

**County Council**

**22 February 2017**



**Local Government Pension Scheme –  
Asset Pooling through the Border to  
Coast Pensions Partnership**

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**Report of Corporate Management Team**

**John Hewitt, Corporate Director Resources**

**Councillor Andy Turner, Chair of the Pension Fund Committee**

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**Purpose of the Report**

- 1 To recommend an approach which ensures that the Council as Administering Authority of the Durham County Council Pension Fund (‘the Durham Pension Fund’), part of the Local Government Pension Scheme (LGPS), can meet the regulatory requirement for pension fund asset pooling by participating in the Border to Coast Pensions Partnership (‘BCPP’). To authorise consequential changes to the constitution in respect of the operation of the Council’s Pensions Committee.

**Background**

- 2 As at the last valuation date (31 December 2016) the Durham Pension Fund had assets of £2.3billion, liabilities of £2.8billion and a funding level of 82%. There are 116 contributing employers from the public and private sector, and over 50,000 active, deferred or pensioner members.
- 3 Following three years of consultation up to November 2015, the Government issued an Investment Reform Criteria and Guidance document inviting proposals for pooling. Estimated annual savings are £200million - £300million across the Local Government Pension Scheme (LGPS).
- 4 During this time, in the July 2015 Budget, the Chancellor announced the Government's intention to work with (LGPS) administering authorities to ensure they pool investments to reduce costs while maintaining investment performance.
- 5 The Criteria and Guidance published in November 2015 required all LGPS administering authorities to submit to Government initial and detailed proposals by 19 February 2016 and 15 July 2016 respectively.
- 6 At a special meeting on 6 July 2016 the Pension Fund Committee agreed to provisionally join a pooling arrangement named the Border to Coast Pensions Partnership (BCPP), on the basis that this pool represented the best fit for the Durham Pension Fund. At its latest meeting on 8 December 2016, the Pension Fund Committee endorsed the approach and recommendations set

out in this paper. The Durham Pension Fund is a joint signatory to both the BCPP initial and detailed proposals that were presented to Government, and this was with the full agreement of the Pension Fund Committee.

- 7 Eight separate investment pools submitted detailed proposals to Government by 15 July 2016, including BCPP. The other seven pools are as follows (figures as at 31 March 2015):

<b>Pool Name</b>	<b>Members</b>	<b>Total assets (at 31 March 2015)</b>
Central	A group of funds in the Midlands	£34 billion
Brunel	A group of funds in the South West	£22 billion
ACCESS	A South East based group of funds	£36 billion
Wales	All 8 funds in Wales	£12 billion
Northern	Merseyside, Greater Manchester and West Yorkshire	£36 billion
London	All 33 London boroughs	£25 billion
Local Pensions Partnership	Lancashire, London Pension Fund Authority and Berkshire	£14 billion

- 8 On 1 November 2016 the Local Government Pension Scheme (Management and Investment of Funds) Regulation 2016 came into force. These Regulations require the 89 separate Local Government Pension Scheme Funds in England and Wales to combine their assets into a small number of investment pools.
- 9 Under the regulations each LGPS administering authority must formulate, having taken proper advice, 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 states that each LGPS administering authority must commit to a suitable pool to achieve benefits of scale and must confirm their chosen investment pool meets the Investment Reform and Criteria issued in November 2015. The Secretary of State has direction and intervention powers if 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 (Appendix 2) dated 12 December 2016.

## Pooling Proposals

- 12 The BCPP is proposed to be formed of 13 LGPS Funds with combined assets of over £40billion at 30 September 2016. Fund values totalling £35.9billion were included in the proposal to Government as they were based on data as at 31 March 2015 and are set out in the table below.

<b>BCPP Partners:</b>	<b>Fund Value at 31/03/2015 (£ billion)</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>

- 13 In developing the BCPP proposal in response to the Government's pooling requirements, both the independent specialist legal and cost/benefit advisors concluded that the most appropriate approach, given the constituent make-up of the partner Funds of BCPP, was for a separate vehicle to be established in the form of a wholly owned company, which would be regulated by the Financial Conduct Authority (FCA).

## Financial Assessment

- 14 Evidence from independent cost consultants CEM Benchmarking shows that if appropriately implemented, larger asset pools can achieve material benefits in fee savings and / or in transaction costs, plus they generally have improved governance structures. Specialist external advice acquired for BCPP further supports this.

- 15 The proposal submitted to government in July 2016 outlines that the BCPP set up costs are expected to be between £2.28million and £4.15million – of which the Council will be responsible for 1/12 i.e. between £0.19million - £0.35million. These amounts will be payable over the lead-in period up to formal operation of the newly created asset management company, scheduled for April 2018 and will be treated as expenses of the Durham Pension Fund.
- 16 The initial savings projections detailed in the proposal (high and low case) show that once operational the full annual savings to BCPP are estimated to be between £22.4million to £52.4million per year by 2028 (when all locally held alternative investments such as private equity and closed ended funds have been reinvested through BCPP Limited). The payback period for all 12 Funds combined is 2 to 5 years depending on the scenario.
- 17 Specifically for the Durham Pension Fund, the annual savings are estimated between £3.2million and £7.0million by 2028. The payback period for the setup costs is between 3 and 4 years.

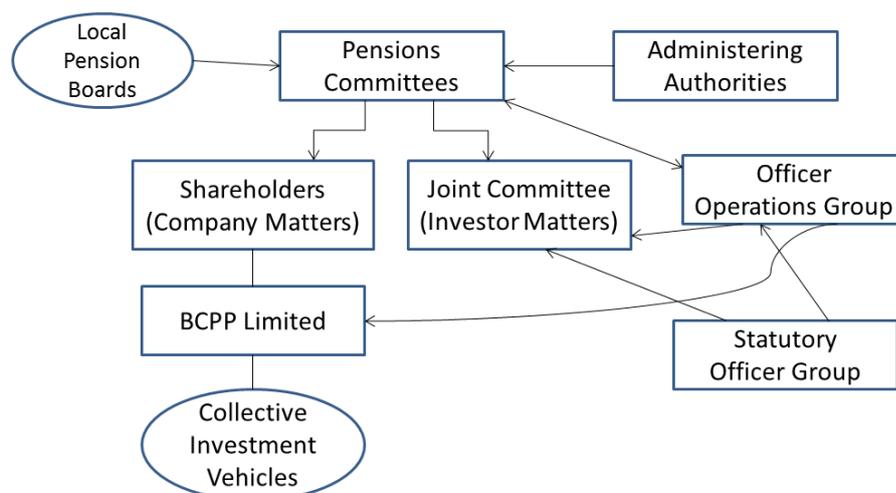
## **Legal Assessment**

- 18 The work to develop the BCPP pooling proposal through the establishment of BCPP Limited has been supported by two sets of external lawyers. Eversheds has been appointed to advise the newly constituted company and to support its set up. Squire Patton Boggs has been appointed to advise the Partner Funds in reaching their decision to approve the arrangements, to ensure the interests of the Partner Funds are reflected in the constitution of the company and the Shareholder Agreement, and to ensure that the governance arrangements, specifically the Joint Committee, are fit for purpose.
- 19 The Summary of Pool Governance Structure document, attached as Appendix 3 gives a general description of the arrangements, and draws out key themes and their implications. It has been prepared by Eversheds and approved by Squire Patton Boggs. It refers to documentation, described elsewhere in this Report, including the Shareholder Agreement and the Inter Authority Agreement and has been negotiated with the benefit of legal advice from both firms. Monitoring Officers, section 151 officers and other representatives from all Administering Authorities have been informed and engaged in the process of developing and finalising the documentation.
- 20 Squire Patton Boggs has provided a legal opinion, attached as Appendix 4, which confirms that the proposal for the Council to participate in the BCPP Pool and to subscribe for shares in BCPP Limited is in compliance with the Council's statutory obligations, and there are no obstacles to the structure which has been proposed.

## **Governance**

- 21 There will be a need for each partner Fund to distinguish between its role as a shareholder, which is a new function, versus its role as an investor in a collective investment vehicle. The two are fundamentally different functions.

- 22 Shareholder functions relate to the ownership of BCPP Limited and are subject to company law and 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.
- 23 Investor rights relate to the partner Funds' investments in the asset pool within BCPP Limited 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 consistent with public law requirements.
- 24 A Council Member will need to be appointed to the Joint Committee. To effectively represent the Fund, the Member of this Committee will need to be fully conversant with the Durham Pension Fund's investment strategy and asset allocation strategy, performance expectations risk appetite.
- 25 It is acceptable that the two functions be undertaken by the same individual, but it is not necessary. It is up to each Partner Fund to decide who will fulfil each of these two roles.
- 26 The proposal is that the Durham Pension Fund be represented by the Chair of the Pensions Committee or any other person nominated from time to time on both the Joint Committee and in exercising voting rights at Shareholder Meetings
- 27 The diagram below details the proposed governance structure of BCPP and how the various control groups are envisaged to interact with each other. These various elements of the governance structure are described below and in more detail in Appendix 3.



- 28 The focus of the Joint Committee will be on 'investor' issues of the Partner Funds (as distinct from shareholder issues). Investor rights relate to the investment in BCPP Limited as governed by legal documents for each

investment e.g. constitutive deed, application form, key investor information, prospectus and FCA handbook of rules and guidance. Investor rights cover such matters as the right to withdraw from the investments, investor reporting (including frequency and content) and investor voting rights.

- 29 The Joint Committee will formally be established by all of the Partner Funds signing the Inter Authority Agreement. This Agreement sets out the role, Terms of Reference and Constitution of the Committee. It also establishes an Officer Operations Group drawn from officers of administering authorities of the Pool to support the working of the Joint Committee with technical advice, as well as a secretariat to provide administrative support.
- 30 The Inter Authority Agreement also provides for one of the Partner Funds to act as Host Authority. In particular, the Authority that acts as Host Authority will be responsible for entering into contracts on behalf of the 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 liabilities and risk on behalf of all the Partner Funds, the Inter Authority Agreement contains indemnity clauses so that this liability and risk is shared. There is no expectation that the Joint Committee will enter into contracts to any significant extent but it may, for example, need to commission specialist advice on occasion.

### **Procurement and public contract regulations**

- 31 As described in paragraph 13 the most appropriate way forward is considered to be to create a wholly owned company, operating a fully regulated structure under the Financial Conduct Authority (FCA).
- 32 To ensure the Partner Funds can transfer their assets to and enter into contracts with BCPP Limited without being required to procure BCPP Limited's services through a competitive process, it will need to adhere to Regulation 12 of the Public Contracts Regulations 2015. As each Administrative Authority is a contracting authority for the purpose of the 2015 Regulations adherence to these public procurement rules is an individual responsibility of each of the individual Authorities, not the new company.
- 33 Under Regulation 12 of the Public Contracts Regulations 2015, contracts entered into between a local authority and compliant company are exempt from the application of public procurement law where the following conditions are met:
  - (a) The contracting authority exercises control over the company (either solely or jointly with other authorities) which is similar to that which it exercises over its own departments;
  - (b) more than 80% of the activities carried out by the company are carried out in the performance of tasks entrusted to it by the contracting authority or other bodies which the contracting authority controls;
  - (c) the company is not directly privately owned.

- 34 It is through the exercise of a number of shareholder reserved matters that the Councils demonstrate a controlling influence and therefore meet this procurement exemption. This element of the operation of the company is governed by a Shareholder's Agreement, and see paragraphs 36 to 38 below, which regulates the relationship between the Partner Funds as shareholders and between the Partner Funds collectively and the company. The Council is being asked to approve the entering into the Shareholder Agreement.
- 35 As BCPP Limited will be set up to meet this procurement exemption there will be many more matters reserved to the control of the shareholders acting collectively than would be the case in a normal company.
- 36 The exercise of these rights will be governed by the Articles of Association of the company and company law. This means that different arrangements from simple majority to unanimity can be attached to different types of decision.

### **Shareholder Agreement**

- 37 The 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 'shareholder majority' - defined as 75% of the shareholders (shareholder majority reserved matters). The reserved matters are listed in Schedule 1 of the Shareholder Agreement, examples being:
- (a) Initial appointment of a director, including non-executive directors of BCPP Limited (100%);
  - (b) changes to directors, including non-executive directors of BCPP Limited (75%);
  - (c) approval of the Initial Strategic Plan and budget (100%).

It is through these reserved decisions in particular that the Partner Funds will exercise a decisive influence over the strategic direction of BCPP Limited.

- 38 The role of the Administering Authorities as shareholders will be to provide oversight and control of the operation of the Company and will include:
- (a) Approval of the Annual Business plan;
  - (b) approval of budgets, fee models, the overall cost base and cost apportionment;
  - (c) appointment and removal directors, including non-executive directors;
  - (d) approval of the senior executive remuneration policy;
  - (e) approval of significant capital requirements;
  - (f) approval of significant transactions (e.g. mergers and acquisitions);
  - (g) approval of any new entrants to BCPP and the terms of entry;
  - (h) determination of exit terms, including notice period and exit treatment;

- (i) approval of conflict of interest policy;
- (j) review of the risk register;
- (k) appointment of the auditor.

39 Other key provisions of the Shareholders Agreement are:

- (a) The Agreement will be governed by a number of shared objectives that are described in Schedule 2 of the Shareholder Agreement. These include that the Administering Authorities will pool their assets through BCPP Limited to meet the Administering Authorities' pooling obligations;
- (b) any Administering Authority may withdraw on giving not less than 12 months' notice to expire on 31 March in any year. On withdrawal, the exiting shareholder must pay outstanding sums owed to the company;
- (c) 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;
- (d) profits of BCPP Limited 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 3.47) and then will be available for distribution to the shareholders unless the shareholders agree otherwise;
- (e) shareholders will use best endeavours to resolve disputes between themselves. If not resolved, they will be escalated with provision, ultimately, for binding arbitration;
- (f) 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 the B shares will be bought by the company (subject to having the necessary capital);
- (g) 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 Limited that they are unable or unwilling to maintain the company's regulatory capital requirements, or the Board determine that the business of BCPP Limited can no longer be carried on lawfully;
- (h) the company will provide information to the shareholders including quarterly financial and performance reports, annual accounts and an annual report of progress against the Strategic Plan.

### **Articles of Association**

40 In addition to the Shareholder Agreement the other main document governing the operation of BCPP Limited will be the Articles of Association. The main provisions of this document of which Members should be aware are set out below.

- (a) It is proposed that the Board of Directors will comprise of 3 Executive Directors and 3 Non-Executive Directors, one of which will be the Chairman. Each of these directors are required to be noted on the Financial Conduct Authority (FCA) application with some required to be designated with approved person status. Following accepted good governance, and to protect shareholder interests, it is proposed that the Chairman has the casting vote to ensure the Non-Executive Directors carry vote, should this be required;
- (b) no shareholder may transfer its shares (Class A or Class B) to any other person save to the company as part of a redemption of shares (for example on a withdrawal by that shareholder);
- (c) meetings will be held in private, and once established there will be the minimum requirement for an annual shareholder meeting. However, as each shareholder will have more than 5% of the total shareholding they can call a meeting at any time (given the required notice period);
- (d) subject to approval from the respective Administering Authorities, BCPP Limited will be owned by the 12 local authorities as Administering Authorities within the investment pool. Each authority will have 1 Class A voting share with 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. Currently operational control is delegated to South Yorkshire Pension Fund;
- (e) the duties and responsibilities of a shareholder mean that each Partner Fund has protection as it will have limited liability (subject to regulatory capital requirements);
- (f) the shareholder representative will be exercising the Council's rights in accordance with instructions rather than have any delegated authority. Appropriate support will be provided to ensure any matters of process, governance or conflict are appropriately addressed;
- (g) generally as a shareholder there will be no involvement in day to day company operational matters, which are 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 on key strategic and operational matters.

## **Constitution**

- 41 To reflect the creation of the Joint Committee, and the shareholder responsibilities, the Constitution will need to be updated to reflect the amended Terms of Reference of the Pension Fund Committee.

## **Operational Arrangements**

- 42 The aim of the BCPP pooling proposal is to meet the regulatory requirements to pool assets by collectively investing and to:
- (a) Deliver savings to the Partner Funds;

- (b) improve governance by moving the asset management into a financially regulated entity;
  - (c) build capability and capacity to invest in infrastructure and other asset classes to improve the risk adjusted returns of partner Funds;
  - (d) through collaboration and consolidation of resource improve technical specialisms and resilience across Partner Funds;
  - (e) use the scale of the pool to more effectively utilise shareholder voting rights to drive corporate governance change in the companies the Funds invest in.
- 43 BCPP Limited will be responsible for managing investments in line with the investment strategy and asset allocation requirements as instructed by the Durham Pension Fund and the other Partner Funds. While there will be some changes required from the current processes, much will remain as is, for example instead of overseeing a range of external managers, the Pension Fund Committee will oversee a range of sub-funds managed by BCPP Limited.
- 44 The Pension Fund Committee will therefore retain responsibility for setting the investment strategy and the asset allocation of the Fund. Other activity such as actuarial valuations, the setting of employer contributions and pensions administration will also remain at the local level.
- 45 The key change is therefore that responsibility for the appointment, monitoring and termination of investment managers will pass from the Pension Fund Committee to BCPP Limited. It is generally accepted that over 80% of investment performance is driven by determining the investment strategy and asset allocation, rather than selecting investment managers to implement that strategy.
- 46 There will inevitably need to 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 appropriate: not too many to lose these benefits, but not too few to unduly restrict the asset allocation requirements of Partner Funds. To ensure the range of sub-funds meets the Durham Pension Fund's needs as far as possible, feedback has been provided by both Officers of the Fund and the Fund's Investment Adviser.
- 47 BCPP Limited will be responsible for the actions of the internal investment teams and hiring / firing external investment managers with the objective of ensuring the performance of each of the sub-funds meets the requirements of the Partner Funds.
- 48 As an FCA regulated entity, BCPP Limited will be required to operate under the Financial Services and Markets Act 2000 (FCA compliance) and the Corporate Governance Code, as well as local authority regulations.

- 49 BCPP Limited will receive an Operator Fee from the Administering Authorities, which is intended to cover the Company's operating costs. The exact amount and method of calculating the Fee have not yet been determined. To the extent that the Fee represents a commercial charge in consideration for services that the Company provides to the Administering Authorities, at market value (i.e., there is no overcompensation), and/or is a charge that a private investor similarly placed would expect to pay, it would not constitute State aid.
- 50 FCA regulated businesses are required to hold regulatory capital designed 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 Limited is expected to be at this maximum. It is proposed that this requirement is funded equally between the 12 Administering Authorities. The Council's contribution is therefore likely to be in the region of £725,000 based on the Euro exchange rate at the time of writing of this report.
- 51 The Administering Authorities could make their contributions to regulatory capital in one of two ways – either by way of equity (the purchase of shares in the company) or debt (by lending the money to the company). The Shareholder Agreement proposes that the regulatory capital is provided by all of the Administering Authorities by them acquiring a class of shares in the company (Class B shares) to the value of their contribution. There are two main reasons for this. The first is that the Pension Fund that accepts as its members, the employees of BCPP Limited, through an admission agreement, will not be allowed in law to make its contribution by way of a loan. The second is that because loans rank higher than equity on an insolvency, then in this very unlikely event, one or more Partner Funds would have priority over the others.
- 52 As these arrangements are solely for the purpose of pooling Pension Fund assets, which are attributable to the Fund's employers, it is proposed that the Council's contribution is made from the Pension Fund rather than Council reserves. This contribution will be held by BCPP Limited and will earn a suitable rate of interest.

## **Conclusion**

- 53 Following the Government's approval in December 2016 for BCPP to go ahead with pooling arrangements, each of the 12 administering authorities within the pool (that are to acquire a shareholding) will need to decide whether or not to formally commit to BCPP. In anticipation of this, these authorities have been reviewing their respective governance arrangements and determining the necessary changes.
- 54 It is anticipated that the last of the Full Council meeting of the 12 administering authorities will be on 21 March 2017 and that the necessary documents will be executed shortly thereafter.

- 55 The administering authorities forming the BCPP pool will then need to push forward with these proposals and set up the regulated asset management company BCPP Limited, ensure its FCA registration, appoint staff (including through TUPE transfer 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.

### **Recommendations and reasons**

- 56 That the Council, as administering authority for the Durham County Council Pension Fund meets its regulatory requirement to pool Pension Fund assets by:
- (a) Agreeing to be a member of the Border to Coast Pensions Partnership and to adopt its arrangements;
  - (b) entering into the Inter-Authority Agreement between the Council and the Administering Authorities of the other Pool Funds;
  - (c) entering into the Shareholder Agreement between the Council and the Administering Authorities of the other Pool Funds and Border to Coast Pensions Partnership Limited;
  - (d) agreeing the Articles of Association to be adopted by Border to Coast Pensions Partnership Limited;
  - (e) approving the establishment of the Border to Coast Pensions Partnership Joint Committee as a formal Joint Committee under section 102 of the Local Government Act 1972 of in accordance with and to carry out the functions as set out in the Inter-Authority Agreement;
  - (f) approving the subscription by the Durham County Council Pension Fund of 1 Class A voting share in the asset management company, Border to Coast Pensions Partnership Limited;
  - (g) nominating the Chair of the Pensions Committee or such other person determined by the Pensions Committee from time to time to vote this shareholding;
  - (h) approving the subscription by the Durham County Council Pension Fund for such number of Class B non-voting shares in the Border to Coast Pensions Partnership Limited as shall be necessary to ensure that the Council contributes by way of equity one twelfth of the minimum regulatory capital requirement of the company as determined in by the requirements of the Financial Conduct Authority;
  - (i) appointing the Chair of the Pensions Committee or such other person determined by the Pensions Committee from time to time to represent the Council on behalf of the Fund at the Border to Coast pensions Partnership Joint Committee meetings;

- (j) making the consequential changes required to the Constitution to reflect these new arrangements;
- (k) authorising the Corporate Director Resources in consultation with the Monitoring Officer to finalise the approval and execution, where required, of all legal documents necessary to give effect to the above decisions.

### **Background papers**

- (a) Inter Authority Agreement
- (b) Shareholder Agreement
- (c) Articles of Association

Available to Members located in the Members' Library.

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**Contact: Nick Orton Tel: 03000 269798**

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## **Appendix 1: Implications**

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**Finance** – The Pension Fund will be required to contribute up to an estimated £350,000 in set-up costs for BCPP Limited, it is estimated it will take 3 to 4 years to recover this through ongoing savings made as a consequence of lower investment costs through the pooling arrangement.

**Staffing** - None

**Risk** – The BCPP pooling project has a risk register. Council officers and members are involved with the project and contribute to the evaluation, monitoring and mitigation of risks.

**Equality and Diversity / Public Sector Equality Duty** - None

**Accommodation** - None

**Crime and Disorder** - None

**Human Rights** - None

**Consultation** - None

**Procurement** – Public sector procurement regulations are being taken into account in the creation of BCPP Limited to ensure that the Partner Funds are able to procure its services without the requirement to undertake a tendering process

**Disability Issues** - None

**Legal Implications** – Participation in BCPP Limited will ensure the Council complies with its obligation to engage in pooling of pension fund assets

## Appendix 2 – Approval letter from Minister for Local Government



Department for  
Communities and  
Local Government

Marcus Jones MP  
Minister for Local Government

Department for Communities and Local  
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[www.gov.uk/dclg](http://www.gov.uk/dclg)

Clr Denise Le Gal, Surrey  
Clr Sue Ellis, South Yorkshire  
Clr Doug McMurdo, Bedfordshire

*On behalf of the participating funds listed at end*

12 DEC 2016

*Dear Councillors,*

### **BORDER TO COAST PENSION PARTNERSHIP (BCPP): FINAL PROPOSAL**

I would like to thank you and all the authorities involved in the proposed BCPP pool for your final proposal, which we discussed at our meeting on 24 November. I was glad to note your commitment to work together to secure benefits for all participating funds, building on your existing internal expertise. I appreciate the hard work and commitment from elected members and officers which the proposal represents, and welcome your determination to deliver on time.

It is now coming up to a year since we set the framework for reform of the investment function of the local government pension scheme, through the guidance and criteria for pooling published in November 2015. I am pleased that authorities across the scheme have responded to the challenge and come together to form partnerships of their own choosing based on a shared view of investment strategy. We do not underestimate the scale of the changes required, but the Government remains committed to pooling in order to deliver reduced costs while maintaining performance as well as to develop capacity and capability for greater investment in infrastructure.

I appreciate that overall costs are likely to rise in the early years, and that salaries are likely to be high for key senior roles within pool operators. But I consider that this is a price worth paying in order to achieve substantial savings, already estimated by the pools at £1-2 billion by 2033 or up to £200 million pa in the medium term. I am confident that as the reform beds in, there are further savings to be achieved.

I therefore expect every administering authority in England and Wales to participate in a pool. I also expect authorities to place all assets in their chosen pool, unless there is a strong value for money case for delay, taking into account the potential benefits across the pool, and to delegate investment manager selection to the pool. In addition my officials will be consulting with all pools on the potential to work with the Local Pensions Partnership to help ensure it delivers the full benefits of scale.

## Appendix 2 – Approval letter from Minister for Local Government

I must also underline that all bodies effectively undertaking collective investments will need to be authorised at the appropriate level by the Financial Conduct Authority (FCA). I appreciate the significant costs and effort required to secure authorisation. However, given the scale and complexity of the pools, and the substantial public funds involved, scheme members and the local taxpayers who underpin the scheme have a right to expect the high level of assurance which is provided by FCA authorisation. Individual funds will continue to be responsible for their investment strategies and asset allocation and will continue to require high standards of governance.

On the basis set out above I am pleased to confirm that I am content for you to proceed as set out in your final proposal. I hope you will continue to work closely with my officials, including on the concerns you raised relating to the Markets in Financial Instruments Directive II (MiFIDII).

Turning to the future, I appreciate there has been some delay this autumn, but I have no plans to extend the deadline for pools to become operational in April 2018. I will be reviewing progress of all the pools in spring and autumn 2017 and will expect to see a core team in place in spring 2017 and an application for Financial Conduct Authority authorisation, where not already in place, in autumn 2017. I look forward to seeing more detailed plans for delivering savings, and increasing your infrastructure investment in line with your stated ambition. I will also expect detailed plans for reporting, including on fees and net performance in each listed asset class against an index, standardised across the sector.

*Your Sincerely,*



MARCUS JONES MP

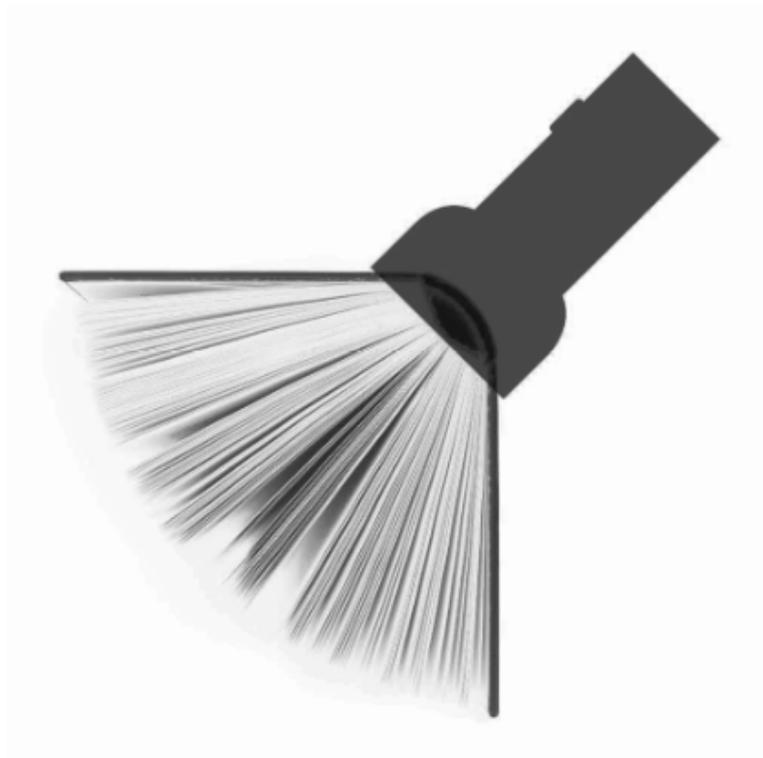
### Participating funds:

Bedfordshire  
Cumbria  
Durham  
East Riding  
Lincolnshire  
North Yorkshire  
Northumberland  
South Yorkshire  
South Yorkshire Integrated Transport Authority  
Surrey Teesside  
Tyne and Wear  
Warwickshire

EVERSHEDS

**Border to Coast Pensions Partnership**  
Summary of Pool Governance Structure

25 JANUARY 2017



## Appendix 3 – Summary of Pool Governance Structure

### Border to Coast Pensions Partnership Summary of Pool Governance Structure

This note has been prepared solely for the administering authorities participating in the Border to Coast Pensions Partnership Pool ("BCPP Pool") to provide a summary explanation of the structure of the BCPP Pool governance arrangements and may be circulated by authorities when seeking approval for the structure. We do not accept liability to any other person other than the authorities in respect of this advice note.

The BCPP Pool is the collective term for the range of collective investment vehicles (including an Authorised Contractual Scheme ("ACS")) that may eventually be used to allow the administering authorities to pool their respective investments. The BCPP Pool will be run and operated by Border to Coast Pensions Partnership Limited ("the Company").

This note is intended to be a summary of the BCPP Pool governance structure and the detailed and definitive provisions of the governance structure can be found in the following core documents:

- the Company's Articles of Association,
- the Shareholders' Agreement; and
- the Inter Authority Agreement (containing the BCPP Joint Committee's Terms of Reference and Constitution and the Terms of Reference for the Officer Operations Group).

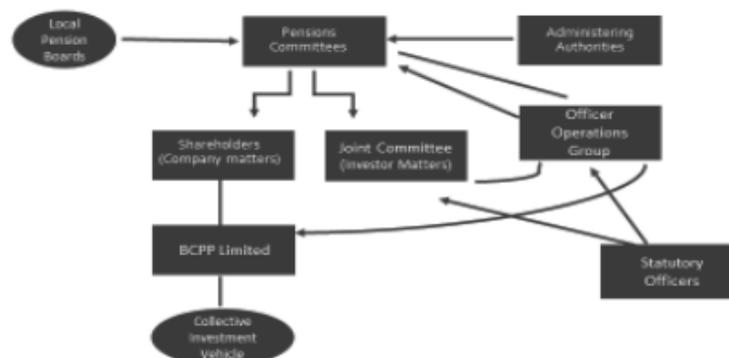
#### 1. Background

1.1 We have been asked to provide a high level summary of the BCPP Pool governance structure, in particular setting out the roles of the structure's key bodies, including the Company, the Shareholder Representatives, the BCPP Joint Committee, the Officer Operations Group and the Statutory Officers.

1.2 Please note that each administering authority still retains its core duties and responsibilities as an LGPS administering authority in respect of its own fund. Administering authorities may need to review their current pension committee structures to see if they will need changing once the BCPP Pool is established and/or to deal with the transition period whilst assets are being moved over to the Pool.

In broad terms the governance structure is summarised in the following diagram:

#### BCPP Pool Governance Structure



## Appendix 3 – Summary of Pool Governance Structure

### Border to Coast Pensions Partnership Summary of Pool Governance Structure

#### **Border to Coast Pensions Partnership Limited**

- 1.3 The Company will be a private company limited by shares. The Company will be incorporated in England and Wales under the Companies Act 2006 and will have a registered office.
- 1.4 The Company's constitution is contained in its Articles of Association which defines the responsibilities of the directors, the kind of business to be undertaken, and the means, along with the Shareholders' Agreement, by which the shareholders exert control over the Company and its board of directors.
- 1.5 The Company will have twelve shareholders being, Bedford Borough Council, Cumbria County Council, Durham County Council, The East Riding of Yorkshire Council, Lincolnshire County Council, Middlesbrough Borough Council, Northumberland County Council, North Yorkshire County Council, The Council of the Borough of South Tyneside, South Yorkshire Pensions Authority (acting on behalf of itself and the Sheffield City Region Combined Authority), Surrey County Council and Warwickshire County Council. As such it will be a "controlled company" within the meaning of the Local Authorities (Companies) Order 1995.
- 1.6 The Company has been formed to act as an alternative investment fund manager to run and operate one or more collective investment vehicles (including an ACS) to allow the administering authorities to pool their respective investments. In due course the Company will become authorised by the Financial Conduct Authority. Unlike the Company, the ACS itself is not a separate legal entity but is a contractual arrangement.
- 1.7 The Company will be run by a board of directors which will comprise of a non-executive chair and two other non-executive directors and up to three executive directors. The directors are appointed (and can be removed) by the agreement of the administering authorities as shareholders.
- 1.8 The board of directors will meet at least four times a year. The directors have to produce an annual business plan including an annual budget for approval by all of the shareholders.

#### **2. Shareholder Representatives**

- 2.1 Company shareholder meetings will be the forum for dealing with the shareholder rights of the twelve administering authorities as individual shareholders in the Company. This is distinct from the Company's board of directors and also from the BCPP Joint Committee (see below).
- 2.2 At Company shareholder meetings each administering authority as shareholder exercises one vote. Certain major decisions (e.g. changes to the Articles of Association, rights in shares, buy-back of shares etc) which would have an effect on the shareholders' rights are usually required, through the Companies Act 2006, to be approved by the shareholders at a general meeting called by the directors of the Company.
- 2.3 The Shareholders' Agreement records the terms of the administering authorities' relationship with each other as shareholders and regulates certain aspects of the affairs and their dealings with the Company. The Agreement provides the framework for the administering authorities to act in a collaborative and coordinated way. To the extent that the Shareholders' Agreement conflicts with the terms of the Articles of Association then the Shareholders' Agreement prevails and the Articles may need to be amended accordingly.
- 2.4 In addition, the Shareholders' Agreement specifies the voting levels for various shareholder decisions. From a procurement perspective, it is important to retain sufficient control over the Company to address 'Teckal' issues.
- 2.5 In particular, the Shareholders' Agreement provides that certain key strategic shareholder decisions require either 100% or 75% approval of all the shareholders (as appropriate) before they can be approved at a shareholders' meeting. These are known as 'reserved matters' and are set out in the Shareholders' Agreement.

## Appendix 3 – Summary of Pool Governance Structure

### Border to Coast Pensions Partnership Summary of Pool Governance Structure

- 2.6 It is intended that shareholders' meetings will be held at least annually (which is the minimum legal requirement) but may occur more often as required. Quorum for a shareholders' meeting will be nine unless a matter requires 100% approval (see below) when all shareholders will need to attend.
- 2.7 Decisions requiring 100% approval include (without limitation):
- 2.7.1 approving the Company's annual business plan including its annual budget;
  - 2.7.2 initial appointment of directors of the Company (with subsequent removal and appointments requiring 75% approval);
  - 2.7.3 admitting any new LGPS administering authority as a new shareholder of the Company or as a new investor in the BCPP Pool;
  - 2.7.4 extending the activities of the Company outside the scope of its business;
  - 2.7.5 closing down any operation of the Company's business;
  - 2.7.6 altering any of the provisions of the Articles of Association or any of the rights attaching to the shares;
  - 2.7.7 allotting, reducing or cancelling any of the Company's share capital; and
  - 2.7.8 passing a resolution to wind up the Company.
- 2.8 Company shareholder meetings are subject to the requirements of the Company's Articles of Association, the terms of the Shareholders' Agreement and general company law. They are therefore subject to different rules to a BCPP Joint Committee meeting (for example in relation to areas such as access to information and voting rules) and for this reason Company shareholder meetings need to be kept separate from BCPP Joint Committee meetings.
- 2.9 Because an administering authority cannot physically appear at a Company shareholders' meeting, it needs to appoint a person to attend the meetings on its behalf and to cast its vote or state its view. Such a person is representing the authority and acting on instructions from the authority. It does not therefore matter legally whether that person is a member or an officer since no delegated powers are being exercised.
- 2.10 Any individual attending in this role needs to be briefed and instructed before attendance and to report back after each Company shareholder meeting. In practice, if something occurs at the meeting itself which requires a shareholder decision or view then the representative, whether a member or an officer, may be required to exercise some degree of discretion. That exercise of discretion should, so far as possible, reflect the known views of the authority.
- 2.11 The representative, if an elected member, may be the same individual that represents the administering authority on the BCPP Joint Committee. Ordinarily the interests of each authority as a shareholder in the Company ought to be aligned with the interests of the authority in its capacity as an investor/customer in the BCPP Pool, so conflicts of interest are unlikely to arise. However, if they do arise, having different individuals to represent the authority at the Company shareholders' meetings and on the BCPP Joint Committee may help to reduce the potential for conflicts of interest between views as a shareholder and views as an investor/customer and may assist in retaining clarity of the governance functions being carried out. However, this is a matter for each administering authority to decide and should common appointments be made then an appropriate conflicts policy will be required.

## Appendix 3 – Summary of Pool Governance Structure

### Border to Coast Pensions Partnership Summary of Pool Governance Structure

#### 3. **BCPP Joint Committee**

- 3.1 The BCPP Joint Committee established under the Local Government Act 1972 will be the forum for discussing common investor/customer issues relating to the Company and the ACS.
- 3.2 Each administering authority, in addition to being a shareholder in the Company, will be an individual investor in the ACS (and any other pooled vehicles managed by the Company) and therefore each authority will have investor rights afforded by its contractual agreement(s) with the Company.
- 3.3 For example, in the case of the ACS, the contractual relationship between an administering authority and the Company is contained in a suite of key investor documents. This is made up of the constitutional deed, application form, key investor information, prospectus and FCA handbook of rules and guidance. The administering authority's investor rights are embedded in those documents and cover matters including the right to withdraw from the pooled vehicle, investor reporting (including frequency and content), obligations of the ACS manager to the investors and investor voting rights (for example, on proposed changes to the pooled vehicle).
- 3.4 There may be other arrangements creating other contractual relationships between an administering authority and the Company, for example equivalent documentation relating to other collective investment vehicles that the Company may operate and/or asset management agreements where the Company is managing assets that remain under the direct ownership of an administering authority.
- 3.5 The administering authorities are not delegating their key strategic asset allocation or other investment decision making powers or investor rights to the BCPP Joint Committee. Instead these will be retained for exercise by the individual administering authorities through their pension committees in the normal way, subject to consideration of any recommendations the BCPP Joint Committee may make.
- 3.6 The Terms of Reference and Constitution of the BCPP Joint Committee are set out in the Inter Authority Agreement. It is expected the BCPP Joint Committee will meet at least once a year (with support from the Officer Operations Group) to undertake the activities set out in its Terms of Reference. The activities differ during the set-up phase of the BCPP Pool and when the Pool becomes operational.
- 3.7 The BCPP Joint Committee would not normally make binding decisions on matters covered in its Terms of Reference but would make recommendations to each administering authority for each authority to decide. However the Constitution of the Joint Committee does allow for it to make decisions on matters delegated to it by the administering authorities should they wish to do so.
- 3.8 Where any issues do need to be resolved by the BCPP Joint Committee, these will be decided by a majority vote of those members present. Each administering authority represented on the Joint Committee exercises one vote.
- 3.9 Each authority will be represented on the BCPP Joint Committee by one of its elected members. In accordance with local government law principles, members cannot be mandated how to vote and therefore must use their own judgement when considering Joint Committee business. However, the views of the member's authority will be a factor in any decision.
- 3.10 Given the restricted the role of the BCPP Joint Committee, alternative and less formal arrangements to a joint committee structure could have been considered. However, a joint committee structure established under the Local Government Act 1972 provides a tried and tested structure that delivers a clear and transparent separation of shareholder matters and investor/customer matters.

## Appendix 3 – Summary of Pool Governance Structure

### Border to Coast Pensions Partnership Summary of Pool Governance Structure

#### 4. Officer Operations Group

- 4.1 The Group will be made up of an officer from each administering authority (such as a pension fund officer). The Group is not a legal entity but a working group of officers. The Terms of Reference for the Group are set out in the Inter Authority Agreement confirming how the Group will be comprised, operate and be resourced and funded.
- 4.2 As this is a working group of officers, no statutory functions can be delegated to the Group. The role of the Group is to:
- 4.2.1 work with the BCPP Joint Committee to support the functions of the BCPP Joint Committee as set out in the BCPP Joint Committee's Terms of Reference;
  - 4.2.2 provide a central resource for advice, assistance, guidance and support for the BCPP Joint Committee (and also if requested for the administering authorities as a collective group of investors in the BCPP Pool);
  - 4.2.3 provide technical support at meetings of the BCPP Joint Committee, for example by proving and delivering performance management reports for the Joint Committee on all aspects relating to the provision of services by the Company; and
  - 4.2.4 act as a conduit for the BCPP Joint Committee to communicate back to the respective authorities and/or direct to the Company as appropriate.

#### 5. Statutory Officers

- 5.1 In addition to the Officer Operations Group, Statutory Officers e.g. the section 151 officer and monitoring officer from each administering authority will individually and collectively support the administering authorities as shareholders, the BCPP Joint Committee and the Officer Operations Group.
- 5.2 It is not intended that there be a formal Statutory Officers Group but the relevant officers will exercise their statutory functions individually and/or collectively as the need arises.

#### Eversheds LLP

25 January 2017

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### Borders to Coast Pension Partnership Limited: Legal Opinion

#### 1. Background

In our capacity as legal advisers to the participant funds in the pooling arrangement known as Borders to Coast Pensions Partnership (the "BCPP Pool"), we have been asked to provide a legal opinion to each of the administering Authorities who have agreed to participate in that arrangement to support that participation (the "Authorities").

We have reviewed and commented, on behalf of the Funds, on the following documentation:

- a summary of the governance arrangements prepared by Eversheds;
- a draft Shareholders' Agreement to be entered into by each of the participating funds in their capacities as Administering Authorities of those funds and Borders to Coast Pensions Partnership Limited ("BCPP Limited");
- a draft Inter-Authority Agreement ("IAA") between the Authorities; and
- a draft set of Articles of Association for BCPP Limited.

We have also seen copies of three advice notes dealing with the following subjects:

- Eversheds' advice on the basis of LGPS participation and liability in case of default dated 20 December 2016;
- Eversheds' advice on Regulatory Capital dated 12 January 2017, and
- Deloitte's draft advice Regulatory Capital dated 23 December 2016.

#### 2. Compliance with relevant legislation: Corporate Structure

The participation in the BCPP Pool involves the subscription for separate classes of shares in BCPP Limited on an equal basis by each of the Authorities.<sup>1</sup>

The creation of two classes of shares, one of which will be voting ("A Shares") and one non-voting ("B Shares"), enables simplification of the treatment of voting and regulatory capital which is necessary for the purposes of BCPP Limited gaining appropriate authorisation from the

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<sup>1</sup> South Yorkshire Pensions Authority will be acting on its own behalf and that of the Sheffield City Region Combined Authority, which is the administering authority for the South Yorkshire Passenger Transport Pension Fund (the "SYPTPF") which, it has been decided for economic reasons, will not become a shareholder in its own right.

## Appendix 4 – Squire Patton Boggs Legal Opinion

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Financial Conduct Authority (the "FCA") in order to conduct its business i.e. as an alternative investment fund manager.

In subscribing for the shares in BCPP Limited, each of the Authorities will be using their statutory powers under the Localism Act 2011 (in particular Sections 1 and 4(2)), respectively the general power of competence and the requirement on local authorities to use a company where it does something for a commercial purpose).<sup>2</sup> The other relevant statutory powers are contained in the Local Government Pension Scheme Regulations 2013 which designate (in schedule 3) the Authorities which are required to maintain and administer pension funds.

Because the purpose of participation in the BCPP Pool is to enable the Authorities to discharge their statutory investment powers (in respect of pooling of investments) by their pension funds, it is appropriate for both the voting A shares and the regulatory capital represented by B Shares to be held as investments of the Pension Funds.

The Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016 ("2016 Regulations") effectively ring-fence Pension Fund money from other assets of the Authorities under Regulation 4. This applies of course to benefit payments, which must be paid from the Pension Fund (Regulation 4(4)), but also to all income and capital gains arising in respect of investments held by the fund (Regulation 4(1) (c) and (d). Regulation 4(5) goes on to state that "any costs, charges and expenses incurred [in] administering a pension fund may be paid from it", except for costs relating to pension sharing orders (ie relating to divorce cases). From a legal perspective we see no reason why the costs of investing in (including the future operation of) BCPP Limited cannot be charged to the Pension Fund, in the same way as other investment expenses, since these are incidental to the investment made.<sup>3</sup>

By investing in BCPP Limited and consequently the BCPP Pool, the Authorities will be complying with their other obligations under the 2016 Regulations.). Since the repeal of the previous regulations (the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009), there are no quantitative limits on the way in which each administering authority must invest its pension fund, other than a prohibition on investing more than 5% of the total value of that fund in entities which are connected with the relevant authority within the meaning of Section 212 of the Local Government and Public Involvement in Health

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<sup>2</sup> As far as the SYTPF is concerned, the relevant references are to the Transport Act 1968, Sections 10A and 10B(6).

<sup>3</sup> This is a legal, not an accounting, interpretation of Regulation 4. Please see Schedule 1 re the scope of our advice.

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Act 2007 or more generally by reference to the restriction on employment related investments under section 40 of the Pensions Act 1995. As explained in Eversheds' note on Regulatory Capital, those tests will only apply to the Authority in whose pension fund BCPP Limited participates as an employer. Those restrictions will not be breached on mathematical grounds by that Authority (one twelfth of the regulatory capital requirement of EUR10 million being significantly less than the value of any of the Authorities' pension fund assets).

Separately, there are obligations on each of the Authorities to formulate an investment strategy in accordance with Regulation 7 (the "**Investment Strategy Statement**") and to comply with any directions by the Secretary of State under Regulation 8. Each Authority's Investment Strategy Statement therefore must confirm that its participation in the BCPP Pool will discharge the statutory obligation under Regulation 7(2)(d), (i.e. to state the Authority's approach to pooling of investments, including the use of collective investment vehicles and shared services).

A further consequence of the corporate structure which is required for FCA purposes is that, because each of the Authorities will have a controlling influence over BCPP Limited, it will be a "controlled company" for the purposes of the Local Authorities (Companies) Order 1995. This (and the disclosure obligations flowing from that status) are reflected in the Shareholders' Agreement.

### 3. Fiduciary duties of the Authorities

DCLG's consultation paper on the 2016 Regulations (in their draft form) made it clear that the Government accepted that Administering Authorities, when exercising their statutory investment powers, did so under a fiduciary duty (to members and employers). There is nothing in the pooling arrangement that would conflict with that duty.

### 4. Procurement compliance

BCPP Limited is to be established as a company which is compliant with Regulation 12 of the Public Contracts Regulations 2015 (the ("**Regulations**")<sup>4</sup>. This allows the Authorities to enter into contracts with BCPP Limited without observing the standard requirements of the Regulations, including most importantly the requirement for an open and competitive tender. This exception applies because: (i) each of the Authorities will exercise control over BCPP

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<sup>4</sup> The test is commonly referred to by reference to the leading case in this area, Teckal Srl v Comune de Viano and Azienda Gas-Acqua Consorziale di Reggio-Emilia [1999], whose principles have now been codified into Regulation 12.

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Limited jointly: (ii) its activities will be carried out solely in the performance of tasks entrusted to it by the Authorities; and (iii) there will be no private capital participation in BCPP Limited.

The essential element of joint control is evidenced through the list of reserved matters which is set out in Part A of Schedule 1 to the Shareholders' Agreement. In addition, the Shareholders' Agreement specifies that the business of BCPP Limited will be to act as an alternative investment fund manager for the Shareholders (clause 2), and there will be no private investment in the company. We are accordingly satisfied that the engagement of BCPP Limited by each of the Authorities will not require the procurement of those services to be provided by BCPP Limited to be competitively tendered.

It should be noted that compliance with the conditions set out above is an ongoing requirement in order to ensure that the Authorities continue to benefit from the exception in the Regulations. Any future changes to the nature of the Authorities' control over BCPP Limited, the scope of its activities or the entry of any private capital may therefore alter this analysis. For that reason we have drafted into the amendment clause in the Shareholders' Agreement a further protection that no amendment will be permitted that would have the effect of undermining the compliance of BCPP Limited with the Regulations.

#### 5. State Aid

Each of the Authorities will pay BCPP Limited a fee, referred to as the operating charge, which we understand is intended to cover BCPP Limited's operating costs. The method of calculating the operating charge and its likely amount have yet to be determined. From a State aid compliance perspective, on the assumption that the charge represents a commercial charge in consideration for services that BCPP Limited provides to the Authorities, at market value, and thus is a cost that a private investor in a similar position to the Authorities would expect to pay, it will not constitute State aid. In addition, if BCPP Limited will only act for the Authorities and not for any third parties (either public or private) – i.e., it will not be active on the market – any payment it receives from the Authorities is therefore not capable of distorting competition. It therefore would not constitute State aid. Since BCPP Limited will not, we understand, be tendering for business from other LGPS authorities or other investors, we do not consider that it would be active in this way.

#### 6. Governance Model: Local Government Law Compliance

## Appendix 4 – Squire Patton Boggs Legal Opinion

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The Inter-Authority Agreement documents the terms on which each of the Authorities will participate in a joint committee under Sections 101 and 102 of the Local Government Act 1972. The statutory framework under the above sections contains no restrictions which have been breached by the proposals set out in the Inter-Authority Agreement and the terms of reference for the joint committee are therefore in keeping with the requirements of legislation (and with good governance).

#### 7. Other statutory compliance

Both the Shareholders' Agreement and the Inter-Authority Agreement contain requirements on the Authorities and BCPP Limited (under the Shareholders' Agreement) to comply with other legislation which is applicable to local authorities in general terms. That includes the Equality Act 2010, the Freedom of Information Act 2000, the Environmental Information Regulations 2004, anti-bribery legislation and data protection legislation. Schedule 2 of the Inter-Authority Agreement, which sets out the constitution of the Joint Committee, also makes provision for the meetings of the Joint Committee to be open to members of the public unless it is necessary to exclude the public in accordance with Part VA of the Local Government Act 1972.

#### 8. Conclusion

Based on the draft documentation which we have seen, we are satisfied 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 obstacles to the structure which has been proposed.

Squire Patton Boggs (UK) LLP  
[20] January 2017

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#### APPENDIX 1: Scope of Advice

- 1 The advice in this report is provided only to the administering authorities participating funds (the "**Authorities**") in Border to Coast Pension Partnership Limited ("**BCPP**"). It was prepared solely for the purpose of assisting the Authorities in accordance with the scope of our appointment to advise them on participating in BCPP. It is not advice to any other connected or stakeholder parties, auditors or other advisers, or other third parties ("**Third Parties**"). No part of this advice may be passed on to Third Parties without our written agreement but, if it is so passed, we accept no responsibility, and will have no liability in contract, tort or otherwise, to those Third Parties in relation to this advice.
- 2 This advice only considers the legal issues in relation to the proposed investment in BCPP by the Authorities. We have reached our conclusions based on an understanding of the law as at the date of this report. Accordingly, it is possible that this report will need to be updated if the law changes. However, we will only do so if we are specifically instructed to do so. We have not considered or advised on the tax efficiency of the matter or its commercial or accounting implications where we understand the Authorities have taken separate advice from Deloitte.
- 3 The documents on which this advice has been based are as set out in paragraph 1 of the report above. In accepting instructions from the Authorities we have not undertaken to review, nor are we responsible for reviewing, all or any elements of any other documentation (unless specifically agreed in writing) which may be relevant to specific Authorities. In particular, it is not within the scope of our appointment to review the constitutional documents of any of the Authorities. Accordingly, we do not accept liability should our advice be based on erroneous assumptions or documents or information with which we have not been provided.