



Committee report

Committee	ISLE OF WIGHT PENSION FUND COMMITTEE
Date	24 MAY 2023
Title	MIFID II OPTION FOR PROFESSIONAL INVESTOR STATUS
Report of	PENSION FUND MANAGER

EXECUTIVE SUMMARY

1. This report presents the requirement for the Council, as administering authority for the Isle of Wight Pension Fund, to resubmit its election for professional investor status under the Markets in Financial Instrument Directive 2014/65 (“MiFID II”).

RECOMMENDATION

2. That the committee approves the election for professional investor status, and authorises the Pension fund Manager to submit the option form to Hymans Robertson, and other investment counterparties as may request such election.

CONFIDENTIAL / EXEMPT ITEMS

3. This covering report is not deemed exempt from publication, but the appendix is deemed to be exempt from disclosure by virtue of paragraph 3 of part 1 of schedule 12A of the Local Government Act 1972 (as amended) as it “relates to financial or business affairs of any particular person”, (including the authority holding that information). The public interest in maintaining confidentiality outweighs the public interest in disclosing it. Disclosing the information could place the council at risk of legal challenge from individuals or other bodies identified in the report.
4. The appendix contains the draft election notice, which has yet to be completed. Once the election has been made, the completed election form can be released into the public domain.

BACKGROUND

5. Following the introduction of the Markets in Financial Instrument Directive 2014/65 (“MiFID II”) from 3 January 2018, firms were no longer able to categorise local authorities as a ‘per se professional client’ or elective eligible counterparty (ECP) for both MiFID and non-MiFID scope business. Instead, all local authorities would have been classified as “retail clients” unless they were opted up by firms to an ‘elective professional client’ status.

6. In January 2018, the Isle of Wight Council completed opt-up election forms for each of its incumbent investment managers, as well as the investment consultants, treasury management advisers and custodians.
7. Since then, for each new investment manager added to the fund's investment portfolio, an election to be considered as a professional investor has been completed and accepted by each counterparty.
8. In May 2023, Hymans Robertson notified the fund that they are required to carry out a status assessment on a regular basis, to determine from their perspective whether the fund can continue to be treated as a Professional Client.
9. The fund is required to complete a questionnaire to confirm its self-assessment as a professional investor; a partially completed copy of that questionnaire is included as Appendix 1 to this report.
10. The committee is asked to confirm the completion of the questionnaire, and to specifically authorise its submission to investment counterparties, as required by

CORPORATE PRIORITIES AND STRATEGIC CONTEXT

Corporate Aims

11. There is nothing contained in this report which directly contributes to the priorities contained in the [Corporate Plan 2021 - 2025](#). Publication of this report supports the Corporate Plan key value of "being fair and transparent".

Pension Fund Strategic Aims

12. The primary objective of the fund is to provide pension and lump sum benefits for members on their retirement and/or benefits on death, before or after retirement, for their dependents, in accordance with the Local Government Pension Scheme (LGPS) regulations and statutory provisions. The committee aims to operate the fund in such a manner that, in normal market conditions, all accrued benefits are fully covered by the value of the fund's assets and that an appropriate level of contributions is agreed by the employer to meet the cost of future benefits accruing.

FINANCIAL / BUDGET IMPLICATIONS

13. There are no direct financial implications for the submission of the stand alone questionnaire.

LEGAL IMPLICATIONS

14. The Isle of Wight Council is the administering authority for the Isle of Wight Council Pension Fund. An administering authority is defined in the Local Government Pension Scheme Regulations 2013 as "a [local authority] required to maintain a pension fund under the local government pension scheme regulations".

EQUALITY AND DIVERSITY

15. The council, as a public body, is required to meet its statutory obligations under the Equality Act 2010 to have due regard to eliminate unlawful discrimination, promote equal opportunities between people from different groups and to foster good

relations between people who share a protected characteristic and people who do not share it. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

16. There are no implications for any of the protected characteristics arising from items covered in the report.

RISK MANAGEMENT

17. Should the council decide not opt up to professional investor status, or if such election were declined by one or more counterparties, it will automatically be considered a retail client, under MiFID II.
18. A move to retail client status would mean that all financial services firms like banks, brokers, advisers and fund managers will have to treat the council the same way they do non-professional individuals and small businesses. That includes a raft of protections ensuring that investment products are suitable for the customer's needs, and that all the risks and features have been fully explained. This provides a higher standard of protection for the client but it also involves lots more work and potential cost for both the firm and the client, for the purpose of to prove proving to the regulator that all such the requirements have been met.
19. Such protections would come at the price of local authorities not being able to access the wide range of assets needed to implement an effective, diversified investment strategy. Retail status would significantly restrict the range of financial institutions and instruments available to authorities. Many institutions currently servicing the LGPS are not authorised to deal with retail clients and may not wish to undergo the required changes to resources and permissions in order to do so.
20. Even if the institution secures the ability to deal with retail clients, the range of instruments it can make available to the client will be limited to those defined under Financial Conduct Authority (FCA) rules as 'non-complex' which would exclude many of the asset classes currently included in LGPS fund portfolios. In many cases managers will no longer be able to even discuss ('promote') certain asset classes and vehicles with the authority as a retail client.

APPENDICES ATTACHED

21. Appendix 1 (confidential): Draft standalone questionnaire Isle of Wight Council as administering authority for the Isle of Wight Pension Fund May 2023.

BACKGROUND PAPERS

22. Local Government Pension Scheme Advisory Board – England and Wales: guidance on opting up to professional status.
<https://lgpsboard.org/index.php/opting-up-process>

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