

Revision of ACCESS Joint Committee Agreement for Pension Fund Investment Pooling

Report by Councillor David Finch, Leader of the Council

Enquiries to Paul Turner, Director, Legal and Assurance, paul.turner@essex.gov.uk telephone 03330 134591 or Jody Evans, Interim Director for Essex Pension Fund jody.evans@essex.gov.uk telephone 03330 138489.

1. Purpose of Report

- 1.1 In July 2017 the Council resolved to participate in the ACCESS pension fund pool which has been established to comply with a central government expectation that the LGPS pension schemes would join together to pool many of their investment management operations. The ACCESS Pool covers eleven pension funds stretching from Norfolk to the Isle of Wight and is governed by a joint committee made up of one Elected Member from each of the eleven member local authorities.
- 1.2 The pool has successfully been set up. The agreement establishing the pool provided for the review of operation after one year. The Joint Committee commissioned a review of operations in 2019. As a result of the review the Council is being asked to agree changes to the terms of reference and constitution of the Joint Committee. Most of the changes are minor and cosmetic but a couple of changes are more substantial and any change to the constitution of the joint committee is required to be approved by the Council.

2. Main changes

- 2.1 **More than one operator:** Originally the agreement and joint committee were set up on the basis that the joint committee would procure a single commercial operator to run the pool. However, it is now clear that the pool may want to have different operators for different types of investments (eg those actively managed and those passively managed such as 'tracker' funds). It is therefore recommended that the terms of reference of the committee are amended to permit there being more than one operator.
- 2.2 **Enhanced role for section 151 officers:** Section 151 officers from each authority have always been involved in the development of ACCESS and have advised to the Joint Committee, however this was not referenced within the original agreement. It is now proposed to capture this role formally by the inclusion of terms of reference for a constituted group comprising the section 151 officers of the member authorities who would be required to provide advice on every decision to be taken by the joint committee.
- 2.3 A copy of the whole revised agreement is available by email from those named at the top of this report.

3. Recommendation

- 3.1 Agree to amend the terms of reference and constitution of the ACCESS Joint Committee as set out in appendices 1 and 2 to this report and authorise the council to enter into an agreement to enact those changes.
- 3.2 Agree to amend appendix 4 of the ECC constitution to replace the current constitution with the version appended to this report.

Appendix 1

Terms of Reference of the ACCESS Joint Committee

Part 1 Operating the Pool and taking Advice

1. The Joint Committee shall consult with and consider the advice of the Section 151 Officers Group (and, where requested, the Monitoring Officers and from appropriate professional advisers) in discharging its functions, recording, if appropriate, where such advice is not followed and the rationale for not doing so. It may decide to procure such professional advisers on such terms as it thinks fit. Accordingly, any procurement of advisers must comply with the constitution of the Council designated to undertake the procurement and that Council will enter into a contract with the appointed adviser on behalf of the Councils.
2. The Joint Committee shall decide which functions shall be performed by the ASU.
3. The Joint Committee shall at all times have regard to the principles set out in Schedule 1.

Part 2 Functions in relation to the Operator(s)

1. **Specifying Operator services:** Deciding, in consultation with the Councils, the specification of Services and functions that each Operator will be required to deliver including the sub-funds and classes of investments required to enable each Council to execute its investment strategy.
2. **Procuring an Operator:** agreeing the method and process for the procurement and selection of one or more Operators.
3. **Appointing an Operator:** Making a recommendation to the Councils as to the identity of each Operator and the terms upon which each Operator is to be appointed.
4. **Reviewing the Performance of an Operator:** Keeping the performance of each Operator under review and making arrangements to ensure that the Joint Committee is provided with regular and sufficient reports from the ASU to enable it to do so including but not limited to:
 - 4.1 the performance of an Operator against its contractual requirements and any other performance measures such as any Service Level Agreement ("**SLA**") and key performance indicators ("**KPIs**") and officer recommendations on any remedial action;
 - 4.2 sub-fund investment performance;
 - 4.3 investment and operational costs including the annual review of investment manager costs;
 - 4.4 performance against the strategic business plan agreed by the Councils.
5. **Managing the Operator(s):**

The Joint Committee shall:

- 5.1 Make recommendations to the Councils about the termination or extension of the Operator Agreement(s);
- 5.2 Make decisions about any other action to be taken to manage an Operator Agreement including the giving of any instruction or the making of any recommendation to the relevant Operator including but not restricted to recommendations on investment managers (within any regulatory constraints that may apply); and
- 5.3 Make recommendations to the Councils about appropriate arrangements to replace an Operator Agreement on its termination.

Part 3 Functions in relation to management of Pool Assets

- 6. The Joint Committee shall make recommendations to the Councils on the strategic plan for transition of assets that are to become Pool Assets.

Part 4 Functions Concerning Pool Aligned Assets

- 7. The Joint Committee shall make recommendations to the Councils about Pool Aligned Assets in accordance with this Agreement or any other delegation to the Joint Committee by the Councils.
- 8. **Specifying services of Pool Aligned Assets Provider(s):** Deciding, in consultation with the Councils, the specification of Services which any Pool Aligned Assets Provider will be required to deliver including the sub-funds and classes of investments required to enable each Council to execute its investment strategy.
- 9. **Procuring a Pool Aligned Assets Provider:** agreeing the method and process for the procurement and selection of one or more Pool Aligned Assets Providers.
- 10. **Appointing Pool Aligned Assets Providers:** Making a recommendation to the Councils as to the identity of each Pool Aligned Assets Provider and the terms upon which each Pool Aligned Assets Provider is to be appointed.
- 11. **Reviewing the Performance of a Pool Aligned Assets Provider:** Keeping the performance of each Pool Aligned Assets Provider under review and making arrangements to ensure that the Joint Committee is provided with regular and sufficient reports from the ASU to enable it to do so including but not limited to:
 - 11.1 the performance of a Pool Aligned Assets Provider against its contractual requirements and any other performance measures such as any Service Level Agreement ("**SLA**") and key performance indicators ("**KPIs**") and officer recommendations on any remedial action;
 - 11.2 investment performance of the Pool Aligned Assets Vehicle(s) or sub-funds, as appropriate;
 - 11.3 investment and operational costs including the annual review of investment manager costs;
 - 11.4 performance against the strategic business plan agreed by the Councils.

Part 5 Functions concerning Business Planning and Budget

12. Having taken account of any advice from the Section 151 Officers Group (or, where relevant, recording the rationale for not following such advice), the Joint Committee shall:
 - 12.1 Make recommendations to the Councils about the annual strategic business plan for the Pool;
 - 12.2 Determine the budget necessary to implement that plan and meet the expenses of undertaking the Specified Functions (insofar as they will not be met by individual transaction costs paid by Councils to the Operator) in accordance with Schedule 5;
 - 12.3 Keep the structures created by this Agreement under review from time to time and make recommendations to the Councils about:
 - 12.3.1 the future of the Pool;
 - 12.3.2 any changes to this Agreement; and
 - 12.3.3 the respective merits of continuing to procure operator services by means of a third party or by creation of an operator owned by the Councils.

Part 6 Functions concerning communications

13. The Joint Committee may agree a protocol for communications in respect of the Pool with third parties, including the LGPS Scheme Advisory Board, other LGPS administering authorities, press, and relevant Government departments.

Part 7 Review of this Agreement

14. The Joint Committee is required to undertake a review of this Agreement:
 - 14.1 to be completed 18 months before the expiry of each and every Operator Agreement, including as a result of the exercise of any option to terminate an Operator Agreement;
 - 14.2 whenever a Council gives notice of withdrawal *under clause 12 of this Agreement*; or
 - 14.3 at such times as a Council may request under clause 11 (*Variation of this Agreement*).

Constitution of the Joint Committee

Part 1 Membership

- 1 The Joint Committee shall consist of one elected councillor appointed by each Council. The member so appointed must, at the time of the appointment, be an elected councillor serving as a member of the Committee of a Council which discharges the functions of that Council as pension administering authority.
- 2 Each Council may appoint a substitute. Any substitute must meet the eligibility requirements in paragraph 1. The substitute may attend any meeting of the Joint Committee or any of its sub-Committees in place of that Council's principal member if notice that the substitute will attend is given to the Secretary of the Joint Committee by the Council concerned.
- 3 Where a substitution notice is in effect with respect to a particular member at a particular meeting, the substitute shall be a full member of the Joint Committee for the duration of the meeting in place of the principal member.
- 4 Each Council may remove its appointed member and appoint a different member by giving written notice to the Secretary to the Joint Committee.
- 5 Each appointed member shall be entitled to remain on the Joint Committee for so long as the appointing Council so wishes. Any member who ceases to meet the eligibility criteria in paragraph 1 shall automatically cease to be a member of the Joint Committee.
- 6 Any casual vacancies will be filled as soon as reasonably practicable by the Council from which such vacancy arises by giving written notice to the Secretary to the Joint Committee or his or her nominee.
- 7 The Joint Committee may co-opt any other person whom it thinks fit to be a nonvoting member of the Joint Committee. The Joint Committee may from time to time make rules as to:
 - (a) Registration and declaration of interests by co-opted members.
 - (b) Standards of behaviour required to be observed by co-opted members when acting as such.
- 8 The Chairman of the Joint Committee will be appointed from time to time by the members of the Joint Committee. Subject to paragraph 5, the Chairman of the Joint Committee shall hold that office until another member is appointed. The appointment of the Chairman shall take place every two years, beginning with the Commencement Date with subsequent appointments falling not later than the first meeting of the Joint Committee following the annual meetings of the Councils in the relevant years.
- 9 The Vice-Chairman of the Joint Committee will be appointed from time to time by the members of the Joint Committee. Subject to paragraph 5, the Vice-Chairman of the Joint Committee shall hold that office until another member is appointed. The appointment of the Vice-Chairman shall take place every two years, beginning with the Commencement Date with subsequent

appointments falling not later than the first meeting of the Joint Committee following the annual general meetings of the Councils in the relevant years.

- 10 The Joint Committee may appoint such sub-committees from among its membership as it thinks will help it to enable it to fulfil its remit. The Joint Committee may delegate its responsibilities to such sub-committees. Sub-Committees may co-opt non-voting members.
- 11 The Joint Committee may set up working groups to advise it on matters within its remit. Such working groups may be formed of members or officers of the constituent Councils or any other third party as the Joint Committee sees fit. Such working groups are advisory only and the Joint Committee may not delegate its responsibilities to such working groups.
- 12 Each member of the Joint Committee and any Sub-committee shall comply with any relevant code of conduct of their Council when acting as a member of the Joint Committee.
- 13 The Chairman may direct the Secretary to the Joint Committee to call a meeting and may require any item of business to be included in the summons.
- 14 Any 5 members of the Joint Committee may by notice in writing require the Chairman to call a meeting to consider a particular item of business and if the Chairman fails to do so within 20 working days of receipt of the notice then those 5 members may direct the Secretary to the Joint Committee to call a meeting to consider that business.
- 15 The Committee may, if the law permits, arrange for attendance at meetings via video conferencing. Any such attendance shall be in accordance with the law and any other requirements imposed by the Joint Committee from time to time.

Part 2 Proceedings

16 TIME AND PLACE OF MEETINGS

- 16.1 The Joint Committee will meet at least four times each year. All meetings of the Joint Committee will take place at a suitable venue and at a time to be agreed by the Councils.
- 16.2 Any Section 151 Officer or Monitoring Officer is entitled to attend all parts of all meetings of the Joint Committee or of any sub-committee appointed by the Joint Committee.

17 NOTICE OF AND SUMMONS TO MEETINGS

The Secretary to the Joint Committee will give notice to the public of the time and place of any meeting in accordance with Part VA of the Local Government Act 1972. At least five clear days before a meeting, the Secretary to the Joint Committee will send a summons by email and, if a member of the Joint Committee so requests, by post to every member at their last known address. The summons will give the date, time and place of each meeting and specify the business to be transacted, and will be accompanied by such reports as are available.

18 CHAIRING OF JOINT COMMITTEE

The Vice Chairman shall preside in the absence of the Chairman. If there is a quorum of members present but neither the Chairman nor the Vice-Chairman is present at a meeting of the Joint Committee, the other members of the Joint Committee shall choose one of the members of the Joint Committee to preside at the meeting.

19 QUORUM

19.1 The quorum of a meeting will be at least 8 members who are entitled to attend and vote.

19.2 If there is no quorum present at the start of the meeting the meeting may not commence. If after 1 hour from the time specified for the start of the meeting no quorum is present, then the meeting shall stand adjourned to another time and date determined by the Secretary to the Joint Committee.

20 VOTING

20.1 Majority

Each elected member shall have one vote. Co-opted members will not have a vote. Any matter will be decided by a simple majority of those members of the Councils represented in the room at the time the question is put. In the event of equality of votes the person presiding at the meeting will be entitled to a casting vote under paragraphs 39(1) and 44 of Schedule 12 of the Local Government Act 1972.

20.2 By Substitutes

The member appointed as a substitute shall have the same voting rights as the member for whom he or she is substituting. Where notice of substitution has been given for a particular meeting the principal member may not vote unless the notice of substitution is withdrawn before the start of the meeting.

20.3 Show of hands

The Chairman will take the vote by show of hands, or if there is no dissent, by the affirmation of the meeting.

20.4 Recording of individual votes

The minutes of the meeting shall record how a member of the Committee voted on a particular question if, at the time that the vote is taken or immediately thereafter, that member asks the Secretary to the Joint Committee or his or her representative at the meeting to record his vote.

21 MINUTES

21.1 The Secretary to the Joint Committee shall arrange for written minutes to be taken at each meeting of the Joint Committee and shall present them to the Joint Committee at its next meeting for approval as a correct record. At the next meeting of the Joint Committee, the Chairman shall move that the minutes of the previous meeting be signed as a correct record. If this is agreed, the Chairman of the Joint Committee shall sign the minutes.

21.2 Draft minutes or a summary of the decisions taken at the meeting and a note of the actions arising shall be circulated to the Committee and to each Council by email no later than 7 days after the date of the meeting.

- 21.3 Minutes of the meeting shall be published by the Host Authority to the extent required by Part VA of the Local Government Act 1972.

22 ACCESS FOR ELECTED MEMBERS OF THE COUNCILS

Any elected member of the Councils who is not a member of the Joint Committee may speak at a meeting of the Joint Committee if the Chairman of the Joint Committee invites him or her to do so but an elected member of the Councils who is not a member of the Joint Committee shall not be entitled to vote at a meeting of the Joint Committee.

23 PUBLIC ACCESS

- 23.1 Meetings of the Joint Committee shall be open for members of the public to attend unless the Joint Committee determines that it is necessary to exclude members of the public in accordance with Part VA of the Local Government Act 1972 or the Joint Committee determines that it is necessary to close the meeting to the public because of a disturbance.
- 23.2 Copies of the agenda for meetings of the Joint Committee and any reports for its meetings shall be open to inspection by members of the public at the offices of the Councils with the exception of any report which the Secretary to the Joint Committee determines relates to items which in his or her opinion are likely to be considered at a time when the meeting is not to be open to the public.
- 23.3 If a member of the public interrupts proceedings, the Chairman will warn the person concerned. If that person continues to interrupt, the Chairman will arrange for that person to be removed from the meeting room and will suspend the meeting until the member of the public has left or been removed.
- 23.4 If there is a general disturbance in any part of the meeting room open to the public, the Chairman may call for that part to be cleared.

24 OVERVIEW AND SCRUTINY

- 24.1 Each Council has overview and scrutiny committees which have the right to scrutinise the operation of the Joint Committee and the Joint Committee and the Host Authority will co-operate with reasonable requests for information from any of the Councils' overview and scrutiny committees.
- 24.2 The decisions of the Joint Committee are not subject to call-in.

25 REGULATION OF BUSINESS

- 25.1 Any ruling given by the Chairman as to the interpretation of this constitution with respect to the regulation of proceedings at a meeting shall be final.
- 25.2 Subject to the law, the provisions of this Constitution and the terms of any contract, the Joint Committee may decide how it discharges its business.