**Essex Pension Fund**
A2, County Hall
Chelmsford
Essex, CM1 1JZ

Benjamin Dance,
Department of Business Innovation & Skills
Vocational Education Directorate
Orchard 1, 2nd Floor
1 Victoria Street
London
SW1H 0ET

*5 August 2016*

Dear Sir,

**FE & Sixth Form Insolvency Regime**

The Essex Pension Fund welcomes the opportunity to respond to the Department's consultation on developing an insolvency regime for Further Education and Sixth Forum Colleges.

The Essex Pension Fund is one of the larger Local Government Pension Scheme (LGPS) Funds in the country with over £5bn of assets. Its 600 scheme employers include 7 Further Education and 2 Sixth Form Colleges.

This response is based on the views of Fund officers. Discussions have also been had with the Chairman of the Essex Pension Fund Strategy Board and the s151 Officer of Essex County Council.

**Background to the LGPS**

The LGPS is a locally managed pension scheme administered by 91 funds in England and Wales. As well as being locally managed, the LGPS is a funded, defined benefit scheme. Paragraph 111 of your consultation states that the LGPS is a scheme *"with benefits payable from the scheme based on the amount of money paid in, the returns achieved on that investment and the market conditions at force*". This is incorrect as it describes a defined contribution scheme. As a defined benefit scheme the LGPS pays benefits based on the salary and length of service of each member.

The operation of employer participation in the LGPS is on a "last man standing" basis. If an employer becomes insolvent and the Fund is unable to recover the deficit that the employer owed to the Fund at the point of insolvency, the resulting liability falls on the remaining employers. As the LGPS is a public sector scheme whose largest employers are local authorities that will often mean that ultimately the burden falls on the local taxpayer.

**Local context of the Consultation**

The Essex Fund has not yet had any Colleges fail. We have however seen, over the last decade the merger of some Colleges (our total of 9 is based on what had been 12 separate Colleges). We are also aware of the Area Review process, that is currently underway and that Essex is in the final cohort due to commence later this year.

**The Status of Colleges and its implications**

Further education colleges and sixth form colleges that are respectively, further education corporations and sixth form corporations under the Further & Higher Education Act 1992, must provide access to the LPGS for their employees and do so as “scheduled bodies” in each Fund. This status prevails from a time when Colleges were in the public sector, however at this time, Colleges are now deemed private sector.

Typically new employers joining the LGPS are from the private or voluntary sector. When a new employer applies to enter the LGPS it is possible for a Fund to require a form of security as a condition of admission. This approach is not available to Funds given that the (now) private sector Colleges are already in the LGPS as scheduled bodies. The situation can be addressed by Government providing the guarantee security Funds require.

**Observations on the Consultation**

Paragraph 112 of the consultation states:

*“If the college either transferred to another employer outside of the scheme or was to ultimately be liquidated and wound up, then the pension deficit would crystallise. In this event (when an LGPS employer loses its last active member it then becomes an exiting employer and an exit payment is calculated) the employees’ accrued and deferred benefits would be protected. Any pension deficit to the fund would have to be met through a claim against the assets of the exiting college as an unsecured creditor, or through an increase in contributions from the remaining scheme members (where a claim against the assets was not sufficient to meet the deficit)”.*

In light of the comments made earlier in this letter, the Essex Fund is concerned that all steps are taken to prevent any risk arising that the pension liability of a College falls on other LGPS employers, and ultimately the local taxpayer.

One of the stated aims of introducing an insolvency regime is to establish a “*clear and well understood framework for the benefit of colleges, learners, creditors and taxpayers”.*

The Essex Fund supports calls for the appointed education administrator (in the event of an insolvency) to have an explicit stated responsibility to carry out their function in a way that achieves the best interests of the tax payer. <u>This would include doing everything to avoid the pension liability falling onto other public sector employers.</u>

Specific circumstances to be avoided include structuring an insolvency regime that allows for a ‘pre-packed’ option enabling Colleges to dispose of liabilities then start up as a ‘new’ college but leaving the burden with the LGPS Funds and ultimately the tax payer.

The Consultation does not provide full detail on what would be covered by Secretary of State’s funding of “learn out”. Whilst we understand this would assist students to complete courses, there is no explicit reference to pension contributions.

Yours sincerely,

Kevin McDonald
Director for Essex Pension Fund
Essex Pension Fund
Corporate Services

Essex County Council
Office telephone: 0333 0138 488
Mobile telephone: 077123 56217
Email: kevin.mcdonald@essex.gov.uk | www.essex.gov.uk | www.essexpensionfund.co.uk

PENSIONSAge AWARDS 2015 WINNER DB PENSION SCHEME OF THE YEAR

Professional Pensions PENSION SCHEME OF THE YEAR AWARDS 2014 WINNER

Public Sector Scheme of the Year 2014

LGC Investment Awards 2013 WINNER Fund of the Year (above £2bn) 2013