

CYNGOR SIR POWYS COUNTY COUNCIL.

**Pensions and Investments Committee
Date 30th September 2016**

REPORT AUTHOR: Solicitor to the Council

SUBJECT: Approval Memorandum of understanding relating to the procurement of services by the administering authorities of the local government pension scheme in Wales

REPORT FOR: Decision

1. Background

- 1.1 You may be aware that the administering authorities for the eight LGPS funds in Wales are working together to establish a pension investment “pool” in line with government requirements set out in guidance issued by DCLG, who administer the LGPS, in November 2015. The government’s aim is that the 89 administering authorities in England and Wales should form 6-8 investment pools. It has set a target date of April 2018 for those investment pools to be operational and for money to start transitioning into the pools.
- 1.2 This is a large and complex project for the LGPS funds in Wales. The investment pools will consist of an FCA regulated “**Operator**” (technically called an Alternative Investment Fund Manager) and regulated “**collective investment vehicles**” (CIVs) which will hold the assets of the participating local authority funds - these could be Authorised Contractual Schemes(ACS) and/or unit trusts (UTs) for example. Different investment vehicles might be used for different assets types (listed equities, bonds, property, etc).
- 1.2 After considering different options for implementation, the LGPS funds in Wales have decided to procure a third party supplier that will provide the regulated “Host Operator” service and the investment vehicles that will house the assets of the pool. In the longer term, the Welsh LGPS funds may decide to move to an “owned” Operator model.
- 1.3 To further that proposal the Constituent Authorities have agreed that they will act in concert to procure the Host Operator and Ancillary Services so that the strategic investment requirements of the Constituent Authorities are being met.
- 1.4 To meet DCLG requirements, one of the key initial tasks is to establish the necessary **governance arrangements** . The eight Monitoring Officers from the eight administering authorities have helped to finalise the governance arrangements.

2. Proposed Governance arrangements for the LGPS investment pool

2.1 Very briefly, the proposed key components of the governance model for the Welsh LGPS investment pool (and the other pools being established in England) are as follows:

Component	New or existing	Summary of remit	Membership
Pension Committees	Existing S101 governance arrangements for individual local authority funds.	Governance of scheme member administration, investment and funding strategy (including strategic asset allocation and setting employer contribution rates). These committees will be the clients effectively be “clients” of the pool Operator.	Elected members. Some funds also have independent professional advisers and/ or other observers or stakeholder representatives in attendance.
Joint Chairs Group (“JCG”) for the pool	New joint governance committee for the all Wales investment pool.	Oversees the appointment the pool’s Operator, holds the Operator to account, ensures that the pool delivers what is needed by individual funds (eg sub- fund building blocks required to enable each individual fund to execute its investment strategy), provides “client” input on matters such as the investment managers used by the Operator.	One elected member from each administering authority pensions committee (expected to be the Chair or his/her nominated representative).
Officer Working Group (“OWG”)	New but builds on existing working relationships between Pension Fund Treasurers will now have a formalised role.	Advises the JCG and, representatives of the Operator’s “clients” (the individual authorities) liaises with the Operator and monitors the Operator’s performance against SLAs and KPIs.	Treasurers (and their investment officers) each of the eight administering authorities.

2.2 In due course consideration will also be given to potential roles for other parties in pool governance including any role for professional advisers; any observer role for employee representatives; and whether there should be an independent Chair for the JCG.

3. High level plan for implementing pool governance arrangements

3.1 Key steps in the short term include the following:

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	Target timesc	Deliverables	Comments
1	Early October 2016	Agree Memorandum of Understanding (“ MoU ”) between the participating administering authorities	<ul style="list-style-type: none"> • Not legally binding. • Precursor to legally binding Inter- Authority Agreement. • Individual authorities to review and sign agreed version. • Draft prepared by Eversheds attached as Appendix 1.
2	Mid/Late - October 2016	Terms of Reference (“ TOR ”) for “Shadow” JCG	<ul style="list-style-type: none"> • Not legally binding. • Chairmen of individual funds who will be the members of the Shadow JCG to approve (after individual authorities review). • Draft prepared by Hymans and reviewed by Eversheds and officers attached.
3	November 2016	Form Shadow JCG and hold first meeting	<ul style="list-style-type: none"> • Precursor to formal JCG. • Need in place for the Operator procurement phase.
4	February 2016	Inter-Authority Agreement (“ IAA ”))	<ul style="list-style-type: none"> • Successor agreement to MoU • Legally binding agreement between participating authorities • Preliminary legal advice suggests advisable to have this agreed and signed before conclude procurement and appoint Operator • Likely to require formal Council approval (within Terms of each Councils constitution) • In order to have this signed in January we would expect to share early drafts in October / November 2016

5	January 2016	Review TOR for JCG	<ul style="list-style-type: none"> • Make any appropriate amends before formalising JCG • Members of shadow JCG to approve (after individual authority review)
6	January 2016	Shadow JCG becomes formal JCG	<ul style="list-style-type: none"> • Preliminary legal advice suggests advisable to have shadow JCG converted to “formal” JCG before conclude procurement and appoint Operator • Hold first meeting of “formal” JCG in January 2016

- 3.2 Members will see from the above timetable that it is proposed that a non legally binding Memorandum of Understanding (MoU) is put in place in early October to allow for the procurement phase of the appointment of the Host Operator to take place at the earliest opportunity. This appointment needs to be done quickly and before a legally binding Inter authority Agreement (IAA) can be finalised if the target date for implementation in April 2017 has any realistic prospect of success.
- 3.3 External firms of lawyers (Eversheds and Hymans)appointed by DGLC to assist in the project have advised that the governance arrangements for the procurement of the Host Operator could be properly dealt with through and MoU.
- 3.4 On Wednesday 21st September, the attached draft Memorandum of Understanding (MoU) (See Appendix 1) prepared by Eversheds was considered and amended by the 8 Monitoring Officers of the 8 Administering Authorities.
- 3.5 It is possible that some further minor amendments may be required and these may not be available until 30th September 2016. In order to finalise and have a signed MoU within the required timescale , and to avoid calling an extra ordinary meeting of the Pensions and Investment Committee, it is proposed that Solicitor to the Council in conjunction with the Strategic Director – Resources have delegated authority to approve any minor amendments to the draft MoU.

4.0 Proposal

- 4.1 To approve the draft MoU attached as Appendix 1 to the report.
- 4.2 To authorise the Solicitor to the Council in conjunction with the Strategic Director – Resources to approve any minor amendments to the draft MoU.

- 4.3 To authorise the Strategic Director – Resources to sign the finalised MoU.

5.00 Statutory Officers

- 5.1 The Solicitor to the Council (Monitoring Officer) has commented as follows: “ the recommendation can be supported”.

Recommendation:		Reason for Recommendations:
1	To approve the draft MoU attached as Appendix 1 to the report.	To ensure that the Host Operator is procured in sufficient time to achieve the target date of implementation of the pooled arrangements by April 2017
2	To authorise the Solicitor to the Council in conjunction with the Strategic Director – Resources to approve any minor amendments to the draft MoU.	
3	To authorise the Strategic Director – Resources to sign the finalised MoU.	

Person(s) To Implement Decision:	Solicitor to the Council and Strategic Director - Resources
Date By When Decision To Be Implemented:	ASAP

Contact Officer Name:	Tel:	Fax:	Email:
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APPENDIX1

Draft/Memorandum of understanding relating to the procurement of services by the administering authorities of the local government pension scheme in Wales

1. This memorandum of understanding governs the relationship of the administering authorities for the local government pension scheme in Wales under Part 1 of Schedule 3 to the Local Government Pension Scheme Regulations 2013.
2. The administering authorities who are parties to this Memorandum are the City of Cardiff Council, the City & County of Swansea Council, Flintshire County Council, Carmarthenshire County Council, Torfaen County Borough Council, Gwynedd County Council, Powys County Council and Rhondda Cynon Taff County Borough Council (“the Constituent Authorities”).
3. The Constituent Authorities have made a proposal to HM Government for the pooling of investment activities relating to the management of their several pension funds and that proposal has been accepted in principle by HM Government.
4. The proposal is to create a pooled investment vehicle (the “Pooled Vehicle”) and to delegate the operation of the Pooled Vehicle to a third party operator holding the relevant regulatory permissions (the “Host Operator”). The Constituent Authorities may delegate additional investment related services (the “Ancillary Services”) to the Host Operator or to another third party provider.
5. To further that proposal the Constituent Authorities have agreed that they will act in concert to procure the Host Operator and Ancillary Services so that the strategic investment requirements of the Constituent Authorities are being met.
6. The Constituent Authorities are committed to the development of formal joint arrangements under the Local Government Act 1972 via an Inter-Authority Agreement (“IAA”) and a Joint Committee under the Local Government Act 1972 (“the Joint Committee”) to ensure the effective operation of the services procured, such arrangements to take effect before the provision of those services commences and by no later than 31st January 2017. The target date for commencement of the new service arrangements is April 2017 with full development of those arrangements by April 2018 .
7. The Constituent Authorities will work together in accordance with this memorandum of understanding until formal joint arrangements (including a Joint Committee and legally binding Inter-Authority Agreement) are in place.

8. This memorandum of understanding does not create any legal relationship nor is it intended by the Constituent Authorities to create such a relationship. The Constituent Authorities will act with good faith, openness, equality, reasonableness, respect and avoid bringing any of the others' reputations into disrepute.
9. Flintshire County Council will act as lead authority for the purpose only of undertaking the joint procurement of a Host Operator. The invitation will be issued by Flintshire CC who will formally respond to any queries and receive the bids. Flintshire will issue the decision notice but each Constituent Authority will be a co-signatory to the contract in relation to the services. The contract will not be awarded until the Inter-Authority Agreement is entered into by the Constituent Authorities.
10. Costs incurred until the Inter-Authority Agreement is completed (including costs of challenge) are to be allocated and recovered from each of the Constituent Authorities on an equal basis.
11. In order to act in concert the Constituent Authorities will form a Joint Chairs Group ("JCG") on which each Constituent Authority will be represented by one member who must be a member of that authority's pension committee or equivalent body (normally the Chairman of the Constituent Authority's LGPS pensions committee or his nominated representative) to make recommendations to their Constituent Authority.
12. The JCG will not be a formally constituted joint committee under the Local Government Act 1972 and the provisions of that Act relating to access to information will not apply.
13. The JCG will have no powers delegated to it by the Constituent Authorities and will be responsible for:
 - 13.1 Making recommendations to the Constituent Authorities on the services and functions to be delivered by a Host Operator, the Ancillary Services and the method of delivery;
 - 13.2 Making recommendations to the Constituent Authorities on the evaluation methodology to be used in the appointment process;
 - 13.3 Making recommendation to the Constituent Authorities on the appointment of a Host Operator and other service providers;
 - 13.4 Making recommendations on the structure of the Pooled Vehicle (or Pooled Vehicles), the number and make up of sub-funds, and the commercial design of the Pooled Vehicle (or Pooled Vehicles);
 - 13.5 Making recommendations to the Constituent Authorities on common minimum standard policies in respect of ethical, social and governance matters and voting rights;

- 13.6 Making recommendations to the Constituent Authorities on the role and procedures of the Joint Committee;
- 13.7 Any other matters which they consider to be necessary for the effective progression of the proposal.
14. In the event of any member of the JCG ceasing to be a member of the Constituent Authority which appointed them, the relevant Constituent Authority shall as soon as reasonably practicable appoint another member in their place.
15. At the commencement of each meeting a Chair will be appointed by the members of the JCG from amongst their own number by means of a vote.
16. A meeting shall be quorate when 6 members are present. No business will be transacted at a meeting unless a quorum exists at the beginning of the meeting. Should there be at any point in the meeting less than six members present then the meeting shall stand adjourned until the requisite number is present or a further meeting is called.
17. The JCG will in the first instance seek to reach decisions through consensus. Where it is not possible to reach a consensus position a decision will be reached by majority vote. Each Constituent Authority present will have one vote and voting will be by means of a show of hands. The Chair shall have a further and casting vote in the event of equality of votes.
18. The JCG may appoint sub-committees from among its membership as required to enable it to fulfil its remit.
19. The JCG may set up working groups to advise it on matters within its remit. Such working groups may be formed of members or officers of the Constituent Authorities or any other third party as the JCG sees fit. Such working groups are advisory only and the JCG may not delegate its responsibilities to such working groups.
20. The clerk to the joint committee who will arrange for the provision of secretarial and administrative support will be an officer provided by the Welsh Local Government Association.
21. The JCG shall meet quarterly or more frequently if that is necessary for the group to execute its responsibilities.
22. Meetings will be held at such times, dates and places as may be notified to the members of the JCG by the clerk. Meeting papers will be circulated at least five working days in advance of any meeting. Urgent items may be tabled at meetings with the agreement of the Chair.

23. Additional ad hoc meetings may be called in order to consider urgent matters of business within the remit of the JCG. Such ad hoc meetings may include virtual meetings facilitated by means of videoconferences or similar technology.
24. The JCG may invite any person, whether a member or officer of one of the Constituent Authorities or a third party to attend any meeting of the JCG and speak on any relevant matter.
25. Employees of the Constituent Authorities and advisers must declare whether they have any conflict of interest in respect of any business being conducted by the JCG. A conflict of interest is defined as a financial or other interest which is likely to prejudice a person's exercise of functions as an adviser to the JCG. A conflicted person shall play no part in any portion of the meeting to which that conflict of interest relates.
26. Members of the JCG will be subject to the Member Code of Conduct as operated by their own Constituent Authority.
27. Under paragraph 19 there will be an Officer Working Group (OWG) drawn from the Constituent Authorities which supports and advises the shadow Joint Committee
28. The OWG is not a decision-making body but its members will as necessary individually exercise any powers delegated to them by a Constituent Authority . Its remit will be:
 - 28.1 Proposing and procuring external support requirements (e.g. legal and taxation advice);
 - 28.2 Proposals to JCG on pool governance arrangements including how the Host Operator and, where relevant, any provider of Ancillary Services, should be held to account;
 - 28.3 Proposing the specification of the scope of services required from the Host Operator and the extent of the Ancillary Services required for the purpose of a procurement exercise and proposing an appropriate procurement process;
 - 28.4 Proposals on the identity of the Host Operator and provider of the Ancillary services;
 - 28.5 Liaising with lawyers (and other advisers) to determine proposals to the JCG on:
 - 28.5.1 finalising a proposed project plan setting out the structure of the proposal, including the services required from the Host Operator and the Ancillary Services, together with a detailed timeline;

- 28.5.2 necessary protections in the Host Operator contract and contracts with any other service providers, including in particular exit triggers, liabilities and indemnities;
 - 28.5.3 the structure of the Pooled Vehicle (or Pooled Vehicles), the number and make up of sub-funds, and the commercial design of the Pooled Vehicle (or Pooled Vehicles);
 - 28.5.4 the actions required under existing investment-related contracts entered into by the Constituent Authorities, subject to agreement with the Constituent Authorities.
- 28.6 Planning the transition from existing mandates to the Pooled Vehicle, including proposals on the procurement of one or more transition managers, the services required, the timing of transitions and the apportionment of transaction costs.

Signed on behalf of City of Cardiff Council

Signed on behalf of City & County of Swansea Council,

Signed on behalf of Flintshire County Council,

Signed on behalf of Carmarthenshire County Council,

Signed on behalf of Torfaen County Borough Council,

Signed on behalf of Gwynedd County Council,

Signed on behalf of Powys County Council

Signed on behalf of Rhondda Cynon Taff County Borough Council

Dated