



## OFFICER REPORT TO COUNCIL

### CHANGES TO BORDER TO COAST PENSION PARTNERSHIP GOVERNANCE

#### **KEY ISSUE/DECISION:**

A review of the governance of Border to Coast Pension Partnership (BCPP) has been undertaken to understand whether there are any changes that may be recommended for consideration by Partner Funds (as customers and shareholders) and the BCPP Board. This paper seeks approval from Surrey County Council regarding proposed changes resulting from this review and that future decisions in respect of BCPP matters be delegated to the Surrey Pension Fund Committee and Shareholder representative where appropriate. These recommendations have been reviewed by the Surrey Local Pension Board and are commended by the Surrey Pension Fund Committee (Annex 1).

#### **BACKGROUND:**

1. At its meeting of 21 March 2017, Surrey County Council resolved that:
  - a) Border to Coast Pension Partnership (BCPP) be approved as the County Council's pooling option to provide compliance with the legislation that mandates pooling.
  - b) The acquisition by the Council, as Administering Authority of the Surrey Pension Fund, of one share in the Border to Coast Pensions Partnership Limited be approved and that the Chairman of the Surrey Pension Fund Committee (or Vice-Chairman in their absence) be nominated to attend any meetings of the BCPP Shareholder Board on behalf of the Council.
  - c) The creation of the BCPP Joint Committee be approved and that the Chairman of the Surrey Pension Fund Committee (or Vice-Chairman in their absence) be nominated to attend on behalf of the Council.
  
2. Since BCPP was established, and the initial governance framework approved by the shareholders the business has matured (as of the end of 2021 it is responsible for managing c. £34bn of Partner Fund assets), Tyne & Wear and Northumberland pension funds have merged, there has been regulatory change, and best practice with respect to both corporate governance and the governance of arms'

length public bodies has evolved. Therefore, a review of the governance of BCPP was undertaken with a view to understanding whether there are any changes that may be recommended for consideration by Partner Funds (as customers and shareholders) and the BCPP Board.

3. As at 31 December 2022, the Surrey County Council Pension Fund had approximately £2.4b invested with BCPP.
4. The three main governance documents which support the establishment and running of BCPP are:
  - a) Shareholder matters: Shareholder Agreement / Articles of Association.
  - b) Joint committee matters: Inter Authority Agreement.
5. A review of the BCPP Governance has recently been completed, as it has been five years since BCPP was established and the initial governance framework approved by the shareholders.
6. The review included the operation of the Joint Committee, a review of shareholder governance (which will be discussed with shareholder representatives) and a review of the governing documentation (including the Inter Authority Agreement, Shareholder Agreement, and the Company's Articles of Association).
7. A four-stage process was carried out:
  - a) Stage 1 – initial work considered the areas identified below (and any others considered relevant) and agree the matters to be put forward to stage 2, together with a proposed basis for consideration.
  - b) Stage 2 – involved a cross section of interests covering Partner Funds (both Members of the Joint Committee and Officers) and BCPP. This group considered the initial proposals from Stage 1.
  - c) Stage 3 – involved a review of the proposed changes by an external legal advisor. They carried out a high-level review of the key governance documentation to establish if there are any other provisions in the agreements that need to be amended.
  - d) Stage 4 – implementation. Each Partner Fund and the BCPP Board will progress through relevant governance process.
8. The focus of the review was to update the terms of reference of the BCPP Joint Committee, which are contained in the Inter Authority Agreement and the Shareholder Reserved Matters which are included in the Shareholder Agreement. There are also some changes proposed to the Articles of Association for BCPP, which broadly set out how the company should be run. A summary of the main changes is shown below:

- a) The appointment of the Chair and Vice Chair is currently restricted to two consecutive terms of one year. It is proposed that this is changed to two consecutive terms of two years.
- b) The quorum for the BCPP Joint Committee is to be changed from 8 out of 11, to 60% of the voting members which would be 7 out of 11.
- c) The creation of an urgent action protocol that allows a decision to be taken outside of a normal meeting schedule. This would be a form of delegated power exercised by the Host Authority (currently South Tyneside) in consultation with the Chair and Vice Chair.
- d) The removal of several items currently under the remit of the BCPP Joint Committee where they are no longer considered relevant, because they relate to the period before BCPP became operational or they are now considered to be shareholder matters.
- e) The Shareholder Reserved Matters are split into two categories. The first requires 100% approval from shareholders and the second currently requires 75% approval (or 9 out of 11). It is proposed to change the 75% limit to 66.6% (which will be 8 out of 11).
- f) As with the Terms of Reference of the BCPP Joint Committee, some of the Shareholder Reserved Matters are no longer relevant, as they covered the initial set up period. These items will be removed.
- g) Additional clarification of some of the matters reserved for approval by shareholders has been sought from the legal advisors and the language may therefore be amended. This is to be discussed with BCPP and its legal team.
- h) Amending a clause with a financial limit in order to set the limit by reference to a formula. This will help future proof the provision.
- i) Removal of the requirement for shareholders to approve a conflicts of interest policy for BCPP. This is a company matter. However, shareholders will still be required to approve any conflict or potential conflict of interest any director may have.
- j) To increase the maximum number of directors from 8 to 10. The appointment of any directors will still be a shareholder reserved matter.
- k) To remove the restriction on paying dividends on the B Shares (Article 27.1). This is an issue because a preclusion on paying dividends is deemed to be regarded as a cap, which is not permissible for the shares to be considered for regulatory CERT 1 purposes (their intended purpose in the capital structure). However, notwithstanding a removal of this Article, this does not create a compulsion to pay any dividends on the B shares and this would remain subject to BCPP Board recommendation and shareholder approval. This change is not therefore intended to alter the current position that the B Shares remain as non-dividend paying, as per Partner Fund intention at inception. Additionally, the B Shares are allocated equally between the Partner Funds so any dividends, should they be paid, would be payable equally between the Partner Funds.

9. Although not specifically covered in any of the Governance Documents, the administering authorities acting as shareholders of BCPP had determined that any Non-Executive Director nominated by the administering authorities should serve a two-year term for a maximum of two terms. It is proposed that this be changed to two, three-year terms.
10. One issue that will need to be addressed is that some changes may be needed in respect of the re-organisation of Cumbria County Council, which will result in a change to the administering authority of the Cumbria County Council Pension Fund. The best way to address this is still under consideration but may result in some changes to the Articles and Shareholders' Agreement to cover this and future proof similar scenarios in the future. However, given that this is unlikely to be contentious, partner funds have been asked to progress with the current documentation and this will be addressed prior to the final sign off.
11. Draft versions of the governance documents were shared with Partner Funds earlier this year. These were considered by the Surrey Local Pension Board and the Surrey Pension Fund Committee. The documents have been discussed with BCPP and been subject to review by the Surrey County Council legal team as well external lawyers (Eversheds Sutherland for BCPP and Squire Patton Boggs on behalf of the partner Funds).
12. Squire Patton Boggs confirm that they are comfortable that the changes being made to the documents are acceptable from a legal perspective and can be agreed by the Partner Funds. The Surrey County Council legal team have also been consulted and are satisfied with this due diligence carried out by Squire Patton Boggs.
13. In order to improve governance and provide more agility in decision making, it is recommended that future decisions in respect of BCPP matters are delegated in the following way:
  - a) Inter authority agreement matters (joint committee) – to the Surrey Pension Fund Committee.
  - b) Articles of Association and shareholder agreement matters – to the shareholder representative (the Section 151 officer or their delegate, in consultation with the Chairman of the Surrey Pension Fund Committee).

<b><u>RECOMMENDATIONS:</u></b>
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It is recommended that Council:

1. Approves the proposed changes to the Stakeholder agreement, Articles of Association and Inter Authority Agreement outlined in this report.

2. Approves for all future decisions in respect of BCPP matters to be delegated in the following way:
    - a) Inter authority agreement matters (BCPP Joint Committee) – to the Surrey Pension Fund Committee;
    - b) Articles of Association and shareholder agreement matters – to the shareholder representative (the Section 151 officer or their delegate, in consultation with the Chairman of the Surrey Pension Fund Committee).
  3. Approves for authority be delegated to the Section 151 officer and the Monitoring Officer in consultation with the Chairman of the Surrey Pension Fund Committee to update the Council’s Constitution to reflect the above approvals and to approve for execution by the Council the final versions of any documents necessary to put these decisions into effect.
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**Annexes:**

Annex 1 - Report of the Surrey Pension Fund Committee

**Sources/background papers:**

BCPP Articles of Association  
BCPP Shareholder Agreement  
BCPP Inter Authority Agreement

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