



CIPFA Pensions Network: The wider legal context of governance

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- Effective decision-making
 - Why it matters
 - How to achieve and assess it

- Conflicts of interest
 - How to identify and manage them

- Disclosing information/reasons for decisions
 - Investment case study

- Disclosure Regulations 2013
 - What has changed?

- Over the horizon: IORP II



Effective decision making: why does it matter?

- Not new ground! But an increased focus?
- Myners Code → incorporated into current LGPS Investment Regulations
- Investment Governance Group
- CIPFA Code of Practice and Knowledge and Skills Framework
- PSPA 2013 requirements
 - Knowledge and understanding obligations
 - TPR oversight and Code of Practice
 - Oversight from pensions board
- Fiduciary responsibility?
- Avoid challenges
 - Pensions Ombudsman / Courts
 - Freedom of Information scrutiny



How do you achieve effective decisions?

- Who makes decisions?
 - Membership of Pensions Committee and Pensions Board
 - Training
 - Codes of practice (internal, CIPFA, TPR)
- Assessment
 - Self-assessment
 - Independent adviser
 - Pensions Board
- Internal controls and audit trail?
- Sanctions/penalties?
 - Pensions Ombudsman
 - Negative publicity
 - Personal responsibility?



Why do conflicts of interest matter?

- Prohibition for pension board members
 - section 5 PSPA 2013 and draft regulation 108 of LGPS Regulations 2013
 - section 117 Local Government Act 1972 and Localism Act 2011
- Can lead to decisions being challenged
- Distinction between potential and actual conflicts of interest
 - TPR guidance
 - Confidential information – and how it is used – is critical
- Tools for managing:
 - Identification – conflict register
 - Declarations of interest
 - Confidentiality agreements / Code of Conduct
 - Principles of Public Life
 - Abstention / resignation



Who is conflicted here (and what should they do about it)?

- Patrick
 - Section 151 Officer for Administering Authority
 - Member of Pensions Committee
 - Member of LGPS
- Susan
 - Former employee of High-Flying Bank PLC
 - District councillor
 - Employer nominated member of Pensions Board
- Jack
 - Employed by Outsourcing-R-Us Limited since TUPE transfer in 1990s
 - Now the Finance Director
 - Trade union representative
 - Employee nominated member of Pensions Board



Disclosing information/reasons: what's the fuss?

- Three different duties for Administering Authorities:
 - to elected officers
 - to members
 - to third parties
- Tension between effective decision-making and confidentiality
- “Exempt” information
- Duty of confidence vs public interest

Members of the investment sub-committee are considering an investment in the Always Positive Returns hedge fund. It guarantees exceptional returns and has low fees. Committee members have Treasury functions at their own authorities. Discuss...



What has changed in the disclosure regime?

- Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013
 - Since 6 April 2014
- Restatement and clarification of previous regime
 - Not all relevant to LGPS (e.g. lifestyling information, SMPI requirements)
- Basic scheme information requirements simplified
 - Some complex information only needs to be provided on request (e.g. treatment of transfer credits)
 - Check your fund booklet
- Procedures for electronic disclosure clarified



- Health warning: applicability of IORP Directives to LGPS is unclear
- Current status
 - March 2014 European Commission proposal for new Directive
 - Refocused on governance, transparency and encouraging cross-border activity
 - Earlier insurance-style funding proposals apparently dropped
- Key point: “fit and proper person” requirement
 - Who does it apply to?
 - Pensions Board members?
 - Scheme Managers (a.k.a. Pensions Committee)?
 - Section 151 officers?
 - Scheme Advisory Board Members?
 - How will it be satisfied?
 - Complete TPR toolkit?
 - Minimum training requirement?
 - Professional qualification?



To conclude...

- It's important to have a clear, robust and effective decision-making process
- As well as being “a good thing”, it will protect decisions from challenge
- Good governance is key to having a proper process
- The PSPA amendments are a good opportunity to review governance structures so they are fit for purpose
- Conflicts of interest merit special attention – but they can almost always be managed appropriately
- Governance requirements and best practice are continually changing – IORP II may lead to more developments



Any questions?



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