



AGENDA

ACCESS JOINT COMMITTEE

Friday, 17th July, 2020, at 10.00 am

Ask for: **Joel Cook**

Virtual – online viewing details to be published in due course

Telephone **03000 416892**

Membership

Chair: Cllr Mark Kemp-Gee (Hampshire CC), **Vice-Chair: Cllr Susan Barker** (Essex CC), **Cllr Adrian Axford** (Isle of Wight), **Cllr Jonathan Ekins** (Northamptonshire CC), **Cllr Gerard Fox** (East Sussex CC), **Cllr Jeremy Hunt** (West Sussex CC), **Cllr Judy Oliver** (Norfolk CC), **Cllr Terry Rogers** (Cambridgeshire CC), **Cllr Ralph Sangster** (Hertfordshire), **Cllr Charlie Simkins** (Kent CC) and **Cllr Karen Soons** (Suffolk CC)

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. Unrestricted sections of this meeting will be open to the press and public online – details to follow.

UNRESTRICTED ITEMS

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

1. Apologies/Substitutes
2. Virtual Meeting Protocols (Pages 1 - 4)
3. Declaration of interests in items on the agenda
4. Minutes of the meeting held on 9 March 2020 (Pages 5 - 10)
5. Business Plan, Budget & Risk Summary (Pages 11 - 30)
6. Joint Committee Secretariat (Pages 31 - 34)
7. Environment, Social & Governance / Responsible Investment position statement (Pages 35 - 50)
8. Supreme Court Judgement (Pages 51 - 58)

9. Motion to Exclude the Press and Public

PROPOSED 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 paragraphs 3 & 5 of part 1 of Schedule 12A of the Act.

EXEMPT ITEMS

(During these items the meeting is not likely to be open to the public or press)

- | | |
|--|-------------------|
| 10. Investment performance update & Annual Report | (Pages 59 - 84) |
| 11. Sub-fund implementation | (Pages 85 - 94) |
| 12. Contract Management update | (Pages 95 - 178) |
| 13. Risk Register detail | (Pages 179 - 186) |
| 14. Link presentation (to follow) | |

Joel Cook
Clerk to the Joint Committee
03000 416892

Thursday, 9 July 2020

Draft – Protocol for Meetings of the ACCESS Joint Committee held under SI 2020 392

General

1. Specific provision is made for the holding virtual meetings, where permitted by law, under s15 of Schedule Three (Constitution of the Joint Committee).
2. The Constitution of the Joint Committee as set out in Schedule Three of the Inter-Authority Agreement (IAA) shall continue to apply for all virtual meetings except where there is a requirement, implied or otherwise, for Members to be physically present in the same location.
3. These Protocols supplement but do not replace the Constitution in the IAA and exist to make meetings held under SI 2020 392 more effective and efficient.
4. Reference to Chair or Clerk relate to the Chair or Clerk of the specific virtual meeting.
5. Members are respectfully reminded to ensure that the electronic device through which they are attending the virtual meeting has sufficient battery charge.

Rules of Conduct

6. The Chair's ruling on the meaning or application of these Protocols or any other aspect of the proceedings of a meeting held virtually cannot be challenged.
7. The Chair may give any direction, or vary these Protocols, when they consider it appropriate to do so in order to allow for the effective and democratic management of the meeting but must take advice from the Clerk before so doing.
8. Unless directed otherwise, immediately before the commencement of the virtual meeting, all participants must switch the video and microphone settings to "off" and only turn them on when invited to speak by the Chair.
9. Members are reminded that any member of the public may observe the meeting.
10. The conversation function referred to in the Protocols is also known as the 'meeting chat'. Members should proceed as if the content can be viewed by participants and the wider public and only use the function for procedural matters as set out below. It should not be used to discuss the substantive issue – this should be done verbally.

Attendance

11. Members must affirm their presence by typing the word 'Present' in the conversation function of the meeting. This shall be accepted by the Clerk as the equivalent of the Member having signed the attendance list.
12. Where a Member is leaving the meeting permanently or temporarily, the word 'Absent' shall be typed in the conversation function. Where the Member joins the meeting once more, 'Present' shall be typed once more.

13. Where a Member has declared a DPI or other interest which means they need to absent themselves for part of the meeting, the Member shall leave the meeting completely at the appropriate time. The Clerk shall email the Member when they are able to re-join. The Clerk will confirm the absence by checking the meeting attendees and confirming the same to the Chair.
14. The quorum of the ACCESS Joint Committee is 8 voting Members and this applies to virtual meetings. At least 8 Members must have indicated they are 'Present' for the meeting to commence or continue. The Clerk will conduct electronic checks on quoracy periodically throughout the meeting.

Substitutes

15. In order to ensure that Members have access to the virtual meeting, it is requested that formal notification of substitutes to the Clerk be made at least 48 hours prior to the start of the meeting. The start time of the meeting will be affected if this is not done.

Speaking

16. Members and other participants in the meeting must wait to be called on by the Chair before speaking.
17. Attendees may indicate a desire to speak through use of the conversation function. The Clerk will ensure these are brought to the attention of the Chair in the order received.
18. Where the functionality is available, the Chair may permit the raising of virtual hands via the meeting platform to indicate a desire to speak and the Clerk will assist in bringing these to the attention of the Chair in the order they are raised.
19. Where Members do not have access to the 'chat' or 'hand raising' functionality for technical or accessibility reasons, they are asked to bring this to the attention of the Clerk prior to the meeting if possible. When this arises, the Chair will periodically ask any Members who have not been able to indicate virtually, whether they wish to speak.
20. Members not part of the Committee wishing to speak shall request permission from the Chair in advance so that the Clerk is informed 24-hours ahead of the meeting.

Motions and Amendments

21. Except where the motion before the Committee is set out in the Agenda, any Member is entitled to request that a motion or amendment before the Committee be typed out in the conversation function by the proposer. Where this is done, the Clerk shall read out the motion/amendment.
22. All proposed motions/amendments will need to be seconded by a Committee Member present in line with usual practice.
23. The Chair shall ask for Members' views on the motion/amendment. Where the view of the Committee is unclear, the Chair shall call for a vote.

Voting

24. Resolutions of the Joint Committee will normally be reached via general agreement to be confirmed by the Chair asking if any Members disagree with the motion at hand. Where no objections are made the Clerk will confirm that Chair may accept the Committee's general agreement and record the resolution accordingly.
25. Where an objection is raised or it is already apparent from the debate that general agreement is unlikely, the Chair will either ask the Clerk to conduct a rollcall of all Members in alphabetical order or ask Members to indicate via the meeting chat function whether they are for, against or abstaining – no response shall be taken as an abstention. The Clerk will verbally confirm the result of the vote and record the resolution accordingly.
26. The Chair will indicate which of the above methods of confirming votes is intended for use at the start of the meeting.
27. No votes shall be recorded in the Minutes unless section 20.4 of the Constitution applies.

Clerking

28. The Clerk to the Committee, as defined in the IAA and these Protocols, will take the minutes and provide procedural and governance support to the Chair and the Committee. Technical assistance in the running of the virtual meeting will be provided by additional officers, not necessarily from the Clerking authority.

Other Provisions

29. Where the minimum legal requirements apply and Members are only able to hear each other and be heard, the Chair shall be responsible for identifying speakers etc., and will be supported in this by the Clerk as facilitator. A rollcall shall be held at the start of the meeting, and at other times as deemed necessary by the Chair, to establish quoracy in these circumstances.

Part Two Meetings

30. At the start of any formal meeting, or part of any formal meeting, from which the press and public have been excluded, Members must type 'Present - Alone' to verify that no unauthorised person is able to hear, see, or otherwise participate in the meeting.
31. A Part Two meeting will normally be anticipated and will be scheduled in advance as a separate virtual meeting. Where the need to move into a Part Two meeting only becomes apparent during the meeting, unless it is the last item due for consideration before moving into a planned Part Two session, discussion of the relevant item should be adjourned and deferred until later in the meeting.

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ACCESS JOINT COMMITTEE

MINUTES of a meeting of the ACCESS Joint Committee held at Committee Room 1 - Islington Town Hall on Monday, 9th March, 2020.

PRESENT: Cllr Mark Kemp-Gee - Chair (Hampshire CC), Cllr Susan Barker – Vice-Chair (Essex CC), Cllr Adrian Axford (Isle of Wight), Cllr Jonathan Ekins (Northamptonshire CC), Mr Jeremy Hunt (West Sussex CC) Cllr Terry Rogers (Cambridgeshire CC), Cllr Judy Oliver (Norfolk), Cllr Ralph Sangster (Hertfordshire CC) and Mr Charlie Simkins (Kent CC).

ALSO PRESENT: Kevin McDonald (ASU Director), Mark Paget (ASU Contract Manager) Officer) and Clifford Sims (Squire Patton Boggs)

OFFICERS: Ian Gutsell (East Sussex), Michelle King (East Sussex) , Jody Evans (Essex), Andrew Boutflower (Hampshire), Patrick Towey (Hertfordshire), Jo Thistlewood (Isle of Wight), Paul Tysoe (Cambridgeshire), Mark Whitby (Northamptonshire), Alison Mings (Kent), Glenn Cossey (Norfolk), Paul Finbow (Suffolk) and Rachel Wood (West Sussex).

UNRESTRICTED ITEMS

176. Apologies/Substitutes.
(Item. 1)

Apologies were received from Cllr Gerard Fox (East Sussex) and Cllr Karen Soons (Suffolk).

177. Declaration of interests in items on the agenda.
(Item. 2)

No declarations made.

178. Minutes of the meeting held on 9 December 2019.
(Item. 3)

RESOLVED that the minutes were a correct record and that they be signed by the Chair.

179. Meeting dates - 2020/2021.
(Item. 4)

1. Members discussed meeting date and venue selection and it was confirmed that the Clerk would liaise with all Members about future arrangements, including reviewing any already agreed dates.

RESOLVED that the meeting in the published agenda be noted.

180. Governance Update.
(Item. 5)

1. Kevin McDonald (ASU) provided an update on the Governance workstream. This included detailing the current status of the Inter-Authority Agreement (IAA) review, clarifying that ACCESS's Legal Advisors were working with Authority Monitoring Officers. It was confirmed that an updated version of the IAA would be circulated to Members in due course. The Clerk advised that all Authorities should review their internal approval mechanisms and inform the Clerk of planned processes to assist in the eventual execution of the final document as a Deed.
2. Mr McDonald outlined the review on Officer sub-groups to confirm key workstreams and areas of Officer focus. This review work reflected the need to consider what the key issues were for ACCESS and Pooling as the landscape and ACCESS's establishment evolved.

RESOLVED that the following be noted:

- The revised timetable for completion of phase 3 governance deliverables.
- The revised IAA to take effect upon execution by all participating authorities and completion of this process to be confirmed in writing by the Clerk to the Committee.
- Recent discussions on the structure of officer sub-groups.

181. Communications.
(Item. 6)

1. Mr McDonald introduced the item, referring Members to previous discussions regarding Communications and the adoption of the ACCESS Communications Protocol in 2018. He advised that the issue was being reviewed in recognition of how things have changed since then, including personnel changes and the shifting Pooling landscape.
2. Members discussed options for handling Communications, in terms of proactive stakeholder engagement and responsive communications activity. It was noted that key objectives of the Communications Strategy needed to be outlined and clarified as part of its development.

RESOLVED that the that the outline for ACCESS communications and relations and the initial planning for the ACCESS Annual Report be noted.

182. Business plan, budget & risk summary.
(Item. 7)

1. Mr McDonald introduced the report, providing an overview of the Business Plan and Budget, which had been agreed at the December meeting. He commented that the Plan was subject to review and that it may have to be updated throughout the year.

2. Mr McDonald highlighted various key points in the plan and budget such as the sub-fund updates and transition arrangements, the rollout of the Governance Training at administering authority level and the full implementation and embedding of the ASU.
3. Mr McDonald confirmed to Members that the projected outturn for 2019/20 was approximately £200k below the approved budget level and explained that this was due to reduced reliance on external consultancy support following the full establishment of the ASU.

RESOLVED that the updated business plan and revised outturn for 2019/20 and the summary risk register be noted.

183. Motion to Exclude the Press and Public.
(Item. 8)

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 it involves the likely disclosure of exempt information as defined in paragraphs 3 & 5 of part 1 of Schedule 12A of the Act.

184. Risk Register.
(Item. 9)

1. Mr McDonald provided an update on the risk register, outlining changes and additions as well as noting where risks remained unchanged and would be monitored.
2. Members discussed the risks and received relevant reassurances from Authority Officers and the ASU of appropriate risk management activity.
3. Members considered the potential for additional risks relating to the COVID-19 situation and were reassured that work was ongoing to explore options for managing normal business remotely if required. It was recognised that any COVID-19 related market volatility risks were likely but this was mainly a matter for the administering authorities. It was noted that without legislative change, formal ACCESS meetings could not take place remotely.

RESOLVED that the report be noted and the additions to the Risk Register as set out in the report be approved.

185. Investment update.
(Item. 10)

1. Sharon Tan (Suffolk) presented the Investment performance update. The positive update was welcomed by Members.

RESOLVED that the report be noted.

186. Sub-fund progress.
(Item. 11)

1. Andrew Boufflower (Hampshire) provided the regular update on Sub-fund progress. He advised the committee on the status of recent launches and highlighting where additional funds were required.

RESOLVED that;

- the asset allocations of ACCESS authorities and the progress in launching the ACS investment sub-funds and providing specific 'transition' sub-funds be noted.
- the request to Link to search for a fund manager(s) for the balanced mandate (Two sub-funds: Fixed Income and Global Equities) be approved.

187. Contract Management update.

(Item. 12)

1. Mark Paget (ASU) provided an update on contract management, highlighting key developments and progress made.
2. Members discussed the planned development of KPI monitoring around business as usual and noted the mitigations that had been put in place where issues had been identified.

RESOLVED that the report be noted.

188. Link presentation (to follow).

(Item. 13)

Karl Midl and James Zealander from Link Fund Solutions were present for this item.

1. Mr Midl and Mr Zealander delivered a presentation, outlining recent activity and key issues. They provided reassurances that preparations were in progress to manage business continuity in the event of emergency issues related to the COVID-19 situation.
2. Members asked questions and discussed performance issues and progress with relevant sub-fund launches.

RESOLVED that the presentation be noted and that a letter be sent to LINK from the Chairman, outlining the views of the Joint Committee on various matters discussed.

189. SAB engagement.

(Item. 14)

1. Mr McDonald introduced the update on Scheme Advisory Board (SAB) engagement, with particular reference to discussions of responsible investment and fiduciary duty.

RESOLVED that the report be noted.

190. Alternatives update.

(Item. 15)

1. Mr McDonald provided an update on progress made with the Alternatives workstream. He advised that further work was being undertaken prior to any firm recommendations being proposed for consideration by the Committee.

RESOLVED that the update be noted.

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Business Plan, Budget & Risk Summary**Quarterly Update****ACCESS Joint Committee****Date: 17 July 2020****Report by: Officer Working Group**

Subject:	Business Plan, Budget & Risk Summary – Quarterly Update
Purpose of the Report:	To provide an update on the activities undertaken since the last Joint Committee, associated spend and risk summary.
Recommendations:	<p>The Committee is asked to note:</p> <ul style="list-style-type: none"> • the Business Plan update • the 2019/20 outturn and 2020/21 budget; and • summary Risk Register.
Enquiries to:	<p>Kevin McDonald</p> <p>Email: kevin.mcdonald@accesspool.co.uk</p>

1. Background

- 1.1. Business Plan (the Business Plan) to the ACCESS Authorities. The Business Plans for 2019/20 and 2020/21 were agreed by the JC in March 2019 and December 2019 respectively prior to being referred to the ACCESS Authorities.
- 1.2. At each of those meetings the JC also determined the budget necessary to implement both years' plans and to be charged to the relevant Authorities.

2. COVID-19 and lockdown

- 2.1. The last JC meeting took place on 9 March. In the following week, as a result of the COVID-19 national emergency, ACCESS Authorities along with the ACCESS Support Unit (ASU), Link Fund Solutions, Northern Trust, Investment Managers and Advisers migrated to remote working arrangements.
- 2.2. Working arrangements during lockdown have included:
 - emailed updates to JC Members in late April and late May;
 - regular briefing calls with the JC Chairman and Vice-Chairman;
 - emailed updates to s151 Officers in April and May along with a virtual s151 Officer meeting on 3 July;
 - weekly virtual meetings of the Officer Working Group (OWG).
- 2.3. Lockdown has placed numerous demands on Local Government and has also impacted on the ability of Authorities to engage with pooling activity. In view of this, in late March, OWG considered a series of scenarios across seven areas of pool activity. The thinking behind this approach was shared with s151 Officers along with the Chairman and Vice Chairman. The scenario analysis was part of the April JC update and is included at Appendix A.
- 2.4. The April update to the JC also invited responses to the Chairman and Vice Chairman's thoughts on the approach to holding the next JC meeting. Key outcomes from both this dialogue and the scenario analysis include:
 - rescheduling the next JC meeting to the 17 July on a virtual basis;
 - sub-funds launching only if all original investing Authorities were able to do so; and
 - ASU keeping the alternatives milestone appropriately positioned until such time as Authorities were in a position to engage. As a result, consideration of alternatives will now take place at the Committee's next meeting on 7 September.

3. Business Plan Update

- 3.1. This report updates the Joint Committee on the work undertaken and costs incurred in 2019/20. The developing and ongoing nature of a significant amount of pooling activity means that a number of the milestones appear within both the 2019/20 and 2020/21 Business Plans. Furthermore, the timescales for establishing a process to transition between sub-funds and determining the approach to pooling alternatives have been moved from 2019/20 into 2020/21.
- 3.2. The Business Plans for 2019/20 and 2020/21 are shown in full detail, with commentary in Appendices B and C respectively. 2019/20's Business Plan contained 11 milestones. 2020/21's Plan used a different format in which milestones were based around 5 themes: active, passive and alternative assets along with governance and the ASU. An overview of both years is provided in the table below.

2019/20 milestone	Comment	2020/21 activity
Inter Authority Agreement (IAA)	Final draft of IAA circulated to Monitoring Officers in June – a report on this matter will be brought to the Committee's September	Completion part of the <i>Operational Protocols</i> milestone within <i>Governance</i> theme
Review Governance Manual	Follows finalisation of IAA review (above)	Completion part of the <i>Operational Protocols</i> milestone within <i>Governance</i> theme
Agree and establish ASU	Recruitment complete	ASU theme includes a milestone to <i>review ASU's size and scope</i>
ASU operations and BAU	Project management activities undertaken by ASU	ASU theme includes a milestone to <i>review ASU's size and scope</i>
Determining reporting framework	Recent activity on the Cost Transparency initiative was led by the Reporting sub-group	Will continue in 2020/21
Development of JC ACS Reporting	Investment performance and cost information now established within JC reporting	Will continue in 2020/21
Agreement to joint polices and guidelines	Formal consideration of Communications scheduled for September meeting. A position statement on ESG / RI appears elsewhere on this agenda	The <i>Governance</i> theme includes an <i>Agreement to Joint policies and Guidelines</i> milestone with specific reference to ESG/RI and Communications
Approval and launch of Sub-funds (tranches 3-6)	15 sub-funds launched as at 31 March 2020 with a total value of £13bn	The <i>Active Assets</i> theme includes milestones for <i>tranches 4, 5 and 6</i>

Establish a process for transitioning between sub-funds	This milestone is addressed in a separate item within this agenda	<i>Establishing a process for transitioning between sub funds</i> is a legacy 2019/20 milestone, brought into the 2020/21 Business Plan within the <i>Active Assets</i> theme
Consideration of approach to illiquid investments	Authority engagement recommenced in June ahead of a report being brought to the September JC	The <i>Alternative Assets</i> theme includes a legacy 2019/20 milestone to <i>Determine approach to pooling alternative/non listed assets</i> milestone
Communication with MCHLG	Pool Officers remain in dialogue with those supporting the Scheme Advisory Board	The <i>Governance</i> theme includes a milestone for <i>Engagement with HM Government</i>
Pool-wide activities	The provision of third-party support is now contracted via the ASU	The use of third-party support will form part of the <i>review of the size and scope of the ASU</i> milestone

The following are milestones featuring in the 2020/21 Business Plan for the first time.

2020/21	Comment
A Scheduled BAU evaluation is a milestone within the <i>Active Assets</i> theme	A report on this matter will be brought to the Committee's next meeting
The <i>Passive Assets</i> theme includes a milestone for <i>ongoing monitoring of passive assets</i>	Ongoing engagement with UBS has been a feature of Officer activity since the 2017 completion of the joint procurement by ACCESS Authorities

3.3. Activities shown in the Business Plan below that are also the subject of separate items on the Committee's agenda include:

- ESG/RI
- Risk Register
- Investment Performance
- Sub-fund Implementation
- Contract Management update

4. 2019/20 outturn

4.1. The final expenditure for financial year 2019/20 was £810,758 against a budget of £1,202,550, giving rise to an underspend of £391,792. The financial contribution required from each of the eleven ACCESS LGPS Authorities was £73,705. The contributions to be invoiced to Authorities in respect of 2020/21 will be adjusted to reflect the 2019/20 underspend. Details were part of the May JC update and are included in the table overleaf.

4.2. The final position was largely driven by underspends in two areas, both of which are under External Professional Costs:

- an underspend of £176,001 on *Strategic & Technical* advice. This reflects both the delayed start to procuring pooled alternative solutions and the cost of associated advice; and
- an underspend of £112,499 on Project Management. This primarily reflects the migration from third-party provision to Host Authority provision of ASU services.

5. 2020/21 budget

5.1. At its December 2019 meeting, the JC determined a budget of £1,080,000 to support the 2020/21 Business Plan. Details are included in the table below. Expenditure against this budget is being kept under review and will be reported to future meetings of the JC.

	Agreed Budget 2019/2020	11-Feb-20 Forecast 2019/2020	Actual Total 2019/2020	Variance 2019/2020	Budget 2020/2021
ASU					
Interim ASU Support	-	70,247	70,247	70,247	
ASU Salaries (incl. on cost)	295,000	228,814	229,083	(65,917)	300.261
ASU Operational	20,500	11,958	11,799	(8,701)	20.580
ASU Host Authority Recharge	42,000	42,000	42,000	-	42.725
ASU JC Secretariat Support	-	-	-	-	14.000
Technical Lead Recharge Costs	93,000	38,131	30,892	(62,108)	89.747
Interim ASU / ASU Total	450,500	391,150	384,021	(66,479)	467.313
Professional Costs					
<i>Internal Professional Costs</i>					
Internal Professional Costs	24,800	13,793	13,831	(10,969)	65.000
<i>External Professional Costs</i>					
Strategic & Technical	364,000	286,131	187,999	(176,001)	344.000
Legal & Governance	207,250	203,836	181,406	(25,844)	203.450
Project Management	156,000	64,337	43,501	(112,499)	
<i>External Professional Costs</i>	727,250	554,304	412,905	(314,345)	547.450
Professional Costs Total	752,050	568,097	426,737	(325,313)	612.450
Total Costs per 2019/2020	1,202,550	959,247	810,758	(391,793)	1,079,763
Cost Per Authority	109,323	87,204	73,705	(35,618)	98,160

6. Risk Summary

6.1. A summary of the risk profile is shown below. Further detail is contained within a separate item within this agenda.

	March 20	June 20
Red	2	2
Amber	12	16
Green	6	5

7. Recommendations

7.1. The Committee is asked to note:

- the Business Plan update
- the 2019/20 outturn and 2020/21 budget; and
- the summary risk register

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Scenario Analysis

Appendix A

Scenario	Officer Working Group	s151 Officers	Joint Committee	Sub funds	Alternatives	Business Plan	ACCESS Support Unit
A.	A1. All OWG & sub-group meetings take place (via Skype or similar/ phone) as normal and for full duration.	A2. All s151 meetings take place via Skype (or similar) as originally scheduled and for full duration.	A3. ASU liaise with Chairman & Vice Chairman as normal; ASU email JC email updates as normal	A4. Sub-fund launch programme continues as planned. Authorities migrate full asset mandates into new sub-funds as planned	A5. Continued OWG engagement with bFinance to develop alternative proposals for June JC	A6. Other key milestones within business plan continue as planned.	A7. ASU continue workstreams e.g. website, sub-group draft ToRs, Governance Manual etc
B.	B1. Weekly one hour OWG call (via Skype or similar/phone). ASU to canvass OWG opinion on extent (if any) of sub-group activity	B2. ASU arrange calls and/or briefing emails for s151 Officers as required	B3. ASU liaise with Chairman & Vice Chairman as required; ASU email JC email updates as appropriate.	B4. & C4. Further work underway on understanding implications of launching or delaying sub-funds;	B5. ASU liaises with bFinance to keep alternative milestone appropriately positioned once greater Authority engagement possible.	B6. ASU draft ESG / RI policy & Comms policy, review Risk Register etc updates given, to & steer taken from, OWG calls	B7. As scenario A
C.	C1. Weekly ASU email to OWG. No sub-group activity	C2. ASU arrange briefing emails for s151s	C3. ASU liaise with Chairman & Vice Chairman where possible; ASU email JC email updates when necessary.	No sub-fund to be launched if one or more, of the original investing authorities is unable to commit to launch at this time	C5. As scenario B	C6. ASU draft ESG / RI policy & Comms policy, review Risk Register etc to take steer once greater Authority engagement possible	C7. As scenario A

The coloured squares indicate the scenarios adopted in March / April.
A further review by OWG commenced in June

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Key Milestone	Final 2019-20 position	Change from previous report?	Further action in 2020-21?
<p>Complete Governance Manual</p> <p>Work with external advisers to reflect decision making principles, communication strategy, policies and procedures, code of conduct etc in the Governance Manual</p>	<p>Completion of the Governance Manual is dependent on completion of the IAA review (see below)</p> <p>Training on Governance delivered to JC in December 2019. Further training will have residual cost.</p>	Change	Yes
<p>Complete Review of Inter Authority Agreement</p> <p>Work with external advisers and Monitoring Officers to update the IAA.</p>	<p>A revised draft of the IAA was circulated to Monitoring Officers at the beginning of March.</p> <p>Based on feedback received further consideration of the wording of Schedule 5 (Cost Sharing) was required. This has now been shared with both Monitoring Officers and s151 Officers, and the revised IAA will be on the JC's September agenda.</p>	Change	Yes
<p>Agree and establish ACCESS Support Unit</p> <p>Identify ASU resource requirements, roles and responsibilities for activities, scope and run recruitment activity and appoint</p>	<p>ASU Officers employed by Essex as the Host Authority following successful recruitment activity (December 2018 – August 2019).</p> <p>ASU functions have been mainly undertaken by ASU Officers and Technical Leads.</p> <p>Hymans Robertson no longer provide project management support and technical input reduced.</p>	No change	No

Key Milestone	Final 2019-20 position	Change from previous report ?	Further action in 2020-21 ?
<p>ASU Operation and Business as usual (BAU)</p> <p>ASU Operation plus professional advice and support</p>	<p>ASU functions have been mainly undertaken by ASU Officers and Technical Leads.</p> <p>Hymans Robertson no longer provide project management support and technical input reduced.</p>	No change	Yes
<p>Determination of Reporting Framework</p> <p>Reflecting investments within the sub-funds work with Link to ensure that reporting meets Authority, Pool, CIPFA and Government requirements</p>	<p>Work progressed to develop reporting arrangements as required on a periodic basis by Authorities – including for the purpose of their Annual Reports and Accounts.</p>	Change	Yes
<p>Development of Reporting for the Joint Committee in respect of funds in the ACS</p> <p>- Quarterly investment performance - Information on investment and operational costs including the annual review of investment manager costs</p>	<p>Both Investment performance information and investment cost information established as part of BAU reporting</p>	Change	Yes, as part of BAU
<p>Agreement to joint policies & guidelines</p> <p>Including communication, environmental social and governance and responsible investment.</p>	<p>Initial preparation for reviewing joint ESG/RI guidelines commenced</p> <p>Actions underway arising from the Communications item on the March JC agenda.</p>	Change	Yes

Key Milestone	Final 2019-20 position	Change from previous report ?	Further action in 2020-21 ?
Approval and launch of Sub-funds Ensure sub-funds meet Link's due diligence requirements and ACCESS Authorities' value for money criteria (including transition activity). Work with Link to submit application to the FCA for approval of the sub-fund set-up. Launch.	By the end of the financial year a total of 15 sub-funds had been launched following Link's due diligence. 7 of these sub-funds were launched in 2019/20. Total assets in the ACS at 31 March 2020 had reached £12.074m. Individual tranche details are described below.	Change	Yes
Approval and launch of Tranche 3 Sub-funds As above	2 sub-funds - transition completed May 2019	No change	No
	1 sub-fund - transition completed September 2019	No change	No
Determine, approve and launch Tranche 4a Sub-funds As above	5 sub-funds – 3 of which completed separate transitions in November 2019 December 2019 & January 2020 respectively.	No change	Yes. Remaining 2 sub-fund launches rescheduled for August 2020
Determine, approve and launch Tranche 4b Sub-funds As above	2 sub-funds – 1 of which completed in late February March 2020	Change	Yes. Remaining sub-fund launch under discussion.
Determine, approve and launch Tranche 5a Sub-funds As above	5 sub-funds - preparation activity	No change	Yes
Determine, approve and launch Tranche 5b Sub-funds As above	3 sub-funds – preparation activity	No change	Yes

Key Milestone	Final 2019-20 position	Change from previous report	Further action in 2020-21 ?
<p>Determine, approve and launch Tranche 6 Sub-funds</p> <p>As above but to also include manager search and selection activity</p>	ACCESS Authorities to determine further local requirements for equity / fixed income sub-fund	No change	Yes
<p>Sub-funds (all)</p> <p>Establish arrangements enabling transitions between sub-funds within the ACS.</p>	Dialogue on this matter continues.	No change	Yes
<p>Consideration of approach to illiquid investments</p> <p>Consideration of requirements and implementation options for ACCESS Authorities' current and proposed investments in illiquid asset classes, including infrastructure.</p>	Dialogue with advisers <i>Bfinance</i> progressed. A training session on illiquid assets was held at 9 March 2020.	Change	Yes
<p>Communication with MCHLG</p> <p>Providing updates to Government and responding to consultations.</p>	<p>The Pool provided an update to MHCLG in Autumn 2019.</p> <p>Pool Officers are in dialogue with the officers supporting Scheme Advisory Board.</p>	Change	Yes
<p>Pool-wide Activities</p> <p>Professional support in relation to ACCESS Governance Structure includes JC, S151, OWG and workstream meetings</p>	A review of arrangements with third-party providers completed and agreements have been transferred to the host authority as appropriate or re-tendered. Legal services procurement completed in January 2020.	Change	Yes

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Theme	Milestone	2020/21 activity	July 2020 comment
Actively managed listed assets	Launch remaining Tranche 4a sub-funds (2019/20 legacy milestone)	Two sub-funds: one global equity & one fixed income	Expected August 2020
	Launch remaining Tranche 4b sub-funds (2019/20 legacy milestone)	One UK equity sub-fund	Dialogue in progress
	Launch of Tranche 5a	Five sub-funds: four global equity & one UK equity	Anticipated September / October
	Launch of Tranche 5b	Three fixed income sub-funds	Anticipated Q1 2021
	Determine, approval & launch of Tranche 6		Timing for approval & launch TBC
	<i>Ensure sub-funds meet Link's due diligence requirements and ACCESS Authorities' Value for Money criteria (including transition activity). Manager search and selection activity where required. Work with Link to submit application to the FCA for approval of the sub-fund set up. Launch.</i>		

Theme	Milestone	2020/21 activity	July 2020 comment
Actively managed listed assets continued	Establish a process for transitioning between sub-funds. (2019/20 legacy milestone) Scheduled BAU evaluation	An evaluation of BAU arrangements will be undertaken and reported to the Joint Committee in March 2021 to inform future planning.	This is addressed in a separate item within this agenda. An initial report on this matter is planned for the Committee's September meeting.
Alternative / non listed assets	Determine approach to pooling alternative/non listed assets (2019/20 legacy milestone) Commence implementation of approach to pool illiquid assets	Consideration of requirements and implementation options for ACCESS Authorities' current and proposed investments in illiquid asset classes, including infrastructure. The initial implementation of pooled alternative assets will commence in 2020/21.	At the outset of lockdown in mid-March, Authorities had reduced capacity to engage with this milestone. Engagement recommenced in June, and planning is in progress to bring recommendations to the JC's September meeting. The initial implementation of pooled alternative assets will commence during 2020/21 once recommendations have been agreed by the JC.
Passively managed assets	Ongoing monitoring of assets managed on a passive basis.	Engagement with UBS will continue throughout the year.	It is proposed that the current basis of Officer engagement with UBS is formalised with the establishment of a Passive Assets Sub-Group.

Theme	Milestone	2020/21 activity	July 2020 comment
Governance	Meetings and oversight	<p>Arrangements will be made to support meetings of the Joint Committee (usually each quarter).</p> <p>Meetings of s151 Officers will also be held.</p> <p>Where required training will be provided, this may involve third party providers.</p>	<p>Following dialogue in April and May, led by the Chairman and Vice Chairman, JC Members agreed to reschedule the first meeting of 2020/21 to 17 July on a virtual basis.</p> <p>A virtual meeting of s151 Officers was held on 3 July.</p> <p>Training requirements are being kept under review.</p>
	Operational protocols	Further development of protocols around key processes associated with the Pool's day to day operation will take place during 2020/21	The agenda for Committee's September meeting will include reports on both the revised IAA and the development of governance arrangements.
	Engagement with HM Government	<p>ACCESS will liaise with the Scheme Advisory Board as appropriate. Periodic reports will be supplied to MHCLG as required.</p> <p>The Pool will actively participate with any Cabinet Officer / MHCLG pooling related consultations.</p>	<p>Pool Officers continue to engage with Officers supporting the SAB.</p> <p>Reports will be submitted to MHCLG as required.</p> <p>Consultations will be considered when published.</p>

Theme	Milestone	2020/21 activity	July 2020 comment
Governance continued	Agreement to Joint Polices & guidelines	<p>The Joint Committee will review its Communications Policy.</p> <p>Work will be undertaken to finalise joint guidelines on ESG / RI.</p>	<p>Arrangements are in place for JC's consideration of Communications at its September meeting.</p> <p>A position statement on ESG / RI appears elsewhere on this agenda.</p>
ACCESS Support Unit (ASU)	Review of ACCESS Support Unit	The size and scope of the ASU will be reviewed.	Officer dialogue is currently underway on the potential use of Officer sub-groups. This will inform the review of the size and scope of the ASU.

Joint Committee Secretariat



ACCESS Joint Committee

Date: 17 July 2020

Report by: Officer Working Group

Subject:	Joint Committee Secretariat
Purpose of the Report:	To provide an update on the provision of Secretariat services to the Joint Committee
Recommendations:	<p>The Joint Committee (JC) are asked to:</p> <ul style="list-style-type: none"> • note the content of the report; and • agree a 12-month extension to the provision of Secretariat services by Kent County Council until the end of July 2021.
Enquiries to:	<p>Name – Kevin McDonald E-mail – kevin.mcdonald@accesspool.co.uk</p>

1. Purpose

- 1.1. The purpose of this report is to provide an update on the provision of Secretariat Services to the Joint Committee (JC) and recommend the continuation of the existing approach for a 12-month period.

2. Background

- 2.1. Since the formation of the formal Joint Committee (JC) in July 2017, Secretariat services to the JC have been provided by colleagues at Kent County Council. This arrangement was initially intended to be for a period of two years from that date.
- 2.2. At its meeting on 11 June 2018, the JC agreed that Essex County Council be the Host Authority for the ACCESS Support Unit (ASU).
- 2.3. At its meeting on 11 June 2019, the JC agreed a 12-month extension to the provision of Secretariat services by Kent County Council until the end of July 2020.

3. The Inter Authority Agreement

- 3.1. Clause 9 of the Inter Authority Agreement (IAA), signed in 2017, states the following:

9.1. On the Commencement Date, Kent County Council will act as Host Authority on behalf of the Joint Committee and will designate one of its officers to be Secretary to the Joint Committee.

9.2. The role of Host Authority may be undertaken by any Council as agreed by the Joint Committee from time to time with the agreement of the Council concerned.

- 3.2. Progress on the ongoing review of the 2017 IAA is covered in a separate item on this agenda. The proposed draft wording relevant to this matter, that would apply under the revised 2020 IAA, once adopted by each Administering Authority, is set out below:

9.1. The role of the Host Authority may be undertaken by any Council as agreed between the Joint Committee and the Council concerned from time to time. Unless otherwise agreed, the Host Authority will designate an officer to be the Secretary to the Joint Committee. The Joint Committee will operate under the normal committee governance arrangements of whichever Council employs the Secretary, subject to any specific processes or requirements outlined in this Agreement.

4. Review of Secretariat

- 4.1. Officers at Kent and the ASU have reviewed the situation. Whilst consolidating the Secretariat within the ASU Host Authority has merit, there are sound reasons to continue with Kent's provision for a further 12 months.

These include:

- the recognition of the detailed and comprehensive knowledge of ACCESS and the JC's workings built up by colleagues at Kent in general, and the current Secretary / Clerk in particular; and

- whilst the Pension Fund Compliance Team at Essex (who would ultimately provide the ASU with JC Secretariat support) have shadowed some of the work undertaken by colleagues at Kent, a combination of a key member of staff taking maternity leave allied to the revised working arrangements during the COVID-19 lockdown has had a significant impact on handover.

4.2. As a consequence, Essex have asked Kent whether it would be possible to continue with the existing arrangement for a further 12 months. Kent have confirmed they are open to this suggestion, and that the intention is that the current Secretary / Clerk would continue to act as Secretary / Clerk to the Committee.

5. Recommendation

Joint Committee are asked to:

- 5.1. note the content of the report; and
- 5.2. agree a 12-month extension to the provision of Secretariat services by Kent County Council until the end of July 2021.

6. Financial implications

- 6.1. No overall change is expected to the total budget agreed at the December 2020 JC meeting.

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Environmental, Social & Governance (ESG) and Responsible Investment (RI) Guidelines



ACCESS Joint Committee

Date: 17 July 2020

Report by: Officer Working Group

Subject:	Environmental, Social & Governance (ESG) and Responsible Investment (RI) Guidelines
Purpose of the Report:	To provide the Joint Committee with a position statement on the development of updated ESG/RI guidelines for the ACCESS pool
Recommendations:	<p>The Joint Committee (JC) are asked to:</p> <ul style="list-style-type: none"> • note the content of the report.
Enquiries to:	<p>Name – Kevin McDonald E-mail – kevin.mcdonald@accesspool.co.uk</p>

1. Purpose

- 1.1. To provide the Joint Committee with a position statement on the development of updated ESG/RI guidelines for the ACCESS pool.

2. Background

- 2.1. At its January 2018 meeting the Joint Committee agreed the current ESG guidelines (Annex A to this report). The current voting guidelines run to eight pages in total, are included at Annex C and form part of Investment Manager Agreement between Link and the various Managers.
- 2.2. The 2020/21 ACCESS Business Plan includes the following:

Theme	Milestone	2020/21 activity
Governance	Agreement to Joint Polices & guidelines.	Work will be undertaken to finalise joint guidelines on ESG / RI.

- 2.3. At the March 2020 meeting of the JC, a new ESG/RI risk – rated amber – was added to the Risk Register. This risk noted that notwithstanding ACCESS’s intention to facilitate the implementation of local strategies, it had been necessary for the JC to determine RI terms, voting and stock lending guidelines in 2018. Since that time Authorities have conducted reviews of their respective Investment Strategy Statements and a number have indicated developments within their respective approaches to ESG/RI matters. The guidelines agreed by ACCESS therefore need to be maintained to reflect the requirements of the investing Authorities.
- 2.4. Since the March JC, the review of ESG/RI guidelines has been part of OWG’s business on four occasions at virtual meetings during May and June.

3. ACCESS Authority ESG/RI Policies

- 3.1. Initial analysis of each Authority’s latest ESG/RI policy was undertaken by the ASU. As was the case in the lead up to the agreement of the existing guidelines in early 2018, there are some commonalities in how investing Authorities’ individual policies frame ESG/RI considerations. For example, each Authority’s ESG/RI policy makes explicit reference to the UK Stewardship Code. However, there is, understandably, no common format across all Authorities which in part means that the scale of ESG/RI discussion is variable.
- 3.2. OWG noted that whilst a significant amount of work has been undertaken by Authorities on developing ESG/RI policies, the review cycles are not uniform and therefore this remains work in progress. The table below summarises the position at each Authority:

	Most recent published ESG/RI Policy	Expected completion of Policy Review
Cambridgeshire	Apr-19	2021
East Sussex	Mar-20	Complete
Essex	Feb-20	2020
Hampshire	Mar-20	Complete
Hertfordshire	Mar-20	2020
Isle of Wight	Jan-19	2020
Kent	Mar-20	2020
Norfolk	Jul-19	2021
Northamptonshire	Apr-19	2021
Suffolk	Jun-20	Jul-20
West Sussex	Jul-18	2021

4. UK Stewardship Code & Task Force for Climate Related Disclosures (TCFRD)

- 4.1. OWG noted that within the many developing aspects of ESG/RI, the Pensions & Lifetime Savings Association (PLSA) have recently underlined the following as having specific bearings on institutional asset owners:
- the revised UK Stewardship Code, compliance with which requires Authorities to report from March 2021; and
 - the Task Force for Climate Related Financial Disclosures, which received the backing of HMG in 2019 with a 2022 reporting date for Authorities.
- 4.2. It was further noted by OWG that the Norfolk Pension Fund had recently surveyed Investment Managers on the following areas.
- UK Stewardship Code
 - Responsible Investment
 - Climate Change related Financial Disclosures; and
 - Engagement

- 4.3. With the agreement of Norfolk, arrangements are now in hand with Link Fund Solutions, to use that survey as a template for dialogue with all Investment Managers within the ACCESS ACS. The responses to that survey will inform next steps.

5. Advice to ACCESS on ESG/RI matters

- 5.1. In view of the importance and profile of ESG/RI matters, the landscape presented by each Authority's individual ESG/RI policy and the expectations upon LGPS Funds. OWG consider that specialist advice is required. This would both articulate suitable guidelines and ensure that ESG/RI is appropriately positioned within ACCESS considerations in future. As a consequence, a specification for the advice required is being drafted. A further update will be brought to the Committee's next meeting.

6. Scheme Advisory Board: online RI Guidance

- 6.1. Earlier this year the Scheme Advisory Board (SAB) stated its intention to develop, as a form of Responsible Investment guide, an online "A-Z" document to explain and clarify RI related terminology. In June Local Government Association (LGA) Officers supporting the SAB asked for a nominee from each Pool to participate on an editorial board to oversee the maintenance of the A-Z guide. The full email is shown at Annex B to this report. OWG concluded that the ASU's Interim Director should represent ACCESS.

7. Recommendation

Joint Committee are asked to:

- 7.1. note the content of the report

The participating Authorities have an overriding fiduciary and public law duty to act in the best long-term interests of their LGPS stakeholders, including scheme members and employers, to achieve the best possible financial returns, with an appropriate level of risk.

The participating Authorities recognise that environmental, social and governance issues can impact on financial performance and expect their investment managers to take these factors into consideration in the selection, retention and realisation of investments. In this context, participating authorities do not seek to impose their particular views by restricting their investment managers' choice of investments by reference to social, environmental or ethical criteria - except where restrictions have been put in place by Government.

Each of the participating Authorities are long-term investors and believe that active engagement with company management promotes good corporate governance principles which will protect and enhance shareholder value.

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Approach from LGA for Editorial Board Representation re: Responsible Investment Guide A-Z

I don't know the extent to which you have been following progress of the SAB Responsible Investment guidance on the Board's web site but hopefully you will be aware of the decisions taken earlier this year to remove references to fiduciary duty pending the outcome of the Supreme Court's judgement in the Palestine Solidarity Campaign case. But notwithstanding that decision, the Board was also mindful that there are matters outside of fiduciary duty where advice and information would continue to be helpful. The Board therefore decided to restructure the proposed guidance to explain and clarify the terminology associated with responsible investment and provide investment decision makers with a range of information, case studies and tools in an A to Z format to help them meet the challenges associated with responsible investment.

More recently, the decision has been taken to reformat the A to Z document as a webpage with extensive search facilities. The Secretariat has started work on and will continue to populate the A to Z document ready for consultation in the early Summer but in the meantime we are looking to establish an editorial forum to maintain and manage content once the webpage has gone live. We see this as a live, dynamic project that will require expert knowledge of the responsible investment sector to ensure that it remains accurate, relevant and up to date.

Can I therefore please ask if you would be happy to be part of the proposed editorial forum to assist SAB in developing this key tool for investment decision makers and other stakeholders in the LGPS. If you are unable or unwilling to put your name forward can I please ask if there is somebody else in your asset pool who would be willing to join the proposed editorial forum.

Finally, although we envisage the work of the editorial forum to commence once the project has gone live, we would also hope that it would help us to develop the A to Z document prior to consultation later in the Summer.

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Introduction

Link Fund Solutions Limited (“LFS”) recognises that as the Manager of the ACCESS LGPS (the “Fund”) it has a responsibility as a shareholder, and to its investors the ACCESS funds, to promote good corporate governance and management in the companies in which the Fund invests and it requires investment managers appointed to manage the Fund to exercise the voting rights attached to investments held in the Fund unless market circumstances make it impossible to do so. This document sets out guidelines to which LFS expects investment managers to have regard in the exercise of voting rights on behalf of the Fund however LFS recognises that in certain cases there may be good reasons not to follow the guidelines set out in this document and in those circumstances LFS expects its investment managers to exercise their discretion having regard to the long-term interests of the shareholders in the Fund and the principles of good corporate governance. LFS requires investment managers to report on voting activity monthly.

The guidelines set out in this document identify those matters that LFS considers of importance in the context of good corporate governance together with its preferred position on those matters. Where investment managers do not adopt the positions set out in these guidelines it is required that they should provide a robust explanation of the position adopted. LFS also expects that investment managers will be signatories to and comply with the Financial Reporting Council’s Stewardship Code (the Code) and United Nations Principles of Responsible Investment (UNPRI). If they have not signed up to either the Code or UNPRI they should be prepared to explain the reasons.

1. Accounting Matters**Report and Accounts****General Principles:**

The Report and Accounts should present a true and fair view of the company’s financial position and prospects and receive an unqualified audit opinion, unless there are exceptional circumstances that are fully explained in the Annual Report.

Vote For

- Adoption of Report and Accounts unless Auditors Report is qualified.

Vote Against

- Adoption of Report and Accounts when the Auditors report is qualified, and there is no satisfactory explanation.
- The Report and Accounts are not considered to present a true and fair view of the company’s financial position.

Audit

General Principles

The principles that are applied in relation to the role of auditors and the Audit Committee are as follows.

Audit Committee

- There should be an Audit Committee of at least three members, all of whom should be independent non-executive directors.
- At least one member of the Audit Committee should have significant financial experience.
- The responsibilities of the Committee should include to review the company's internal financial control system, and to make recommendations to the board on the appointment of the external auditor.
- The annual report should include a separate section that describes the work of the Audit Committee.

External Auditors

- Non-audit fees should be disclosed and should not affect audit independence. In general, fees for non-audit work should not represent more than 25% of the total audit fees, unless there are special circumstances which are explained.

Voting guidelines: Audit

Vote for the re-appointment of the auditors:

- Where the fees for non-audit work are either immaterial (less than £100,000) or less than one quarter of the total payments to the auditor.

Vote against:

- The re-appointment of the auditors where the fees for non-audit work are material and exceed the fee for audit work.
- The auditor's tenure exceeds ten years or is undisclosed.

2. Directors

General Principles

The principles that are applied in relation to the role of executive and non-executive directors are as follows:

Division of responsibilities

- There should be a separate chairman and chief executive, while a temporary combination of the roles may be acceptable for example, while looking for a successor CEO, such interim measures should not continue long-term.
- The chairman should not have previously served as chief executive.

- There should be a senior independent non-executive director.

Independent non-executives

- The board should have sufficient independent non-executive directors with a minimum of three non-executives on the board.
- At least half of the board should be independent. In determining whether a candidate is independent regard should be had to the independence criteria set out in the FRC Corporate Governance Code.

Accountability

- All directors should be subject to regular re-election, at least every three years.

Independent appointment process

- Where there is a Nomination Committee a majority of the Nomination Committee should consist of independent non-executive directors.

Remuneration and Audit Committees

- Where a director is a member of the Remuneration Committee or the Audit Committee, the guidelines on best practice in these areas, which are referred to below, will be followed in voting on that director.

Board Diversity

- The Report and Accounts should include a statement of the board's policy on diversity, including professional, international and gender diversity, objectives set for implementing the policy and its progress against these objectives.

Voting Guidelines

Election of Executive Directors

Vote for the election of an executive director, only where the following are satisfied:

- the candidate is subject to re-election by rotation at least every 3 years or where the candidate is over 70 and is required to stand for re-election each year.
- where at least one half of the Board are independent non-executive directors.
- there is a senior independent non-executive director.
- where there is a formal nomination process for directors e.g. a Nomination Committee, and a majority of the Nomination Committee consists of independent non-executive directors.

Vote against the election of an executive director, if one of the following situations exists:

- a director, who is not subject to re-election by rotation at least every three years.
- a director, who is over 70, and is not required to stand for re-election each year.
- a director, who has a contract period of longer than one year, and there are no exceptional circumstances.
- a director, where less than one half of the Board are independent non-executive directors.
- a director, who is also a member of the Nomination Committee, where a majority of the Nomination Committee are not independent non-executive directors.

- a director, who is also a member of the Audit Committee.
- a director, who is also the company secretary.
- a director who has low attendance at meetings without a suitable explanation.

• Election of Non-Executive Directors

Vote for the election of a non-executive director, only where the following are satisfied:

- where there is re-election of directors by rotation at least every 3 years.
- where candidate is over 70 and is required to stand for re-election each year.
- where the candidate is independent.
- where the candidate is not independent, but at least one half of the Board are independent non-executive directors.
- where there is a formal nomination process for directors e.g. a Nomination Committee and a majority of the Nomination Committee consists of independent non-executive directors.

Vote against the election of a non-executive director, if one of the following situations exists:

- a director, who is not subject to re-election by rotation at least every three years.
- a director, who is over 70, and is not required to stand for re-election each year.
- a director, who is not independent, where less than one half of the Board are independent non-executive directors.
- a director, who is not independent, and who is a member of the Audit Committee.
- termination provisions are in excess of one year's salary and benefits.
- a director who has low attendance at meetings without adequate explanation.

Election of Chairman

Vote for election of a chairman, only where there is a senior independent non-executive director.

Vote against election of a chairman, if one of the following situations exists:

- where the candidate combines the roles of Chairman and Chief Executive, unless there are exceptional circumstances e.g. a temporary arrangement, pending separation of the posts.
- where the candidate is proposed as an Executive Chairman and there is no separately designated Chief Executive, unless there is an explanation of how the Chairman's role is balanced by other executive directors.
- Where the candidate proposed also chairs the Remuneration or Audit Committee.

Board Diversity

- A vote against the Report and Accounts should be considered if a diversity statement is not included or is unsatisfactory.
- If there is no clear evidence that diversity is being considered by the board then a vote against the Chair or Chair of the Nominations Committee should be considered.

3. Directors' Remuneration

General Principles

The principles that are applied in relation to the remuneration of director are as follows:

Remuneration Committee

- Executive remuneration should be determined by a Remuneration Committee.
- All directors on the Remuneration Committee should be independent.

Disclosure

- There should be full and transparent disclosure of each director's remuneration.

Long-term incentives scheme

- Long term incentive schemes should be based on challenging performance targets over a consecutive period of at least three years. Therefore performance targets for minimum rewards should be based on at least producing median performance for the industry or average market returns.
- Performance should be measured by reference to comparison with the company's competitors, rather than by reference to general market movements.

Remuneration Packages

- Total rewards available under the terms of the director's contract should not be excessive. Excessiveness will be judged by reference to market norms in the industry concerned.
- Share-based incentive schemes should require a significant financial commitment from the participant, to align their interests with those of shareholders.

Contract Period

- Executive director contracts should not be longer than one year.
- Contracts should not provide for automatic compensation in excess of one year's salary in the event of termination of the contract.

- **Voting guidelines: Remuneration Report**

Vote for the Remuneration Report if the following conditions exist:

- where all directors' contract periods are for no longer than one year.
- where only independent directors are members of the Remuneration Committee.
- where the company complies with the Combined Code on remuneration matters.

Vote against the Remuneration Report:

- where any director's contract period is for more than one year, and there are no exceptional circumstances.
- where a director, who is not independent, is a member of the Remuneration Committee.

- **Voting guidelines: Executive remuneration schemes and long-term incentive plans**

Vote against:

- where the remuneration structure does not permit participation across the workforce.
- where there is a no capital commitment on the part of executive participants.
- where rewards are not based on performance targets, or where performance targets do not reflect performance relative to the company's competitors, rather than general market factors.
- where the period over which performance is assessed is less than 5 years.

Abstain in other circumstances

4. Shareholder Rights

General Principles

The principles that are applied in relation to the shareholder rights are as follows.

Dividends

- Declared dividends should be put to a vote.
- There should always be a cash alternative available as an option to a scrip dividend or equivalent.

Share Buybacks

The Stock Exchange guidance is that market repurchases of up to 15% of share capital may be made within a 12 month period, provided that the price does not exceed 105% of market value. Share buybacks may affect earnings per share and so performance targets for directors' remuneration should be adjusted accordingly. Share re-purchase proposals should comply with the Stock Exchange's guidance, and should be put as special resolutions.

Pre-emption rights

The disapplication of pre-emption rights (the requirement to allot shares only to existing shareholders) will be supported provided that the share allotment does not exceed 5% of issued share capital within one year or 7¹/₂% within a 3 year rolling period.

Controlling Shareholder

- Where there is a shareholder or connected group of shareholders holding more than 30% of the voting rights, there should be safeguards in place to protect the rights of other shareholders. A majority of the board should not be connected with the controlling shareholder.

Memorandum and articles of association

- Any proposals affecting the memorandum and articles of association should be put as separate resolutions.

Political Donations

- All political donations should be fully disclosed and justified. Any political donations should be subject to a separate vote.

Shareholder Rights Vote

Vote for:

- Pre-emption, where a proposal complies with the Pre-emption Guidelines
- Share buybacks, where the proposals comply with Stock Exchange guidelines, and any relevant performance targets for executive directors are adjusted accordingly.

Vote against:

- Proposed dividend and special dividends which are not covered by earnings and the company offers no explanation of policy.
- Pre-emption, where a proposal does not comply with the Pre-emption Guidelines.
- Share buybacks, where the proposals do not comply with the Stock Exchange guidelines.
- Annual report, where dividend policy is not put to a vote.
- Bundled resolutions, unless the reasons are fully explained or the issues concerned are immaterial.
- Annual report, where political donations are material (more than £100,000) and are not subject to a separate vote.
- Any proposal for authority to make party political donations which are material.
- A scrip dividend without a cash alternative, unless the reasons are fully explained.

5. Environmental Issues

The principles that are applied in relation to the environmental issues are as follows:

Published Policy

- The company should publish a formal statement setting out its approach to dealing with environmental issues.

Reporting

- The Annual Report should disclose the company's procedures for auditing and reporting on environmental risks.

Voting guidelines: Environmental Issues

Vote for:

- Annual report, where it includes full disclosure of company's policies and verification procedures on environmental matters.

Vote against:

- Annual report, where significant environmental risks in relation to the company's activities are not disclosed or reported on or reporting is considered poor or inadequate.

Supreme Court Judgement



ACCESS Joint Committee

Date: 17 July 2020

Report by: Officer Working Group

Subject:	Supreme Court Judgment
Purpose of the Report:	The purpose of this paper is to update the Joint Committee (JC) on the Supreme Court recent judgment on an LGPS related case and related matters.
Recommendations:	The Joint Committee is invited to note the report.
Enquiries to:	Name – Kevin McDonald Email – kevin.mcdonald@accesspool.co.uk

1. Purpose

- 1.1. The purpose of this paper is to update the Joint Committee (JC) on the Supreme Court recent judgment on an LGPS related case and related matters.

2. Supreme Court judgment on Palestine Solidarity Campaign: LGPS investment guidance on foreign policy and defence issues

- 2.1. Following a hearing in November 2019, on 28 April 2020 the Supreme Court gave its judgment in R (Palestine Solidarity Campaign Ltd and another) v Secretary of State for Housing, Communities and Local Government [2020] UKSC 16. By a 3-2 majority the Court allowed the claimants' appeal against the decision of the Court of Appeal. Part of the guidance, relating to the Government's ability to prohibit LGPS funds from investing in a way contrary to UK foreign or defence policy, was therefore deemed unlawful. The rest of the guidance remains valid.
- 2.2. A two-page overview of the ruling, produced by the legal chambers representing the participants in the case, was included within the monthly briefing update emailed at to JC Members on 29 May. Web links to the full 36-page ruling is included in section 7 of this report.

3. Subsequent developments

- 3.1. On 11 May, the statement below was published on the web site of the National LGPS Scheme Advisory Board's (SAB):

The SAB welcomes the clarity brought by the judgement of the Supreme Court in the case of R (on the application of Palestine Solidarity Campaign Ltd and another) Appellants) v Secretary of State for Housing, Communities and Local Government (Respondent). In seeking to restrict the outcome as well as the considerations taken account of by an LGPS administering authority when developing its responsible investment policy, the government has been judged to have overstepped its powers. It is the Board's view that Responsible Investment policy decisions belong at the local level reflecting: the need to pay pensions both now and in the future; local democratic accountability and the views of scheme members; and that outcomes of policy developments should not be subject to restrictions based on unrelated matters'

The Board's secretariat and legal advisor have commenced work on a draft summary of the judgement which will be published on this site as soon as it is available.

Source: <https://lgpsboard.org/>

- 3.2. In the weeks following the judgment's publication, a number of LGPS Authorities received communications on this matter from individuals as well as organisations which included both the *Palestine Solidarity Campaign* and *UK Lawyers for Israel*.
- 3.3. On 8 June the SAB website posted a five-page summary of the Supreme Court judgment which is reprinted in full at Annex A to this report. The covering statement on the SAB website is as follows:

This summary was drafted with the assistance of the Board's legal adviser in order to attempt to clarify the impact of the judgement in this case on LGPS administering authorities. The summary concludes that the fundamental duties and responsibilities of authorities are not altered by the judgement, in particular that authorities remain responsible for investment decisions.

Should the 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.

The summary represents the views of the SAB and does not constitute legal advice nor should it be relied upon or treated as a substitute for specific legal advice relevant to particular circumstances.

3.4. The concluding paragraphs of the summary state the following:

Although the judgement was primarily concerned with the exercise of the Secretary of State's powers, comments made by Lord Wilson and Lord Carnwath may be viewed as providing support for ensuring that, when taking non-financial considerations into account in relation to investment decisions, members' views should be effectively communicated to, and considered by, administering authorities as an intrinsic part of their investment decision making processes.

Otherwise, the judgement does not change the fundamental role or duties of LGPS administering authorities in relation to their investment or other powers and confirms that administering authorities remain responsible for the investment decisions of their respective funds.

3.5. Clifford Sims, from ACCESS's legal Advisers Squire Patton Boggs has attended briefing calls on this matter with the Chairman and Vice Chairman (who had extended the invitation to Cllr Oliver from the Norfolk Pension Fund) and to OWG.

4. Fiduciary duty

4.1. Members will recall that in January a combined ACCESS response was sent to the SAB's consultation on draft Responsible Investment guidelines. This centred on concerns around how the proposed guidelines characterised fiduciary duty and suggested a meeting. At the 9 March meeting of the JC, Members noted the SAB's February announcement that in light of concerns raised by respondents, allied to the then pending Supreme Court judgement (outlined above) it would be "imprudent" to offer any definitive fiduciary duty advice at that time. It is understood that the SAB has decided to restructure the proposed guidance to explain and clarify the terminology associated with Responsible Investment.

4.2. Officers from both Norfolk and the ASU spoke with colleagues at the LGA in early May and reaffirmed ACCESS's suggestion of a meeting. It was felt by all that this was best positioned both after Supreme Court's judgement, and at a time when face to face meetings are possible. At the time of writing the implications of the Supreme Court judgement are being considered in detail, and preparations for the above meeting are in hand.

5. Recommendations

5.1. The Joint Committee is invited to note the report.

6. Consultation with Key Advisers

6.1. Squire Patton Boggs and Paul Newman QC are providing legal advice.

7. Background papers

- 7.1. Web link to full Supreme Court judgment
<https://www.supremecourt.uk/cases/docs/uksc-2018-0133-judgment.pdf>
- 7.2. Web link to SAB summary of document (reprinted at Annex A below)
https://lgpsboard.org/images/Guidance/SAB_SCSN062020.pdf

The Local Government Pension Scheme Advisory Board

Supreme Court decision on LGPS investment guidance

Summary

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

Background

- 1 November 2016 - The Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016 (the **2016 Regulations**) come into force setting out the provisions governing the management and investment of LGPS pension funds by administering authorities. Regulation 7(1) of the 2016 Regulations provides for the formulation by administering authorities of an investment strategy statement in accordance with statutory guidance.
- 1 November 2016 - As envisaged by the 2016 Regulations, statutory “Guidance on Preparing and Maintaining an investment strategy statement” issued by the then Department for Communities and Local Government came into effect. The guidance permitted ethical and social objections to a particular investment to be taken into account. However, it expressly stated that it was “inappropriate” for administering authorities to use pension policies “to pursue boycotts, divestment and sanctions against foreign nations and UK defence industries...other than where formal legal sanctions, embargoes and restrictions have been put in place by the Government”, and that LGPS funds “should not pursue policies that are contrary to UK foreign policy or UK defence policy”. This restriction would have operated even if the proposed investment policy did not involve significant financial risk to the fund and irrespective of whether there were reasonable grounds to believe that it would be supported by members.
- June 2017 - A judicial review challenge was brought by Palestine Solidarity Campaign Ltd and a LGPS member, alleging that the Secretary of State had gone beyond the scope of the powers granted to him under the 2016 Regulations by including these passages in the guidance. The High Court agreed, finding that the powers provided by the legislation could only be exercised for pension purposes and that the Secretary of State had not acted for such a purpose when issuing the guidance.
- July 2017 – The Department reissued the guidance with the relevant passages removed.
- June 2018 - The Secretary of State appealed the decision and the Court of Appeal disagreed with the High Court allowing the appeal. The decision found that there was nothing objectionable in the Secretary of State having regard to considerations of wider public interest, including foreign policy and defence policy, in formulating such guidance. However, the Department did not revise the guidance at that point because leave to appeal the Court of Appeal decision was granted.
- April 2020 – Supreme Court decision on the appeal by the Palestine Solidarity Campaign Ltd and a LGPS member against the Court of Appeal decision was published.

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Purpose of the summary

This summary seeks to clarify the direct legal impact of the Supreme Court’s judgement in relation to investment guidance issued by the Secretary of State. It also includes items of interest from the

court's reasoning in reaching its judgement that may inform the thinking of both scheme stakeholders and government in the future.

The Decision and its Direct Impact

Essentially, the Supreme Court had to answer the following question: is the power granted to the Secretary of State under the 2016 Regulations wide enough to entitle him to issue guidance which effectively prohibits LGPS administering authorities from pursuing policies that are contrary to UK foreign or defence policy? If that power is not wide enough to allow the Secretary of State to issue guidance in such terms, then it was unlawful for him to do so.

By a 3-2 majority, the Supreme Court found that the Parliamentary purpose in conferring the relevant power on the Secretary of State was to enable him to provide guidance about how administering authorities should administer and manage the LGPS funds, and how, within the investment strategy, they should take ethical considerations into account.

However, the Court found that in the contested passages of the guidance, the Secretary of State had, according to Lord Wilson, incorporated something quite different: *"an attempt to enforce the government's foreign and defence policy"*.

The outcome of the decision is that the Secretary of State went beyond his powers by including the contested passages in the guidance. The reissued guidance from July 2017 (with the relevant passages removed) remains valid.

The judgement does not change the fundamental duties and responsibilities of LGPS administering authorities in relation to their investment or other powers. The administering authorities remain responsible for investment decisions.

Potential Indirect Impact of the Decision on MHCLG Guidance

Although the decision did not challenge the validity of any extant guidance (in fact comments made by the Court do not challenge the status of the investment guidance outside of the contested passages), the Court's reasoning may impact on the nature of future guidance issued by the Secretary of State.

Section 3 of the Public Service Pensions Act 2013 (the **2013 Act**) enables the responsible authority to make, subject to the Act, such regulations as they 'consider appropriate'. Schedule 3 of the Act sets out the matters for which regulations may make provision these include, at paragraph 12, the *"administration and management"* of schemes, including for the issue of guidance or directions in that regard.

The Supreme Court found that the policy of the 2013 Act, recognised in the case of the LGPS by the 2016 Regulations and indeed by most of the guidance, is for guidance to identify procedures and the strategy which administering authorities should adopt in the discharge of their functions.

However, Lord Carnwath states that the scope of statutory guidance does not necessarily have to be *"confined to purely procedural or operational matters"*. For example, there is no reason *"why the guidance should not extend to guidance on the formulation of the investment strategy, including the social and other matters appropriate to be taken into account."*

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Whilst the Secretary of State had the power, through guidance, to direct how administering authorities should approach the making of investment decisions by reference to non-financial considerations, the Secretary of State did not have the power to *"direct (in this case for entirely extraneous reasons) what investments they should not make"* (Lord Wilson). In doing so, the Secretary of State went beyond his powers.

The Supreme Court's comments could have wider implications for MHCLG should it wish to consider using statutory guidance to mandate how LGPS administering authorities should act in the future. Although the actual impact of these comments will vary from case to case such action may in future require changes to the relevant regulations governing the LGPS.

Other Points of Interest in the Decision

Investment Issues

Following the Supreme Court's decision, it is now clear that current legislation does not permit the Secretary of State to impose the government's view on foreign and defence policy on LGPS administering authorities.

Whilst the Board has not been made aware whether any LGPS funds are in fact actively seeking to formulate ESG policies which would run counter to UK government policy in these areas, we now have certainty that, subject to compliance with the remainder of the guidance, it would be lawful for them to do so.

None of the judges take issue with the section of the guidance dealing with the extent that administering authorities can take social, environmental and corporate government factors into account when making investment decisions. Lord Wilson specifically notes that there is general acceptance that the criteria proposed by the Law Commission are lawful and appropriate and that administering authorities may take non-financial considerations into account where this would "*not involve a risk of significant financial detriment*" and where the administering authority has "*good reason to think that scheme members would share the concern.*"

Fundamentally, the decision does not change the role or duties of administering authorities in relation to their investment or other powers and confirms that the administering authority remains responsible for investment decisions.

Status of Administering Authorities

The judgment confirms that a local authority, when acting in its role as an administering authority of an LGPS fund, should not be viewed as part of the machinery of the state, acting on behalf of the UK central government.

There is express endorsement by Lord Wilson of the view that administering authorities have duties which are "*similar to those of trustees*" and, of Lord Carnwath, that they are "*quasi-trustees*" of their funds. References to quasi-trustees would appear to be taken straight from statements in the Law Commission report that "*in practice administering authorities consider themselves to be quasi-trustees*". The Law Commission report does not go further than this, other than quoting some LGPS fund materials to support the statement.

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However, the term "quasi trustee" has no clear legal definition in pension legislation (public or private) and therefore we should be careful not to read too much into this statement with regard to the legal status of administering authorities other than they have duties which are similar to trustees.

Importantly, the judgment does not suggest that administering authorities are actual trustees and does make it clear that the LGPS is a statutory occupational pension scheme¹ not a trust-based pension scheme.

Are LGPS Funds Public Money?

In pursuing an argument that administering authorities were part of the machinery of state, MHCLG also argued that LGPS funds are “*public money*”. What MHCLG appear to have argued is that because LGPS funds are ultimately funded by the taxpayer, they are effectively the government’s money and therefore the government has the power to direct how those funds should be used via guidance.

Lord Wilson rejected this argument, quoting Sir Nicolas Browne-Wilkinson VC from the Imperial Tobacco case², making the point that contributions are paid by both employees and employers and that employer contributions are made in consideration of the work done by their employees and so represent another element of the employees’ overall remuneration.

Lord Wilson came to the conclusion that LGPS funds should rather be viewed as representing employees’ money rather than public money.

This comment may be at risk of being taken out of context and should not be interpreted as meaning that LGPS funds are owned or controlled by the members. It is clear elsewhere in the judgement that the LGPS is a statutory pension scheme and that the primary responsibility for delivering the functions of the LGPS rests with its administering authority.

There is no suggestion that the assets of an LGPS fund legally vest in anybody but the administering authority. We do not believe that Lord Wilson was making such a suggestion. In fact, Lord Carnwath specifically states that, “*responsibility for investment decisions thus rests with the administering authorities*”.

Conclusion

Although the judgement was primarily concerned with the exercise of the Secretary of State’s powers, comments made by Lord Wilson and Lord Carnwath may be viewed as providing support for ensuring that, when taking non-financial considerations into account in relation to investment decisions, members’ views should be effectively communicated to, and considered by, administering authorities as an intrinsic part of their investment decision making processes.

Otherwise, the judgement does not change the fundamental role or duties of LGPS administering authorities in relation to their investment or other powers and confirms that administering authorities remain responsible for the investment decisions of their respective funds.

8th June 2020

1 Paragraph 4 of the judgement.

2 Imperial Group Pension Trust Ltd v Imperial Tobacco Ltd [1991] 1 WLR 589, 597

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