# Report for National Scheme Advisory Board

## Report on legal duties of LGPS Pensions Committees in relation to the investment of LGPS Funds

## 1. Introduction

This Report has been prepared for the benefit of the National Scheme Advisory Board ("**SAB**") for the Scottish Local Government Pension Scheme (the "**LGPSS**") and considers the application of fiduciary and other duties owed by Pensions Committees in relation to investment of LGPSS pension funds.

This Report refers to and summarises various pieces of legal advice which have been obtained for the benefit of LGPS funds in England and Wales and its Scheme Advisory Board. The Report then highlights where the two jurisdictions are aligned and where there are differences between the two jurisdictions.

The references marked throughout the Report can be found in section 7.

Finally, the Report sets out the views of our own QC, Craig Connal QC, ("**Scottish Counsel**") where we felt it would be of benefit to instruct a Scottish counsel to advise on these issues.

## 2. Background

The LGPSS consists of various pension funds administered by local authorities which provide pension schemes for local government and other eligible workers in Scotland. The LGPSS is established and governed by statute, and is similar in terms of legal structure to the English Local Government Pension Scheme (the "**LGPSE**").

The LGPSS and the LGPSE are not established as trust funds, and those who administer them are not trustees. It is therefore not immediately clear whether the duties of trustees in relation to investment apply also to the investment committees of the LGPSE and the LGPSS. In addition, the Pensions Committees of the LGPSE and the LGPSS (each multi-employer occupational pension funds) arguably owe a fiduciary duty to (i) the pension scheme members (beneficiaries); and (ii) the admitted employer bodies (which have financial exposure through their obligation to pay contributions and meet any liabilities) within the respective funds. The Pensions Committees may also be subject to certain public law duties in this regard. Advice has been received by the Local Government Association on these points from Nigel Giffen QC[1] in relation to the LGPSE, and in this Report we consider the extent to which that advice is applicable in Scotland to the LGPSS.

Directive 2003/41/EC[2] (the "**IORP Directive**") imposes obligations on EU Member States in relation to the activities and supervision of institutions for retirement provision. Among other things the Directive sets out in Article 18 the general requirement that Member States should require retirement institutions to invest in accordance with the "prudent person" rule, and more specific requirements concerning suitability of investments. Advice has been received by the Local Government Association on this point from Michael Furness QC[3]. in relation to the LGPSE, and in this Report we consider whether that advice is equally applicable to the LGPSS.

# 3. Executive Summary

- Although the LGPSS is not itself a trust, the duties of the Pensions Committee in Scotland are of a fiduciary nature. Accordingly, any decision (investment or otherwise) made by a Pensions Committee which may affect a party to whom the fiduciary duty is owed, should be made having regard to the best interests of that party.

- Administering authorities owe fiduciary duties to scheme employers and scheme members both generally and specifically in relation to investment matters.

- Article 18(1) of the IORP Directive[4], including the requirement to invest in accordance with the "prudent person" rule in the best interest of members and beneficiaries, does apply to the LGPSS and the Investment Regulations (defined herein) should be construed to include the relevant principles.

- Non-financial factors (including social, environmental or ethical considerations) may be taken into consideration as part of any investment decision making process, provided that:-

  (i) there is no policy in place limiting the scope of potential investments purely on the grounds of Non-Financial Considerations (as defined in Section 5 herein). A decision regarding any particular investment should not be made where the diversification of potential investments has been compromised; and

  (ii) the proposed investment is expected to generate financial returns similar to those expected from other investment opportunities available in the market at that time offering similar risk and return characteristics.

- When considering investments, Pensions Committees may look at environmental, social and governance (ESG) issues where the financial performance of that investment may be adversely impacted as a result of any particular environmental, social or governance factor. The investment options may be restricted where the investment returns to the fund may be negatively impacted by such environmental, social or governance factors.

- Given the uncertainties in relation to the LGPSE, we sought confirmation and clarification from Scottish Counsel on:-

  (i) whether he agrees with our analysis that the IORP Directive applies directly to the LGPSS;

  (ii) how Article 18 in particular interacts with the Investment Regulations and whether the Regulations must be considered as subject to and overridden by Article 18; and

  (iii) how the relevant case law is likely to be interpreted by a Scottish court in relation to the LGPSS.

  His advice is highlighted throughout this Report and reinforces the above conclusions, making no notable distinctions between the treatment of the LGPSE (under the laws of England and Wales) and the LGPSS (under Scots law).

- Neither we nor Scottish Counsel have identified any material points which, in our view, would require further analysis by counsel.

# 4. Duties of Pensions Committee Members

In this section we consider the legal obligations on Pensions Committee members in relation to the investment of LGPSS assets.

In particular we consider obligations under:-

- common law;

- public law;

- the Local Government (Management and Investment of Funds) (Scotland) Regulations 2010 (the "**Investment Regulations**")[5] ;and

- the IORP Directive.

We also seek to clarify to whom Pensions Committee members owe a fiduciary duty.

## 4.1 Duty of care at common law

The 1999 Joint Report of the Law Commission and the Scottish Law Commission (Law Com Report No 260, Scot Law Com Report No 172)[6] stated that:-

- trustees are under a duty to invest trust funds in their hands, subject to their overriding obligation to administer the trust in accordance with its terms.

- in performing their duty to invest trust funds, trustees must exercise proper care. The standard is that of the ordinary prudent man of business acting in the management of his own affairs.

- prudence requires more than mere honesty, good faith and sincerity. A level of proficiency and competence is expected of a trustee. However, quite what that level is will vary from case to case.

The Scottish case of *Martin v City of Edinburgh Council*[7] in 1987 is, in our view, the best authority available for the proposition that administering authorities owe a fiduciary duty to the beneficiaries of the LGPSS. Although on its facts the case concerned certain public and charitable funds held by the council in trust, Scottish Counsel considers that the analysis in that case is equally applicable to other situations where persons, such as local authorities have responsibility for investing funds for the benefit and/or the interests of third parties. In his opinion, referred to in Section 5, Nigel Giffin QC took a similar view.

In the *Martin* case Lord Murray stated that:-

- there was a legal duty on trustees to apply their minds to the best interests of the beneficiaries;

- there was an obligation to take appropriate professional advice in relation to a proposed investment decision; and

- failure to comply with these duties resulted in a breach of trust.

He stated:-

"…I conclude that the pursuer has proved a breach of trust by the council in pursuing a policy of disinvesting in South Africa without considering expressly whether it was in the best interests of the beneficiaries and without obtaining professional advice on this matter. That is sufficient for the decision of this case and it turns entirely on the general principles of law applicable to trusts in Scotland. In short the trustees acting on behalf of the council misdirected themselves in failing to comply with a prime duty of trustees, namely, to consider and seek advice as to the best interests of the beneficiaries, and so they are in breach of trust."

This case sets out the core obligations which apply to fiduciaries in relation to the investment of trust funds. In Scottish Counsel's view the case also supports the proposition that those obligations apply equally to those entrusted with investing LGPSS assets, even though the LGPSS is not itself a trust. Scottish Counsel considers that the investment duty of the Pensions Committee, and of those administering the funds, is a fiduciary one.

## 4.2 Public law duties

What is set out above considers (in inevitably simplified form) the general obligations encumbent under common law on public authorities. Different considerations arise (or may arise) in the event of obligations being imposed on decision-makers through the form of statutory public duties (outwith the specific pensions arena). In his opinion, Mr Giffin QC considers that point using as examples duties under The National Health Service Act 2006 (applicable in England and Wales) and The Equality Act 2010 (applicable throughout the UK). He points out that the duties in these statutes (and others are likely to be in similar terms) are couched in non-obligatory language. In the former what is "considered appropriate" for improving health and in the latter to have "due regard" to equalities considerations. In essence he then concludes that, at most, this might require a consideration to be brought into the equation when an investment or similar decision was being made and where the choice was neutral

from an investment perspective. In other words, if the investment considerations pointed only in one direction, an obligation to “have regard” to other considerations would not require a different decision. Mr Giffin concludes that such situations are expected to be rare. We agree.

Accordingly, we conclude that in most circumstances the issue will not arise and where it does only where a decision on investment is otherwise neutral from an investment perspective. To take a Scottish example, the Climate Change (Scotland) Act 2009 imposes duties to exercise functions in a way “best calculated” to contribute to delivery of climate change targets and in a manner considered “most sustainable”. We see no reason why such generalised duties would not be treated in a similar way to the approach suggested by Mr Giffin. In the event of a decision neutral from an investment perspective which is viewed as significantly more sustainable, the sustainability obligation might come into play. What if the statute was more direct and less of an exhortation? If a circumstance arose where the investment body was satisfied that it fell within the ambit (usually a definition of public bodies) of the particular statutory obligation and that statutory obligation was worded in such a way as to direct action in one way only, then in our view the investment decision would require to be made in accordance with that direct statutory requirement. The law would require to be obeyed and it could not then be said that the investment decision taken in obedience to that law was in breach of a fiduciary or other general duty.

In our view, however, such circumstances are unlikely to arise, given the existence of special statutory and regulatory regimes directed at the proper functioning of pension arrangement.

Our overall conclusion is accordingly that public law duties are in practice unlikely to add much to the considerations which would arise in any event under the ambit of fiduciary duties and that statutory intervention is unlikely in practice (outwith the specialist pension field) to impact significantly on these decisions.

## 4.3 The Investment Regulations

The Investment Regulations set out the statutory obligations on the LGPSS in relation to investment. They are similar in terms to the current English equivalent[8] although we note that the concept of the "prudent man" will be legislated for explicitly in England & Wales as part of the proposed 2016 changes to the LGPSE investment regulations (see below).

Regulation 11[9] sets out the core obligations, which are (in summary):-
- to formulate a policy for the investment of fund money, with a view-

(a) to the advisability of investing fund money in a wide variety of investments; and

(b) to the suitability of particular investments and types of investments.

- to invest, in accordance with its investment policy, any fund money that is not needed immediately to make payments from the fund.

- to obtain proper advice at reasonable intervals about its investments.

- to consider such advice in taking any steps in relation to its investments.

These obligations do not contain any specific reference to a "prudent man" test, which is one of the common law duties of trustees in relation to investment, and is a key provision in IORP and, we anticipate, will underpin guidance behind the new investment regime for the LGPSE (which may be adopted in Scotland in due course depending on the attitude of Scottish Ministers following advice from the SAB).

The Department for Communities and Local Government (the "**DCLG**") is currently consulting[10] on the possible revocation and replacement of the English equivalent of the Investment Regulations. It notes (at paragraphs 2.12 to 2.22):-

- the suggestion that Article 18(1) of IORP (see below) should be transposed into the LGPSE investment regulations

- that the investment regulations applicable to private sector pension schemes did transpose Article 18(1)

- that the LGPS is not subject to trust law, but that those administering it are in a similar position to trustees

- those in local government responsible for making investment decisions must also act in accordance with ordinary public law principles, in particular, the ordinary public law principles of reasonableness. They risk challenge if a decision they make is so unreasonable that no reasonable person acting reasonably could have made it. (This analysis is consistent with the comments in paragraph 8 of opinion of Nigel Giffen QC).

The consultation on this point concludes by saying that:-

"Ministers are satisfied that the Scheme is consistent with the national legislative framework governing the duties placed on those responsible for making investment decisions. The position at common law is also indistinguishable from that produced by the 2005 Regulations applicable in respect of trust-based schemes."

In the absence of any clear reference in either the Investment Regulations or their English equivalent to the "prudent man" principle it is difficult to see how Ministers can be quite so confident about that conclusion, particularly when the private sector legislation has specifically transposed the requirements of Article 18(1) of IORP.

The consultation comments are nevertheless of interest since they seem to be in contrast to the views expressed by Michael Furness QC in relation to IORP (referred to in the next section). We would therefore draw your attention to the comments of Scottish Counsel below.

## 4.4 Article 18(1) of the IORP Directive

The IORP Directive applies to "institutions for occupational retirement provision". The full text of Article 18(1) is set out in section 7.

The key provisions for present purposes in relation to investment are that:-

- Member States must require institutions located in their territories to invest in accordance with the "prudent person" rule

- the assets must be invested in the best interests of members and beneficiaries

- in the case of a potential conflict of interest, the investment must be made in the sole interest of members and beneficiaries.

- assets shall be invested in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole.

If these provisions apply to the LGPSS then they impose an additional set of requirements which the LGPSS pension funds and those administering them require to observe. It should be noted though that the DCLG in its consultation document appears to be of the view that the LGPSE is already consistent with the requirements of the private sector investment regulations which transpose Article 18(1).

The question of whether the IORP Directive applies to the LGPSE was the subject of an opinion by Michael Furness QC in 2007. He concluded that:-

- the entire Directive applies to the LGPSE;

- Article18 specifically applies to the LGPSE in any event; and

- the LGPSE is not compliant with Articles 8[11] and 18 of the Directive.

We do not consider that the position of the Investment Regulations in Scotland is materially different from that of the English Regulations considered by Mr Furness in his opinion. The reasoning in his opinion seems to us to apply to the position in Scotland as it applies in England.

It seems that what Mr Furness is saying is that the IORP Directive does apply to the LGPSE, that it therefore ought to be operating in accordance with it, but that the national legislation which applies to it is inconsistent with the IORP Directive. (See in particular paragraphs 20 to 23 of his opinion.)

On the other hand, DCLG seems to take the view that the obligations under the IORP Directive already apply to the LGPSE, and that no specific legislative changes are needed for the LGPSE to be compliant with the IORP Directive. This is one area of uncertainty where in our view, it was helpful to obtain further advice from our own Scottish Counsel.

## 4.5 To whom do Pensions Committee members owe a fiduciary duty?

Nigel Giffin QC was of the view that administering authorities owed a fiduciary duty to both scheme employers and scheme members on the basis, in summary, that if the fund performs poorly it could result in:
- the requirement for higher employer contributions; and
- the potential loss of discretionary powers being exercised in favour of the member and/or legislative changes requiring higher member contributions.

In the English case of *Charles Terence Estates Ltd v Cornwall Council*[12], the court confirmed, having regard to previous cases[13], that the council had fiduciary duties to council tax payers, although that case related to lease arrangements rather than pension arrangements.

Whilst councils may have a fiduciary duty to tax payers where a decision by them has a direct impact on tax payers, as was the case in *Charles Terence Estates Ltd* and the cases to which it referred, in our view, the position can be distinguished from the duties on Pensions Committees in relation to their pension arrangements. There is not, in our view, a sufficiently direct relationship between the LGPSS and tax payers which would result in Pension Committees having a fiduciary duty to tax payers, or to take actions which are in the best interests of those tax payers.

Accordingly, on the basis that a poor investment decision may result directly in adverse consequences for (i) scheme employers; and (ii) scheme members, it is our view, which is shared by Scottish Counsel, that Pensions Committee members of the LGPSS owe a fiduciary duty to both of those entities both in general and in the context of investment decisions. Such duty is not, however, owed to the tax payer.

In certain circumstances, it may be difficult to balance these duties as there may be competing interests. In such circumstances, the Pensions Committee should consider both parties' interests and treat each of them fairly and equitably, but not necessarily equally where favouring one party over another can be justified. Further legal advice may be required in cases of uncertainty.

## Scottish Counsel's opinion

Counsel's view is that the Scottish courts are likely to agree with opinions regarding fiduciary duties that have been received in relation to the LGPSE – i.e. that fiduciary duties do apply to those who hold funds in a fiduciary capacity, such as the LGPSS.

He is also of the view that as a point of principle, Scottish courts will not take a different approach to the application of the IORP Directive – i.e. that whilst the IORP Directive has not been explicitly transposed into the Investment Regulations, the Directive should be treated as being directly applicable to the LGPSS and the Investment Regulations should be read as subject to the principles set out on the IORP Directive and Article 18 in particular.

Given that the prudent man principle is well enshrined in Scots law, the reference to "prudent person" in the IORP Directive is less significant.

## 5. Scope for consideration of non-financial factors

Regulation 12(2)(f) of the Investment Regulations requires administering authorities to maintain a statement of investment principles which sets out, among other things, "the extent to which social, environmental or ethical considerations are take into account in the selection, retention and realisation of investments".

In isolation, this provision could be construed as entitling investment decisions to be made purely with regard to non-financial matters and so we sought the opinion of Scottish Counsel on this matter to establish the extent to which non-financial matters can of themselves influence investment decisions other than as a factor of assessing their impact on investment risk and return in the usual way.

An investment policy, such as an ethical investment policy, is one which is not guided solely by financial criteria, but takes into account non-financial considerations independent from the investment risk and return analysis ("**Non-Financial Considerations**").

On the basis that Article 18(1) of the IORP Directive applies to the LGPSS (or in any event that the prudent man principle applies under Scots law) and therefore that investment and other decisions must be exercised by the LGPSS in a 'fiduciary' capacity, we now consider the extent to which the LGPSS is entitled to consider Non-Financial Considerations when reaching decisions regarding investment and otherwise.

One of the leading cases on investment duties is the English case of *Cowan v Scargill*[14] in 1984. The general principles set out by Megarry V-C in this case in relation to investment decisions are that:

- the starting point is to exercise powers in the best financial interests of the beneficiaries;

- when considering what investments to make, the fiduciary's personal interests and views should be put aside;

- the ordinary prudent man test applies in making investment decisions;

- where the fiduciary is opposed to an investment for non-financial reasons, the fiduciary should not refrain from making the investment by reason of those views;

- Megarry V-C could see no reason to hold that different principles apply to pension fund trusts as apply to other trusts; and

- Trustees must do the best they can for the benefit of their beneficiaries, and not merely avoid harming them.

The conclusion is that in deciding how to invest pension scheme assets, moral and ethical principles should be put aside.

Nicholls V-C in another English decision *Harries v Church Commissioners*[15] in 1992 stated in summary that 'trustees must act prudently' and:

- investment decisions may be made on moral grounds, so long as that course of action "would not involve a risk of significant financial detriment"
- otherwise, investment decisions should not be made on non-financial grounds

Nigel Giffin QC summarised these cases and reached the view that the LGPSE can:

- have regard to non-financial considerations where that does not run the risk of material financial detriment to the fund; and

- the LGPSE should not place its own wider interest (whether its own or those of the areas inhabitants) above those of the scheme employer (i.e. the LGPSE must be "blind to its own interests").

The decision in the Scottish case of *Martin v City of Edinburgh* in 1987 (referred to in section 4.1 of this Report) is also relevant to these considerations.

In relation to taking non-financial matters into account, Lord Murray states (in summary):

- the position in Scotland is that trustees must act prudently and in the best interest of the beneficiaries;

- the fiduciary must recognise that he has his own preferences and principles but that he should "nonetheless do his best to exercise fair and impartial judgment on the merits of the issue before him"; and

- trustees must not simply adhere to a policy where that policy restricts the choice of investment.

In relation to the procedure to make investment decisions, the Law Commission has stated that in relation to trust arrangements "…the trustees may consider the views of their beneficiaries when making investment decisions, but there is no need for them to do so. Trustees must make the ultimate decisions."

In our view, the fiduciary duties on Pensions Committees both in relation to investment matters and more generally should be exercised by the Pensions Committees on whom the duties are bestowed, having taken professional advice (such as investment advice) where appropriate. It would not be appropriate, in our view, to canvas the views of the beneficiaries before such decisions are taken.

## Scottish Counsel's opinion

Having considered the relevant cases outlined above and the opinions of Nigel Giffin QC and Michael Furness QC, Scottish Counsel's view is that the LGPSS should exercise its investment duties in a fiduciary capacity.

Counsel was also of the view that the decision in *Harries* should be limited to its own specific facts and that trustees (and by extension Pensions Committees) are required to do more than simply ensure that the investment "would not involve a risk of significant financial detriment".

In summary, Scottish Counsel's view on the application of Non-Financial Considerations to the LGPSS is that:-

- there should be no policy in place that would restrict the choice of investments available to the LGPSS, including those based purely on the grounds of Non-Financial Considerations, other than restrictions under the Investment Regulations and by law. However, when making an investment decision, Pensions Committees may take environmental, social and governance (ESG) considerations into account in relation to that investment if the financial performance of that investment may be impacted as a result of any particular environmental, social or governance factor;

- any policy which specifically excludes the choice of investment purely based on Non-Financial Considerations will be contrary to the Pensions Committees' fiduciary duties and should be set aside before any investment decision is made; and

- Pensions Committees should seek to obtain the best returns for the fund while acting prudently. Investments should be made with the intention of achieving the best financial position for the fund whilst balancing risk and return considerations. Provided there is compliance with the above, social, environment and/or ethical considerations may be taken into account.

## 6. Implications for SAB and Pensions Committees

Pension Boards were established under the Public Service Pensions Act 2013[16] and the Local Government Pension Scheme (Governance) (Scotland) Regulations 2014. Pension Boards are responsible for assisting the administering authorities in relation to ensuring compliance with legislative and other requirements relating to the governance and administration of the LGPSS.

The Scheme Advisory Board (SAB) was also established under the Public Service Pensions Act 2013[17] and the Local Government Pension Scheme (Governance) (Scotland) Regulations 2014. The purpose of the SAB is to provide advice to the Scottish Ministers and to the Pension Boards and managers of the LGPSS in relation to the effective and efficient administration and management of the LGPSS.

In summary, it is our view that Pensions Committees in Scotland owe a fiduciary duty to the scheme employers and the scheme members in general and specifically in relation to investment matters. Those duties should be exercised in the best interests of the beneficiaries and in relation to investment decisions, should aim to achieve the best financial position for the fund, balancing risk and return in the usual way.

The Pensions Committees should seek appropriate professional advice before exercising their investment powers. In relation to investment decisions, they should not have a policy in place which would limit their investment options and all decisions should be made on a "prudent man basis. However, Pensions Committees may take environmental, social and governance (ESG) factors into consideration in relation to any investment decision, if the financial performance of that investment may be impacted by one or more of those factors.

SAB should have procedures in place to monitor the Pensions Committees to ensure the effective and efficient administration and management of the LGPSS in accordance with legislative requirements and the recommendations in this report and to advise the Pensions Committees where these have not been met.

# 7. References

References are in the order they appear in this Report.

[1] Opinion by Nigel Giffin QC dated 25 March 2014

QCOpinionApril2014.pdf

[2] IORP Directive
Directive 2003/41/EC

[3] Opinion by Michael Furness QC dated 24 May 2007

QCMF.pdf

[4] Article 18(1) of IORP Directive

**Investment rules**
1 Member States shall require institutions located in their territories to invest in accordance with the "prudent person" rule and in particular in accordance with the following rules:
(a) the assets shall be invested in the best interests of members and beneficiaries. In the case of a potential conflict of interest, the institution, or the entity which manages its portfolio, shall ensure that the investment is made in the sole interest of members and beneficiaries;

(b) the assets shall be invested in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole.
Assets held to cover the technical provisions shall also be invested in a manner appropriate to the nature and duration of the expected future retirement benefits;

(c) the assets shall be predominantly invested on regulated markets. Investment in assets which are not admitted to trading on a regulated financial market must in any event be kept to prudent levels;

(d) investment in derivative instruments shall be possible insofar as they contribute to a reduction of investment risks or facilitate efficient portfolio management. They must be valued on a prudent basis, taking into account the underlying asset, and included in the valuation of the institution's assets. The institution shall also avoid excessive risk exposure to a single counterparty and to other derivative operations;

(e) the assets shall be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings and accumulations of risk in the portfolio as a whole.
Investments in assets issued by the same issuer or by issuers belonging to the same group shall not expose the institution to excessive risk concentration;

(f) investment in the sponsoring undertaking shall be no more than 5% of the portfolio as a whole and, when the sponsoring undertaking belongs to a group, investment in the undertakings belonging to the same group as the sponsoring undertaking shall not be more than 10% of the portfolio.
When the institution is sponsored by a number of undertakings, investment in these sponsoring undertakings shall be made prudently, taking into account the need for proper diversification.

Member States may decide not to apply the requirements referred to in points (e) and (f) to investment in government bonds.

[5] The Local Government (Management and Investment of Funds)(Scotland)Regulations 2010
http://www.legislation.gov.uk/ssi/2010/233/body/made

[6] Scottish Law Commission: Report on Trust Law 2014 (No 239)
http://www.scotlawcom.gov.uk/files/4014/0904/0426/Report_on_Trust_Law_SLC_239.pdf

[7] *Martin v City of Edinburgh Council* [1989]PLR, [1988] SLT 329

[8] the Law Commission report (No 350) on the Fiduciary Duties of Investment Intermediaries; http://www.lawcom.gov.uk/wp-content/uploads/2015/03/lc350_fiduciary_duties.pdf

[9] Regulation 11 of the Investment Regulations

**11 Investment policy and investment of pension fund money**
(1) An administering authority must formulate a policy for the investment of its fund money.

(2) The authority's investment policy must be formulated with a view -
(a) to the advisability of investing fund money in a wide variety of investments; and

(b) to the suitability of particular investments and types of investments.

(3) The authority must invest, in accordance with its investment policy, any fund money that is not needed immediately to make payments from the fund.

(4) The authority may vary its investments.

(5) The authority must obtain proper advice at reasonable intervals about its investments.

(6) The authority must consider such advice in taking any steps in relation to its investments.

[10] the Department for Communities and Local Government Consultation on the Local Government Pension Scheme: Revoking and replacing the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009
Revoking and replacing the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009: consultation

[11] Article 8 of the IORP Directive

**Legal separation between sponsoring undertakings and institutions for occupational retirement provision**

Each Member State shall ensure that there is a legal separation between a sponsoring undertaking and an institution for occupational retirement provision in order that the assets of the institution are safeguarded in the interests of members and beneficiaries in the event of bankruptcy of the sponsoring undertaking.

[12] *Charles Terence Estates Limited v Cornwall Council* [2012] EWCA Civ 1439

[13] *Hazell v Hammersmith LBC* [1992] 2 AC 1;
*Bromley LBC v Greater London Council* [1983] 1 AC 768

[14] *Cowan v Scargill* [1985] Ch 270

[15] *Harries v Church Commissioners for England* WLR 1241

[16] Section 5 of the Public Service Pensions Act 2013

[17] Section 7 of the Public Service Pensions Act 2013

# 8. Legal Input and Contacts

Ruth Tobias
Partner
Pensions
**T:** +44 141 567 8578
**M:** +44 7860 606 770
**E:** ruth.tobias@pinsentmasons.com

Ruth, based in Glasgow, has experience advising on all areas of pensions law and is recognised as a "leading individual" in this sector by the independent directories. The Legal 500 describes Ruth's team as being "*definitely one of the strongest practices in the area".* This has recently been reinforced in the particular field of public sector pensions by its appointment on the LGPS National Framework for Legal Services as a specialist firm in public sector pensions in Scotland.

Craig Connal QC
Partner
Litigation
**T:** +44 141 567 8633
**E:** craig.connal@pinsentmasons.com

As a solicitor-advocate qualified in the jurisdictions of Scotland and England and Wales, he has rights of audience in all courts, civil and criminal, including the Supreme Court of the United Kingdom. Craig has appeared in high profile and complex litigation in a wide variety of courts, inquiries and tribunals and includes pensions within his areas of practice. He was the first solicitor-advocate in Scotland to be appointed to the rank of Q.C. (Queens Counsel) and won Solicitor Advocate of the Year category in The Law Society Excellence Awards 2012.

Jae Fassam
Senior Associate
Pensions
**T:** +44 131 777 7074
**M:** +44 7840 642 024
**E:** jae.fassam@pinsentmasons.com

Jae, is based in Edinburgh and is a leading adviser in the Pensions and Pension Investment teams advising private and public sector clients throughout the UK. Chambers UK 2016 lists Jae as an "Associate to Watch".

Elaine MacGregor
Senior Associate
Transactional Services
**T:** +44 141 249 5436
**E:** elaine.macgregor@pinsentmasons.com

Elaine, based in Glasgow, is part of our Funds and Pensions Investment team and specialises in advising institutional investors on their investment programmes.

Caroline Ramsay
Senior Associate
Transactional Services
**T:** +44 20 7054 2504
**M:** +44 7860 607 027
**E:** caroline.ramsay@pinsentmasons.com

Caroline is based in Glasgow and has a wide ranging European law practice advising across the UK and Europe. Caroline has extensive experience in public policy and public law duties.

# 9. Disclosure

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**Pinsent Masons LLP**
**11 February 2016**