



BCPP Joint Committee

Date of Meeting: 6th June 2017

Report Title: Consideration of Options For Terms and Conditions of Employees of BCPP Ltd

Report Sponsors: Lead Officer People Sub Group – Nick Orton,
Support Officer People Sub Group - Steve Barrett

1.0 Executive Summary:

- 1.0 This report provides information on options for the terms and conditions for employees of BCPP Limited, including a proposal on the type of pension provision that should be offered to new recruits to the company.
- 1.1 In order to ensure BCPP Limited is able to recruit and retain the skilled staff it needs to function effectively, it should offer staff starting a new contract with the company the choice between access to the LGPS or access to a defined contribution pension scheme and higher take-home pay. This should be structured to ensure the overall cost to the company is equivalent under either option.
- 1.2 BCPP Limited's participation in the LGPS should be appropriately underwritten by the shareholders.

2.0 Recommendations:

- 2.1 Members agree to progress the proposal that BCPP Limited should participate in the Local Government Pension Scheme (LGPS) as an 'open' admission body, and should offer new employees (as well as employees transferring from the internally managed Funds) access to the LGPS, with the exception of senior staff. Final approval will be sought from the shareholders once all issues are resolved. Senior staff includes all executive directors and any staff paid at more than a specified level (initially set at £120,000 a year whole-time equivalent).
-

- 2.2 In order to provide a flexible offering that is attractive to a range of recruits across the public and private sector, employees should also be offered the alternative of employer contributions to a defined contribution pension scheme and additional salary instead of participation in the LGPS. This is on the proviso that the overall cost of employment is not increased as a result of this flexibility.
- 2.3 A package of other terms and conditions should be provided for new employees to BCPP Limited which are broadly similar to those typically provided within local government. Suitable external advice will be sought when determining the detail of the terms and conditions and the overall value of the remuneration packages to ensure they are appropriate and competitive.
- 2.4 The project team should draft and circulate an LGPS guarantee working on the general principle that any liabilities at the point of transfer should remain the responsibility of the original Fund, but liabilities built up going forwards should be underwritten by all partner Funds in an equitable manner.

3.0 Background:

3.1 Access to the Local Government Pension Scheme (LGPS)

- 3.2 When there is a transfer of employment following the sale or transfer of all or part of a business or undertaking, there is a degree of legal protection given to the terms and conditions of the transferring employees. This is mainly a consequence of the Transfer of Undertakings (Protection of Employment) Regulations 1982 (as amended) ('the TUPE regulations') which, broadly speaking, mean the terms and conditions of transferring staff cannot be worsened as a consequence of the transfer.
 - 3.3 One exception to this is pensions and access to pension schemes. For transfers within the private sector there is no requirement for the receiving employer to provide the transferring staff with access to the same occupational pension scheme they participated in immediately before the transfer. Instead, there is a requirement for the receiving employer to provide access to a defined contribution (money purchase) pension scheme with matching employer contributions up to 6% as a minimum.
 - 3.4 However, transfers within the public sector are covered by the Government's 'fair deal' approach, which for the Local Government Pension Scheme (LGPS) is dealt with by provisions made under the Local Government Act 2003.
-

- 3.5 The 2007 Directions Order made under the Local Government Act 2003 means that where there is a transfer of staff as a consequence of a transfer of an undertaking or assets from a local authority, the staff who transfer must be given continuing access to the Local Government Pension Scheme or a 'broadly comparable' scheme. In practical terms, as it is usually prohibitively expensive for an employer to set up a 'broadly comparable' scheme, these types of transfers usually result in the new employer becoming an admission body employer within the LGPS.
- 3.6 The staff whose employment transfers from the three internally-managed Funds (East Riding, South Yorkshire and Teesside) will be given continuing access to the LGPS. They will then individually be able to choose whether or not to combine their previous past LGPS service with their new period of service. The current position under the LGPS regulations is that unless they decide otherwise within 12 months of starting employment with BCPP Limited, their pension benefits earned while working for their original Fund would be aggregated with their BCPP Limited pension benefits.
- 3.7 Although any of BCPP's partner Funds could, in theory, become the administering authority for BCPP Limited, it would be logical for one of the three internally-managed Funds to take on this role. This would reduce the number of asset transfers that would need to take place between the Funds, as there would only need to be an internal reallocation of notional assets in respect of the staff belonging to the internally-managed Fund that takes on the role of administering authority. South Yorkshire Pensions Authority has indicated that it would be prepared to become the administering authority for BCPP Limited.
- 3.8 There are two possible routes in which BCPP Limited could become an employer within the South Yorkshire Pension Fund:
- a) As an 'automatic' employer under Schedule 2 Part 2 of the LGPS Regulations 2013: This would require the South Yorkshire Pension Fund Authority's auditors to determine that BCPP Ltd should be included within the SYPA accounts.
 - b) As an 'admission body' employer under Schedule 2 Part 3 of the LGPS Regulations 2013: The most likely 'admission body' route would require the consent and agreement of the Secretary of State. Eversheds Sutherland has advised that this consent should not be difficult to obtain.
- 3.9 With either option, BCPP Limited would have the discretion to choose whether to admit some or all new employees to the LGPS, or whether to restrict LGPS access just to the employees whose employment transfers from one of the Partner Funds.
-

- 3.10 BCPP Limited will need to provide LGPS benefits to the transferring staff. However, there is a choice to make on whether to allow access to the LGPS for employees that join after the transfer date, or (potentially) to transferring staff who voluntarily move to a new role after the transfer date.
- 3.11 The 31st January 2017 Member Steering Group approved employment packages for the senior appointees which specifically excluded access to the LGPS. The rationale for this approach was because of the comparatively high salary packages being offered, and the fact that the tax rules around high earners mean that membership of the LGPS is significantly less beneficial to those earning more than around £120,000.
- 3.12 A paper presented to the 24th March 2017 Member Steering Group identified the main issues to consider when deciding on whether or not to extend access to the LGPS beyond those with a legal entitlement to be in the scheme as cost, risk, ethos and recruitment/retention. A further update on these issues is as follows:
- 3.13 **Cost:** Provided BCPP Limited's participation in the LGPS is appropriately underwritten by the Partner Funds through the provision of a written guarantee, the administering authority and actuary of the LGPS fund BCPP Limited participates in should not require BCPP Limited to obtain and maintain a guarantee bond. In addition, the ongoing contribution rate set for BCPP Limited should be broadly in line with the rates the three internally managed funds pay in respect of their staff. The actual rate paid would depend on the demographic profile of the transferring staff and whether or not the scheme is open or closed to new entrants – actuaries typically adopt a different valuation methodology for a closed scheme which often results in a higher ongoing contribution rate being required. The results of the 31 March 2016 valuations for the three internally managed funds show that the following ongoing contribution rates are currently being paid in respect of the staff that are expected to transfer to BCPP Limited:

Fund	Employer (from Rates and Adjustments Certificate)	Ongoing employer contribution rate
East Riding Pension Fund	East Riding of Yorkshire Pool (Non-Schools)	15.3%
South Yorkshire Pension Fund	South Yorkshire Pensions Authority	14.9%
Teesside Pension Fund	Middlesbrough Borough Council	15.3%

It would be reasonable to assume the employer rate set for BCPP Limited should be around 15% of pensionable pay if it is treated as underwritten by

existing scheme employers, is open to new entrants and has a demographic profile similar to the original employers.

3.14 **Risk:** Deloitte has provided initial verbal feedback on the issue of whether building up additional defined benefit pension liabilities will adversely impact BCPP Limited's financial position. Initial advice has been that the following two factors mean BCPP Limited's financial stability should not be affected by a decision to provide wider access to the LGPS:

- BCPP Limited will initially be 'fully funded' on an ongoing valuation basis, or if the way asset transfers are determined under the regulations means it is not possible to ensure this, an appropriate contribution plan will be in place to achieve full funding over a defined time period.
- BCPP Limited's participation in the LGPS will be ultimately underwritten by the Partner Funds (this will be evidenced in a guarantee document). This means any pension debt identified either on an ongoing valuation basis or an accountancy basis can be balanced off in BCPP Limited's accounts by a credit amount representing the value of the guarantee.

At the time of writing this report, written advice from Deloitte confirming this assessment is still outstanding. An update will be provided to members at the meeting.

3.15 **Ethos:** As a private sector company wholly owned by public bodies, operating in the financial services sector but not required or expected to win new business, BCPP Limited will be distinct from local authorities and from other asset management companies. The shareholders all provide access to the LGPS to new entrants to their organisations, and have all been required to produce a communications strategy which includes a policy on "the promotion of the Scheme to prospective members and their employers" (LGPS Regulations 2013, regulation 61(2) (c)). Although BCPP Limited's culture will develop over time, some of the decisions made by the shareholders and senior management at the outset will influence the culture of the organisation. Whether or not to allow access to the LGPS to new recruits is one of these decisions.

3.16 **Recruitment** – Open defined benefit pension schemes are very unusual within the private sector, and recruits from that sector will not be expecting to be offered access to one. However, BCPP Limited (at least in its initial years of existence) is likely to be competing for staff not just with 'traditional' private sector financial services organisations, but also with quasi-public sector bodies, namely the other LGPS pool companies. Our understanding is that all the other LGPS pools will be offering access to the LGPS to their new recruits, albeit with a salary cap for some in line with that proposed a

paragraph 3.11. If BCPP Limited does not offer LGPS as an option to new staff, this will deter staff from other funds and pool companies from choosing to come and work for BCPP Limited, and will make it harder to attract the people with the range of skills required to ensure the company delivers an excellent service to its shareholders. Conversely, staff from the private sector may prefer the flexibility offered by higher salary with a lower cost (to the employer) pension scheme

3.17 **Retention** – The July 2016 submission to Government identified the need for BCPP Limited to retain and develop the skills of the internally managed funds. This included reference to “development of the range of skills ...to enhance professional expertise, and breadth of asset coverage”. If BCPP Limited operates as a ‘closed’ scheme within the LGPS, and those moving to new roles in the organisation are not able to access LGPS membership, this will inhibit the ability of the transferring staff to progress and develop their skills as they may be reluctant to move to a more senior role if that means giving up their ability to contribute to the LGPS.

3.18 **Pension flexibility proposal**

3.19 In practice, unlike the administering authorities of the Partner Funds (who are required by the LGPS regulations to automatically put almost all staff into the LGPS when they start employment), BCPP Limited will have the scope to decide which new employees (if any) to put into the LGPS. The Government’s auto-enrolment regulations mean that if BCPP Limited employees are not brought into the LGPS they will need to be automatically enrolled into a defined contribution pension scheme which provides a specified minimum level of employer contributions – this is currently 1% (rising to 3% by April 2019) of earnings between certain limits (currently between £5,876 and £45,000 a year).

3.20 In order to provide flexibility while ensuring compliance with auto-enrolment regulations it is proposed that BCPP Limited could offer new recruits, or those moving to a new role in the organisation after the transfer, the following pension options:

- a) Access to the LGPS
- b) Access to a defined contribution pension scheme with 5% matching employer contributions

3.21 In order to ensure the overall remuneration package is broadly similar for both options, a lower basic salary would be offered if staff wanted access to the LGPS. So, as an example, assuming an employer contribution rate of 15% to the LGPS or an employer contribution rate to a defined contribution rate

pension scheme of 5% possible salary options for someone paid around £60,000 a year that would result in the same overall cost to the company would be as follows:

Pension scheme	Annual salary	Employer pension cost	Employer National Insurance cost	Total cost to employer
LGPS	£60,000	£9,000	£7,153	£76,153
Defined Contribution	£65,050	£3,253	£7,850	£76,153

So under this proposal, someone taking up a new position within BCPP Limited would have the choice between access to the LGPS or access to a defined contribution pension scheme with employer contributions of 5% along with 8.4% higher annual salary.

3.22 **Terms and conditions**

3.23 BCPP Limited is expected to initially have staff operating under at least five different sets of terms and conditions. This is partly a consequence of the need to ensure staff transferring in from the internally managed funds do not have their existing terms and conditions worsened as a consequence of the transfer. It also reflects the fact that BCPP Limited's directors / senior staff will have different terms and conditions to the other new recruits to the organisation.

3.24 Most of the terms and conditions of the staff at the internally managed funds are consistent with the standard 'green book' local government terms and conditions. However there are significant variations in three key areas: salary, bonus and holiday entitlement. Officers will continue to work with legal advisers to understand what options exist regarding eventual alignment of these terms and conditions in a way that is cost-effective and complies with TUPE requirements.

3.25 Project group officers have visited staff at all three of the internally managed funds and given a presentation to those staff likely to be affected by the transfer. These were informal information sharing meetings and were not part of any formal consultation process. Consultation under TUPE will take place nearer to the expected transfer date and has to take place with employee representatives, not with employees themselves.

3.26 One issue that has arisen during the consultation is whether the transferring staff (whose work location will move to Leeds) should receive a temporary 'disturbance' payment to recognise the additional travel costs incurred through



the change of work location. Information supplied so far suggests that none of the internally managed funds has an existing policy which would apply to this scenario, however BCPP Limited would be able to decide to devise its own policy to make this type of payment. This will be an issue for the incoming executive team to consider and the cost of any such allowance would need to be included within BCPP Limited's initial plan and budget.

- 3.27 After salary and pensions, other significant terms and conditions of employment include holiday entitlement, flexible working arrangements, sick pay entitlement and parental leave entitlement. These would all ordinarily be determined by the company board but there may be a requirement for a limited amount of recruitment to take place before the board members have been recruited. The Joint Committee is asked to confirm that the terms and conditions agreed in these areas should be broadly consistent with those currently provided to the staff transferring in from the internally managed funds. Where decisions are require on this before the board is in place, shareholder agreement will be sought through written resolution.

4.0 Next steps:

- 4.1 Officers will continue to work with legal advisor, actuaries and government as necessary to agree the best approach to ensure BCPP Limited can participate in the LGPS and its pension liabilities are appropriately guaranteed.
- 4.2 Work will continue with legal advisors and HR specialists as necessary to draft standard terms and conditions for new recruits to BCPP Limited.

5.0 Conclusion:

- 5.1 Subject to final written advice from Deloitte, ongoing 'open' access to the LGPS can be achieved without incurring additional risk or significant additional cost to BCPP Limited, provided the participation is underwritten by the shareholders. Having an 'open' scheme will ensure BCPP Limited is best placed to acquire and retain the staff necessary to fulfil its objectives.

6.0 Report Author:

Nick Orton
nick.orton@durham.gov.uk
03000 269798
