

By: Director of Finance  
To: Superannuation Fund Committee – 6 June 2008  
Subject: **DEED OF MODIFICATION - CONNEXIONS PARTNERSHIP  
KENT & MEDWAY LIMITED**  
Classification: Unrestricted

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Summary: To report on the request from Connexions Partnership Limited to close their admission agreement to new members

## **FOR DECISION**

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### **INTRODUCTION**

1. Connexions Partnership Kent & Medway Limited (Connexions) was admitted to the Pension Fund by means of an admission agreement dated 27 May 2002. The admission agreement gave all eligible employees the right to join the Pension Fund. Under the Local Government Pension Scheme Regulations in force at that time, this meant all employees were eligible regardless of whether they were part or full time, permanent, temporary or casual provided that they were not eligible for another statutory pension scheme.
2. In 2004, Connexions made a Board decision to close the Local Government Pension Scheme (LGPS) to new employees. Kent County Council (KCC) was not notified of this Board decision and no Deed of Modification (Deed) was drawn up to reflect this change to the admission agreement. (Connexions offered an alternative pension scheme to new employees).
3. KCC is currently in the process of transferring employees from the Communities directorate to Connexions. The original TUPE transfer date for these employees was April 2008 but this has been delayed because Connexions are not prepared to take on the KCC employees until the Deed has been signed and sealed by both parties.
4. For officers to be able to enter into the Deed, once the terms have been agreed by both parties, Committee approval of the use of the official KCC seal is required.

## **DEED OF MODIFICATION**

5. Connexions lawyers have drawn up a Deed reflecting the closure of the admission agreement to new employees. However, there is a dispute over the Specified Date (i.e. the date at which the closure of the scheme to new employees is effective). The Deed has this date as the Date of the Deed i.e. when the Deed is signed and dated by the relevant parties.
6. KCC legal view is that the Specified Date should be the same date as the Connexions Board resolution as this was when the scheme was closed to new entrants. This would prevent any retrospective claim from employees who worked for Connexions between 2004 and 2008 who under the terms of the original admission agreement should have been offered the opportunity to join the LGPS.
7. Connexions have sought Counsel's opinion on the Specified Date and the response is that having a retrospective date would undermine the enforceability of the Deed and that it would be better to have the Specified Date as the date on which the Deed is entered into.
8. The Department of Communities & Local Government have been asked for their opinion on the issue; it is their view of the issue and does not constitute legal advice. In their opinion, if Connexions want the Deed signed and dated now then new employees who joined Connexions between the date of the Board resolution and the date of the Deed should have been offered the opportunity to join the LGPS in accordance with the original admission agreement. There is nothing within the LGPS Regulations to prevent a retrospective agreement.
9. KCC Legal Services have been asked to obtain Counsel's opinion on the matter.

## **RECOMMENDATION**

10. Members are asked to agree that the Deed of Modification can be entered into on behalf of Kent County Council subject to agreement of the Specified Date.

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