

Approval of Proposals for Pension Fund Investment Pooling

Report by Councillor David Finch, Leader of the Council

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1. Purpose of Report

- 1.1 This report follows a report considered by Council on 14 February 2017 relating to pension fund pooling.
- 1.2 Essex County Council is an administering authority for the statutory Local Government Pension Scheme which provides pensions for most local government employees in Essex as well as for some other related bodies. Employees and Employers pay into the scheme and the Council invests the money to pay future pensions. At present each administering authority invests its money separately, but the Government has asked authorities to group together to pool investments.
- 1.3 There are a number of pools available but the Council has been involved in the creation of the proposed ACCESS Pool. This report asks Council to approve the steps necessary to join the ACCESS Pool in order to implement the Government's proposals for pooling of pension fund investments.

2. Background and Proposal

- 2.1 In 2015 the Government announced it would ask Administering Authorities to make proposals to pool LGPS investments. The Department for Communities and Local Government (DCLG) subsequently published its criteria for pooling investments focusing on 4 elements:
 1. Scale – pools of assets are created with at least £25bn of assets per pool.
 2. Strong Governance – authorities are charged with defining the mechanisms by which they can hold the pool to account.
 3. Reduced costs – including estimated savings over the next 15 years.
 4. Improved capacity to invest in infrastructure through pooling.
- 2.2 In 2016 the Government published Regulations which allow the Secretary of State to direct an administering authority to change its investment strategy or direct that part or all of its investment function is undertaken by another organisation if the Secretary of State determines that a fund is

failing to act in accordance with guidance issued, including the guidance to pool investments according to the criteria above.

- 2.3 In July 2016 the Essex Investment Steering Committee agreed to support the principle that Essex should become a member of the ACCESS pool proposal to Government in July 2016. Accordingly the Council has already signed a non-binding Memorandum of Understanding with the 10 other authorities in the pool to underpin the initial work of establishing the pool. ACCESS contains the following funds:

Cambridgeshire	Kent
East Sussex	Norfolk
Essex	Northamptonshire
Hampshire	Suffolk
Hertfordshire	West Sussex
Isle of Wight	

- 2.4 ACCESS's July 2016 submission was based on pooling investments via a Collective Investment Vehicle (CIV) that would be administered and maintained by a third party Operator, which was believed at that time to be the Government's preferred means of investment pooling. The third party Operator would be collectively managed by the pension funds by use of a joint committee made up of one elected Councillor member from each authority.
- 2.5 Following representations by Essex and other ACCESS Funds to the Secretary of State for Communities and Local Government in September 2016, all the ACCESS funds agreed that the Government's pooling criteria could be better met without the cost and complexity of a CIV Operator, through collaborative joint procurement where each council would buy investments together in a co-ordinated way but without using a CIV. ACCESS put forward an amendment to its July 2016 submission in December 2016 to base the pool on collaborative joint procurement. In February 2017 the Council considered a report advising that discussions were continuing and that a report would need to be brought back to the meeting of the Council in May 2017 in order to make a final decision on the way forward.
- 2.6 Between January 2017 and March 2017 further correspondence was exchanged with Department for Communities and Local Government. On 22 March 2017 the Minister wrote to say that his expectation was that there should be a single entity '*at the heart of the pool, appropriately regulated by the FCA*' and went on to express the opinion that:

'establishing a well-known existing structure such as an FCA regulated operator and collective investment vehicle minimises regulatory and tax risks and provides the greatest assurance to authorities, scheme members and local taxpayers'.

- 2.7 The Minister said that he would not support the collaborative joint procurement approach and stated that he expected ACCESS to proceed with the Collective Investment Vehicle approach as originally proposed.
- 2.8 At its meeting on 4 April 2017, the Essex County Council Investment Steering Committee - the Committee of the Council which, amongst other things, oversees pension fund investments - considered the 22 March 2017 letter. In the view of the Committee, this letter made it clear that ACCESS would need to pursue the Collective Investment Vehicle approach to pooling.
- 2.9 At its 19 April 2017 meeting, the shadow ACCESS joint committee concluded that the Minister's 22 March 2017 meant that that if ACCESS did not pursue a CIV approach then the 11 ACCESS member authorities were exposing themselves to a high risk of a direction from the Secretary of State unless they implemented pooling via a Collective Investment Vehicle.
- 2.10 As a result, the shadow ACCESS joint committee made its final recommendation to the 11 ACCESS Administering Authorities which was that the ACCESS approach to pooling pension fund investment management arrangements be a Collective Investment Vehicle.

3. Summary of the pooling proposals

- 3.1 Investment pooling is intended to create the scale that will enable access to lower Investment Manager fees and deliver cost savings to LGPS funds. In the pooled investment structure individual funds, like Essex, will still be responsible for their own investment strategy and asset allocation decisions.
- 3.2 The Councils will jointly procure a CIV operator who will be responsible for creation of the CIV and appointing a suitable number of Investment Managers in order to meet the requirements of all of the funds' investment strategies.
- 3.3 The CIV operator will create sub-funds and contract with the investment managers selected by the pool. Individual authorities will then be able to select investment managers for their fund from those that have been selected by the pool.
- 3.4 There will be initial setup costs for the project to create the pool, agree the relevant legal documents and appoint the necessary suppliers. The ACCESS authorities have agreed that the cost of establishing the pool would be shared equally between the 11 ACCESS funds. Essex's estimated share of these costs is £160,000 – which will be met by from the Pension Fund and not from the County Council's annual revenue budget.
- 3.5 The costs above do not include transition costs of moving current investments into the CIV since these will depend on the specific portfolios and investment managers selected by the CIV. These costs could be

significant if the Fund has to move all its investments from one fund manager to another.

- 3.6 Savings are expected by reductions in future investment management fees. The ACCESS July 2016 proposal estimated cumulative savings across the pool of £13m by 2021 and between £26m - £30m by 2033.

4. Inter-Authority Agreement

4.1 The ACCESS funds have jointly commissioned the external legal firm Eversheds Sutherland to provide assistance in drafting a legally binding Inter Authority Agreement ('IAA') for the pooling of investments.

4.2 The IAA is based on principles that were agreed by the ACCESS pension funds at the outset of their collaboration in February 2016, including:

- working collaboratively,
- all Councils/Funds having an equitable voice in governance,
- avoiding unnecessary complexity, and
- running economically and applying value-for-money considerations.

4.3 The most significant principles in the IAA are as follows:

Governance

4.4 The ACCESS Pool will be governed by a Joint Committee constituted under s101 of the Local Government Act 1972 and made up of one elected councillor nominated by each authority from their pension committee. The Joint Committee (or Joint Governance Committee as it will be known) will be 'hosted' by one of the ACCESS local authorities. The host authority will undertake the secretariat function for the Joint Governance Committee. It is proposed that Kent County Council will be the initial host authority. A Chairman and Vice-Chairman of the Joint Governance Committee will be appointed by the members of the Joint Governance Committee. Each elected member will have one vote in any decision requiring a vote, and decisions will be carried by a simple majority with the Chairman having a casting vote if necessary. The full draft constitution of the Joint Governance Committee is attached at Appendix 1.

4.5 The specific functions that are proposed to be delegated to the Joint Governance Committee are specified in Appendix 2.

Procurement

4.6 The Joint Governance Committee will oversee the procurement of an Operator. The procurement will be undertaken by a 'Lead Authority' (Kent County Council) on behalf of all of the ACCESS authorities. Whilst the Joint Governance Committee will oversee the procurement process and make a recommendation on the preferred supplier, each of the 11 ACCESS local authorities will make their own decision to enter into a

contract with the Operator. At Essex it is proposed that this decision will be taken by the Investment Steering Committee.

Cost Sharing

- 4.7 It is the aim of the ACCESS Pool that costs are shared equitably between the member funds. Some costs will be shared equally between the member funds, or costs will be shared according to the value of investments by each fund as follows:
- 4.8 Costs to be shared equally between the member funds:
- The pool establishment costs including strategic and technical advice, legal advice, project management costs and the costs associated with running the procurement process to appoint a CIV Operator .
 - Any set-up costs charged by the Operator for the overall creation of the sub-fund structure.
 - The ongoing costs of managing and governing the pool including the host authorities' costs of hosting the Joint Governance Committee and providing the secretariat function, the cost of any external advice commissioned by the Joint Governance Committee and any re-procurement processes for either the CIV Operator or investment manager framework.
- 4.9 Costs in relation to funds' investments will be shared according to the value of each fund's investments as charged by the CIV Operator for the sub-funds in which each fund is invested.
- 4.10 Other costs will not be shared and will be borne by the fund that they are incurred by, which includes:
- Each fund's costs of participating in the pool, such as attendance at meetings.
 - Any transition costs of moving assets to or within the pool.

Withdrawal and termination

- 4.11 Any fund can withdraw from the IAA and therefore the ACCESS Pool by giving 12 months' notice to expire on 31 March. Following the signing of the IAA, any fund that wishes to withdraw from the pool will be liable for its share of the costs (not relating directly to investments) for the remainder of the contract period of the CIV Operator unless otherwise agreed by the Joint Committee

Other Provisions

- 4.12 The IAA will cover a number of other standard areas including dispute resolution, information and confidentiality, data protection, freedom of information, equal opportunities, and change in identity of Administering Authorities.

5 Timescales

- 5.1 The Government has made it clear that it expects LGPS funds to begin transferring their investments into pools by no later than April 2018. In order for the ACCESS Pool to meet this deadline, the procurement processes for a CIV Operator will need to commence very soon. The ACCESS Pool has committed to move forward in a way that will meet the Government's April 2018 deadline.
- 5.2 A decision from the County Council is required to delegate the relevant functions to the Joint Committee.

6. Recommendations

- 6.1 That the Council enters into to the ACCESS Pool Inter Authority Agreement and thereby a participant in the ACCESS Pool Joint Governance Committee (of which the Constitution and Terms of Reference are set out at Appendix 1 and Appendix 2 to this report) for the purposes of pooling pension fund investment management arrangements.
- 6.2 That Council resolves to delegate functions to the ACCESS Joint Governance Committee as specified in Appendix 1 with effect from the date of the execution of the Inter Authority Agreement.
- 6.3 That the constitution is amended by the insertion of the following text at the end of paragraph 13.2:
- ‘The ACCESS Pension Fund Pool Joint Governance Committee will exercise council functions in accordance with the terms of the delegations granted to it by full Council from time to time’.
- 6.4 That attendance of a meeting of the ACCESS Pool Joint Governance Committee as a member of that Committee shall be added to the list of approved duties in appendix 3 of part 26 of the Constitution.
- 6.5 That the Executive Director for Corporate and Customer Services (section 151 Officer) in consultation with the Chairman of the Investment Steering Committee be authorised to agree minor changes to the IAA agreement if she considers them necessary in order to achieve the agreement.

Draft 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 authority'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 Council appointing them so wishes, but shall cease to be a member if he or she ceases to meet the eligibility criteria in paragraph 1 or if that Council removes the appointed member.
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 non-voting member of the committee. The Joint Committee may from time to time make rules as to:
 - 7.1 Registration and declaration of interests by co-opted members.
 - 7.2 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 their replacement is appointed which shall be at the first meeting to take place after the second anniversary of their appointment.
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 their replacement is appointed which shall be at the first meeting to take place after the second anniversary of their appointment.
10. The Joint Committee may appoint 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 authorities 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 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 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

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.

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 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.

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 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. The only part of the minutes that can be discussed is their accuracy.

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.

22. 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. 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.

23.1 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.

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

25. If a member of the public interrupts proceedings, the Chairman will warn the person concerned. If they continue to interrupt, the Chairman will arrange for their removal from the meeting room and will suspend the meeting until the member of the public has left or been removed.

26. 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.

27. Overview and Scrutiny

27.1 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.

27.2 The decisions of the Joint Committee are not subject to call-in.

28. Regulation of Business

28.1 Any ruling given by the Chairman as to the interpretation of this constitution with respect to the regulation of proceedings at meeting shall be final.

28.2 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.

Draft Terms of Reference of the Joint Committee

Part 1 Functions in relation to the Operator

1. **Specifying Operator services:** Deciding, in consultation with the Councils, the specification of services and functions that the 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 the Operator:** agreeing the method and process for the procurement and selection of the Operator.
3. **Appointing the Operator:** Making a recommendation to the Councils as to the identity of the Operator and the terms upon which the Operator is to be appointed.
4. **Reviewing the Performance of the Operator:** Keeping the performance of the Operator under constant review and making arrangements to ensure that the Joint Committee is provided with regular and sufficient reports from the Officer Working Group to enable it to do so including but not limited to:
 - 4.1 the performance of the Operator against its contractual requirements and any other performance measures such as any Service Level Agreement (SLA) and key performance indicators (KPIs) and Officer Working Group 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:** The Joint Committee shall:
 - 5.1 Make recommendations to the Councils on the termination or extension of the Operator Contract and
 - 5.2 Make decisions about any other action to be taken to manage the Operator Contract including the giving of any instruction or the making of any recommendation to the Operator including but not restricted to recommendations on investment managers (within any regulatory constraints that may apply).
6. **Appointment of Advisers**
 - 6.1 The Joint Committee may appoint such professional advisers on such terms as it thinks fit. Any procurement of advisers must comply with the constitution of the Authority designated to undertake the procurement and that Authority will enter into a contract with the appointed adviser on behalf of the Authorities.
 - 6.2 The Joint Committee may appoint such professional advisers on such terms as it thinks fit. Any procurement of advisers must comply with the constitution of the Authority designated to undertake the procurement and that Authority will enter into a contract with the appointed adviser on behalf of the Authorities.
 - 6.3 The Joint Committee shall decide which tasks shall be performed by the Client Unit and which Council shall manage the Client Unit including the employment arrangements for employees in the Client Unit.

Part 2 Functions in relation to management of Pool Assets

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

Part 3 Functions Concerning Pool Aligned Assets

8. Making recommendations to the Councils about Pool Aligned Assets (including proposals concerning the migration of investments-such as passive investments via life fund policies-to become Pool Aligned Assets) in accordance with this Agreement or any other delegation to the Joint Committee by the Councils.

Part 4 Functions concerning Business Planning and Budget

9. Make recommendations to the Councils about the annual strategic business plan for the Pool
10. 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 hereof.
11. Keep the structures created by this Agreement under review from time to time and make recommendations to the Councils about:
 - 11.1 the future of the Pool;
 - 11.2 any changes to this Agreement; and
 - 11.3 as to 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.
12. The Joint Committee is required to commence the first review of this Agreement by the second anniversary of its first meeting.
13. The Joint Committee is required to undertake a review of the Pool and this Agreement:
 - 13.1 to be completed 18 months before the expiry of each and every Operator Contract including as a result of the exercise of any option to terminate the Operator Contract;
 - 13.2 whenever a Council gives notice of withdrawal under clause 12 of this agreement.