

GOVERNANCE: LGPS INVESTMENT POOLING INTER AUTHORITY AGREEMENT

Report of the Director of Resources

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1. Purpose of the Report

- 1.1 To provide members of the Pension Board a progress report on the work to establish the ACCESS Pension Pool and in particular the delegation of functions to a joint governance committee made up of member representatives from the eleven fund members of ACCESS.

2. Summary

- 2.1 The County Council at its meeting on 22 March 2016 agreed, as recommended by the Pension Committee, to join the ACCESS pool. Accordingly the Council signed a Memorandum of Understanding (MoU) in May 2016 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	

- 2.2 The ACCESS pool proposal for the pooling of assets was submitted to Government on 15 July 2016 and an initial acceptance letter was received on 27 January 2017.
- 2.3 The eleven Fund members of the ACCESS pool have agreed to put in place a joint governance committee that will be responsible for the procurement and appointment of the operator, managing the operator relationship and

implementing the investment strategy decisions on behalf of the eleven ACCESS Funds. This report provides members of the Board with details of how this body has been established and approved by the constituent member authorities of ACCESS. The attached appendices set out the constitution and functions for this Joint Governance Committee.

3. Recommendations

3.1 The Board is asked to note the content of the report.

4. Background

4.1 In the summer 2015 budget the Chancellor announced the Government's intention to invite Administering Authorities to make proposals for pooling LGPS investments. Following the Autumn Statement on 25 November 2015 the Department for Communities and Local Government (DCLG) published its criteria for pooling investments focusing on 4 elements:

1. Scale – it is the Government's desire that 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.

4.2 In July 2016 ACCESS made a submission to Government based on pooling investments via a Collective Investment Vehicle (CIV) that would be administered and maintained by a third party Operator. The third party operator would be collectively managed by the pension funds through a joint committee established by the Authorities and made up of one member from each authority.

5. Inter-Authority Agreement

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

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

- Working collaboratively,
- All Councils having an equitable voice in governance,
- Avoiding unnecessary complexity, and
- Running economically and applying value-for-money considerations.

5.3 The most significant principles that will be reflected in the IAA are as follows:

Governance

- 5.5 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 chosen 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.
- 5.6 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**.
- 5.7 The specific functions that would be delegated to the Joint Governance Committee are specified in **Appendix 2**.

Procurement

- 5.8 The Joint Governance Committee will oversee the procurement of an operator. The procurement itself would be undertaken by a “Lead Authority” (one of the ACCESS authorities) on behalf of the group. 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. The assets pooled by each authority will be determined by each individual authority’s investment strategy and initially illiquid assets such as private equity investments will sit outside the pool.

Cost Sharing

- 5.9 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:
- 5.10 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 either the procurement process to appoint a CIV;
 - Any set-up costs charged by the operator for the overall creation of the sub-fund structure; and

- 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.
- 5.11 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 that each fund is invested in.
- 5.12 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

- 5.13 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.

Other Provisions

- 5.14 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.

6. Timescales

- 6.1 Government requires 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 either a CIV Operator will need to commence in or around April 2017
- 6.2 It is therefore necessary to seek decisions now to enable establishment of the Joint Governance Committee and commence the procurement processes. To achieve this, it is necessary for all of the ACCESS Authorities to make decisions at Council meetings in February/March 2017.

7. Financial implications

- 7.1 The implementation costs of establishing a CIV are estimated to be £160k for the Hertfordshire Fund. Ongoing annual operational costs are estimated

between £273k and £455k). These estimates have been derived following significant market research with market participants including potential suppliers and other pools.

- 7.2 Eventual savings for the ACCESS Pool are projected to be £30m annually. Allowing for investment growth of 3-5% per annum, by year 10 this will be equivalent to £40-50m.¹

¹ ACCESS pool submission to Government dated 15th July 2016

Appendix 1

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 11 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.

Appendix 2

Draft Terms of Reference of the Joint Committee for a CIV Operator

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