



Border to Coast Joint Committee

Date of Meeting: 9th March 2020

Report Title: Annual Election of Committee Chair and Vice-Chair
Annual nomination to Border to Coast Board

Report Sponsor: Governance Sub-Group

Report Author: Governance Sub Group Secretary – David Hayward

1.0 Executive Summary:

1.1 This report sets out the process by which the Joint Committee will select its Chair and Vice Chair at the June meeting and make a nomination to the Board of Border to Coast for a Non-Executive Director (NED) to sit on the Company Board

2.0 Recommendation:

2.1 It is recommended that:

- a) that the Joint Committee agrees the next meeting will conclude with elections and nominations as specified in the report,
- b) the process as set out in the report will be adopted,
- c) consideration be given to increasing the term for the Partner Fund Non Executive Director from two years to three.

3.0 Chair and Vice Chair of the Joint Committee:

3.1 The Chair and Vice-Chair roles are elected annually in accordance with the terms of the Inter Authority Agreement (IAA) and specifically in accordance with the constitution of the Joint Committee appended to that Agreement.

3.2 It should be noted that the IAA allows a Chair and Vice Chair to serve for “a further term” after the initial election. As both Chair and Vice Chair are in their second terms they are not eligible for re-election to the post that they currently hold.

3.3 The role of the Chair and Vice Chair is described in the role profile appended to this report as Appendix 1. The Vice Chair is required to shadow the Chair and to Chair any Joint Committee meetings that the Chair is unable to attend.

4.0 Partner Fund Nominated Non-Executive Director:

4.1 The Joint Committee has previously determined that it is beneficial to provide two candidates to Border to Coast Pensions Partnership Limited (the Company) to act as NEDs on the Board.

- 4.2 The Joint Committee has agreed the nomination for each NED would be for a term of two years. This was also agreed by the Company.
- 4.3 In 2019 two nominations for the role of Partner Fund NED were made. This was because the contract for one of the NEDs matured and the other resigned. To ensure that both contracts did not end in the same year, it was agreed that one NED appointment would be in place for one year (the unexpired term for the resigning NED) and the other for two years.
- 4.4 The current Partner Fund NEDs in post are:
- Councillor John Holtby, East Riding Pension Fund – Term end date 1st October 2021
 - Councillor Jeff Watson, Northumberland Pension Fund – Term end date 1st October 2020.
- 4.5 At the June Joint Committee meeting it is proposed that a nomination process is run for the NED appointment that expires in October 2020. Subject to the discussion point raised under section 5 below, any new appointment will be for a term of two years.
- 4.6 It is recognised that acting as a director of the Company will be a Disclosable Pecuniary Interest within the meaning of s31 Localism Act 2011. Depending on the circumstances and arrangements at each individual administering authority, it may then prove necessary to refer the matter to the individual authority's Standards Committee for a dispensation pursuant to s33 of the Localism Act. Ultimately, however, it is for candidates for the role of Partner Fund Nominated NED, to satisfy themselves that they are able to carry out such functions in relation to their local pensions committees as they deem desirable. A view on this should be taken by any potential candidate in consultation with the administering authority of their fund, before any nominations are put forward.
- 4.7 Following some concerns raised about the appropriateness of a Councillor being appointed to the role of NED and how a dispensation might be couched, legal advice was sought on behalf of the partner funds.
- 4.8 This advice provided support for the approach being adopted by the Partner Funds in the Border to Coast pool and provided guidance on how a possible dispensation under the Localism Act could be put in place to secure that.
- 4.9 Any nomination for the NED role is subject to approval by the Company Board and the candidate being assessed as being a fit and proper person by the Company under the FCA's Senior Managers and Certification Regime. Finally the appointment needs to be agreed by the shareholders.
- 4.10 The Role Profile for the Partner Fund Nominated NED, the FCA requirements and information regarding the selection procedure and appointment process used by the Company are annexed to this report. (Appendices 2, 3 and 4).
- 4.11 The successful candidate for the NED role is expected to stand down from the Joint Committee for the period in which they serve as a NED. A replacement Joint Committee member may be nominated by the affected fund.

5.0 Partner Fund Nominated Non Executive Director – Term on the Board

- 5.1 As noted above it has been agreed by the Joint Committee and by the Company, that the Partner Fund Nominated NEDs term on the Board will, in the normal course of events, last for two years. It has also been previously agreed that each Partner Fund Nominated NED can only serve two consecutive terms. This therefore provides for a maximum period of four years.
- 5.2 Following discussion with those who have served as Partner Fund Nominated NEDs, reflecting on the level of training required and the time taken to go through the appointment process, the Joint Committee is asked to give consideration to extending the term of each appointment to three years, instead of two, for future appointments. The limit of two consecutive terms would remain in place. This would increase the maximum period to six years.
- 5.3 The initial rationale for a two-year term was that this would create rotation so that any one Partner Fund was not able to dominate the discussion at the Board. It should be noted however that the business discussed by the Board is about the Company's strategic direction and oversight rather than Partner Fund specific matters.
- 5.4 Whatever the Committee decides, it will need to be clear to candidates what the term of the appointment is prior to commencing the nomination processes this year. As noted above the Joint Committee is only nominating a candidate, ultimately the appointment is made by the shareholders on a recommendation from the Company, which would include the term for which the NEDs would serve.

6.0 Election Process to be Adopted:

- 6.1 The Joint Committee constitution simply provides for the members of the Joint Committee to select a Chair and Vice Chair. Practice to date has been to elect those roles outside of the Committee Meeting so the provisions of voting by show of hands do not apply and a secret ballot can be used. The normal process would be that the election to those posts and the nomination for the role of Partner Fund nominated NED should take place at the first Joint Committee meeting following the start of the new municipal year.
- 6.2 As noted above, it has been previously agreed that any member selected as NED should not continue to sit on the Joint Committee in a voting capacity. For this reason it is important that the ballot for the nomination to the NED role should be held first in order to determine eligibility for the Chair or Vice-Chair role. Any Joint Committee member at the meeting will continue to be eligible to vote at the meeting as they will not have succeeded a role on the Company Board until that nomination has been confirmed.
- 6.3 It is considered important that each Partner Fund is provided with the opportunity to be able to take part in the process, even if they are unable to attend the meeting in person. This could easily be accommodated by allowing a Joint Committee member to appoint a proxy to vote on their behalf.
- 6.4 It is therefore, considered appropriate to use an election process, which easily allows Partner Fund representatives to participate whether they are in attendance or not. It is believed that this can be reasonably achieved by using the single transferable vote (STV) system for the ballot. This was the method used in 2019.

- 6.5 Should a member representing one of the Partner Funds not be able to attend the meeting and the vote in person they will be provided with the opportunity to submit their ballot to the Committee secretariat, who will ensure that the vote is counted along with those cast in person.
- 6.6 Prior to the commencement of the ballot process all members wishing to become either Chair or Vice Chair or to be nominated as a NED of the Company will be asked to circulate a short supporting statement to all members of the Joint Committee (through the Secretariat) not less than 14 days before the proposed ballot date. For the NED role, Members are asked that the supporting statement addresses the key provisions of the Job Description as this will be subsequently used to support the approval process.
- 6.7 As the next Joint Committee meeting is on 16th June 2020, the process will need to commence before the end of May 2020. As with last year, the process will be co-ordinated by South Yorkshire Pensions Authority as part of their role of secretariat support to the Joint Committee.

7.0 Recommendation

- 7.1 It is recommended that:
- a) that the Joint Committee agrees the next meeting will conclude with elections and nominations as specified in the report,
 - b) the process as set out in the report will be adopted,
 - c) consideration be given to increasing the term for the Partner Fund Non Executive Director from two years to three.

Report Author:

David Hayward : David.Hayward@southtyneside.gov.uk

Further Information and Background Documents:

Appendix 1: Role Profile for the Chair and Vice Chair

Appendix 2: Role Profile for the Non Executive Director

Appendix 3: FCA and Companies Act requirements for Non Executive Directors

Appendix 4: Border to Coast Process for Partner Fund Nominated Non executive Directors

Role Profile for Chair and Vice-Chair

Overall

- Leading the BCPP Joint Committee to enable it to fulfil its purpose.
- To ensure an effective relationship between:
 - the Joint Committee and BCPP Limited
 - the Joint Committee and the partner funds
 - the Joint Committee and the external stakeholders/community
- Acting as a spokesperson and figurehead as appropriate.
- To supervise and support the Chief Executive and Non-exec Chair of BCPP Limited

Specifically

- Plan and prepare the BCPP Joint Committee meetings with others as appropriate.
- Chair BCPP Joint Committee meetings ensuring:
 - A balance is struck between time-keeping and space for discussions.
 - Business is dealt with and decisions made.
 - Decisions, actions and deliberations are adequately minuted.
 - The implementation of decisions is clearly assigned and monitored.
- Ensure that a successor to the post of Chair is found when the term of office is due to end and the new term begins.

Experience and Qualities

- A willingness to lead the partnership.
- A strong background/working knowledge of the LGPS.
- Recent experience of serving on an LGPS Pensions Committee.
- A working knowledge of asset strategy and implementation thereof.
- Possesses tact, diplomacy and powers of persuasion.
- Has the relevant skills and experience to run a meeting well.

Capacity

- The capacity to commit the time that will be required to undertake this role, including any travel that may be required to undertake duties associated with the role to represent BCPP nationally.

Role of the Chair

1. Chairing the Joint Committee Meeting

The Chair (or in his/her absence, the Vice-Chair) will be the person presiding over BCPP Joint Committee meetings. The Chair of the BCPP Joint Committee does not have a casting vote.

2. Election of the Chair

The Chair will be elected by the Joint Committee in accordance with an agreed procedure annually from among the Joint Committee Members and will receive regular briefings by the Chief Executive and Chair of the BCPP Company on current issues. They will also receive direct support from the Chair of the Officer Operations Group.

3. Responsibilities of the Chair

The Chair will have the following responsibilities:

- 3.1 to uphold and promote the purposes of the terms of reference and the inter authority agreement, and to interpret the these when necessary during BCPP Joint Committee meetings;
- 3.2 to preside over meetings of the BCPP Joint Committee so that its business can be carried out efficiently and with regard to the rights of Members and the interests of the Partner Funds and their employers and members;
- 3.3 to ensure that the BCPP Joint Committee is a forum for the debate of matters of concern to Partner Funds and their employers and scheme members
- 3.4 to be the public face of the BCPP Joint Committee and to represent the Partner Funds at wider events as required

Role Profile

Role Title: Non-Executive Director

Purpose of the role:

To fully participate in ensuring the Board exercises effective leadership of and control over Border to Coast. To constructively challenge and contribute to the development of strategy, performance and the management of risk.

About Border to Coast:

Border to Coast Pensions Partnership is one of the largest pension pools in the UK. One of eight Local Government pools, Border to Coast oversees the investment of pensions assets. Our customers are at the heart of what we do; delivering long-term sustainable investment outcomes for our Partner Funds. We build long-term partnerships through working collegiately, in a sustainable and transparent way.

Border to Coast is an FCA regulated investment company (“Border to Coast Pensions Partnership Ltd”) which manages the assets of its twelve Partner Funds through both internal and external management within a number of investment vehicles, including an Authorised Contractual Scheme.

A non-executive director is a member of the board of directors of an organisation, but not a member of the executive management team. They are not employees of the company, instead they have a contract for services. However, they do have the same legal duties, responsibilities and potential liabilities as their executive counterparts.

Reports to: Chair of the Board

Level: n/a

Function: Board

Team: Board

Direct Reports: 0

SMCR: Notified NED

Role line of defence: n/a

Role Dimensions

Budget Responsibility: n/a

Number of employees in area of responsibility: 0

Mandate: Board remit

Prescribed Responsibilities (SMF): n/a

Time Commitment: Expected to be two to three days per month, with availability for meetings, induction and training as required

Key Accountabilities

Role Specific Accountabilities

- Support the Chair and Executive Team in instilling the appropriate culture, values and behaviours in the boardroom and beyond
- Provide independent oversight and scrutiny of Border to Coast including:
 - Provide an impartial and independent view of Border to Coast and its operations, removed from the day-to-day running of the business
 - Oversee the performance of the Board and Executive Team in meeting strategic objectives, including monitoring financial controls and risk management systems
- Draw on wider experience, in other organisations, to provide the Board and Border to Coast Executive Team with a breadth of understanding and insight, including:
 - Challenge and contribute to the development of the strategy of Border to Coast
 - Support the development of a suitable succession plan for the Board and CEO
 - Use specialist knowledge to input to decision making processes
- Promote a culture of responsible investment and stewardship throughout the organisation
- Commit to building a full understanding of Border to Coast, especially in those areas of the business with a significant level of risk
- Take time to understand various stakeholder needs and ensure these are addressed at Board level
- Chair Committees of Border to Coast (Independent NEDs; less likely for Partner Fund NEDs)

Skills, Knowledge and Experience

Skills, Knowledge and Qualifications

Essential

- Excellent inter-personal and communication skills
- Awareness of Border to Coast customers and their particular needs
- Understanding of LGPS investment requirements

Desirable

- Other corporate knowledge – health and safety, ICT strategy and systems, HR, information management and data protection

Additional

- Skills, knowledge and qualifications as required dependant on succession planning requirements as per the Board skills matrix

Experience

Essential

- Extensive experience of working as a non-executive director/Local Authority Committee Chair either within a public sector environment or FCA regulated business
- Excellent understanding of working across multiple stakeholders
- Ability to satisfy fitness and propriety test as a Notified NED under the Senior Manager & Certification Regime (SM&CR) and to continue to satisfy test requirements and comply with FCA Conduct Rules

Desirable

- Asset management experience would be beneficial, gained either in the commercial or pension fund sectors
- Familiarity with the FCA Statements of Principle for Approved Person (and, in future, FCA Conduct Rules).

It is important to achieve an appropriate balance of experience amongst the non-executive directors

Version	
Version No. and Date	1, 10/05/19
Profile created/updated by	Nora Burns, Head of Legal Peri Thomas, Head of HR Paul Birch, HR Project Manager
Profile reviewed by people manager (state name & role)	Rachel Elwell, CEO
Profile reviewed by HR (state name & role)	Paul Birch, HR Project Manager

FCA and Companies Act requirements for Non-Executive Directors

FCA Requirements

Border to Coast's Directors are responsible for the governance and oversight of the Company in relation to the 11 FCA Principles of Business:

1 Integrity	A firm must conduct its business with integrity.
2 Skill, care and diligence	A firm must conduct its business with due skill, care and diligence.
3 Management and control	A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
4 Financial prudence	A firm must maintain adequate financial resources.
5 Market conduct	A firm must observe proper standards of market conduct.
6 Customers' interests	A firm must pay due regard to the interests of its customers and treat them fairly.
7 Communications with clients	A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.
8 Conflicts of interest	A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.
9 Customers: relationships of trust	A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.
10 Clients' assets	A firm must arrange adequate protection for clients' assets when it is responsible for them.
11 Relations with regulators	A firm must deal with its regulators in an open and cooperative way, and must disclose to the appropriate regulator appropriately anything relating to the firm of which that regulator would reasonably expect notice.

Directors who hold Senior Management Functions or Controlled Functions are also subject to the FCA's individual conduct rules and standards:

- Rule 1: You must act with integrity.
- Rule 2: You must act with due skill, care and diligence.
- Rule 3: You must be open and cooperative with the FCA, the PRA and other regulators.
- Rule 4: You must pay due regard to the interests of customers and treat them fairly.
- Rule 5: You must observe proper standards of market conduct.

The Companies Act Requirements

A Director should display possession of the knowledge, skill and experience that may reasonably be expected of a person carrying out the role of Director. It codifies the Directors' duties into law:

- To act within powers;
- To promote the success of the Company;
- To exercise independent judgment;
- To exercise reasonable care, skill and diligence;
- To avoid conflicts of interest;
- Not to accept benefits from third parties; and
- To declare interests in proposed or existing transactions or arrangements.

Duty two requires Directors to have regard (amongst other matters) to the likely consequences of any decision in the long-term, the interests of employees, the need to foster relationships with customers, suppliers and others, the impact of operations on the community and the environment, the desirability of maintaining a reputation for high standards of business conduct and the need to act fairly as between shareholders. The government has stated that promoting success means striving for a "*long term increase in value*".

The conflict of interest provisions requires Directors to avoid profiting from their position as a Director on an opportunistic basis and apply to exploiting an opportunity, property or information even when the Company could not take advantage of it.

Border to Coast Process for Partner Fund Nominated Non-Executive Directors

- 1 The Border to Coast Board has requested that the following be shared with the Joint Committee to provide transparency and promote understanding for those considering standing for nomination.

Pre-Selection

- 2 Prior to beginning the selection process the Joint Committee and Nominees should satisfy themselves that those offering themselves for selection do not have an unacceptable conflict of interest if the person appointed continues with their role with the partner fund's pension committee and the Board of Border to Coast.
- 3 The applications from the Nominees should illustrate how they meet the requirements of the Job Description (Appendix 4), including the required minimum time commitment and the requirement to undertake regular training, some of which is regulatory and compulsory.
- 4 The applicants should be comfortable with the post-selection process, including the FCA approval process. The Appendix to the Job Description details the requirements expected of directors by the FCA and the Companies Act.
- 5 Applicants must be willing to share the results of their DBS check with Border to Coast and the members of its Board.

Post-Selection

1. The Board would expect to meet the nominated candidates to assess whether they are comfortable to recommend to the Shareholders that they approve the appointment of the proposed nominee as a director of the company.
2. The Board reserves the right to not recommend for approval if they believe that the nominees do not meet the role profile criteria.
3. To satisfy the FCA regime, the nominees must be credit checked, satisfy anti-money laundering checks and be cleared by the Data Barring Service. At present all NEDS must then be approved by the FCA (after December 2019 under the Senior Managers and Certification Regime (Core), Border to Coast will have to self-certify NEDs other than the Chair).
4. Nominees will need to provide personal information, including photo ID and two forms of address information to apply for the Data Barring Service checks. The process of gathering the data will be managed by the Border to Coast HR team. Once the credit reference, anti-money laundering and DBS checks are completed and shared with Border to Coast, the Border to Coast Compliance team will apply for FCA approval, up to December 2019, or afterwards, register the new NED with the FCA.

5. The Board must approve the recommendation of the nominees to the Shareholders for approval to be directors. The Board may approve conditional upon the successful completion of the checks referred to above and the FCA's approval.
6. Once the checks are successfully completed, and FCA and Board approval has been obtained, the Company Secretariat will issue a resolution seeking the consent of 75% of the shareholders in line with the requirements of the Shareholders' Agreement. The time-frame for the return of Shareholder approvals vary between each of our Partner Funds.
7. Once approved by the Shareholders, the nominees will be required to enter into a service contract with Border to Coast.
8. Once all of the above is completed, the Company Secretary will register the nominees on Companies House and update the Company's register of Directors and Secretaries. Only then, will the nominee become a director of Border to Coast. This process may take up to 3 months. Hence the term for new Partner Fund nominated NEDs is expected to run from the October following nomination.

Time Commitment and Remuneration

9. The Board also asked that further information be provided regarding the time commitment involved in the role. The Board is currently scheduled to meet six times a year, with Committee meetings 4-5 times a year in addition. Telephone meetings may occur where urgent matters are under consideration. The full meetings usually last about 5 hours; telephone meetings are shorter and are held to deal with urgent business. Typically meetings are held in the Company's office in Leeds. Papers are circulated a week before the meeting and reading time is required.
10. It is emphasised that individuals will sit as directors of the Company and provide expert input as such based on their personal knowledge and experience. They are not holding office as representatives of individual funds and will be expected to act in their view of the best interests of the Company.
11. Remuneration is approved by Shareholders on recommendation of the Remuneration Committee. The current level has been agreed at £15,000 pa,