

## County Council

21 March 2017

### Border to Coast Pensions Partnership

#### Recommendations

That Council:

- i) Approves the subscription by the Council as administering authority of the Warwickshire Pension Fund in one class A voting share and such number of non-voting class B shares as are equivalent to one twelfth of the agreed regulatory capital requirement in the Border to Coast Pension Partnership (BCPP) Limited
- ii) Authorises the Strategic Director for Resources to act as the Shareholder representative in BCPP Limited on behalf of the Council as administering authority for the Warwickshire Pension Fund
- iii) Approves the establishment of the Border to Coast Pension Partnership Joint Committee in accordance with section 102 of the Local Government Act 1972 to carry out the functions set out in the Inter-Authority agreement
- iv) Nominates the Chair of the Pension Fund Investment Sub-committee (and the Vice Chair of the Pension Fund Investment Sub-committee in his/her absence) to represent the Council as administering authority for the Warwickshire Pension Fund on the Border to Coast Pension Partnership Joint Committee.
- v) Authorises the Strategic Director for Resources in consultation with the Chair of the Pension Fund Investment Sub-Committee to take any further steps which he considers necessary to enable the Council to participate in BCPP Limited, to agree any further amendments and finalise the approval and execution of the legal documents necessary including the Articles of Association, the Shareholder Agreement, the Inter-Authority Agreement and the terms of reference of the Joint Committee.
- vi) Authorises the Strategic Director for Resources to make any amendments to the constitution which are necessary to reflect these arrangements.

# 1 Background

- 1.1 Warwickshire Pension Fund provides a pension service for 45,000 members (i.e. current employees, former employees who are not yet drawing a pension, and pensioners) across approximately 180 separate employers within Warwickshire including local authorities, academies and other not for profit organisations. 11% of the adult population within Warwickshire is a member of Warwickshire Pension Fund.
- 1.2 The Fund is financed by contributions from employee and employer contributions and holds assets that fund the current and future liabilities of the pension payments for members of the fund. As at 31st March 2016, Warwickshire Pension Fund held assets totalling over £1.6 billion to help meet these liabilities.
- 1.3 Following three years of consultation, in October 2015, the former Chancellor set out the final stages of the plans to legislate that all assets of the 89 Local Government Pension Funds in England and Wales be pooled into a few larger asset pools. In response to this, in July 2016, eight separate investment pools submitted proposals to Central Government with Warwickshire being included within the submission for BCPP.
- 1.5 The BCPP is proposed to be formed of 13 Local Government Pension Funds with combined assets of £35.9 billion (at 31st March 2015) as set out in the table below.

**Table 1 - Local Government Pension Funds within the Border to Coast Pensions Partnership**

<b>BCPP Partners:</b>	<b>Fund Value at 31/03/2015 (£bn)</b>
Bedfordshire Pension Fund	1.7
Cumbria Pension Fund	2.0
Durham Pension Fund	2.3
East Riding Pension Fund	3.7
Lincolnshire Pension Fund	1.8
North Yorkshire Pension Fund	2.4
Northumberland Pension Fund	1.1
South Yorkshire Pension Fund	6.3
South Yorkshire Passenger Transport Pension Fund	0.2
Surrey Pension Fund	3.2
Teesside Pension Fund	3.2
Tyne and Wear Pension Fund	6.4
Warwickshire Pension Fund	1.7
<b>BCPP TOTAL</b>	<b>35.9</b>

- 1.6 The Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016 which came into force 1 November 2016 requires administering authorities to formulate investment strategies in accordance with guidance issued from time to time by the Secretary of State. The guidance requires that 'All authorities must commit to a suitable pool to achieve benefits of scale. Administering authorities must confirm their chosen investment pool meets the investment reform and criteria published in November 2015, or to the extent that it does not, that Government is content for it to continue.' The Government has power to direct investments if administering authorities fail to comply with the guidance.
- 1.7 The Council formally approved the proposal for BCPP to be its pooling partner at its meeting on 17 May 2016. The Government in November 2016 gave its approval to the governance structures and operating principles proposed in the July 2016 submission for the creation of the BCPP and confirmed it met the required criteria.
- 1.8 The new pooled fund is now required to push forward with these proposals and set up a separate regulated asset management company, appoint staff (including TUPE transfer where appropriate) and develop the corporate and governance structures that will enable the pooling of the partners' assets by April 2018. There are no expected TUPE transfers from Warwickshire Pension Fund into the BCPP Ltd.
- 1.9 The Pension Fund Investment Sub-Committee, retain responsibility for setting the investment strategy and asset allocation of the Warwickshire pension fund. BCPP will be responsible for managing investments in line with the investment strategy and asset allocation as instructed by the Council. This will enable BCPP to:
- reduce investment costs by taking the opportunities of economies of scale;
  - improve professionalism & personnel resilience through engagement of a larger team than is present in individual funds;
  - provide opportunities for Funds to access the benefits of using partners internal investment teams;
  - provide opportunities for funds to access more complex asset classes;
  - improve risk control & performance monitoring by investing through regulatory structures
- 1.10 In developing the BCPP proposal in response to the Government's pooling requirements, both the legal and cost/benefit advisors concluded that the most appropriate model, given the constituent make-up of the partner Funds of BCPP, was for a wholly owned Teckal compliant company, operating a fully regulated structure under the Financial Conduct Authority (FCA).

1.11 Under Regulation 12 of the Public Contracts Regulations 2015, a contracting authority may directly award a public contract to a company without needing to go through a competitive process where the following (Teckal) conditions are met:

- i. the contracting authorities jointly exercise a control over the company which is similar to that which they exercise over their own departments;
- ii. more than 80% of the activities carried out by the company are carried out in the performance of tasks entrusted to it by the controlling contracting authorities or other bodies which the contracting authority controls; and
- iii. there is no direct private capital participation in the company (the exception is non-controlling and non-blocking forms of private capital participation required by national legislative provisions, or in conformity with Treaties which do not exert a decisive influence on the company)

1.12 The company would be owned by the 12 administering authorities operating pension funds within the investment pool with each authority having equal voting rights. It should be noted that South Yorkshire Passenger Transport Pension Fund will have no shareholding or voting rights in the new company. Legal advice confirms that this can provide a Teckal compliant structure that is suitable for providing the pooled investment function. The participating authorities have received external legal advice that the proposal to participate in the BCPP Pool and to subscribe for shares in BCPP Limited is in compliance with the statutory obligations which fall upon the Authorities, and there are no legal obstacles to the structure which has been proposed.

1.13 The role of the administering authorities as shareholders will be to provide oversight and control of the operation of the Company and will include the:

- Appointment and removal Directors, including non-executive directors of BCPP.
- Approval of the Annual Business plan.
- Approval of budgets, fee models and the overall cost base and cost apportionment.
- Approval of the remuneration policy.
- Approval of capital requirements.
- Approval of significant transactions (e.g. mergers and acquisitions).
- Approval of any new entrants to BCPP and the terms of entry.

- Determination of exit terms, including notice period and exit treatment.
  - Approval of Conflict of Interest policy.
  - Review of risk register.
  - Appointment of Auditor.
- 1.14 The exercise of the Shareholders rights will be governed by the constitution of the company and private company law. Meetings will be held in private.
- 1.15 BCPP Limited will be required to operate in accordance with the Financial Services Act (FCA compliance) & the Corporate Governance Code and comply with any appropriate regulations governing local authority investments.
- 1.16 It is proposed that the Board of Directors will comprise of 3 Executive Directors and 3 Non-Executive Directors. Each of these directors is required to be approved persons for Financial Conduct Authority (FCA) purposes. An external recruitment exercise will take place to secure the appointment of the most appropriately experienced and qualified people.
- 1.17 There will be no direct Administrative Authority representation on the Board of Directors. Instead a Joint Committee will be set up to ensure BCPP partners' investment issues are appropriately considered by the Board of Directors. Each partner will have one representative on the Joint Committee.
- 1.18 The Border to Coast Pension Partnership Joint Committee will act in the best interests of the individual funds acting as investors. It is expected that they will exercise scrutiny over the investment performance of the Company and its sub funds. It will also retain an advisory role over the functioning of the company. Its meetings will be governed by local government law and will normally meet in public unless the criteria for a private meeting are met. Voting will be by simple majority. (The current draft terms of reference and constitution of the Joint Committee are set out in the Appendix)
- 1.19 Due to the challenging timescales for approval, the legal documents are currently in draft form and are subject to change before finalisation (A copy of the current draft documents have been placed in each of the group rooms). Work continues on preparations for practical implementation. This report therefore recommends delegation to the Strategic Director for Resources in consultation with the Chair of the Pensions Investment Sub-committee to authorise further changes to enable the documents to be finalised.
- 1.20 Following the establishment of the Company, still further work will be required to ensure the Company can meet FCA registration requirements as well as finalising contract terms between BCPP Ltd

and the respective Councils. The company will require FCA registration before it makes any investments.

## **2. Value for Money Implications**

- 2.1 Warwickshire Pension Fund has assets with a value of over £1.6 billion (as at 31st March 2016). Government have mandated the pooling of Local Authority Pension Funds and it is proposed that Warwickshire Pension Fund joins the Border to Coast Pensions Partnership with a combined asset value of £35.9 billion as at 31st March 2015.
- 2.2 The pooling of assets is scheduled to commence from 1st April 2018 however some assets will take longer to transfer to ensure that this is managed in a timely and cost efficient manner. To transfer the assets to the pool, the current arrangements with fund managers will have to be terminated. The Pension Fund Investment Sub Committee has the powers to approve termination of investment managers with holdings of less than 5% of the portfolio (c. £100m).
- 2.3 It is forecast that the pooling of assets will, by 2030, lead to reduced costs across the fund of between £0.7m and £1.5m per annum for the benefit of all 180 employers through reducing the pressure of increasing employer contributions set at each triennial valuation.
- 2.4 The Local Government Pension Scheme is a defined benefit scheme. This means that the pension payable to a member of the scheme is based on the service of the member up to April 2014 and final salary at date of leaving and, from then, the career average revalued earnings whilst in the scheme. Changes to the Pension Fund from the pooling of assets will have no impact on the pension received by existing pensioners, current employees or former employees who are yet to draw their pension.
- 2.5 Remuneration levels for BCPP senior staff members are currently being investigated by member funds and an executive search company

## **3. The Pension Fund Investment Sub-Committee**

- 3.1 The Pension Fund Investment Sub-Committee (PFISC) is the body delegated in the Council to exercise all matters in relation to investing of the Fund's assets. The primary role in this regard is setting and monitoring the total portfolio asset strategy. Setting an appropriate asset strategy is also how a Fund ensures its investment strategy is aligned to its actuarial requirements. Responsibility for this role does not change under pooling. However how that allocation is exercised will change.
- 3.2 BCPP will offer a template of various asset allocation choices and the Sub-Committee, having received appropriate external advice, will determine the appropriate asset allocation from within the template.

This has been presented by BCPP to both the funds independent advisor(s) and investment consultant to assess its suitability with the funds current allocation. The PFISC will not be permitted to invest outside the range of sub- funds offered by BCPP.

- 3.3 The PFISC will be responsible for the termination of existing manager contracts and arrangements to enable new mandates to be awarded to BCPP. This is expected to start by mid-2018 for listed assets, illiquid alternative assets will take much longer to “run-off” before they can be transitioned to BCPP.

#### 4. Background Papers

None

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The report was not circulated to members prior to publication

### **Border to Coast Pension Partnership Joint Committee**

#### **Terms of Reference**

1.1 The primary purpose of the Joint Committee is to exercise oversight over the investment performance of the collective investment vehicles comprised in the BCPP Pool.

1.2 The Joint Committee will provide effective engagement with the Authorities as the BCPP Pool vehicles are established and ultimately operated. It will encourage best practice, operate on the basis that all partners have an equal say and promote transparency and accountability to each Authority.

2.0 The remit of the Joint Committee is:

2.1 First Phase – Period to April 2018 or operational commencement of the BCPP Pool (whichever is the later)

2.1.1 To provide support and guidance to the work being undertaken by the Officer Operations Group to give effect to the pooling arrangements.

2.1.2 To consider issues and provide feedback on relevant proposals as they are developed, ensuring effective engagement with the Authorities To scrutinise and monitor project management arrangements and proposals for the appointment of advisers by the Authorities.

2.1.3 To oversee costs to deliver the BCPP Pool, obtaining approval from individual Authorities where necessary.

2.1.4 To monitor and scrutinise responsibilities for delivery of the project and relevant support arrangements.

2.1.5 To oversee and provide feedback on positions and conclusions deriving from work streams adopted by the Officer Operations Group.

2.1.6 To formulate processes and policies for appointment and termination of membership to the Joint Committee.

2.1.7 To propose and confirm contracts and policies required by the Authorities to commence transition to the BCPP Pool arrangements.

2.1.8 To provide support and guidance to the work being undertaken by the Officer Operations Group to do all things necessary to implement the final proposal, including preparatory work for asset transition.

2.1.9 To consider the initial range of sub-funds to be provided by the ACS and to make recommendations to the BCPP Board for the creation of those sub funds



2.1.10 To review and comment on the draft ACS prospectus and supporting documents on behalf of the Authorities prior to the Financial Conduct Authority approval.

## 2.2 Phase 2 – Post Establishment and Commencement of Operations

2.2.1 To facilitate the adoption by the Authorities of relevant contracts and policies.

2.2.2 To consider requests for the creation of additional ACS sub funds (or new collective investment vehicles) and to make recommendations to the BCPP Board as to the creation of additional sub funds (or new collective investment vehicles).

2.2.3 To consider from time to time the range of sub funds offered and to make recommendations as to winding up and transfer of sub funds to the BCPP Board

2.2.4 To review and comment on the draft application form for each additional individual ACS sub fund on behalf of the Authorities prior to the Financial Conduct Authority approval (or the draft contractual documents for any new collective investment vehicle).

2.2.5 To formulate and propose any common voting policy for adoption by the Authorities and to review and comment on any central policy adopted by BCPP.

2.2.6 To formulate and propose any common ESG/RI policy for adoption by the Authorities and to review and comment on any central policy adopted by BCPP.

2.2.7 To formulate and propose any common conflicts policy for adoption by the Authorities and to review and comment on any central policy adopted by BCPP.

2.2.8 To agree on behalf of the Authorities high level transition plans on behalf of the Authorities for approval by the Authorities for the transfer of BCPP Pool assets.

2.2.9 To oversee performance of the BCPP Pool as a whole and of individual sub funds by receiving reports from the BCPP Board and taking advice from the Officer Operations Group on those reports along with any external investment advice that it deems necessary.

2.2.10 To employ, through a host authority, any professional advisor that the Joint Committee deems necessary to secure the proper performance of their duties.

## **Constitution of the Joint Committee**

1. The Joint Committee shall consist of one elected member appointed by each Authority. The member so appointed must at all times during the appointment, be a member of the committee or sub-committee of that Authority which discharges the functions of that Authority with respect to pensions.

2. Each Authority may appoint a named substitute. Any named substitute must meet the eligibility requirements in paragraph 1. The substitute may attend any meeting of the Joint Committee or any of its sub-committees in place of that authority's principal member if prior written notice that the substitute will attend is given to the Secretary of the Joint Committee by the Authority concerned.
3. Where a substitution notice is in effect with respect to a particular member at a particular meeting, the substitute shall be a full member of the Joint Committee for the duration of the meeting in place of the principal member.
4. Each Authority may remove its appointed member and appoint a different member by giving written notice to the Secretary to the Joint Committee.
5. Each appointed member shall be entitled to remain on the Joint Committee for so long as the Authority appointing them so wishes, but shall cease to be a member if he or she ceases to be a member of the appointing Authority or if that Authority removes the appointed member.
6. Any casual vacancies will be filled as soon as reasonably practicable by the Authority from which such vacancy arises by giving written notice to the Secretary to the Joint Committee or his or her nominee.
7. Each member of the Joint Committee shall comply with any relevant code of conduct of his or her Authority when acting as a member of the Joint Committee.

## **Proceedings**

### **8. Time and Place of Meetings**

The Joint Committee will meet at least once each year and further as may be required. All meetings of the Joint Committee will take place at a suitable venue and at a time to be agreed by the Joint Committee.

### **9. Notice of and Summons to Meetings**

The Secretary to the Joint Committee will give notice to the public of the time and place of any meeting in accordance with Part VA of the Local Government Act 1972. At least five clear days before a meeting, the Secretary to the Joint Committee will send a summons by post or email to every Member or make arrangements for it to be left at his or her usual office. The summons will give the date, time and place of each meeting and specify the business to be transacted, and will be accompanied by such reports as are available.

### **10. Chair, Vice Chair and Secretary of Joint Committee**

10.1 The Chair of the Joint Committee will be appointed from time to time by the members of the Joint Committee. The Chair of the Joint Committee shall be

selected annually by election by the Joint Committee but the Chair may be re-elected for a further term.

10.2 The Vice Chair of the Joint Committee will be appointed from time to time by the members of the Joint Committee. The Vice Chair of the Joint Committee shall be selected annually by election by the Joint Committee but the Chair may be re-elected for a further term.

10.3 If there is a quorum of members present but neither the Chair nor the Vice-Chair is present at a meeting of the Joint Committee, the other members of the Joint Committee shall choose one of the members of the Joint Committee to preside at the meeting.

10.4 The Authority represented by the Chair shall appoint one of its officers to act as Secretary to the Joint Committee in accordance with clause 7 of this Agreement.

10.5 The Secretary shall provide legal and secretariat services to the Joint Committee.

## 11. Quorum

The quorum of a meeting will be at least 8 members who are entitled to attend and vote.

## 12. Voting

### 12.1 Majority

Each member of the Joint Committee shall have one vote. Any matter will be decided by a simple majority of those members of the Joint committee present in the room at the time the question is put.

### 12.2 By Substitutes

Any person appointed as a substitute shall have the same voting rights as the member of the Joint Committee for whom he or she is substituting. Where notice of substitution has been given for a particular meeting the principal member may not vote unless the notice of substitution is withdrawn in writing before the start of the meeting.

### 12.3 Show of hands

The Chair will take the vote by show of hands, or if there is no dissent, by the affirmation of the meeting.

## 13. Minutes

The Secretary to the Joint Committee or his or her nominee shall arrange for written minutes to be taken at each meeting of the Joint Committee and shall present them

to the Joint Committee at its next meeting for approval as a correct record. At the next meeting of the Joint Committee, the Chair shall move that the minutes of the previous meeting be signed as a correct record. If this is agreed, the Chair of the Joint Committee shall sign the minutes. The only part of the minutes that can be discussed is their accuracy.

#### 14. Public Access

Meetings of the Joint Committee shall be open for members of the public to attend unless the Joint Committee determines that it is necessary to exclude members of the public in accordance with Part VA of the Local Government Act 1972 or the Joint Committee determines that it is necessary to close the meeting to the public because of a disturbance. Copies of the agenda for meetings of the Joint Committee and any reports for its meetings shall be open to inspection by members of the public at the offices of the Authorities with the exception of any report which the Secretary to the Joint Committee determines relates to items which in his or her opinion are likely to be considered at a time when the meeting is not to be open to the public.

##### 15.1 Disturbance by member of the public

If a member of the public interrupts proceedings, the Chair will warn the person concerned. If that person continues to interrupt, the Chair will arrange for their removal from the meeting room and will suspend the meeting until the member of the public has left or been removed.

##### 15.2 Clearance of part of meeting room

If there is a general disturbance in any part of the meeting room open to the public, the Chair may call for that part to be cleared.

#### 16. Overview and Scrutiny

The Joint Committee and the Host Authority will co-operate with reasonable requests for information from any of the Authorities' overview and scrutiny committees.

#### 17. Regulation of Business

17.1 Any ruling given by the Chair as to the interpretation of this constitution with respect to the regulation of proceedings at meeting shall be final.

17.2 Subject to the law, the provisions of this Constitution and the terms of any contract, the Joint Committee may decide how it discharges its business.