

Dated 16 January 2018

- (1) WEST SUSSEX COUNTY COUNCIL
- (2) FISHBOURNE PARISH COUNCIL

Pooling agreement

West Sussex County Council
County Hall
West Street
Chichester
West Sussex
PO19 1RQ

This Agreement is made on the sixteenth day of January 2018

Between:

- (1) **West Sussex County Council** of County Hall, West Street, Chichester, West Sussex PO19 1RQ (the **“Administering Authority”**); and
- (2) **Fishbourne Parish Council** of **Parish Office, The Fishbourne Centre, 48 Blackboy Lane, Fishbourne, Chichester, West Sussex, PO18 8BE** (the **“Small Scheduled Body”**).

Background

- (A) The Administering Authority is an administering authority within the meaning of the Regulations. It administers and maintains the Fund in accordance with the Regulations.
- (B) The Small Scheduled Body is a Scheme employer within the meaning of Part 1 or 2 of Schedule 2 to the Regulations.
- (C) The Administering Authority has agreed to create an actuarial pool for certain small scheduled bodies for the purposes set out in this Agreement (the **“Small Scheduled Body Pool”**).
- (D) The Small Scheduled Body wishes to pool its pensions liabilities in the Fund for the purpose of setting employer contribution rates and has agreed to enter into this agreement setting out the terms of participation in the Small Scheduled Body Pool. For the avoidance of doubt the underlying funding position of each employer will be tracked as if the employer was not a member of the Pool and an employer specific assessment of assets and liabilities will be calculated on the employer leaving the Pool.

NOW IT IS AGREED as follows:

1. **Definitions**

This Clause sets out the definitions which apply to the Agreement.

1.1 The following expressions have the following meanings:

- “2013 Regulations”** the Local Government Pension Scheme Regulations 2013.
- “Commencement Date”** 1 January 2018
- “Fund”** West Sussex County Council Pension Fund.

"Pool"	Small Scheduled Bodies Pool
"Regulations"	the 2013 Regulations and the Transitional Regulations.
"Scheme"	the Local Government Pension Scheme established by the Regulations made by the Secretary of State under sections 7 and 12 of the Superannuation Act 1972.
"Transitional Regulations"	the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014.

2. **Interpretation**

2.1 In this Agreement:

- 2.1.1 expressions have the same meaning as in the Regulations except where the context otherwise requires;
- 2.1.2 each gender includes all genders;
- 2.1.3 the singular includes the plural and vice versa;
- 2.1.4 words preceding "include" "includes" "including" and "included" shall be construed without limitation by the words which follow those words;
- 2.1.5 a reference to any Clause, Schedule or Recital is except where expressly stated to the contrary a reference to such Clause, Schedule or Recital of and to this Agreement;
- 2.1.6 save where stated to the contrary any reference to this Agreement or to any other document shall include any permitted variation amendment or supplement to this Agreement or to such document;
- 2.1.7 any reference in this Agreement to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force.

3. **Commencement Date**

This Agreement shall have effect on and from the Commencement Date.

4. **Pooling Arrangements**

- 4.1 The terms of the Pool are set out in the Schedule to this Agreement and are subject to amendment at the sole discretion of the Administering Authority from time to time on notice to the bodies that participate in the Pool.
- 4.2 The Small Scheduled Body agrees to participate in the Pool in accordance with its terms as set out in the Schedule to this Agreement.

5. **Amendment**

- 5.1 With the exception of the Schedule to this Agreement (which may be amended at the sole discretion of the Administering Authority), the parties to this Agreement may, with the agreement of all of them in writing, amend this Agreement by deed provided that:
- 5.1.1 the amendment is not such that it would breach the Regulations or any other legal or regulatory requirements applicable to the Scheme; and
- 5.1.2 the amendment would not prejudice the status of the Scheme as a registered pension scheme under the Finance Act 2004.

6. **More than one Counterpart**

This Agreement may be executed in more than one counterpart, which together constitute one agreement. When each signatory to this Agreement has executed at least one part of it, it will be as effective as if all the signatories to it had executed all of the counterparts. Each counterpart Agreement will be treated as an original.

7. **Laws**

- 7.1 This Agreement will be governed by and interpreted in accordance with the laws of England and Wales.

EXECUTED as a deed and delivered on the date stated at the beginning of this Agreement.

THE COMMON SEAL of:
WEST SUSSEX COUNTY COUNCIL
was affixed in the presence of:

Authorised Officer

THE COMMON SEAL¹ of:
FISHBOURNE PARISH COUNCIL
was affixed in the presence of:

Mrs. Lucy Wright - Parish Clerk/RFO to Fishbourne Parish Council

Authorised Officer

¹ Amend to own form of execution

SCHEDULE

Terms of the Small Scheduled Bodies Pool

1. Interpretation

1.1 The following expressions in this Schedule have the following meanings:

"2013 Regulations"	the Local Government Pension Scheme Regulations 2013.
"Actuary"	an actuary appointed by the Administering Authority.
"Administering Authority"	West Sussex County Council.
"Fund"	West Sussex County Council Pension Fund.
"Member"	an employee who joins the Scheme as an active member and who remains an active member or subsequently becomes a deferred member or a pensioner member. Where applicable, this term shall also include a Member's spouse, civil partner, nominated partner, eligible child or dependant whether actual or prospective.
"Pool"	Small Scheduled Bodies Pool
"Regulations"	the 2013 Regulations and the Transitional Regulations.
"Scheme"	the Local Government Pension Scheme established by the Regulations made by the Secretary of State under sections 7 and 12 of the Superannuation Act 1972.
"Transitional Regulations"	the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014.

2. Terms of entry into the Pool

2.1 Any bodies already participating in the pooling arrangements equivalent to the Pool prior to 1st April 2017 shall be deemed to join the Pool with effect on and from 1st April 2017.

- 2.2 A body within the meaning of Part 1 or 2 of Schedule 2 to the Regulations (the “**Small Scheduled Body**”) may apply to join the Pool on giving not less than 3 months’ written notice to the Administering Authority. The Administering Authority shall have absolute discretion as to whether to admit the Small Scheduled Body to the Pool.
- 2.3 If the Administering Authority agrees to admit the Small Scheduled Body to the Pool, then on the expiry of such notice given in accordance with **clause 2.2** of this Schedule the Small Scheduled Body will be admitted to the Pool with immediate effect.
- 2.4 The Administering Authority may in its absolute discretion allow a Small Scheduled Body to be admitted to the Pool with effect from a different date to that set out in **clause 2.3** of this Schedule.
- 2.5 New bodies are admitted to the Pool at the absolute discretion of the Administering Authority, therefore the consent of the other bodies already participating in the Pool will not be required to admit a new body. The Administering Authority shall notify all existing bodies in the Pool on the admission of a new body.

3. **The Pooling Arrangements**

- 3.1 Subject to the provisions set out in **clauses 4, 5** and **6** of this Schedule the Pool will operate in accordance with the following arrangements:
- 3.1.1 the Small Scheduled Body’s rates and adjustments certificate (and any future revisions of that certificate) shall be assessed by the Actuary as if the Small Scheduled Body and all other employing authorities participating in the Pool were a single body. This will reflect both the cost of future accrual (future service rate) and any amount required to cover a deficit, if applicable (past service adjustment);
- 3.1.2 the Small Scheduled Body shall restrict increases to the pensionable pay of any Members to the [higher of *the pay awards agreed by National Joint Council for Local Government Services (or any successor body for local government pay negotiations)* **and** the assumptions set out in the latest actuarial valuation] unless the Administering Authority agrees otherwise in writing. In the event that the Small Scheduled Body awards pensionable pay increases in excess of this level then the Small Scheduled Body shall be responsible for the increased liabilities and the Administering Authority shall either:

- 3.1.2.1 charge the Small Scheduled Body an additional payment in respect of any extra charge on the Fund; or
 - 3.1.2.2 require the Actuary to adjust the Small Scheduled Body's rates and adjustments certificate to take account of this;
- 3.1.3 the Administering Authority shall charge the Small Scheduled Body an additional payment in respect of any extra charge on the Fund to take account of any increased liabilities as a result of:
 - 3.1.3.1 the immediate payment of benefits when the Small Scheduled Body dismisses any Member who is an active member of the Scheme by reason of redundancy or business efficiency or where such a Member's employment is terminated by mutual consent on the grounds of business efficiency;
 - 3.1.3.2 the immediate payment of benefits with the Small Scheduled Body's consent under Regulation 30(6) of the 2013 Regulations including the costs of the Small Scheduled Body waiving any reduction of benefits under Regulation 30(8) of the 2013 Regulations; or
 - 3.1.3.3 the immediate payment of benefits under Regulation 30(5) of the 2013 Regulations including the costs of the Small Scheduled Body waiving any reduction of benefits under Regulation 30(8) of the 2013 Regulations;
- 3.1.4 in the event that:
 - 3.1.4.1 a Member who is an active member of the Scheme has his employment with the Small Scheduled Body terminated on grounds of ill-health or infirmity of mind or body which renders him both permanently incapable of discharging efficiently the duties of his current employment and not immediately capable of undertaking any gainful employment; or
 - 3.1.4.2 a Member who became a deferred member of the Scheme on leaving his employment with the Small Scheduled Body receives payment of his benefits immediately on grounds of ill-health or infirmity of mind or body which renders him both permanently incapable of discharging efficiently the duties of that employment and unlikely to be capable of undertaking gainful employment before normal pension age, or for at least three years, whichever is the sooner;

then the Small Scheduled Body shall make a claim against the Small Scheduled Body's insurance cover, if applicable, and pay the amount recovered (or, if less, an amount equal to the additional costs of payment of such benefits, as calculated by the Actuary) to the Administering Authority; and

3.1.5 in the event that insurance cover as referred to in **clause 3.1.4** is in place but is not sufficient to cover the costs in full the Administering Authority will:

3.1.5.1 charge the Small Scheduled Body an additional payment in respect of any extra charge on the Fund; or

3.1.5.2 require the Actuary to adjust the Small Scheduled Body's rates and adjustments certificate to take account of this.

4. **Exit from the Pool on notice**

4.1 Subject to **clause 5** of this Schedule, the Administering Authority may give not less than 3 months' written notice to the Small Scheduled Body to terminate the Small Scheduled Body's participation in the Small Scheduled Bodies Pool.

4.2 Subject to **clause 5** of this Schedule, the Small Scheduled Body may make a request in writing to the Administering Authority to terminate the Small Scheduled Body's participation in the Small Scheduled Bodies Pool. The Administering Authority has absolute discretion as to whether to consent to such request.

4.3 On the expiry of such notice given in accordance with **clause 4.1** of this Schedule or the Administering Authority's consent given in accordance with **clause 4.2** of this Schedule, the Small Scheduled Body will cease to participate in the Pool with effect from 31 March in the year following the next triennial actuarial valuation of the Fund.

4.4 Where the Small Scheduled Body exits the Pool in accordance with **clause 4** of this Schedule, the Small Scheduled Body shall remain a Scheme employer in the Fund (subject to the provisions of the Regulations).

5. **Automatic exit from the Pool**

5.1 The Small Scheduled Body shall automatically exit the Pool with immediate effect:

5.1.1 on the Scheme Employer ceasing to be a Scheme employer within the meaning of the Regulations; or

5.1.2 on the Small Scheduled Body no longer being open to admitting active Members to the Fund; or

5.1.3 where the Small Scheduled Body breaches any of its obligations under the terms of the Pool.

If the breach is capable of remedy, the Administering Authority shall first give the Small Scheduled Body the opportunity of remedying the breach within such reasonable period as the Administering Authority may specify. **or**

5.2 The Small Scheduled Body exiting from the Pool in accordance with **clause 5.1** of this Schedule is without prejudice to any valuation that may be required as a result of the Small Scheduled Body becoming an exiting employer under Regulation 64(1) of the 2013 Regulations.

6. **Consequences of leaving the Pool**

6.1 Where the Small Scheduled Body exits from the Pool in accordance with **clauses 4 or 5** of this Schedule the terms of the Pool will cease to apply to the Small Scheduled Body and the Small Scheduled Body shall then be treated by the Administering Authority as a stand-alone employer in the Fund and assessed on that basis for any future rates and adjustment certificate.

6.2 On exiting the pool the Small Scheduled Body's share of assets and liabilities will be based on its underlying profile, as tracked by the Actuary throughout the period of the body's participation in the Pool as if the body was not a member of the Pool.

6.3 In the event that a Small Scheduled Body ceases to be such a body and therefore ceases to be an employer in both the Pool and the Fund, the Administering Authority will seek to recover any exit payment due under the the Regulations from the employer. In the event that these liabilities cannot be recovered from the Small Scheduled Body, a bond provider, their guarantor or a successor body within the Fund, and a shortfall exists within the Fund, these will normally fall to be met by the Pool as a whole.

6.4 The costs incurred by the Administering Authority of all work commissioned in relation to this **Clause 6** will be charged to and payable by the Small Scheduled Body.

7. **Matters of doubt**

7.1 The Administering Authority shall have absolute discretion to decide on any matters of doubt arising in relation to the interpretation of the provisions of the terms of the Pool.

7.2 The Administering Authority will make arrangements for the resolution of any disagreements or disputes in relation to the terms of the Pool.