

Bath & North East Somerset Council		
MEETING:	AVON PENSION FUND COMMITTEE	
MEETING DATE:	24 March 2017	AGENDA ITEM NUMBER 9
TITLE:	LGPS Pooling of Investments - Update	
WARD:	ALL	
AN OPEN PUBLIC ITEM		
List of attachments to this report: Appendix 1 – Draft Terms of Reference for Avon Pension Fund Committee Exempt Appendix 2 – Commercial considerations		

1 THE ISSUE

- 1.1 At the Committee meeting on 9 December 2016 the Committee recommended that the Council approved the full business case for the setting up of a Financial Conduct Authority (FCA) regulated company to be named Brunel Pension Partnership Limited (BPP). This was approved by Council on 14 February 2017.
- 1.2 The full business case had now been approved by all ten participating administering authorities.
- 1.3 This report outlines the further work that is now underway to form the company, and the decisions that will be required over the next four months. A verbal update will also be given at the meeting including a discussion of Exempt Appendix 2.
- 1.4 In addition, the Committee's Terms of Reference (TOR) requiring amending to take account of pooling.

2 RECOMMENDATION

That the Committee:

- 2.1 **Approves the amended Terms of Reference for the Committee to be recommended to Council for approval at Council meeting in May 2017**
- 2.2 **Notes that the Committee will have to formally nominate its representative to the Brunel Partnership Oversight Board once the Board moves from shadow to formal status**
- 2.3 **Notes the progress with establishing the Brunel Pension Partnership Limited company**

3 FINANCIAL IMPLICATIONS

- 3.1 The Committee has previously approved for the establishment of the Brunel Company as advised within the Full Business Case. Since the FBC was prepared progress has moved on a pace and it is clear that there are increasing costs pressures in delivering the project within the required timescales.
- 3.2 Finance officers have been asked to agree contingency funding of up to £50k per fund in the event of cost overruns and the Committee are asked to approve this additional contingency in the Service Plan Report. It should be noted that this some will only be drawn as a last resort and all efforts will be focused on delivering to budget
- 3.3 Expenditure to 31 March 2017 is likely to be £110,000. The 2017-18 budget includes £75,000 to cover project costs in line with the FBC with a further provisional sum of £50,000 to be used as a contingency. The fund's share of the operating costs of the company incurred in 2017/18 will be provided for once the pricing model has been agreed (see Section 7 Budgeted costs 2017/18 below).

4 RECRUITMENT OF THE COMPANY BOARD

- 4.1 The first step in forming the new company is to begin the process of appointing the board. Korn Ferry, an executive search agency, have been appointed to carry out recruitment processes, and have embarked on the initial task of organising the recruitment of the Chair and 2 external Non-Executive Directors. An advertisement was placed in the Sunday Times on 16 January, with a deadline for applications of 30 January.
- 4.2 The applications received are being evaluated and it is envisaged that the Chair will be appointed during March, and two Non-Executive Directors will be appointed in April / May. An appointments panel drawn from the Shadow Oversight Board and the Finance and Legal Assurance Group, which includes a representative from B&NES, will undertake the final interview process, advised by Korn Ferry and Pricewaterhouse Coopers (PwC).
- 4.3 The next step will then be to recruit the Chief Executive Officer. This is a vital role and the newly appointed Chair will need to play a key part in the recruitment process. It is envisaged that this will be in progress during May. Recruitment of other operational directors and staff will then follow.
- 4.4 A key aspect of the recruitment of the Board and key staff will be the contractual arrangements for the appointments, and the company's remuneration policies. These will need to be signed off as the recruitment process progresses. One of the issues to be determined is whether BPP Ltd. should be an admitted body in the LGPS. This will be part of the decision on the remuneration packages for staff and will also be influenced by whether TUPE considerations / principles apply to any staff that may be appointed from the current administering authorities. If BPP Ltd. does become an admitted body then a decision will be required as to which Fund admits them.

5 LEGAL AGREEMENTS

- 5.1 A key part of setting up the company will be the agreement of various legal agreements between the ten administering authorities, as shareholders, that govern the operations of BPP Ltd. These documents are being drafted by a Legal Services group comprising representatives of Osborne Clark, who have been providing legal support to the project, and legal officers from four of the ten authorities. The required documents include the following.

- 5.2 The **Articles of Association** of the BPP Ltd. (the "Articles"). This document is required by company law, and will set out the constitution of the company and regulate the relationship between the Administering Authorities as shareholders and BPP Ltd. It sets out the powers and procedures of BPP Ltd., and will be filed at Companies House and be publicly available.
- 5.3 The **Shareholders' Agreement** between the Administering Authorities. This regulates the relationship between the Funds as shareholders of BPP Ltd. It will define contractually the manner in which the shareholders will run BPP Ltd., rather than limiting the power of the company itself. Some of its content can overlap with the Articles, and there are some provisions which can be moved from one to the other.
- 5.4 The pooling and asset management services agreement (the "**Services Agreement**"). There will be one agreement between the Funds and BPP Ltd. setting out the pooling and other services BPP Ltd. will perform and the relevant terms.
- 5.5 These documents will need to be agreed by each of the ten administering authorities under the delegation arrangements in place, to enable BPP Ltd. to become operational. The Articles and the Shareholders' Agreement are likely to be agreed in interim form at the outset. They will include details of reserved matters that cannot be changed without the agreement of shareholders, and for each reserved matter what level of agreement (e.g. simple majority or 75% of shareholders) is required for a change to be made. Reserved matters would include significant issues such as the admission of a new shareholder or a move to internal management of assets.
- 5.6 Other documents. There will be various other documents of importance to the structure and governance arrangements. These include terms of reference, the terms of appointment of key personnel, BPP Ltd.'s internal policies and agreements with third party providers of back office support. This will include the terms of references of the Oversight Board and Client Group.
- 5.7 Once the Shadow Oversight Board loses its shadow status and becomes a formal body, the Avon Pension Fund will need to formally appoint a representative to serve on it. In addition, the Terms of Reference of the Committee needs to reflect pooling and the new governance arrangements. The revised TOR is in Appendix 1. These have been amended to reflect the immediate changes required, namely that the Committee is responsible for nominating its representative to the Oversight Board, once BPP Ltd is established. Further revisions will be required as pooling progresses through the transition of assets to BPP. While the Pension Fund Committee will continue to have a key role in monitoring the performance and activities of BPP Ltd. the Leader of the Council in consultation with the S151 Officer has delegated authority to act on shareholder matters. In practice the Committee will be consulted on all material issues.

6 Appointment of Administrator

- 6.1 Each LGPS Fund currently employs a custodian bank to safeguard its investment assets and process transactions. Going forward BPP Ltd. will need to appoint a custodian. However, the nature of the business they will be undertaking and the requirement for FCA regulation will mean that the role will be wider than the custodian's current role. As a result, the role is defined by the FCA

as an “administrator” rather than a custodian, as it encompasses other tasks beyond the custodian role.

- 6.2 The administrator will need to be in place before the FCA will authorise BPP Ltd to operate. Therefore the administrator needs to be appointed before the application for authorisation is made to the FCA. Work is under way to draw up the specification for an invitation to tender, which will need to be signed off by 1 April. This should then enable the administrator to be appointed by the target date of the 1 August. Any delay is likely to delay the application for FCA authorisation.

7 Budgeted Costs 2017/18

- 7.1 Project costs on the development of the proposals have been split equally between the ten authorities on the basis of 10% each. For the 2017/18 financial year a budget for the project of £750,000 has been agreed by the Shadow Oversight Board and the Finance and Legal Assurance Group. This equates to £75,000 per Fund which is included in the 2017/18 budget. A contingency has also been agreed by FLAG of up to £500,000 to manage any significant variance against individual budget items which will only be drawn upon once agreed by each Fund through their Section 151 Officer.
- 7.2 The operating costs of BPP Ltd will be established during 2017/18. This will be dependent on the remuneration policies agreed, the results of the administrator procurement and other contractual arrangements still to be determined. The full business case allowed for total development and operational costs of around £4m for 2017/18 plus the provision of £2m for working and regulatory capital. A pricing policy is being developed for charging the ongoing overhead running costs of BPP Ltd. These will not be charged purely on equal shares, but will be partly based on the total Assets under Management (AUM), and on any additional services that the Fund may use over and above the core service. Once this policy is agreed by the shareholders, the Fund’s budget will be revised accordingly.

8 GOVERNANCE ARRANGEMENTS

- 8.1 Decisions on the issues listed above will be required over the next four months in order to achieve the timeframe required by Government, such that BPP Ltd. can be established, achieve FCA authorisation and begin to transition assets from 1 April 2018.
- 8.2 The legal documents and activity required to set up BPP Ltd. over that period will be signed off on behalf of Avon Pension Fund by the Leader of the Council, as shareholder, in consultation with the Council’s Head of Legal, S151 Officer and the Chairman, under the delegation recommended by the Committee in December and agreed by Council in February.
- 8.3 The Finance and Legal Officers Group and Shadow Oversight Board will consider all the documentation prior to sign off by the administering authorities and where relevant input from the Committee will be sought.

9 RISK MANAGEMENT

- 9.1 The Avon Pension Fund Committee is the formal decision-making body for the Fund. As such it has responsibility to ensure adequate risk management processes are in place. It discharges this responsibility by ensuring the Fund has an appropriate investment strategy and investment management structure in

place that is regularly monitored. The creation of an Investment Panel further strengthens the governance of investment matters and contributes to reduced risk in these areas.

10 EQUALITIES

10.1 An equalities impact assessment is not necessary.

11 CONSULTATION

11.1 N/a

12 ISSUES TO CONSIDER IN REACHING THE DECISION

12.1 Set out in the report.

13 ADVICE SOUGHT

13.1 The Council's Monitoring Officer (Divisional Director – Legal and Democratic Services) and Section 151 Officer (Divisional Director – Business Support) have had the opportunity to input to this report and have cleared it for publication.

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Background papers	
Please contact the report author if you need to access this report in an alternative format	