

AGENDA ITEM 2

Investment, Governance and Engagement Committee 5 December 2016

Issues outstanding from predecessor committees

1. The purpose of the report is to update the committee on outstanding issues carried forward from the preceding Governance and Standards and Investment and Engagement committees.

James Goudie legal opinion

2. Following stakeholder concerns, the Local Government Association instructed James Goudie to provide opinion on the legal status of local pension boards; the legal relationship between the pension board and the LGPS administering authority and whether there is a conflict between the requirements of the 1972 Act and the 2013 Public Service Pensions Act with regard to membership of section 5(7) combined committee boards.
3. James Goudie concluded that local pension boards are constituted entirely under the 2013 Act and are not therefore local authority committees. In his opinion, this results in various practical difficulties such as access to council officers and indemnity insurance cover.
4. The legal opinion was endorsed by the SAB on 25 January 2015 with an undertaking to review and, if necessary, revise the guidance on the establishment of local pension boards to reflect. Eversheds, as the SAB's legal adviser, has been commissioned to report on the amendments that will need to be made to the guidance to reflect James Goudie's legal opinion.

Nigel Giffin legal opinion

5. The Local Government Association instructed Nigel Giffin to provide opinion on the issue of whether a local authority or other body which is the administering authority for the purposes of the 2014 scheme might, in that connection, be subject to regulation by the Financial Conduct Authority (FCA) under the Financial Services and Markets Act 2000. (FSMA).
6. The opinion was sought following a disagreement between the South Yorkshire Pensions Authority (SYPA) and their external auditors who were refusing to sign off the 2015/16 accounts without confirmation, legal or otherwise, that FSMA authorisation was not required in the case of SYPA. The South Yorkshire Passenger Transport Agency, administered by the SYPA under an agency agreement, is FSMA authorised which led the external auditors to believe that the SYPA should also be FSMA authorised.

7. In managing an LGPS fund, Nigel Giffin concluded that an administering authority is not carrying on a regulated activity, and does not therefore require FSMA authorisation. The opinion was sent to the SYPA with permission to forward it to their external auditor.
8. This case highlights the concern that external auditors may be falling short of the professional standards in terms of their understanding and knowledge of the LGPS. Informal discussions with the CIPFA Pensions Panel suggest that one option may be to establish a liaison group representing the main stakeholders who could meet regularly to monitor activity and share information.

The committee is asked to note the contents of these opinions