics as part of constructing and implementing an investment strategy which seeks to achieve the purpose of the scheme in paying members the benefits to which they are entitled.

The Board is seeking an opinion from Counsel as to whether there is a need to update the [previous advice](#) received on the nature of fiduciary duty for LGPS AAs.

It is also important that those charged with management of an LGPS fund understand the decision-making function they have and maintain an appropriate level of knowledge and skills, as underpinned by legislation, legal opinions and guidance to exercise their duties.

## Considerations that are not appropriate

It is not appropriate for investment decisions to be driven directly by the political views of Pension Committee members or indeed Government ministers (except as where prescribed in law, e.g. under the [Sanctions and Anti-Money Laundering Act 2018](#)). The Supreme Court held, in its [judgment on the Palestine Solidarity Campaign case](#), that it is not appropriate for political preferences, whether local or national, to take precedence over what is required under the fiduciary duty.

This makes Pension Committees different from other local government committees that are dealing with service provision, and which have to make political choices about the prioritisation of scarce public resources. The Supreme Court (in the above case) was clear that administering LGPS funds is not best understood as a “local government function” or “part of the machinery of the state”, instead Pension Committees operate in a quasi-trustee role.

To the extent that environmental, social or governance considerations are applied, these should be framed in terms of what the scheme members would support or share the concern about those considerations. It may be reasonable to assume that elected members have a better understanding of local scheme member views than professional advisers, who in turn are better placed to understand the implications of financial factors. Those appointed to represent members on committees or boards may similarly have a good understanding of member views.

In a scheme with six million members there will inevitably be a wide range of views amongst scheme members. That means that consideration should also be given to exploring the range of concerns, and the relative priority amongst them, that members hold. There is no one right approach to doing this, but some AAs have carried out surveys, consultation events and even formal market research.

The quasi-trustee role means that decisions made by the Pension Committee should not privilege one group of scheme members over another. This creates an obvious tension when Pension Committees know that scheme members are likely to hold strong but very different views on a particular subject. Where such disagreements are anticipated, the Pension Committee should try and keep focus on financial factors and avoid taking one position against another.

## **Expected behaviour at Pension Committee and other official meetings**

Pension Committee members should focus on ensuring that good decisions are made in the best interests of scheme members, taking into account all relevant considerations and excluding irrelevant ones. They should not use committee meetings as a forum to rehearse their own political positions or engage in antagonistic debate with other committee members. They must not direct unfair comments or abuse at officers or others invited to attend meetings to present to the Committee. Pension Committee and Board meetings should be conducted in a way that reflects the seven [Principles of Public Life](#) (selflessness, integrity, objectivity, accountability, openness, honesty and leadership).

Under the Localism Act, local authorities are required to establish a Code of Conduct for elected and co-opted members to follow. Action should be taken if conduct at Pension Committees or Boards does not comply with the Principles of Public Life or the council's own Code of Conduct.

Scheme members and the public do have a right to lobby the AA and peacefully protest against decisions. It may help to engage with those organising protests and explain to them that Pension Committee members and officers cannot allow themselves to be unduly influenced by these representations. When acting within their fiduciary duty the AA is legally obliged to limit itself to acting in the best interests of scheme members (as defined above) and the views of local residents generally on ESG matters is not relevant.

Officers, elected members and others have the right to go about their lawful duty of administering the LGPS without abuse. Where the actions of those protesting or lobbying amounts to attempting to intimidate, cause unease or harass those administering the scheme then this needs to be taken very seriously and reported to the appropriate authorities.

## **Where to go for support**

AAs should clearly define the process for officers or elected members to raise concerns when inappropriate behaviour or language are directed against them.

The Local Government Association (LGA) is aware that councillors are often unsure as to where to go for support in their councils. Therefore, there should be a clear and formalised process for raising concerns, either through a specific individual or department, and responsible persons should be assigned who are well equipped and located in the council to provide them with the support they need.

# Scheme Advisory Board



Levels of abuse and intimidation of officers and councillors will vary from place to place. Councils that have robust and embedded arrangements for supporting councillors dealing with abuse and intimidation have often been galvanised into action by a local high-profile event or national event that has caused them to reflect on their local arrangements. The Board strongly recommends not waiting for such an event but putting in place appropriate arrangements now to ensure the safety of those administering the pension scheme.

The LGA has worked with the sector to produce a [toolkit](#) that helps identify good practices and the most impactful approaches when supporting councillors across prevention, incident management and aftercare.

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