

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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