

AUDIT & GOVERNANCE COMMITTEE



Report subject	BCP Council Investment to Support the One Dorset Pathology Unit
Meeting date	10 October 2019
Status	Public
Executive summary	<p>A report on a BCP Council investment to support the One Dorset Pathology Unit was presented to Cabinet on 11th September 2019.</p> <p>The report requested Cabinet to recommend to Council approval of a £14.9m investment, extend the Councils schedule of approved counterparties for investments, delegate further terms of the investment to the Chief Finance Officer and authorise the Monitoring Officer to draw up and enter a suitable legal agreement.</p> <p>The report to Cabinet also requested that the Audit & Governance Committee be asked to consider the report and make any further recommendations for Council consideration.</p>
Recommendations	<p>It is recommended that Audit & Governance Committee;</p> <p>1. Consider the BCP Council Investment to support the One Dorset Pathology Unit Cabinet report and make any necessary recommendations to Council.</p>
Reason for recommendations	To enable Audit & Governance Committee to comment on the proposed BCP investment to support the One Dorset Pathology Unit.
Portfolio Holder(s):	Cllr David Brown – Finance Portfolio Holder
Corporate Director	Julian Osgathorpe (Corporate Director Resources)
Contributors	Adam Richens, Chief Finance Officer and Director of Finance
Wards	All wards
Classification	For recommendation

Summary

1. A report on a BCP Council Investment to Support the One Dorset Pathology Unit was presented to Cabinet on 11th September 2019.
2. The report stated *"Cabinet recommend Council:*
 - *approve a £14.9m investment over a 15-year repayment period to The Royal Bournemouth and Christchurch Hospitals NHS Foundation Trust on the terms outlined in in paragraph 3;*
 - *extend the Council's schedule of approved counterparties for investments to include the Royal Bournemouth and Christchurch Hospital NHS Foundation trusts for the purposes of this investment only as well as increase the time limit to 15 years.*
 - *delegate to the Chief Finance Officer the approval of any further detailed terms for the provision of the investment.*
 - *authorise the Council's Monitoring Officer to draw up and enter into a suitable legal agreement with the NHS Foundation Trust."*
3. This report requests Audit & Governance to consider the Cabinet report (see Appendix A) and to offer any recommendation to.

Summary of financial implications

4. See attached Appendix A
5. All such investment activity is carried through the treasury management of cash surpluses and uses established and programmed resources. No external borrowing is specifically undertaken to finance such investments.

Summary of legal implications

6. See attached Appendix A

Summary of human resources implications

7. See attached Appendix A

Summary of environmental impact

8. See attached Appendix A

Summary of public health implications

9. See attached Appendix A

Summary of equality implications

10. See attached Appendix A

Summary of risk assessment

11. See attached Appendix A

Background Papers

12. See attached Appendix A

13. Appendices

Appendix A BCP Council Investment Report to Cabinet 11th September 2019

CABINET



Report subject	BCP Council Investment to Support the One Dorset Pathology Unit
Meeting date	11 September 2019
Status	Public
Executive summary	<p>This report presents the Council with the opportunity to support one of its key strategic partners in delivering a new modern pathology facility to serve both the conurbation and the rest of Dorset.</p> <p>The support will be in the form of a £14.9m investment from the Council into the Royal Bournemouth and Christchurch National Health Service (NHS) Foundation Trust (RBCH) which will be repaid evenly in equal instalments of capital of just under £1m per annum.</p> <p>To make this investment Council needs to add, on an exceptional basis, the RBCH to its list of approved counterparties and extend the normal five-year period for investments.</p> <p>This repayment will be made by the Royal Bournemouth and Christchurch NHS Foundation Trust regardless of the operational performance of the new One Dorset Pathology Unit.</p> <p>The risk around delivering the savings from the new pathology unit will therefore lay with the Royal Bournemouth and Christchurch NHS Foundation Trust.</p> <p>This arrangement recognises that there is a limited amount of capital funding available in the NHS compared to the size of their revenue budget.</p>
Recommendations	<p>It is RECOMMENDED that Cabinet recommend Council:</p> <p>(a) approve a £14.9m investment over a 15-year repayment period to The Royal Bournemouth and Christchurch Hospitals NHS Foundation Trust on the terms outlined in in paragraph 3;</p> <p>(b) extend the Councils schedule of approved counterparties for investments to include the Royal Bournemouth and Christchurch Hospital NHS</p>

	<p>Foundation trusts for the purposes of this investment only as well as increase the time limit to 15 years.</p> <p>(c) delegate to the Chief Finance Officer the approval of any further detailed terms for the provision of the investment.</p> <p>(d) authorise the Council's Monitoring Officer to draw up and enter into a suitable legal agreement with the NHS Foundation Trust.</p>
Reason for recommendations	To provide the funding the NHS Foundation Trust, is seeking to enable its investment in its front-line services and benefit the local community.
Portfolio Holder(s):	Councillor David Brown (Portfolio Holder for Finance)
Corporate Director	Julian Osgathorpe (Corporate Director Resources)
Contributors	Adam Richens, Chief Finance Officer and Director of Finance Matthew Filmer, Finance Manager
Wards	All Wards
Classification	For Recommendation

Background

14. The Council has been approached by the Royal Bournemouth and Christchurch Hospitals NHS Foundation Trust, on behalf of the local NHS pathology network of services. The request is to provide a mechanism for them financing their One Dorset Pathology modernisation. Councils which have provided resources to support their local foundation trusts includes those between;
 - a) Blackpool Council and Blackpool Teaching Hospitals NHS Foundation Trust.
 - b) Northumberland County Council and the Northumbria Healthcare NHS Foundation Trust.
15. On the basis that Foundation Trusts are not legally allowed to secure a loan against operational assets then the investment would not be secured but would be issued based on creditor assurance as laid out in the Department of Health guidance (see Summary Risk Assessment section).
16. The Council's Corporate Management Board has recommended approval of an investment in the Royal Bournemouth and Christchurch Hospitals NHS Foundation Trust on the following terms:
 - that formally the Royal Bournemouth and Christchurch Hospitals NHS Foundation Trust will be responsible for the capital and interest repayments.
 - an investment of up to £14,900,000.

- a repayment term of 15 years.
 - repayment by annual equal instalments of capital and interest on a reducing capital sum basis.
 - an interest rate of 3.5% based on a suggested rate of 2.75% plus the 0.75% EU state aid margin rate for organisations for strong and normal levels of collateral.
 - unsecured on the basis that all liabilities of a Foundation Trust are protected by the Department of Health.
 - a one-off upfront arrangement fee of £45,000 to reflect the due diligence and monitoring arrangements required.
 - a delegation to the Chief Finance Officer of any further detailed terms not stated above.
 - drawdown of the investment will take place in line with the projects build programme.
 - no provision within the agreement will be made for any extensions or payment deferrals.
17. This application is different from a normal business investment in terms of the nature of the applicant as a strategic public-sector partner. However, from the Councils perspective it is important to emphasise that the Royal Bournemouth and Christchurch NHS Foundation Trusts will be required to make £993k annual capital repayments and the associated interest payment regardless of their financial position, operational performance or success of the One Dorset Pathology service.
18. Therefore, the success of the business case associated with One Dorset Pathology service sits with the Royal Bournemouth and Christchurch NHS Foundation Trusts and its partners.
19. A detailed assessment of the financial position of the Foundation Trust has not been undertaken. However, it is noted RBCH is rated as “Outstanding” for the use of resources as assessed by its’ key regulators (Care Quality Commission and NHS Improvement). The key issue is whether the Foundation Trust can repay an investment of this scale and what recourse the Council would have should, in the worst case scenario, the Foundation Trust were to default or be placed in special measures. This is detailed further in the Summary of Risk Assessment section.

Royal Bournemouth and Christchurch Hospital NHS Foundation Trust

20. The Royal Bournemouth and Christchurch Hospitals NHS Foundation Trust provides healthcare to the residents of Bournemouth, Christchurch, East Dorset and part of the New Forest. It gained Foundation status in 2005, following three consecutive years as a three-star performing Trust. Services are provided to patients from the Royal Bournemouth and Christchurch Hospitals. The Trust’s catchment population is covered by two Clinical Commissioning Groups:
- Dorset Clinical Commissioning Group
 - West Hampshire Clinical Commissioning Group

21. The Trust was issued with a provider licence by Monitor (now part of NHS Improvement) on 1 April 2013, which replaced the Trust's terms of authorisation. The Trust is run by a Board of Directors, which is made up of Executive and Non-Executive Directors.
22. Work is currently underway to enable the merger of the Trust with Poole Hospital NHS Foundation Trust. A case has been submitted to the Competition Mergers Authority (CMA) who have indicated that the Trusts may create a shared leadership team (e.g. single Chief Executive and Chair posts) and introduce joint management of key services. The merger is potentially likely to take place between April 2020 and April 2021, though it has not yet been agreed exactly when NHSI and the CMA will consider the request to merge. All national political parties have agreed to legislate to end the CMA role in NHS, which was introduced in 2012. However, a date has not yet been set for this. The merged organisation would continue the obligation of repayment to the Council.
23. NHS Improvement oversees NHS Trusts and NHS Foundation Trusts using one consistent approach via a Single Oversight Framework (SOF). The objective of the SOF is to help providers attain and maintain Care Quality Commission ratings of "Good" or "Outstanding", meet NHS constitution standards and manage their resources effectively, working alongside their local partners. RBCH is rated as overall "Good" with outstanding for well led domain, which includes the use of resources.

One Dorset Pathology Unit

24. As part of the NHS Sustainability Plan all of Dorset's NHS providers have agreed a business case to deliver a new pathology facility on its site at Castle Lane East Bournemouth. This new build hub would enable;
 - A shared vision and future for the service, which fits the national strategy.
 - Implementation of a new service delivery model centred on a new build at the Royal Bournemouth Hospital and essential service laboratories at Poole Hospital and Dorset County Hospital.
 - Harmonise clinical leadership.
 - A single management structure.
 - Modern, harmonised equipment through a new Managed Equipment Services (MES), with easier ability to update and flex as the service evolves.
 - Implementation of a single Laboratory Information System (LIMS), able to share results between healthcare professionals more quickly, and reduce travel.
 - A financially viable model, able to offer greater certainty to staff, and allow investment in training, facilities and equipment.
 - Dorset NHS to have the capacity to support the increasing service demand from a diverse and aging population.
 - Network laboratory models which lead to better recruitment and improved staff training, as services are at scale, and offer career progression.
 - Dorset NHS to support the demand for increasing specialisation and sophistication in the types of testing services required. The network approach also

allows more cutting-edge tests, including research and development opportunities. This will allow more residents access to trials and latest tests.

- Deliver savings and efficiencies in excess of those required to meet the capital and interest repayments on the investment.
25. The Royal Bournemouth and Christchurch Hospital firmly acknowledge that the capital and interest repayments under this proposal must be made to the Council regardless.
 26. The resources provided by the Councils investment would be used to finance the building of the new pathology facilities. A modern hub laboratory will lead to faster diagnosis whilst delivering more efficient ways of working. A modern design will also allow us to future proof the service and give flexibility to adapt to changes in technology and clinical requirements which current laboratories cannot.
 27. Over 17 million tests per year are undertaken by the Dorset Pathology network. Many these are for residents of BCP Council. Multiple tests are run on one sample, such as a single blood test. Pathology is relied upon for over 70% of all clinical decisions.
 28. The annual turnover of the RB&C NHS Foundation Trust is approximately £295m. The approximate turnover of all the NHS organisations party to the One Dorset Pathology Unit proposal is over £700m per year. The intention is that the Foundation Trust and their partner Acute Trusts would generate operational efficiencies in delivering the service from a single modern pathology facility.
 29. The facility will either be built on land owned by the Royal Bournemouth and Christchurch Hospital at Castle Land East Bournemouth or by land purchased from the Council which is currently part of the adjoining Wessex Fields site. This latter point is a separate decision for the Council and hospital Trust. The Council's early masterplan identifies a location on Wessex Fields for the facilities, adjacent to the hospital. Timelines are very much dependent on the work underway with the design and construction teams. The best case is another eight months of planning and a twelve-month build.

Investment

30. The £14.9m investment will require capital repayments of £993k in capital annually on the anniversary of the investment from the Foundation Trust in each of the next 15 years plus interest at a rate of 3.5% based on a reducing balance basis. Assurance via the Finance Director for the Foundation Trust has been received to confirm that the Board of the NHS Foundation Trust acknowledge that they will make these repayments regardless of their success in delivering the savings assumed within their underpinning business case.
31. The Royal Bournemouth and Christchurch NHS Foundation Trust have also confirmed that as a solvent foundation trust they do not need to obtain approval from the Department of Health or NHS Improvement. However, they have discussed the arrangement with NHSI in detail and they have confirmed in writing they are able to do so. NHSI have also seen and approved the One Dorset Pathology business case as the underlying IT system is being funded by the Department of Health.

32. NHS colleagues have confirmed their confidence in the One Dorset business case with the capital and interest payment having been factored into their long-term cash plans.

State Aid

33. For the avoidance of doubt the Council has used loan terms to ensure the interest rate has been set at a margin to ensure compliance with the EU Commission Test and therefore ensure compliance with EU State Aid requirements.
34. The proposed 3.5% interest rates also mirror the Department of Health public dividend rate which is used for any Government backed NHS borrowing schemes.

Third Party, Independent consideration

35. The legal framework and assurance around the Council's ability to make an investment in its NHS Foundation Trust has been obtained from Link Asset Services (LAS) the Council's Treasury Management Advisers.

Consultation

36. Consultation has been undertaken internally with the Council's Corporate Management Board (CMB) and the Foundations Trust's Finance Committee.
37. Externally consultation has taken place with the Council's External Auditor who has responded that he has no problem with the arrangement in principle.
38. Consultation with the BCP Audit & Governance Committee will take place when this report is presented to their 10 October 2019 meeting.

Alternative Options

39. The alternative option for the Council is not to progress this proposal. This would impede the NHS Foundation Trust in delivering its new Pathology Hub for Dorset as RBCH would need to seek a commercial investment. However, it would deprive the Council of some relatively low risk income over 15 years, and potentially result in a higher cost to the public sector locally for the Pathology service. As the NHS is non-profit making any savings are re-invested directly back into local patient care.

Summary of financial implications

40. The interest rate charged to the NHS Foundation Trust would be 3.5% which can be compared to the 1.5% rate the Council would currently (13 August 2019) expect to obtain on a 15-year investment.
41. The total interest earned on this proposal by the Council is £4.2m. The additional interest earned over the 15-year period when compared to the current prevailing 15-year rate on the same reducing balance basis is £2.4m. This additional return recognises the extra level of risk the Council is taking. It should also be noted that the interest earned each year will differ as £993k of the investment is repaid each year.
42. For information and comparative purposes only, the Council, as at the 13 August 2019, could borrow at a rate of 1.17% based on a 15-year equal instalments of principle and interest loan.
43. In addition, and in line with normal such arrangements, the NHS Foundation Trust will pay an upfront cost of £45,000 as an arrangement fee. This will support the costs

incurred by the Council including the cost of staff ordinarily employed by the Council who have worked on this proposal.

Summary of legal implications

44. The Council has the powers to make such an arrangement using the investment power granted by Section 12 of the Local Government Act 2003 however such arrangements should still comply with State Aid criteria.
45. When making such investments, an authority must have regard to Investment Guidance, which includes key references to the fact that such investments do not represent revenue or capital expenditure, and that they must be recorded in the balance sheet as long or short-term investments.
46. An investment of this type would be classified as a “non-specified” investment. When making such investments, an authority should report the reason for the investment being made to the appropriate reporting body and include the details of the investment within their investment strategy.
47. Subject to the approval of the investment, a legal agreement will be drawn up by the Council’s Monitoring Officer.

Summary of human resources implications

48. None specifically related to this report.

Summary of environmental impact

49. None specifically related to this report.

Summary of public health implications

50. None specifically related to this report.

Summary of equality implications

51. The Council can support its residents indirectly by providing better value financing to another public sector third party.

Summary of risk assessment

52. Guidance has been produced by the Department of Health with regards to unsecured creditors entitled NHS Trust and foundation trust special administration – a guide for unsecured creditors, Department of Health, November 2015. The 2015 version replaced the 2013 guidance, considering recent Acts which have strengthened the Trust Special Administrator’s (TSA) regime. However, the fundamental principles in relation to creditors’ rights remain unchanged. The key sections worth noting in terms of a Trust getting into financial difficulty are sections 6/7 and 8:

6. Is the Secretary of State liable for all the liabilities of a dissolved NHS trust?

The Secretary of State has an obligation to deal with all of the liabilities of an NHS trust that is dissolved at the conclusion of the TSA Regime 1. Section 70 of the 2006 Act places a duty on the Secretary of State to transfer all of a dissolved NHS trust’s liabilities to another NHS body, to the Secretary of

State, or to Welsh Ministers. **This means that all creditors of an NHS trust are protected and all liabilities of all NHS trusts are safeguarded.**

7. Is the Secretary of State liable for all the liabilities of a dissolved foundation trust?

In the event that a decision is made at the conclusion of the TSA Regime to dissolve an FT, Monitor must make an order under Section 65LA of the 2006 Act to dissolve that FT. The order must provide for the transfer of all of the FT's liabilities to another NHS body, to the Secretary of State, between more than one NHS body or between one or more NHS bodies and the Secretary of State. **This means that all creditors of an FT are protected and all liabilities of all FTs are safeguarded.**

8. Does the TSA Regime mean that in all cases 100% of any due debt/liability will be met according to current terms of business with suppliers and there are no circumstances in which creditors might be offered anything less than this?

The appointment of the TSA does not affect any contractual obligations that the NHS trust or FT owes to third parties. If an NHS trust or FT is under a contractual obligation prior to the appointment of the TSA, it will continue to be after that appointment. As stated under question 6, section 70 of the 2006 Act places a duty on the Secretary of State to deal with all the liabilities of any NHS trust that is dissolved, and an order made by Monitor under section 65LA of the 2006 Act will transfer all liabilities of an FT that is dissolved as set out under question 7.

NHS legislation does not impose a duty on a TSA to meet debts according to current terms of business with suppliers. Our expectation is that a TSA will strive to deal with debts in accordance with current terms of business. Suppliers will need to decide for themselves the terms on which to do new business with an NHS trust or FT under trust special administration. However, an NHS trust or FT to which a TSA has been appointed remains covered by the section 70 obligations (in relation to NHS trusts) or section 65LA obligations (in relation to FTs), which have the effect of safeguarding all liabilities.

The guidance therefore provides reassurance that any such agreement between the Council and an NHS Trust is secure in that any temporary or replacement body will become responsible for all liabilities.

53. Members need to be aware of the reputational and financial consequences of default on any investment.

Appendices

None