

COUNCIL

22 FEBRUARY 2017

LOCAL GOVERNMENT PENSION SCHEME (LGPS) REQUIREMENT FOR ASSET POOLING

Report of the Chief Executive

Cabinet Member: Councillor David Ledger – Portfolio Holder from Resources and Deputy Leader of the Council

Purpose of the report

This report seeks approval to establish the governance arrangements to enable the Council to participate in the proposed Border to Coast Pensions Partnership Pool (“**BCPP Pool**”). Such participation will enable the Council, acting in its capacity as the administering authority for Northumberland County Council Pension Fund (NCCPF), to meet its LGPS regulatory obligation to state its approach to pooling investments in accordance with guidance issued by the Secretary of State for Communities and Local Government.

Recommendation

The Council, as administering authority for the Northumberland County Council Pension Fund, is requested to:

- 1 confirm the proposed BCPP Pool as the Council’s chosen approach to pooling, as recommended to Council by the Pension Fund Panel and Cabinet;
- 2 establish the necessary governance arrangements to establish and join BCPP Pool, as summarised in **Appendix 2**:
 - i establish BCPP Joint Committee as a formal Joint Committee under section 102 of the Local Government Act 1972 in accordance with and to carry out the functions as set out in the Inter Authority Agreement (**Appendix 4**), and enter into the Inter Authority Agreement with the other eleven named administering authorities; and

- ii enter into the Shareholders' Agreement between the Council and the other eleven named administering authorities to form **BCPP Ltd** as an entity to operate collective investment vehicles to allow the administering authorities to pool their LGPS investments, and agree BCPP Ltd's Articles of Association;
- 3 approve the subscription by Northumberland County Council to one Class A voting share in BCPP Ltd and such number of Class B non-voting shares in BCPP Ltd as shall be necessary to ensure that the Council contributes one twelfth of the minimum regulatory capital requirement of the Company to fulfil the requirements of the Financial Conduct Authority;
- 4 authorise the Pension Fund Panel to nominate a representative (and substitute) to vote this shareholding and to represent the Council on the BCPP Joint Committee;
- 5 authorise the Legal Services Manager to make the consequential changes required to the Constitution to reflect these new arrangements; and
- 6 authorise the Chief Executive in consultation with the Deputy Leader of the Council and the Chairman of the Pension Fund Panel to finalise the approval and execution, where required, of all legal documents necessary to give effect to the above decisions.

Link to Corporate Plan

This report is relevant to the Developing the Organisation priority included in the Corporate Plan 2013 to 2017.

Key issues

- 1 In July 2015, the then Chancellor announced the Government's intention to work with (LGPS) administering authorities to ensure they would pool their investment assets with the intention of reducing costs while maintaining investment performance.
- 2 In November 2015, the Government invited LGPS administering authorities to put forward proposals for asset pooling. The principle behind this was LGPS pension funds could pool investments and reduce the amounts paid in investment management fees. Estimated annual savings were assessed as £200m to £300m across the c £200 billion investment assets owned by Local Government Pension Scheme (LGPS) funds in England and Wales.
- 3 LGPS Regulations were introduced from 1 November 2016 which required administering authorities to state their approach to pooling investments in accordance with guidance issued by the Secretary of State, and gave the Secretary of State (for DCLG) wide powers of direction and intervention to be

used if she/he was not satisfied that an administering authority was complying with its obligations under the Regulations. Therefore, administering authorities do not have any real choice *whether* to join a pooling arrangement, the choice they have is which one to join.

- 4 After careful consideration of the options, on 5 February 2016 the Pension Fund Panel agreed to work with a collaboration of administering authorities to form a pooling arrangement subsequently named the Border to Coast Pensions Partnership (BCPP), on the basis that this proposed pool represented the best fit for NCC Pension Fund.
- 5 Initial estimates show that NCC joining BCPP Pool (as summarised in **Appendix 2**) should result in significant savings on investment manager fees payable by 2030.
- 6 The Government's aim is for LGPS pools to be fully operational from April 2018, which is a very tight timescale. To target this start date, all participating administering authorities within the proposed BCPP Pool are seeking authority from their councils in February or March 2017 to establish a BCPP Joint Committee and make other changes to enable BCPP Ltd to be established to (ultimately) manage the assets of NCC Pension Fund and the other LGPS pension funds in BCPP Pool.
- 7 The proposal to join BCPP Pool was considered by Cabinet on 7 February 2017 and the Pension Fund Panel and Cabinet recommend BCPP Pool to Council as the appropriate pooling arrangement for NCC Pension Fund.

BACKGROUND

Northumberland County Council is an administering authority under the Local Government Pension Scheme Regulations (meaning a body listed in Part 1 of Schedule 3 of the 2013 LGPS Regulations which maintains a fund within the LGPS).

Northumberland County Council Pension Fund

- 1 The Northumberland County Council Pension Fund (NCCPF) has assets of £1.1bn, liabilities of £1.3bn and a funding level of 83% (as at 31 March 2016). There are 37 contributing employers from the public and private sector, and over 25,000 active, deferred pensioner and pensioner members.

Local Government Pension Scheme asset pooling

- 2 Following three years of consultation, on 25 November 2015 the Government issued an Investment Reform Criteria and Guidance document inviting proposals for pooling. The principle behind this was LGPS pension funds could pool investments and save on amounts paid in investment management fees. Estimated annual savings were assessed as £200m to £300m across the Local Government Pension Scheme (LGPS) in England and Wales.
- 3 In the July 2015 Budget, the then Chancellor announced the Government's intention to work with (LGPS) administering authorities to ensure they would pool their investment assets with the intention of reducing costs while maintaining investment performance.
- 4 The Criteria and Guidance published in November 2015 required all LGPS administering authorities to submit to Government initial and detailed **proposals** for pooling by 19 February 2016 and 15 July 2016 respectively.
- 5 Following a series of meetings of Northumberland County Council's Pension Fund Panel at which the pooling options available to NCCPF were considered, on 5 February 2016 the Pension Fund Panel agreed to work with a collaboration of administering authorities to form a pooling arrangement subsequently named the Border to Coast Pensions Partnership (BCPP), on the basis that this proposed pool represented the best fit for NCCPF.
- 6 NCCPF is a joint signatory to both the BCPP initial and detailed proposals submitted to Government.
- 7 Eight separate proposed investment pools submitted detailed proposals to Government by 15 July 2016, including BCPP. The other seven pools are as follows (asset values shown are as at 31 March 2015):
 - Central: a group of funds in the Midlands, with total assets of £34bn;
 - Brunel: a group of funds in the South West, with total assets of £22bn;
 - ACCESS: a group of funds in the South East, with total assets of £36bn;

- Wales: all 8 funds in Wales, with total assets of £12bn;
 - Northern: Merseyside, Greater Manchester and West Yorkshire funds, with total assets of £36bn;
 - London CIV: all 33 London boroughs, with total assets of £25bn; and
 - Local Pensions Partnership: Lancashire, London Pensions Fund Authority and Berkshire, with total assets of £14bn.
- 8 On 1 November 2016 the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016 came into force. These Regulations *effectively* require the 89 separate LGPS funds in England and Wales to combine their assets into a small number of investment pools.
- 9 The Regulations set out that each LGPS administering authority, having taken proper advice, must formulate an **investment strategy** and publish a statement of that strategy no later than 1 April 2017. That investment strategy must include the administering authority's **approach to pooling** investments, including the use of collective investment vehicles, and must be in accordance with guidance issued by the Secretary of State.
- 10 The Guidance referred to requires each LGPS administering authority to commit to a suitable pool to achieve benefits of scale and must confirm that its chosen investment pool meets the Investment Reform and Criteria issued on 25 November 2015. The Secretary of State (for DCLG) has wide powers of direction and intervention which can be used if she/he is not satisfied that an administering authority is complying with its obligations in relation to the Regulations.
- 11 The Secretary of State approved BCPP as meeting the requirements of the Investment Reform and Criteria document by letter dated 13 December 2016, attached as **Appendix 1** to this report.

Overview of BCPP pooling proposal

- 12 The BCPP pooling proposal comprises thirteen LGPS funds (i.e. twelve administering authorities) with combined assets of over £40 billion at 30 September 2016. Fund values totalling £35.9m were included in the proposal to Government as they were based on data as at 31 March 2015 and are set out below.

BCPP funds:	Fund value at 31 March 2015 (£bn)
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
BCPP TOTAL	35.9

- * South Yorkshire Passenger Transport Pension Fund will not participate in BCPP Pool in its own right, it will participate via a contractual arrangement with South Yorkshire Pensions Authority.
- 13 When developing the BCPP pooling proposal, in May 2016 both the independent specialist legal adviser (Squire Patton Boggs) and cost/benefit adviser (Deloitte) to the funds concluded that the most appropriate approach, given the constituent make-up of the collaborating funds within BCPP, was for a separate legal entity to be established in the form of a wholly owned **Teckal** compliant **asset management company**, regulated by the Financial Conduct Authority (FCA).

Financial assessment

- 14 Empirical evidence from independent transaction cost consultant, CEM Benchmarking, shows that if appropriately implemented, larger asset pools can achieve material benefits in investment management fee savings and/or reduced transaction costs, compared to smaller asset pools. Specialist external advice provided to the BCPP participating LGPS funds in May 2016 by CEM further supported this.
- 15 The BCPP proposal submitted to Government in July 2016 outlined that the BCPP set up costs are expected to be between £2.3m and £4.2m, of which the Council will be responsible for one twelfth i.e. between £190,000 and £350,000. These costs will be payable over the lead-in period up to formal operation of the soon to be created BCPP asset management company. The Government suggested **target** start date for BCPP Ltd to become operational is April 2018.
- 16 The initial savings projections detailed in the proposal (under best and worst scenarios) show that once operational the full annual savings to the funds participating in BCPP Pool are estimated to be between £22.4m to £52.4m per year by 2030 (i.e. the date by which all the “alternative” investments that are held in closed ended funds have run off and have been reinvested through BCPP Ltd). The payback period for all twelve administering authorities collectively is two years under best case scenario and five years under worst case scenario.
- 17 The annual savings estimated for NCCPF are £1.5m (worst case) and £2.2m (best case) by 2030. The payback period for the set up costs is estimated to be within the first year (under best and worst case scenario) based upon this

assessment. However, it should be noted that NCCPF currently has a significant allocation to assets invested via an index tracking investment manager, and reduced fees payable to this manager with effect from 1 April 2016 (i.e. before pooling), have been taken into account and attributed as fee savings as a result of pooling in this assessment.

- 18 Members should note that the costs of setting up and operating BCPP Ltd are based on *estimates* only and limited information. LGPS asset pools, established (as proposed) as fully regulated asset management companies have not existed in the past, so the concept is new. Deloitte provided advice on costings which was used in BCPP's July 2016 submission to Government. Deloitte was selected to provide this advice (in part) because it had worked with the London CIV, which is one of only two LGPS pools that already exist, albeit at a very early stage of development.

Legal assessment

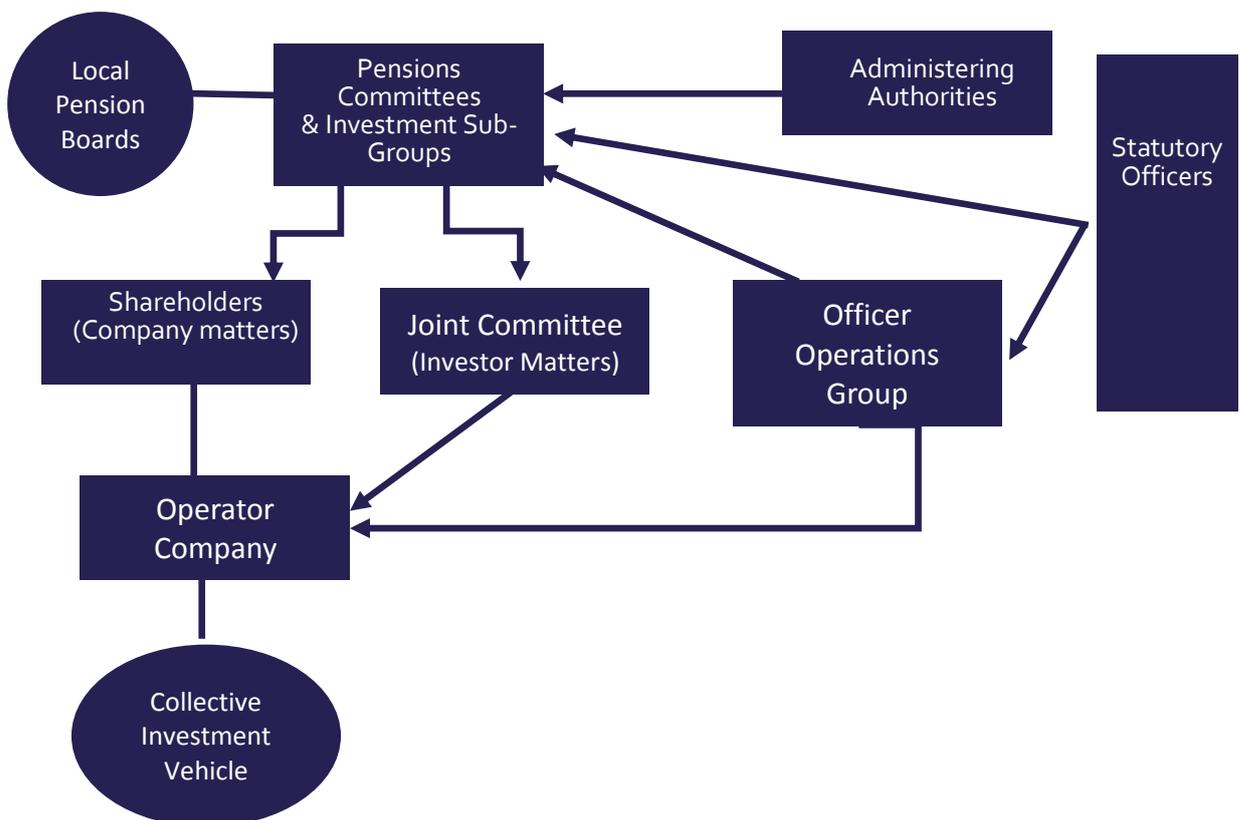
- 19 The work to develop BCPP's pooling proposal through the establishment of BCPP Ltd has been supported by two firms of external lawyers, appointed in December 2016. Eversheds was appointed to advise BCPP Ltd (once formed) and to support its establishment. Squire Patton Boggs was appointed to advise the collaborating administering authorities, collectively and individually, to ensure their interests are reflected in the constitution of the Company and the terms of the proposed Shareholders' Agreement, and to ensure that the governance arrangements are fit for purpose.
- 20 The Eversheds' **Summary of Pool Governance Structure** document (dated 25 January 2017), attached as **Appendix 2**, gives a description of the proposed arrangements for BCPP Ltd, and draws out key themes and implications. It has been prepared by Eversheds and agreed by Squire Patton Boggs. It refers to documentation, described elsewhere in this report, including the Shareholder Agreement and the Inter Authority Agreement which have been negotiated with the benefit of legal advice from both firms. Monitoring Officers, Section 151 Officers and other representatives from each of the twelve administering authorities have engaged in the process of developing the documentation, working to very short timescales.
- 21 Squire Patton Boggs has provided a *draft Legal Opinion* (dated 20 January 2017) to each of the administering authorities who have agreed to participate in BCPP Pool to support that participation. The opinion is attached as **Appendix 3**.

Governance

- 22 There will be a need for each administering authority to distinguish between its role as a **shareholder** and its role as an **investor** in BCPP Ltd. The two roles are fundamentally different.
- 23 Shareholder functions relate to the ownership of BCPP Ltd and are subject to company law and governed by key company documents. Because the Council as a corporate body cannot exercise its rights as shareholder directly,

it will need to act through a nominated shareholder representative who will either vote by attendance at shareholder meetings of the Company or by signing written resolutions, as permitted by company law.

- 24 Investor rights relate to investing LGPS pension fund assets in the various collective investment vehicles within BCPP Ltd as a 'customer'. There will be a need for a collective forum to discuss common investor issues. It is proposed that this is through a joint committee ("**the BCPP Joint Committee**"), which must be consistent with public law requirements.
- 25 A Council member will be appointed to BCPP Joint Committee. To effectively represent NCCPF, the member of the Joint Committee will need to be fully conversant with NCCPF's investment strategy and asset allocation strategy, performance expectations and investment risk appetite.
- 26 It is acceptable that the two functions be undertaken by the same individual, but it is not necessary. It is up to each administering authority to decide who will fulfil each of these two roles. There is the potential for conflicts of interest between the two roles, but this is seen as unlikely.
- 27 For NCCPF, it is proposed that the shareholder representative (and substitute) and the BCPP Joint Committee representative (and substitute) are appointed by the Pension Fund Panel.
- 28 The diagram below shows the proposed governance structure of BCPP Pool and how the various control groups will interact with each other. These elements of the governance structure are described below and in more detail in **Appendix 2**.



- 29 The focus of BCPP Joint Committee will be on investor issues of the participating funds, rather than shareholder issues. Investor rights relate to the investment in BCPP Ltd as governed by legal documents for each separate investment sub fund e.g. application form, key investor information and prospectus, as well as FCA handbook rules and guidance. Investor rights cover such matters as the right to withdraw capital, the terms of redemption, investor reporting (including frequency and content) and investor voting rights.
- 30 The BCPP Joint Committee will be formally established by all administering authorities signing the Inter Authority Agreement. A copy of the latest *draft* (dated 25 January) is attached at **Appendix 4**. This Agreement sets out the role, terms of reference and constitution of the Joint Committee. It also establishes an Officer Operations Group to support the working of the Joint Committee, to give members technical advice, secretariat and administrative support.
- 31 The Inter Authority Agreement provides for one of the participating administering authorities to act as host authority for the Joint Committee. The host authority will be responsible for entering into contracts on behalf of BCPP Joint Committee. This is necessary because the Joint Committee has no separate legal identity. In recognition of the fact that the host authority will take on liability and risk on behalf of the participating administering authorities, the Inter Authority Agreement contains an indemnity clause so this liability and risk is shared. There is no expectation that the Joint Committee will enter into substantial contracts, but it may, for example, occasionally commission specialist advice.

Teckal exemption

- 32 As described in paragraph 13 above, the creation of a wholly owned Teckal compliant company, operating a fully (FCA) regulated structure, is considered to be the most appropriate structure for BCPP Pool.
- 33 To ensure the participating administering authorities can transfer their assets to and enter into contracts with BCPP Ltd, without some form of competitive procurement process being followed, the Company needs to be “Teckal” compliant i.e. it must adhere to Regulation 12 of the Public Contracts Regulations 2015. As each administering authority is a contracting authority for the purpose of the 2015 Regulations, adherence to public procurement rules is the responsibility of each of the individual authorities, not BCPP Ltd.
- 34 Under Regulation 12 of the Public Contracts Regulations 2015, contracts entered into between a local authority and a Teckal compliant company are exempt from the application of public procurement law where the following conditions are met:
- i. the contracting authority exercises control over the Teckal compliant company (either solely or jointly with other authorities) which is similar to that which it exercises over its own departments;

- ii. more than 80% of the activities carried out by the Teckal company are carried out in the performance of tasks entrusted to it by the contracting authority or other bodies which the contracting authority controls; and
 - iii. the Teckal compliant company is not directly privately owned.
- 35 BCPP Ltd will be established with certain “shareholder reserved matters” which enable the participating authorities to demonstrate a controlling influence and therefore Teckal compliance. This element of the operation of BCPP Ltd is set out in the Shareholders’ Agreement, the latest *draft* of which is dated 24 January 2017 and will be made available on request.
- 36 Due to the need to show Teckal compliance, BCPP Ltd has many more matters reserved to the control of the shareholders acting collectively than would be the case in most other companies.
- 37 The exercise of these shareholder rights will be governed by the Company’s Articles of Association and by company law. This means that different arrangements, from simple majority to unanimity, can be attached to different types of decision.

Shareholder agreement

- 38 The *draft* BCPP Shareholder Agreement identifies a number of shareholder reserved matters which can only be decided with the approval of either all of the shareholders (unanimous reserved matters) or a majority (defined as 75%) of the shareholders (shareholder majority reserved matters). At the time of finalising this report, the participating administering authorities were considering, for example, whether the appointment and removal of directors of the Company should be included in either the unanimous or majority reserved matters.
- 39 The role of the administering authorities as shareholders will be to provide oversight and control of the operation of the Company and will include:
- approval of the annual business plan;
 - approval of budgets, fee models, the overall cost base and cost apportionment;
 - appointment and removal of directors, including non-executive directors;
 - approval of the senior executive remuneration policy;
 - approval of significant 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 conflicts of interest policy;
 - review of the risk register; and
 - appointment of the auditor.

40 Other key provisions of the draft Shareholders' Agreement are:

- it is governed by a number of shared objectives which include that the administering authorities will pool their assets through BCPP Ltd to meet their pooling obligations;
- any administering authority may withdraw on giving not less than twelve months' notice expiring on 31 March. On withdrawal, the exiting shareholder must pay outstanding sums owed to the Company;
- on withdrawal, the Company will buy back the shares of an exiting shareholder (subject to having the necessary capital) and the remaining shareholders will be required to adjust the regulatory capital caused by the withdrawal;
- profits of BCPP Ltd lawfully available for distribution (after prudent consideration of the amounts required to be retained by the Company) will first be used to reduce the operating fee (see paragraph 55, below) and then will be available for distribution to the shareholders unless the shareholders agree otherwise;
- shareholders will use best endeavours to resolve shareholder disputes. If not resolved, disputes will be escalated with provision, ultimately, for binding arbitration;
- if a shareholder is in material breach of the Shareholders' Agreement and the breach is not remedied, the shareholder in breach is required to sell its A share back to the Company and its B shares will be reimbursed by the Company subject to the Company having sufficient capital;
- the Shareholders' Agreement may be terminated if all shareholders agree in writing, the Company is wound up, such number of shareholders withdraw that the remaining shareholders inform BCPP Ltd that they are unable or unwilling to maintain the Company's regulatory capital requirements, or the Board determine that the business of BCPP Ltd can no longer be carried on lawfully; and
- the Company will provide information to the shareholders including quarterly financial and performance reports, annual accounts and an annual report of progress against its Strategic Plan

41 The Council's shareholder representative will be exercising the Council's rights in accordance with instructions rather than via delegated authority.

Articles of Association

42 In addition to the Shareholders' Agreement, the other main document governing the operation of BCPP Ltd is the Articles of Association the latest *draft* of which is dated 24 January 2017 and will be made available on

request. The main provisions of the Articles are set out in paragraphs 43 to 45 below.

- 43 BCPP Ltd's Board of Directors will comprise three executive directors and three non-executive directors, one of whom will be the Chairman. Each director must be noted on the Financial Conduct Authority (FCA) application, and some must be designated with FCA approved persons status. To protect shareholder interests, the Company has been constituted with the Chairman having the casting vote on the Board of Directors, to ensure the non-executive directors can carry a vote, should this be required.
- 44 No shareholder may transfer its shares (Class A or Class B) to any other person save to the Company itself as part of a redemption of shares (for example on withdrawal from BCPP Pool).
- 45 Shareholder meetings will be held in private, with a minimum requirement for at least one meeting per year. However, as each shareholder has more than 5% of the total shareholding any shareholder can call a meeting at any time, after giving the required notice.
- 46 As a shareholder in BCPP Ltd the Council will have no involvement in day to day operational matters which will be managed by the Board of Directors. The exercise and conduct of business by the Board is set out in Articles of Association, which will include consulting with shareholders on key strategic and operational matters.

Operational arrangements

- 47 The stated aims of the BCPP pooling proposal are to meet the regulatory requirement to pool assets by collectively investing and to:
 - deliver savings to the participating administering authorities;
 - improve governance by moving the asset management into a financially regulated entity;
 - build capability and capacity to invest in infrastructure and other asset classes to improve the risk adjusted returns of participating administering authorities;
 - through collaboration and consolidation of resources improve technical resilience across the participating administering authorities; and
 - use the scale of the assets managed in the pooling arrangement to more effectively utilise shareholder voting rights to drive corporate governance change in the companies the pension funds invest in.
- 48 BCPP Ltd will be responsible for managing investments in line with the investment strategy and asset allocation requirements as instructed by NCCPF (and the other participating administering authorities) via the Joint Committee. While there will be some changes required from the current processes implemented by the Pension Fund Panel, much will remain as is, but instead of overseeing a range of external investment managers, the Panel will oversee a range of sub-funds managed by BCPP Ltd.

- 49 The Pension Fund Panel will therefore retain responsibility for setting the investment strategy and the asset allocation of NCCPF, as required by the LGPS Regulations. Other activities such as actuarial valuations, setting employer contributions and administering the LGPS will also remain at local level. The role and responsibilities of the Council's LGPS Local Pension Board will remain unchanged by pooling.
- 50 The key change, therefore, is that future responsibility for appointing, removing and monitoring most investment managers will pass from the Pension Fund Panel to BCPP Ltd. For technical reasons to do with the legal format, index tracking investments structured as insurance contracts will remain outside any pooling arrangements, for the time being at least.
- 51 It is a generally accepted principle that over 80% of investment performance is driven by the investment strategy and asset allocation, rather than manager selection. After pooling is implemented, the Pension Fund Panel will retain control over decisions to change contractual arrangements with investment managers to accommodate pooling, including the timing of those changes. Changes will be actioned at an appropriate time to comply with pooling requirements and to coordinate with other participating administering authorities, with the aim of optimising net of fees performance of assets held within the Pool.
- 52 There will inevitably be some compromises in the arrangements as the Council will be one voice amongst twelve. For example, in order to achieve benefits through economies of scale, the number of sub-funds will need to be set such that there are not too many to lose benefits of scale, but not too few to unduly restrict the asset allocation options of participating administering authorities. To ensure the *proposed* range of sub-funds meets NCCPF's needs as far as possible, feedback was provided in November 2016 by officers of the Fund and the Fund's investment consultant, Mercer. Future changes to NCCPF's requirements for sub-funds will be communicated to BCPP Ltd via the Joint Committee.
- 53 BCPP Ltd will be responsible for the actions of the internal investment teams and hiring / firing of external investment managers with the objective of ensuring the performance of each of the sub-funds meets the requirements of the participating authorities. Inevitably, as BCPP Ltd (and the other LGPS pools) will be managing billions of investments held with the ultimate purpose of paying public sector pensions, its investment performance and fees incurred will come under considerable public scrutiny.
- 54 As an FCA regulated entity, BCPP Ltd will be required to operate under the Financial Services and Markets Act 2000 (FCA compliance).
- 55 BCPP Ltd will receive an operating fee from the administering authorities to cover the Company's operating costs. The exact amount and the method of calculating the fee have **not yet been determined**.
- 56 FCA regulated businesses must hold regulatory capital to support the solvency of the Company. There are detailed rules governing the minimum

amount of regulatory capital required. The maximum regulatory capital that can be required is €10m and is based on assets under management. BCPP Ltd is expected to be at this maximum. The regulatory capital will be funded equally by the twelve administering authorities. NCCPF's share is therefore likely to be in the region of £800,000 based on the Euro exchange rate at the time of finalising this report, plus a "buffer" to be held to allow for exchange rate movements.

- 57 Contributions to regulatory capital can be made either by way of equity (the purchase of shares in the Company) or debt (by lending the money to the Company). The BCPP Shareholders' Agreement sets out that the regulatory capital will be provided by the administering authorities' acquisition of Class B shares to the value of their contribution.
- 58 Advice received from Squire Patton Boggs (see Appendix 3) in January 2017 concludes that by funding the regulatory capital through equities rather than loans, the administering authorities will be able to class their ownership of BCPP Ltd as an investment asset of the Pension Fund (as opposed to an investment of the administering authority itself). This means that the Council can include the value of its ownership in BCPP Ltd on the Net Assets Statement of NCCPF rather than on the Balance Sheet of the Council.
- 59 Subject to approval, BCPP Ltd will be owned by the twelve local administering authorities that are currently collaborating to establish this Pool. Each authority will own one Class A voting share, which carries equal voting rights.
- 60 It should be noted that South Yorkshire Passenger Transport Pension Fund will have no shareholding or voting rights, but will instead participate in BCPP Ltd via a contract with South Yorkshire Pensions Authority.

Other comments

- 61 Three of the participating administering authorities in the BCPP Pool currently have internal investment management. Staff working in internal management may TUPE transfer to BCPP Ltd, and their LGPS rights will need to be protected by establishing an admission in one of the participating LGPS funds. The terms of this participation have not yet been agreed, but it is very likely that all of the participating administering authorities will need to give a **guarantee** for the participation of BCPP Ltd as an admitted employer in a LGPS fund. Whilst it is unlikely that the guarantee would be called upon, members should be aware that the value to be guaranteed (if necessary) is unknown at this stage.
- 62 Pooling LGPS assets does not change employee contributions to the LGPS or the pension entitlement of members of the LGPS.
- 63 The expectation of pooling is that it will reduce the costs incurred in running the Scheme, which in turn will reduce the costs to participating employers. It should be noted that any cost savings from pooling will take **many years** to come through, and the ultimate impact on the employer contribution rate is likely to be **very small**.

- 64 The Pension Fund Panel has carefully considered the pooling options available to NCCPF and concluded that the BCPP pooling proposal offered the best value for money. BCPP pooling proposal also offered some geographical cohesion, which no other pool offered. NCC's LGPS Local Pension Board considered the approach taken by the Panel to pooling and, in its report on pooling, concluded that the approach had been "*most thorough and professional*".

Constitution

- 65 To reflect the creation of BCPP Joint Committee, and the shareholder rights and responsibilities attaching to ownership of BCPP Ltd, the Council's Constitution will need to be updated to amend the remit of the Pension Fund Panel.

Conclusions

- 66 Following the Government's approval given in December 2016 for BCPP to go ahead with pooling arrangements, each of the twelve administering authorities within BCPP Pool now must decide whether or not to formally commit to BCPP Ltd.
- 67 It is anticipated that the latest meeting of full Council amongst the twelve administering authorities will be Bedfordshire's, on 22 March 2017, and that the legal documents to establish the BCPP Joint Committee will be executed shortly thereafter.
- 68 The administering authorities collaborating to establish BCPP Ltd will then need to set up the regulated asset management company, obtain FCA registration, appoint staff (including TUPE transfers where appropriate), find a suitable location to operate from, and implement the other necessary arrangements to facilitate pooling such as the appointments of a depositary and custodian.
- 69 The scale and complexity of the work required to establish BCPP Pool should not be underestimated.
- 70 The Government target for LGPS pools to be fully operational and capable of managing assets is from April 2018, which is a very tight timescale. This is already seen as unrealistic for BCPP Pool, and a revised target start date of June 2018 is likely to be adopted.

Next steps

- 71 Once approval is received from the administering authorities, BCPP Ltd will be established. This will require finalisation of the contract terms between BCPP Ltd and the administering authorities. This report recommends delegating this finalisation of key documents to the Chief Executive in consultation with the Deputy Leader of the Council and the Chairman of the Pension Fund Panel.

- 72 Remuneration and appointment of BCPP Ltd's directors may need to be approved before the Company is established and authority will be obtained from the Pension Fund Panel until all legal documents are signed.
- 73 Once BCPP Ltd is established and directors appointed work will progress to obtain FCA registration, secure premises and implement IT systems, among other things.

APPENDICES

- Appendix 1 Secretary of State approval letter for BCPP pooling proposal
- Appendix 2 Eversheds' Summary of Pool Governance Structure
- Appendix 3 Squire Patton Boggs' Legal Opinion on BCPP Pool
- Appendix 4 Draft BCPP Inter Authority Agreement, dated 25 January 2017

Background papers

- Draft BCPP Ltd Shareholders' Agreement dated 24 January 2017
- Draft BCPP Ltd Articles of Association dated 24 January 2017
- Deloitte: Regulatory capital considerations memo dated 23 January 2017
- Eversheds: Revised advice note on regulatory capital and loans dated 12 January 2017
- Eversheds: Advice on basis of participation in LGPS and liability in case of default dated 20 December 2016
- Pension Fund Panel and LGPS Local Pension Board minutes since 18 September 2015 Panel meeting.

IMPLICATIONS ARISING OUT OF THE REPORT

Policy: NCCPF's Investment Strategy Statement, with effect from 1 April 2017, will reflect the adopted approach to pooling.

Finance and value for money: Pooling has the potential, in the long run, to improve the value for money from investment management obtained by NCCPF, however in the next two or three years it will increase costs incurred by NCCPF.

Human Resources: None.

Property: None.

Equalities: None.

(Impact Assessment attached)
Yes No N/A

An impact assessment is not applicable to this decision.

Risk Assessment The risks associated with joining BCPP Pool have been considered by the Pension Fund Panel and LGPS Local pension Board during 2015, 2016 and 2017 to date. Squire Patton Boggs is engaged to provide legal advice to administering authorities, including NCC, to consider the implications of entering into the legal agreements to establish BCPP Ltd.

Customer Considerations: None.

Carbon Reduction: None.

Consultation: Deputy Leader.

Wards: All.

Report sign off:

Chief Executive	Steven Mason
Monitoring Officer/ Legal Services Manager	Liam Henry
Portfolio Holder	Cllr David Ledger