

Croydon Council

REPORT TO:	Pension Committee 5 December 2017
SUBJECT:	The Markets in Financial Instruments Directive: Compliance and Requirements
LEAD OFFICER:	Nigel Cook Head of Pensions and Treasury
CABINET MEMBER	Councillor Simon Hall Cabinet Member for Finance and Treasury
WARDS:	All
CORPORATE PRIORITY/POLICY CONTEXT: Sound Financial Management: This report deals with the regulatory framework allowing the Pension Committee to be treated as a professional investor.	
FINANCIAL SUMMARY: Financial risks relating to the Pension Fund are substantial and can impact on the General Fund of the Council.	
FORWARD PLAN KEY DECISION REFERENCE NO.: N/A	

1. RECOMMENDATIONS

- 1.1 The Committee is asked to note the contents of this report.

2. EXECUTIVE SUMMARY

- 2.1 This report details the tests applied under the Markets in Financial Instruments Directive with particular reference to the role of the Pensions Committee in decision making.

3. DETAIL

- 3.1 The Committee decided to opt to elect to professional investor status under the Markets in Financial Instruments Directive (MiFID II) at its September meeting (Item A9 refers).
- 3.2 In order to comply with the requirements of the Directive, the authority has to pass two tests. The first relates to the size of the Fund and is a simple hurdle. The second test is qualitative and it is that test that is the subject of this report.
- 3.3 The Qualitative Test comprises 5 sections: the decision making body; expertise, experience and knowledge; investment history and strategy; understanding risk; and support for investment decisions.

- 3.4 There are four decision making models described. This Committee fits into the third category, being 'Decisions delegated to committee ... with partial delegation to an officer.' The constitution of the Council describes the arrangements in detail.
- 3.5 Expertise, experience and knowledge refers to members of the committee. There are 8 questions:
1. Are members provided with a written brief on joining the committee?
 2. Are members provided with training on investment matters?
 3. Is the attendance of members at training monitored and recorded?
 4. Average hours of training over a 12-month period?
 5. Average hours at investment conferences over a 12-month period?
 6. Are members required to complete a self-assessment with regard to their knowledge of investments?
 7. Average number of years on this committee?
 8. Any other information?

It is difficult to know how high the hurdle has been set, although the return provided for this committee has been widely deemed sufficient, but these questions are helpful in understanding what the Directive, and by extension investment managers and counter-parties, are looking for in the composition of the committee.

- 3.6 Investment history and strategy is an analysis of the asset classes that the team has invested in over a period of time. The Pension Fund investment team are able to demonstrate a breadth of experience over a substantial length of time.
- 3.7 Understanding risks relies on the Risk Management Policy and corporate and Pension Fund Risk Registers.
- 3.8 The final section relates to the support for investment decisions taken by the committee. This relies on the experience and qualifications of the Pension Fund investment team and the investment advisory and consultancy team retained by the Council. Currently this is AON Hewitt.
- 3.9 This test needs to be repeated periodically and each time the makeup of the Committee changes, key personnel change, or new investments are considered. It is not immediately clear how approaches from fund managers will be affected by this change.
- 3.10 In total, and to date, officers have applied to opt up to 17 bodies covered by the Directive. This comprises 14 fund managers, plus the Fund's investment advisors, the London CIV and the Fund's custodian. At the time of writing 10 of these counter-parties had agreed to the election to opt up. The deadline for this process is effectively the end of December 2017.
- 3.11 In summary therefore, the Committee is invited to consider the 8 questions outlined in paragraph 3.5 above, and how an adequate level of expertise, experience and knowledge can be maintained.

4 FINANCIAL CONSIDERATIONS

- 4.1 There are no further financial considerations flowing from this report.

5. OTHER CONSIDERATIONS

- 5.1 Other than the considerations referred to above, there are no customer Focus, Equalities, Environment and Design, Crime and Disorder or Human Rights considerations arising from this report

6. COMMENTS OF THE SOLICITOR TO THE COUNCIL

- 6.1 The Solicitor to the Council comments the Council is an Administering Authority under the Local Government Pension Scheme Regulations 2013 (the Regulations) for the London Borough of Croydon's Pension Fund.
- 6.2 The Pension Committee act as Trustee of the Pension Fund and is responsible for (1) ensuring that the Pension Fund is properly operated in accordance with the Regulations and all other relevant legislation and best practice as advised by the Pensions Regulator (2) adopting Fund specific policies concerning the administration of the Pension Fund and (3) discharging its fiduciary responsibility in the best interest of the Pension Fund.
- 6.3 The Markets in Financial Instruments Directive II (MiFID II) is due for implementation on 3 January 2018. The policy statement from the Financial Conduct Authority (FCA) in respect of the MiFID II sets out rules for the implementation of the Directive.
- 6.4 The re-classification of local authorities under the MiFID II is at odds with the Local Government Pension Scheme (Management and Investment of funds) Regulations 2016. The FCA has recognised that the reclassification of local authorities may not be in the best interests of their pension funds and has given the Council an option to opt up to "elective professional" client status subject to satisfying certain criteria. To enable the Council to obtain the best possible investments for the Pension Fund the Committee has taken up the option to opt up to "elective professional" client status. The MIFID II sets out certain tests with which the Council must comply. This report relates to the qualitative assurance test.
- 6.5 When exercising its functions in relation to the Pension Fund the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not (the Public Sector Equality Duty).

Approved by: Sandra Herbert Head of Litigation and Corporate Law on behalf of Jacqueline Harris-Baker the Director of Law and Monitoring Officer.

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BACKGROUND DOCUMENTS: None