

**SUPERANNUATION FUND COMMITTEE**

**Friday, 26th June, 2020**

**10.00 am**

**Microsoft Teams**







## AGENDA

### SUPERANNUATION FUND COMMITTEE

**Friday, 26th June, 2020 at 10.00 am**  
**Microsoft Teams**

Ask for: **Theresa Grayell**  
Telephone: **03000 416172**

*In response to COVID-19, the Government has legislated to permit remote attendance by Elected Members at formal meetings. This is conditional on other Elected Members and the public being able to hear those participating in the meeting. This meeting of the Superannuation Fund Committee will be streamed live and can be watched via the Media link [here](#)*

#### **Membership**

Conservative (8):	Mr C Simkins (Chairman), Mr P V Barrington-King, Mr P J Homewood, Mr J P McInroy and Mr J Wright	Mr N J D Chard (Vice-Chairman), Mr P Bartlett, Mr P C Cooper,
Liberal Democrat (1)	Mr D S Daley	
District Council (3)	Cllr J Burden, Cllr P Clokie and Cllr N Eden-Green	
Medway Council (1)	Cllr S Tranter	
Kent Active Retirement Fellowship (2)	Mrs M Wiggins and Mr D Coupland	
UNISON (1)	Mr J Parsons	
Staff Representative (1)	Vacancy	

#### **UNRESTRICTED ITEMS**

*(During these items the meeting is likely to be open to the public)*

- 1 Apologies and Substitutes
- 2 Declarations of interest by Members in items on the agenda for this meeting.
- 3 Minutes of the meeting held on 13 March 2020 (Pages 1 - 6)  
To approve the minutes as a correct record.
- 4 Fund Employer Matters (Pages 7 - 14)

- 5 Report on the Pension Board meeting on 12 June 2020 (Pages 15 - 18)
- 6 Supreme Court decision on Local Government Pension Scheme investment guidance (Pages 19 - 22)
- 7 Date of next meeting
- The next meeting of the committee will be held on Friday, 4 September 2020 commencing at 10.00 am.

**Motion to exclude the press and public for exempt business**

That, under Section 100A of the Local Government Act 1972, the press and public be excluded from the meeting for the following business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 3 of part 1 of Schedule 12A of the Act.

Paragraph 3 – Information relating to the financial or business affairs of any particular person (including the authority holding that information)

**EXEMPT ITEMS**

*(During these items the meeting is likely NOT to be open to the press and public)*

- 8 Investment Strategy (Pages 23 - 88)
- 9 Woodford update (Pages 89 - 90)

Benjamin Watts  
General Counsel  
03000 416814

**Thursday, 18 June 2020**

*In accordance with the current arrangements for meetings, representatives of the Managers have been given notice of the meeting and will be in attendance for their items.*

**KENT COUNTY COUNCIL****SUPERANNUATION FUND COMMITTEE**

MINUTES of a meeting of the Superannuation Fund Committee held in the Council Chamber, Sessions House, County Hall, Maidstone on Friday, 13 March 2020.

PRESENT: Mr N J D Chard (Vice-Chairman), Mr P V Barrington-King, Mr P Bartlett, Cllr J Burden, Cllr P Clokie, OBE, Mr P C Cooper, Mr D Coupland, Mr D S Daley, Cllr N Eden-Green, Mr P J Homewood, Mr J P McInroy, Mr J Parsons, Cllr S Tranter and Mr J Wright.

ALSO PRESENT: Mrs M E Crabtree and Mr P J Oakford

IN ATTENDANCE: Ms Z Cooke (Corporate Director of Finance), Mrs A Mings (Treasury and Investments Manager, and Acting Business Partner for the Kent Pension Fund), Ms S Surana (Principal Accountant - Investments) and Mrs A Hunter (Principal Democratic Services Officer).

**UNRESTRICTED ITEMS****182. Apologies and Substitutes**

*(Item 1)*

Apologies for absence were received from Mr Simkins. There were no substitutes.

**183. Declarations of interest by Members in items on the agenda for this meeting.**

*(Item 2)*

1. Mrs Crabtree declared a disclosable pecuniary interest as part of her pension fund was invested with Woodford and said she would leave the meeting during Item 15 - the Legal Update re Woodford.
2. Mr Bartlett said he was an employee of Bank of New York Mellon and was based in the same building as one of the firms referred to in Item 14 – Equity Protection Strategy Proposal. As a member of the working group, he said that, if he recognised any individuals, he would leave the meeting during discussion of the item.

**184. Minutes of the meeting held on 7 February 2020**

*(Item 3)*

It was RESOLVED that the minutes of the meeting held on 7 February 2020 are correctly recorded and that they be signed by the Chairman.

**185. Internal Audit Action Plan update (verbal)**

*(Item 4)*

1. Ms Cooke gave a verbal update on the Internal Audit review. She said that some of the items on the agenda for the meeting had been included because of the plan developed in response to the Internal Audit report. She also said that the committee would receive a written report at its meeting on 19 June 2020.

2. It was RESOLVED that the verbal update be noted.

#### **186. Future committee work programme**

*(Item 5)*

1. Mrs Mings introduced the report which provided an update on the committee's work programme. One of the actions agreed, following the Internal Audit review, was to update the programme to ensure sufficient time was made available for the development and implementation of the Fund's investment strategy, for Members to be able to gain a full understanding of the Fund's key policies, and for consideration of governance matters and training. The proposed work programme was set out in Appendix 1 of the report. Mr Clokie said that Fund Managers should be asked to come to Kent quarterly rather than the committee members travelling to London to meet them. There was broad agreement with his proposal.
2. It was RESOLVED that the proposed work programme be agreed.

#### **187. Report from the Pension Board meeting on 26 February 2020 (verbal)**

*(Item 6)*

1. Mrs Crabtree (Chairman of the Pension Board) gave a verbal update on the last meeting of the Pension Board which had been held on 26 February 2020. She said the Board had been very pleased to welcome Mr Simkins to the meeting and outlined the business conducted at the meeting. The business included a presentation from Barnett Waddingham on the actuarial valuation and other actuarial matters, including the McCloud judgement, an update on Fund Employer Matters especially on the position relating to Hadlow College and West Kent and Ashford College; an update from Mrs Cheate (Pensions Manager) on pensions administration, an update on the training available to Members of the Board on the governance and administration requirements of the LGPS as well as reports on ACCESS Pooling and the Pension Fund Business Plan. The Board also received an update on the Pension Fund's investments with Woodford.
2. Mr Chard thanked Mrs Crabtree for her update and asked that in future the update be provided in a written report.
3. It was RESOLVED that the update be noted.

#### **188. Pension Fund Business Plan**

*(Item 7)*

1. Mrs Mings introduced the report which asked the committee to agree the updated business plan including anticipated activity in 2020- 21 and the budget required to deliver the plan in 2019-20 and 2020-21. In response to questions from Members, Mrs Mings said that the costs associated with the Kent Fund were broadly similar to those of other LGPS schemes.
2. It was RESOLVED that the updated business plan and the related budget for 2019-20 and 2020-21 be agreed.

## **189. ACCESS update**

*(Item 8)*

1. Mrs Mings introduced the report which provided an update on the progress being made with the establishment of the ACCESS pool.
2. It was RESOLVED that the report be noted.

## **190. Fund Employer Matters**

*(Item 9)*

*Steve Tagg (Senior Accountant) was in attendance for this item.*

1. Mr Tagg introduced the report which provided an employer update, set out information on the 31 March 2019 valuation, provided updates on the impact of the McCloud judgement and the progress of Hadlow College and West Kent and Ashford College which were in educational administration.
2. The report also set out information on organisations applying for admission to the Superannuation Fund, several exiting employers and amendments to existing admission arrangements as well as seeking the committee's approval to enter into those agreements.
3. The committee RESOLVED to note the employers report, the update on the 31 March 2019 valuation, the update on McCloud and the update on Hadlow, West Kent and Ashford Colleges, and to agree:
  - (a) to the admission to the Kent County Council Superannuation Fund of Churchill Contract Services Ltd (re Thinking Schools Trust),
  - (b) to the admission to the Kent County Council Superannuation Fund of Busy Bee Cleaning Services Ltd (re Stour Academy Trust);
  - (c) to the admission to the Kent County Council Superannuation Fund of Purgo Supply Services Ltd (re Leigh Academy Trust);
  - (d) to the admission to the Kent County Council Superannuation Fund of Independent Catering Management Ltd (re Hillview Schools for Girls Academy);
  - (e) to the admission to the Kent County Council Superannuation Fund of Wealden Leisure t/a Freedom Leisure;

### **Amendments to admission agreements**

- (f) to open the Skanska Construction (UK) Ltd admission agreement for the staff transferring to them from Kier Facilities Services Ltd;
- (g) to open the Churchill Contract Services Ltd (re Skanska) admission agreement for the staff transferring to them from Kier Facilities Services Ltd;
- (h) to open the Pathways to Independence Ltd admission agreement for staff nominated to the Fund in writing;

## **Exiting employers**

- (i) that officers may return a surplus, if any, having regard to any relevant considerations and the LGPS (Amendment) Regulations 2020 to: -
  - Kier Facilities Services Ltd
  - Circle Care and Support Ltd
  - Birkin Cleaning Services Ltd
  - YBC Cleaning Services Ltd
  - Compass Contract Services Ltd
- (j) that the Chairman may sign the minutes relating to recommendations (a) to (i) at the end of today's meeting; and
- (k) that, once legal agreements have been prepared for these matters, the Kent County Council seal can be affixed to the legal documents.

## **191. Fund Position**

*(Item 10)*

1. Mrs Mings introduced the report which provided an update on the Fund's asset allocation and manager performance to 31 December 2019 and asked Members to consider whether to make any changes to the allocation. She said that the Fund had performed well in the quarter to the end of December, however, its performance and value had declined since then as a result of volatility in the stock market.
2. It was RESOLVED to note the report and agree that no changes be made to the asset allocation.

## **192. Date of next meeting**

*(Item 11)*

It was noted that the next meeting of the committee would be held on Friday 19 June 2020 at 10.00 am.

## **193. Motion to exclude the press and public for exempt business**

RESOLVED that, under Section 100A of the Local Government Act 1972, the press and public be excluded from the meeting for the following business on the grounds that they involve the likely disclosure of exempt information as defined in paragraph 3 of part 1 of Schedule 12A of the Act.

### **EXEMPT ITEMS**

(Open access to minutes)

## **194. Pension Fund Risk Register**

*(Item 12)*



1. Mrs Mings introduced the report which included a copy of the Fund's risk register. Mrs Mings and Ms Cooke answered Members' questions.
2. Members made suggestions to enhance the risk register and Mrs Cooke suggested that a workshop might be arranged with a view to assessing the attitude and appetite to risk among the committee Members.
3. It was RESOLVED to:
  - (a) agree the updated Fund risk register; and
  - (b) arrange a session with the Corporate Risk Manager to articulate the risk appetite of the committee.

### **195. Baillie Gifford presentation**

*(Item 13)*

1. As Baillie Gifford staff had been advised not to travel, a conference call was arranged with Lynn Dewar and Gareth Roberts from Baillie Gifford. They went through a presentation which had been circulated to Members of the committee and answered Members' questions.
2. The verbal update was noted, and Mr Chard thanked Ms Dewar and Mr Roberts for their presentation and for answering questions.

### **196. Equity Protection Strategy Proposals**

*(Item 14)*

1. Mr Chard introduced the report and reported Mr Simkins' views on the recommendations to the committee.
2. It was RESOLVED to:
  - (i) agree the proposed equity protection strategy
  - (ii) approve a formal delegation to the working group to select a programme provider with the committee subsequently being advised of the provider selected
  - (iii) agree that a final decision on the implementation of the strategy would be taken by the committee once the arrangements are in place but before implementing the programme.

### **197. Legal Update re Woodford (verbal)**

*(Item 15)*

*Ben Watts (General Counsel) was in attendance for this item.*

1. Mr Watts referred to the verbal update that he had given at the last meeting of the committee. He said that investigations were continuing and that he hoped to provide a written report to the next meeting of the committee.
2. It was RESOLVED that the verbal update be noted.

## **198. Investment Strategy**

*(Item 16)*

*Catrina Arbuckle and Nick Page from Mercers were in attendance for this item.*

1. Mrs Mings introduced the report which considered issues in relation to the Fund's investment strategy and sought the committee's views with regard to the inclusion of all investment managers in the Mercers quarterly manager update.
2. It was RESOLVED that the report be noted, and that, in future, Mercers quarterly manager report cover all the Kent Fund's managers.

## **199. Responsible Investment (RI) / Environmental Social and Governance (ESG) policy**

*(Item 17)*

1. Mrs Mings introduced the report which asked Members to review the draft Responsible Investment Policy and consider the next steps outlined in the report.
2. It was RESOLVED that:
  - (i) the updated Responsible Investment Policy and proposed next steps be agreed; and
  - (ii) a report on stock lending be considered at a future meeting of the committee.

By: Chairman Superannuation Fund Committee  
Corporate Director of Finance

To: Superannuation Fund Committee - 26 June 2020

Subject: **Fund Employer Matters**

Classification: Unrestricted

Summary: To report on employer related matters.

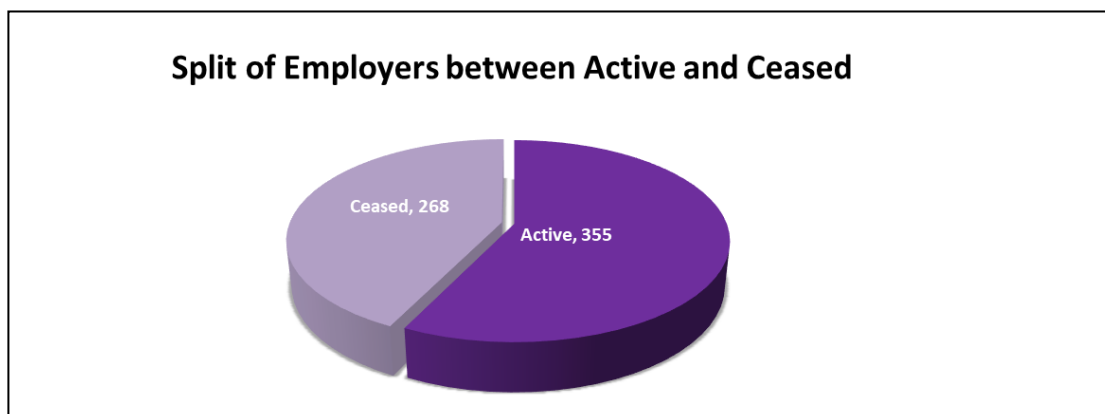
**FOR DECISION**

**INTRODUCTION**

1. This report provides an update on employers including COVID-19 issues, the issue of admission employer exit credits and the progress on Hadlow College and West Kent and Ashford College in educational administration.
2. The committee is asked to agree the Fund policies on employer contributions and the payment of exit credits.

**EMPLOYER UPDATE**

3. There was a total of 623 employers in the Kent Pension Fund at 31 March 2020, an increase of 4 from 31 December 2019.



4. The number of active employers regularly paying contributions increased by 1 in the 3 months from the end of December, 2 new employers in the fund, 4 changed their payroll provider from KCC Schools to in house, 3 employers ceased to have active members in the Local Government Pension Scheme (LGPS) and 2 merged into trust level. The ceased employers no longer have

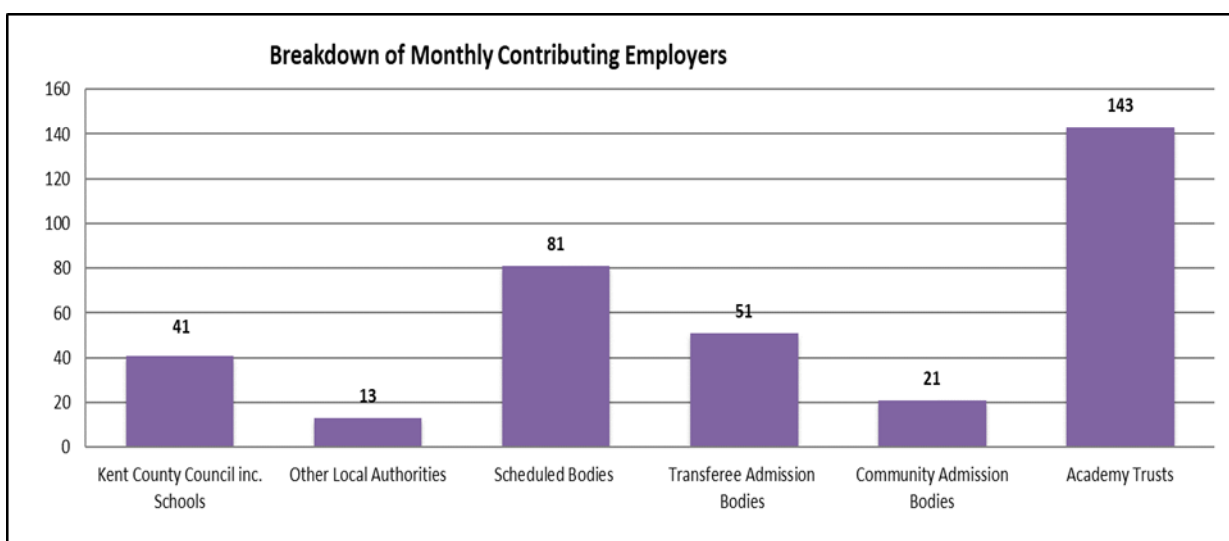
active contributing members in the LGPS and the Fund has an existing or future liability to pay any pensions.

5. The following table lists employers who either joined or ceased to have active members in the Fund during in 2019-20. This includes backdated admission agreements.

New Employers	Effective date
<b>Academy Trusts</b>	
Deal Education Alliance for Learning Trust (DEALT)	1 April 2019
Connect Schools Academy Trust	1 July 2019
EKC Schools trust	1 March 2020
<b>Admitted Bodies</b>	
Sodexo Ltd (Oasis Community Learning)	1 September 2018
Compass Contract Services (UK) Ltd T/A Chartwells (re KCSP Primary Schools)	1 January 2019
Compass Contract Services (UK) Ltd T/A Chartwells (re KCSP Secondary Schools)	1 January 2019
Deep Beat Entertainment (re Strood Sports Centre)	1 February 2019
Deep Beat Entertainment (re Medway Park)	1 February 2019
PT Commercial Ltd T/A Ecocleen	1 April 2019
Tonbridge & Malling Leisure Trust (Limb C Members) splitting out members from the original admission	1 April 2019
The Contract Dining Company Limited	1 July 2019
Compass Contract Services (UK) Ltd (T/A Chartwells Re Fortis Trust)	1 July 2019
Alliance in Partnership Limited	1 August 2019
Cleantec Services (Leigh Academies Trust)	1 August 2019
<b>Scheduled Bodies</b>	
Swingate School	1 September 2019

Ceased / Merged to Trust Employers	Effective date
<b>Academy Trusts</b>	
Medway UTC	1 April 2019
Brent Primary School Academy	31 August 2019
Strood Academy	31 August 2019
<b>Admitted Bodies</b>	
Invicta Telecare T/A Centra Pulse	31 May 2019
Canterbury Archaeological Trust	31 August 2019
Churchill Contract Services (SJWMS)	31 August 2019
Compass Contract Services (UK) Ltd	31 August 2019
YBC Cleaning Services Limited	31 August 2019
Birkin Cleaning Services Limited	30 September 2019
Circle 33 Housing ltd (Epic Trust)	31 October 2019
PT Commercial t/a Ecocleen Services	31 December 2019
Kier Facilities Services Limited	20 January 2020
Kier limited	20 January 2020

6. The following chart shows the Employers from whom the Fund receives monthly contributions by Employer Group. Note the KCC figures reflect the County's and schools' relationships with several payroll providers.

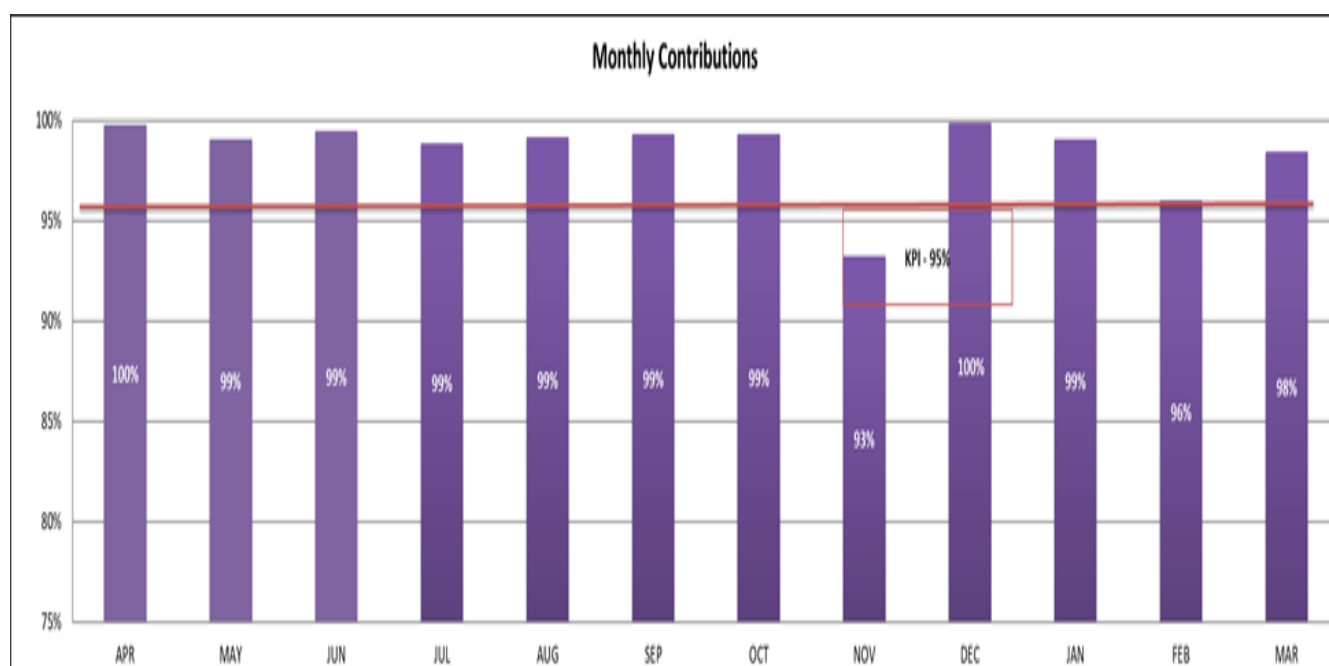


## CONTRIBUTIONS FROM EMPLOYERS

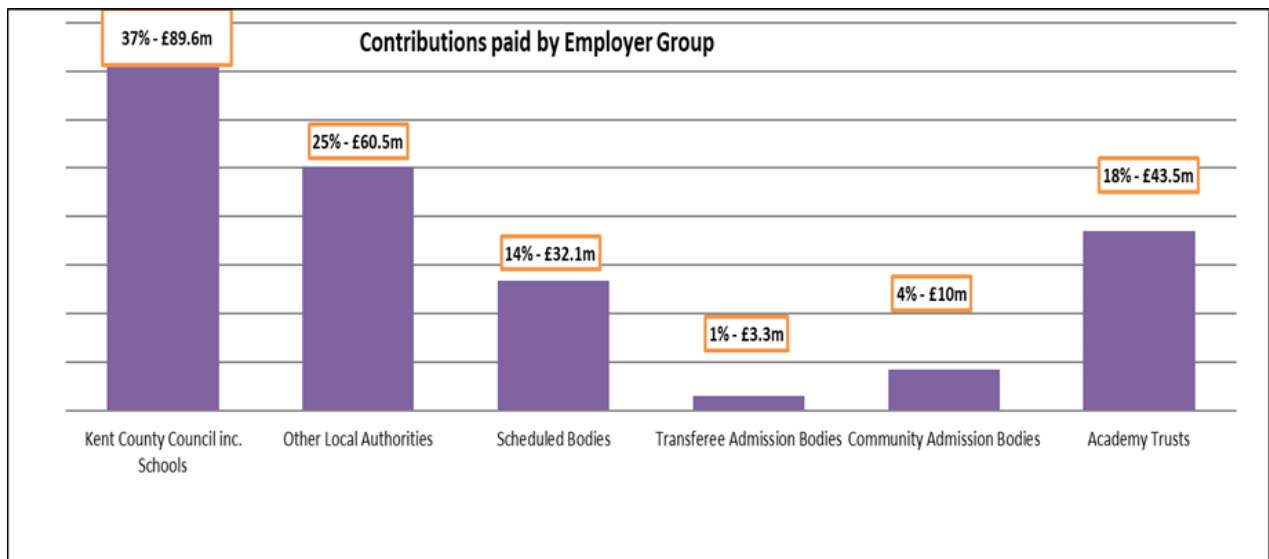
7. In 2019-20 the Fund received £239.4m from employers in respect of their monthly contributions (employer and employee) as follows:

	Received Early	Cash on 19th	Received Late	Total
	£	£	£	£
April	10,379,145	9,614,534	50,104	20,043,783
May	11,947,101	7,654,450	190,395	19,791,947
June	12,711,002	7,416,605	107,899	20,235,506
July	11,666,419	7,860,946	228,796	19,756,161
August	13,209,586	6,267,185	163,762	19,640,534
Sep	11,782,559	7,789,521	140,151	19,712,231
October	12,515,959	7,292,194	136,202	19,944,356
Nov	11,583,924	7,085,807	1,352,294	20,022,026
Dec	11,442,340	8,816,867	22,082	20,281,290
January	11,663,800	8,117,641	189,132	19,970,573
Feb	12,550,008	6,628,925	796,748	19,975,681
March	12,400,221	7,299,774	314,072	20,014,067
<b>Total</b>	<b>143,852,068</b>	<b>91,844,451</b>	<b>3,691,639</b>	<b>239,388,159</b>

8. KCC monitors the timing of receipt of these contributions compared to a KPI of 95%. The following chart shows that the KPI was exceeded in 11 of the 12 months. This is due to Medway Council paying their November contributions a day late.



9. The following chart shows the proportion paid by KCC and other employers of contributions received.



## **COVID - 19**

10. Since the start of the COVID-19 pandemic officers have been working closely with Fund employers to understand their issues and challenges at this unprecedented time.

## **Contributions**

11. Despite these difficulties, the Fund's monthly KPI for the receipt of contributions by the due date has not fallen below 95%.
12. Most employers in the Fund pay over employer contributions together with employee contributions on a monthly basis. However, we are aware that the current crisis may have caused some admission bodies eg leisure centres and theatres, some financial difficulties and they are having difficulty paying contributions.
13. **Employee contributions** - Employers have been made aware that if they deduct contributions from employees, they must continue to pay these to the Fund by the due date of the 19<sup>th</sup> after the month end.
14. The level of employee contributions may reduce if their pay falls, per the Pensions Act 1995. If an employee is furloughed and their pay is reduced the view of the Local Government Association (LGA) is that it would be reasonable to expect that the employee's contribution band would also reduce.
15. **Employer contributions** - The Fund has some discretion regarding the timing of receipt of employer contributions during a financial year as the LGPS Regulations state that contributions due for the year, as set out in the rates and adjustments certificate from the 31 March 2019 valuation, must be received by

the appropriate year end. The LGPS regulations do not permit a contribution holiday.

16. However, we need to consider the risks to the Fund and these include but are not limited to, the risk of the employer not being able to meet the full amount by year end and the risk to the fund's cash flow requirements. As any approach to contribution deferral should be applied consistently the Kent Fund needs to consider agreeing a policy position.

### **Proposed employer contributions policy**

17. The Committee are recommended to agree the Fund's policy based on the regulations and taking account of guidance from the Pensions Regulator as follows:
  - That we agree to deferring payment for up to 3 months provided the employer can provide assurance as to the state of its financial difficulties. These arrangements will be regularly monitored and reviewed with the employer and referred to the fund actuary to get advice on any implications, as appropriate.

### **Cash flows**

18. To date only a small the number of employers has advised that they are unable to pay contributions on time however should this number grow then this will impact the level of cashflows paid into the Fund.
19. Officers are closely monitoring employer payments and keep in contact with those employers having difficulties. So far, the Fund's cash balance has been largely unaffected by these issues. Officers will update the Committee on this issue at its September meeting.

### **EXIT CREDIT POLICY RE ADMISSION EMPLOYERS**

20. The Funding Strategy Statement (FSS) is currently being updated following the completion of the 2019 valuation and MHCLG has advised that the Fund should set out its exit credit policy in respect of employers leaving the Fund, in its FSS.
21. When an employer leaves the Fund the Actuary will calculate their cessation position on a minimum-risk basis unless it can be shown that there is another employer in the Fund who will take on financial responsibility for the liabilities in the future. If the Fund is satisfied that there is another employer willing to take on responsibility for the liabilities (or that there is some other form of guarantee in place) then the cessation position may be calculated on the ongoing/long-term funding basis. If there is no other employer to take on responsibility for the liabilities then the exit credit policy will apply.



## **Proposed policy**

22. In order that this policy can apply immediately in respect of exiting employers the Committee are recommended to approve the following approach to the payment of exit credits having regard to any relevant considerations:
- Any employer who cannot demonstrate that they have been exposed to underfunding risk during their participation in the Fund will not be entitled to an exit credit payment. This restriction will apply to most “pass-through” arrangements and is on the basis that these employers would not have been asked to pay an exit payment had a deficit existed at the time of exit.
  - The Fund must be satisfied that a risk sharing arrangement has been in place before it will pay out an exit credit and the level of risk that an employer has borne will be considered when determining the amount payable. It is the responsibility of the exiting employer to set out in writing why the arrangements make payment of an exit credit appropriate.
  - Any exit credit payable will be subject to a maximum of the actual employer contributions paid into the Fund.
23. The Fund will pay out any exit credits within six months of the cessation date where possible. A longer time may be agreed between the Fund and the exiting employer where necessary, for example if the employer does not provide all the relevant information to the Fund within one month of the cessation date the Fund will not be able to guarantee payment within six months of the cessation date.
24. Under the Regulations the Fund has the discretion to take into account any other relevant factors in the calculation of any exit credit payable and officers will seek legal advice where appropriate.

## **HADLOW COLLEGE**

25. As previously advised, staff at the Mottingham Campus were transferred to Capel Manor College (CMC) on 1 January 2020 and, with support from the Kent Fund the administrators BDO have applied to the Secretary of State for Education for a Direction Order allowing CMC to be a Scheduled Body concurrently in the Kent Pension Fund and the London Borough of Enfield Pension Fund.
26. In response to the application MHCLG issued a formal consultation email on 15 June 2020 to CMC, Kent County Council and Enfield Borough Council. Each of these bodies is invited to make any representations as to whether the Direction should be made and come into force on 1 January 2020 and any comments are required by 29 June 2020.
27. The email from MHCLG sets out the allocation of the LGPS liabilities relating to the employees of CMC as well as deferred and pensioner members. Officers will respond to the consultation by 29 June having taken advice from Barnett Waddingham.

28. The Committee is advised that the staff at the Canterbury Campus were transferred to East Kent College on 31 March 2020 and it is understood the remaining staff will be transferred to North Kent College in August 2020.
29. It is also understood that the successor colleges will take on the LGPS liabilities.

### **WEST KENT AND ASHFORD COLLEGE**

30. The Committee is advised that the staff at the Ashford Campus were transferred to East Kent College on 31 March 2020.
31. It is understood the remaining staff will be transferred to North Kent College in August 2020.
32. It is also understood that the successor colleges will take on the LGPS liabilities.

### **RECOMMENDATION**

33. Members are asked to note the report, the update on Hadlow College, the update on West Kent and Ashford College and to resolve to agree:
  - a) the employer contributions policy
  - b) the exit credits policy re admission employers

**Steven Tagg**  
**Treasury and Investments**  
[Steven.tagg@kent.gov.uk](mailto:Steven.tagg@kent.gov.uk)  
03000 416747

By: Chairman – Pension Board

To: Superannuation Fund Committee – 26 June 2020

Subject: **REPORT ON THE PENSION BOARD MEETING ON 12 JUNE 2020**

Classification: Unrestricted

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Summary: To report on the matters discussed at the board meeting

## **FOR INFORMATION**

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### **INTRODUCTION**

1. The Pension Board met on Friday 12 June 2020 for a briefing meeting which was held to provide Members with an update on recent activity and providing them with the opportunity to ask questions of officers. The Chairman welcomed Mr Simkins to the meeting and he provided an update to the Board on the work of the committee at the end of the meeting. The Board received reports on the following matters.
  - Business Plan
  - Pensions Administration
  - Fund Employer Matters
  - ACCESS Pool Update
  - Pension Fund Investment Governance Lessons Learnt Review - Action Plan
  - Risk Register
2. Members discussed the reports as follows and noted the updates. The Chairman recorded thanks to all staff for work achieved during very difficult circumstances.

### **BUSINESS PLAN**

3. It was noted that COVID-19 had caused some delay in receiving information from employers however Mrs Cheatle advised that if the 31 August deadline for the issue of the annual benefit statements (ABIs) is missed this must be reported to Pensions Regulator but it is expected that the Pensions Regulator will be sympathetic if this is due to Covid-19. In answer to questions Mrs Mings reported that consultant costs show an overspend in 2019-20 as Mercers are used more now as recommended by the internal audit review.

### **PENSIONS ADMINISTRATION**

4. The Chairman expressed thanks to all staff for coping with challenges arising from lockdown.

5. Members raised concerns and Mrs Cheatle responded.
- All LAs have had the letter from the Government Actuary (GAD) asking for more data by end September – Kent has not been singled out. Local authorities (Las) are challenging questions being asked as GAD may not understand the full picture.
  - Members' concern noted that 6 new recruits may not be enough to cover workload. More may be recruited in September. Apprentices are not pensions specialists so are on basic office tasks, and training is difficult to do during lockdown.
  - Kent has the highest number of full-time equivalent employees among LAs due to the number of academies in the scheme.

### **FUND EMPLOYER MATTERS**

6. Members raised concerns and Mrs Mings responded.
- Members' concern noted re theatres and leisure centres and if 3 months' deferral of employer payments will help. Arrangements will be monitored and employers have the deadline of the end of the financial year to make payments due. Barnett Waddingham, the Fund's actuary, will be involved in the discussion of risk and problems and how to manage these problems.
  - LGPS Regs state that KCC should return any surplus to any employer who leaves the scheme but that the Fund ensure that risk relating to the employer's participation is shared and exit credits will be capped. At their 26 June meeting the committee will be asked to agree a policy for managing exit credits.
  - Concern expressed re West Kent college. Still open but staff have a change of employer.

### **PENSION FUND INVESTMENT GOVERNANCE LESSONS LEARNT REVIEW - ACTION PLAN**

7. Members raised concerns and Mrs Mings responded.
- Important for the Board to see updates on line 5 of Plan. Review of strategy extended to ensure compliance with best practice and LGPS Regs. Updates will be reported to the Board (PB) and the committee (SFC) for review.
  - Weekly meetings of officers need to include Vice-Chairman of SFC. SFC Chairman explained that weekly updates go beyond the recommendations of the review but were started to keep updated during Covid-19 crisis. SFC VC Nick Chard not included as yet but has frequent updates with SFC Chairman and would sub if Chairman not able to attend weekly meeting.
  - Reassurance sought that SFC fully understand risk when considering issues. SFC receive training during meetings and at separate briefings to

keep up to date, to comply with MIFID 2 and ensure that SFC members have appropriate knowledge.

- Reassurance sought that SFC see original reports from fund managers at first hand, not just second-hand reporting and interpretation by managers attending meetings. Chairman of SFC explained that reports are seen first-hand by SFC.

## **RISK REGISTER**

8. Members raised concerns and Mrs Mings responded.

- Concern expressed about staffing issues. Staff resources reduced but appropriate resources for addressing each area of work - governance issues, investment and accounting - will be reviewed and recruitment addressed if considered necessary.
- Concern expressed that so much activity is led by three people and that the Fund relies too much on these few. As well as recruiting to Pensions Assistant level, for example, also need to have enough people at senior level. Recruitment at higher level will be addressed, if felt appropriate, as part of wider staffing review.
- Fund Managers are in close touch with companies and would identify and report any business continuity problems cause by Covid-19. There has been no apparent reduction in the service being provided.

**Margaret Crabtree**

Chairman, Pension Board

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By: Chairman Superannuation Fund Committee  
Corporate Director of Finance

To: Superannuation Fund Committee – 26 June 2020

Subject: **SUPREME COURT DECISION ON LGPS INVESTMENT GUIDANCE**

Classification: Unrestricted

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Summary: To report on the Supreme Court decision on the local government pension scheme (LGPS) Investment Guidance and implications for the Kent Fund

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## FOR INFORMATION

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### INTRODUCTION

1. In a judgment handed down on 29 April 2020, the Supreme Court ruled by a narrow majority that the Secretary of State for Housing, Communities and Local Government (MHCLG) exceeded his powers when issuing investment guidance in 2016 to LGPS administering authorities which purported to prohibit the adoption of investment policies that are contrary to UK foreign policy or UK defence policy.
2. The guidance has since been reissued with the relevant passages removed.

### SCHEME ADVISORY BOARD SUMMARY

3. The Scheme Advisory Board (SAB) summary, published on 8 June, concludes that the fundamental duties and responsibilities of administering authorities are not altered by the judgement, in particular that authorities remain responsible for investment decisions. A copy of the SAB summary is available on their website at: [Summary of Supreme Court boycotts case](#)
4. SAB advises that should an administering authority wish to consider non-financial factors in its investment decisions it may do so taking into account the requirements of the guidance including the potential financial impact and the views of members. Such consideration may legally result in boycotts or disinvestment should the authority decide to take such action.

### MERCER VIEW

5. A copy of the Mercer view on the implications of the judgement is attached at appendix 1.
6. Mercer's view is that as a result of this ruling administering authorities could see an increase in the correspondence from campaign groups who want their interests to be particularly taken into account in investment strategies.

7. The Local Government Association is monitoring such correspondence with administering authorities and in May 2020 made us aware that the Palestine Solidarity Campaign has written to a number of chairs of LGPS pensions committees notifying them of the judgement and urging them to act in a way prescribed in the letter.
8. To date the Kent Fund has not received any correspondence from this group but the Chair has received letters from other interest groups. These have been acknowledged and as appropriate the writers referred to the Fund's draft RI policy which has recently been published on the website and which is consistent with the MHCLG guidance.

### **RECOMMENDATION**

9. Members are asked to note the report.

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# Supreme Court decision on LGPS Investment Guidance

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This paper provides comment on the recent Supreme Court ruling on the Local Government Pension Scheme Investment Guidance. This paper is our understanding based on our thoughts and conversations with leading industry parties. However, we are not legal advisers and whilst we may comment on legal issues or legislation, our services do not constitute and are not a substitute for legal advice. It is recommended that you seek legal advice with respect to any legal matters.

## Background

Under his statutory power, the Secretary of State for Housing, Communities and Local Government (MHCLG) issued Guidance on Preparing and Maintaining an Investment Strategy Statement (ISS) (“the guidance”). Under the LGPS (Management and Investment of Funds) Regulations 2016 (“the regulations”), LGPS administering authorities in England and Wales are required to follow that guidance when formulating their ISS.

The guidance directed how social, environmental or corporate governance considerations should be taken into account, and included two passages, which provoked a legal challenge led by the Palestine Solidarity Campaign Ltd:

- 1) “...the Government has made clear that using pension policies to pursue boycotts, divestment and sanctions against foreign nations and UK defence industries are inappropriate, other than where formal legal sanctions, embargoes and restrictions have been put in place by the Government.”
- 2) The second passage states that authorities “should not pursue policies that are contrary to UK foreign policy or UK defence policy”.

## Supreme Court ruling

On 29 April 2020, the Supreme Court handed down its judgment, ruling against the Secretary of State. The court decided that by including these two passages in the guidance the Secretary of State had exceeded his statutory powers.

In his judgment, Lord Wilson concluded that the Government’s statutory “power to direct *how* administrators should approach the making of investment decisions by reference to non-financial considerations does not include power to direct... *what* investments they should not make”.

The Scheme Advisory Board met on 5 May 2020 and consideration of this ruling was on the agenda. The Government is also expected to respond to the ruling in the coming weeks.

# Mercer view

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This ruling will likely be disappointing to the Government, albeit one which it will have to accept. We believe that there will be a number of potential implications for LGPS Funds, and set out some of these below:

- **Increase in correspondence from campaign groups** – we believe that this ruling could see a significant increase in the volume of approaches that administering authorities receive from a range of campaigners, activists and pressure groups. There is a possibility that these groups will see this ruling as giving LGPS Funds a green light to pursue a range of divestment strategies, and will want to ensure that their particular area is included. In our view, Funds need to prepare themselves for this increase in interest, and ensure that they have the necessary governance and processes in place to manage it.
- In particular, **administering authorities should remain aware of the lawful requirements of the [guidance](#)**, including those regarding ESG. The guidance directs that Funds may take purely non-financial considerations into account (in addition to financial considerations), provided that doing so would not involve significant risk of financial detriment to the scheme and where they have good reason to think that scheme members would support their decision.
- **Consider reviewing ISS and Responsible Investment policies** – whilst we do not believe that the existing guidance would have stopped any LGPS Funds from setting out their views as a Responsible Investor, any updated guidance from MHCLG will need to be reviewed in due course.
- **Role of central government in “guiding” LGPS investment strategy** – Lord Wilson held that Fund assets are not public monies, and the Supreme Court has now made it clear that responsibility for investment decisions rests with the administering authorities. This clarification is likely to be welcomed.
- **The Government’s response** – it will be interesting to see whether the MHCLG responds to this ruling, beyond deleting the unlawful passages from its guidance, given that this judgment cannot be appealed. Other matters concerning the Government at present may drive the timing of any response. We note that the [version](#) of the guidance currently published on gov.uk no longer includes the two passages that were ruled unlawful.

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Agenda Item 8

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Agenda Item 9

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