

Investment, Governance and Engagement Committee

MEETING OF THE 21st FEBRUARY 2022

ITEM 6 PAPER C

SHARIA COMPLIANT INVESTMENTS IN THE LOCAL GOVERNMENT PENSION SCHEME IN ENGLAND AND WALES – COUNSEL ADVICE

Recommendations:

- To note the contents of this paper and Counsel's advice (annexed)
- To recommend to the Board that Counsel's advice is published on the Board's website
- To recommend to the Board that further expert advice is sought on the questions posed by Counsel

Background

1. Lydia Seymour (Outer Temple Chambers) was instructed in October 2021 to provide advice on 4 questions relating to issues raised by some administering authorities.
2. A conference was held via MS Teams with Counsel, LGA Legal and SAB Secretariat members in late November 2021 to discuss the questions in more detail.
3. Counsel provided their written advice recently, which is annexed in full.
4. The Secretariat is clarifying whether or not Counsel's advice can be published in full.

The Issue

5. A number of LGPS administering authorities have raised the issue of members opting out of the LGPS on the basis of their religious belief – currently as far as we are aware these appear to be limited to those of the Muslim faith who are concerned that LGPS funds/investments are not Sharia compliant / halal.
6. Employers are becoming concerned about potential discrimination claims being brought in the Employment Tribunal (ET) by employees who feel

Investment, Governance and Engagement Committee

excluded from membership of the LGPS due to their religious beliefs. At present there is no alternative pension provision with their employer beyond the LGPS.

7. We explored with Counsel the risk of a claim made on this basis being successful, and what – if any – defence could be mounted were there to be such a claim. Counsel advised that taking pre-emptive action, such as exploring the legal issues and procuring advice, would be an important part of any future defence.
8. Counsel was not asked to opine on whether or not the LGPS is Sharia compliant – there are many differing views on this question; what is important is an individual's genuinely held beliefs. Counsel advised that either a discrimination claim in the ET was possible, or a broader human rights-based challenge in the civil courts.
9. Clearly this is a complex area, and Counsel's lengthy advice demonstrates that. At a high level, her advice is that at present it is arguable whether employers have the legal power to offer an alternative to the LGPS. If that were to be clarified as permissible, offering alternative pension provision could most likely not be limited just to Muslim employees who opt out of the LGPS by reason of their religious beliefs. Any alternative provision (which would probably be a DC scheme offering inferior benefits to the LGPS) would need to be offered to all employees.
10. There are obvious implications for employers and administering authorities of offering and administering more than one scheme, especially where those schemes could differ significantly. Clearly there are also implications for employees opting out of the LGPS for reasons other than religious beliefs. They may choose a cheaper, less beneficial DC scheme without fully understanding the benefits they receive through membership of the LGPS.
11. Recognising one group of employees' beliefs may also lead to pressure from others with strongly held philosophical beliefs who may wish to have more control over the funds that their pension contributions are invested in. It is unlikely to be desirable to have an LGPS employer offering a number of different pension options, all of which would likely be inferior to the LGPS (even if the employer contribution rate was the same).

Next steps

Investment, Governance and Engagement Committee

12. There are some further questions that could be explored in more detail, on Counsel's recommendation. These would include instructing an Islamic scholar to provide an opinion on the LGPS and Sharia law.
13. The Committee is asked to consider whether further enquiries should be made, and expert advice sought, and whether to recommend that – plus publication of Counsel's advice (if agreeable, an abridged version if necessary) – to the Board.