

## **PENSION FUND COMMITTEE – 6 JUNE 2014**

### **CORPORATE GOVERNANCE**

#### **Report by Chief Financial Officer**

##### Introduction

1. This report informs the Pension Fund Committee of the latest advice regarding its fiduciary duty, to the members and employers of the scheme and the extent to which social, environmental and ethical considerations could influence investment decisions. The report also provides a summary of the proxy voting activity for 2013 at Annexes 1 and 2.

##### Fiduciary duty

2. The Local Government Association (LGA) recently sought Queens Counsel advice regarding the fiduciary duty of LGPS administering authorities. The following questions were posed to Nigel Giffin QC:-
  - Does an LGPS administering authority owe a fiduciary duty and if so to whom is it owed?
  - How should the wider functions, aims or objectives of the administering authority influence the discharge of its LGPS investment duties?

A full report of the opinion, available on the LGPS advisory board website at <http://www.lgpsboard.org/images/PDF/Publications/QCOpinionApril2014> is summarised below.

3. Nigel Giffin QC determined that LGPS administering authorities do owe fiduciary duties to both their scheme employers, and to their scheme members. Whilst LGPS pension fund committees are not trustees, fiduciary duties are not limited to trustees. The way in which the fund is administered may have a significant financial impact upon scheme employers and members.

##### Broader investment considerations

4. The Oxfordshire Pension Fund periodically receives objections to the fund's investments in tobacco stocks, due to the impact on public health, and objections to investments in other sectors on environmental grounds. The Committee has previously been advised that its responsibility is to invest in the best financial interests of the fund; to exclude investments on the grounds of wider considerations could be considered a breach of fiduciary duty.

5. Nigel Giffin QC was asked by the LGA what considerations could legitimately influence investment decisions. He determined that it would be impermissible for an administering authority to exclude investments to which objection was taken, if that was likely to have an adverse impact on the returns achieved, or to lead to the fund being exposed to an unduly narrow and undiversified investment portfolio. Similarly it would not be permissible to invest in the local schemes to benefit the local area, if it was not a good and prudent investment.
6. The LGPS Investment regulations, requires the investment policy to state how far social, environmental or ethical considerations are taken into account. It therefore follows that in principle the administering authority can have regard to wider considerations that don't run the risk of material financial detriment to the fund. So, if a local investment was considered equally as financially advantageous as a similar one in another location, the Committee could choose the local investment. Tobacco investments could be avoided but only if it did not endanger the diversity of investments, or the returns likely to be achieved.
7. Where it may be permissible to have regard to wider considerations, if there is no impact on the financial returns, it is still not legitimate for the administering authority to place its own wider interests above those of other scheme employers or members. The administering authority must be blind to its own wider interests insofar as they may diverge from, or conflict with those of other parties interested in the fund. The administering authority should not impose its own view on, for example, the desirability of investing in oil companies, if that would differ from the views likely to be generally held by other scheme employers and scheme members.
8. Nigel Giffin QC states 'the administering authority is in my view under no legal obligation to consider investment decisions from any perspective other than the maximisation of returns, whatever precise scope there may be for it to take account of wider matters if it chooses to do so.'

### QC's conclusion

9. 'The administering authority's power of investment must be exercised for investment purposes, and not for any wider purposes. Investment decisions must therefore be directed towards achieving a wide variety of suitable investments, and to what is best for the financial position of the fund (balancing risk and return in the normal way).
10. However, so long as that remains true, the precise choice of investment may be influenced by wider social, ethical or environmental considerations, so long as that does not risk material financial detriment to the fund. In taking account of any such considerations, the administering authority may not prefer its own particular interests to those of other scheme employers, and should not seek to impose its particular views where those would not be widely shared by scheme employers and members, (nor may other scheme employers impose their views upon the administering authority).'

## **Recommendation**

**The Committee is RECOMMENDED to:**

- (a) note the Opinion of Nigel Giffin QC, provided to the Local Government Association, on the duties of administering authorities under the Local Government Pension Scheme; and**
- (b) note the proxy voting activity of the Fund Managers during 2013 provided in annexes 1 and 2.**

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Background papers: Nil

May 2014

## CORPORATE GOVERNANCE - VOTING

11. The UK Stewardship Code was introduced by the Financial Reporting Council in 2010, and revised in September 2012. The Code, directed at institutional investors in UK companies, aims to protect and enhance the value that accrues to ultimate beneficiaries through the adoption of its seven principles. The code applies to fund managers and also encourages asset owners such as pension funds, to disclose their level of compliance with the code.
12. Principle 6 of the Code states that Institutional investors should have a clear policy on voting and disclosure of voting activity. They should seek to vote all shares held and should not automatically support the board. If they have been unable to reach a satisfactory outcome through active dialogue then they should register an abstention or vote against the resolution, informing the company in advance of their intention to do so and why.
13. The Oxfordshire County Council Pension Fund's voting policy is set out in its Statement of Investment Principles (SIP), which states that voting decisions are fully delegated to the Fund Managers to exercise voting rights in respect of the Pension Fund's holdings. Officers monitor this activity and raise any concerns with the Fund Managers. This report summarises the voting activity and fulfils the voting disclosure requirement.

### UK Equities

14. A summary of the Oxfordshire Pension Fund voting activity for UK Equity mandates during 2013, is provided below:-

<b>Manager</b>	<b>No. of Meetings</b>	<b>No. of Agenda Items Voted On</b>	<b>No. Items Voted Against Manager Proposals</b>	<b>No. Items Voted Against Shareholder Proposals</b>	<b>No. of Items Abstained</b>
Baillie Gifford	56	1,103	33	1	0
L&G UK FTSE 100 Index	99	2,033	20	1	0
Wellington	11	196	11	0	0
Private Equity	18	133	0	0	0
	<b>184</b>	<b>3,465</b>	<b>64</b>	<b>2</b>	<b>0</b>

15. The majority of Baillie Gifford's votes 'against' were in relation to the issuance and allotment of equity. Legal & General's were predominantly in relation to remuneration reports, and Wellington tended to vote against AGM notice periods.
16. There were 21 instances where the fund managers placed contrasting votes. The conflict generally occurred when Legal & General voted 'for' on resolutions where other managers voted 'against'.

## Overseas Equities

17. A summary of the Oxfordshire Pension Fund voting activity for Overseas Equity mandates during 2013, is provided below:-

Manager	No. of Meetings	No. of Agenda Items Voted On	No. Items Voted Against Manager Proposals	No. Items Voted Against Shareholder Proposals	No. of Items Abstained
L&G World (Ex-UK) Index	1,732	20,363	2,215	398	162
UBS Emerging Markets	39	712	93	0	0
UBS Global Optimal Thirds	71	971	41	28	1
UBS Property	5	19	0	0	0
Wellington	75	1,177	20	65	174
	<b>1,922</b>	<b>23,242</b>	<b>2,369</b>	<b>491</b>	<b>337</b>

18. UBS votes 'against' in the Emerging Markets portfolio generally related to director appointments. They voted 'against' a much wider range of proposals in the Optimal Thirds Fund. Wellington's votes 'against' were focused on the appointment of certain directors, whereas Legal & General voted against on a wide range of proposals.
19. Annex 2 provides a list of votes cast 'against' the resolution by the Oxfordshire Pension Fund active Managers, and also includes details of the proxy voting activity for the passive UK equity mandate.