



**Agenda Item: 4
Council
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Norfolk Business Rates Pool

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Portfolio: Finance and Resources

Ward(s) Affected: All

Purpose of the Report:

Due to timescales the Director of Resources in consultation with the Leader of the Council has agreed in principle that the Council will participate in the 2020/21 Norfolk Business Rates Pool subject to ratification by Council. This report is to inform Members of the Norfolk Business Rates Pooling arrangements for 2020/21, and the potential financial risks and reward involved for participating councils, in order that Council can make an informed decision on whether to ratify the decision in principle and the consequences for the Pool in 2020/21 should a decision be made not to participate.

Recommendations:

1. That Council ratify the decision in principle to participate in the Norfolk Business Rates Pool for 2020/21.

1 SUMMARY

- 1.1 Due to timescales the Director of Resources in consultation with the Leader of the Council has agreed in principle that the Council will participate in the 2020/21 Norfolk Business Rates Pool subject to ratification by Council. This report is to inform Members of the Norfolk Business Rates Pooling arrangements for 2020/21, and the potential financial risks and reward involved for participating councils, in order that Council can make an informed decision on whether to ratify the decision in principle and the consequences for the Pool in 2020/21 should a decision be made not to participate. Further technical information is available in the background papers.

2 BACKGROUND

- 2.1 The intention of the Business Rates Retention scheme is to provide incentives for local authorities to increase economic growth, through retention of a share of revenue generated from locally collected business rates. The scheme includes an arrangement for councils to pool business rate resources where it makes local economic sense to do so. Providing a county council is part of a pooling arrangement, the creation of a pool within a two-tier area such as Norfolk, can reduce or remove the levy on business rates growth paid to the Government by billing authorities who experience business rate growth. This enables more business rates growth to be retained locally and used as agreed by authorities within the pool.
- 2.2 South Norfolk District Council has been a member of the Norfolk Business Rates Pool since 2014/15. Subsequently other Districts have joined the pool in the following years and by 2018/19 the pool included all seven districts in Norfolk as well as the County Council.
- 2.3 Under the scheme all local authorities are set individual baseline funding levels. In two tier areas such as Norfolk the upper tier authority, in this case NCC, will normally receive top up funding from government to reach their baseline funding level and the district authorities will normally pay a tariff (levy) to government for growth above their baseline funding levels. The effect of pooling is that the levy paid to Government is reduced or eliminated completely.
- 2.4 However, there are also financial risks associated with pooling. If a local authority is not in a pool and its business rates income falls by more than 7 ½% below the baseline funding level, then it qualifies for a safety net payment from the Government up to the level of 92 ½% of the baseline funding. In a pooling arrangement the local authorities are treated as a single entity in calculating safety net thresholds, and therefore where a single authority might have received safety net funding outside of a pool, in a pool this may not be a case as the combined safety net threshold may not have been reached.
- 2.5 On 25 September 2018 Norfolk councils submitted a bid to become a 75% Business Rates Pilot, which was confirmed by Government on 13 December 2018.

As part of the pilot the Government agreed that the safety net level would be set at 95% of the baseline funding rather than the usual 92 ½%.

- 2.6 Operation of the pilot is managed via a Governance Agreement signed by all councils 10 January 2019. A Memorandum of Understanding is also in place with the Ministry of Housing, Communities and Local Government (MHCLG). The pilot commenced 1 April 2019 and Norfolk County Council acts as the lead authority.
- 2.7 MHCLG confirmed in September that the 2019/20 pilots will operate for one year only and set out details of pooling arrangements for 2020/21.

3 CURRENT POSITION

NHS Trust Business Rates Challenge

- 3.1 Since the start of the pilot, a court date has been confirmed for the NHS Trust business rates challenge, which was previously identified as a key risk by the Norfolk Pool.
- 3.2 NHS Trusts have made a claim that they should benefit from charitable status for the purposes of business rates. If successful, this would result in a substantial backdated cost for all local authorities nationally as the claims go back to 2010 in some instances. The NHS Trust business rates challenge is now set to be heard by the High Court on 4 November 2019. It remains unclear at this point what the timescale is for the NHS Trust Business Rates Challenge to be resolved, but it has potential to impact on both the 2019/20 pilot and the decision to pool for 2020/21.
- 3.3 Under the business rates retention system, the costs in the event of a successful challenge would be shared between central and local government. Due to the operation of the 75% pilot, the share would differ between 2019/20 and 2020/21. The value is also increasing as each year's business rates bills are added. In September 2019, for Norfolk, the impact of a successful challenge by the NHS Trusts has been estimated to be in the region of:
 - £35m if settled in 2019/20, of which **£27m** would be borne locally (75%).
 - £40m if settled in 2020/21, of which **£20m** would be borne locally (50%).
- 3.4 There would also be an ongoing impact in future years of a successful challenge, permanently reducing the rates take in Norfolk by about £4-5m.
- 3.5 It is unclear what action Government would take in the event of a successful NHS Trust Business Rates Challenge. Clearly this would have the potential to be highly destabilising for a large number of councils on a national scale and it may well be that Government would seek to mitigate the impact.
- 3.6 In the event that Government does not step in, it is possible that individual authorities' retained growth would have to be clawed back by the lead authority (Norfolk County Council) to bring other members of the pilot up to their Safety net funding level.

- 3.7 Regardless of the outcome of the challenge to be heard in November, it is assumed that the potential would remain for either party to appeal. However, it is also assumed that a ruling in favour of the NHS Trusts would have an immediate impact even if appealed by local authorities, because of the need for Districts to make a provision at that point in their Annual Financial Accounts. Currently Districts have not made any provisions to date within their Annual Financial Accounts in respect of the NHS Trust Business Rates Challenge but have recognised the risk as a contingent liability.

Norfolk Business Rates Pool Governance Arrangements

- 3.8 The Business Rates Pool Governance Agreement sets out how volatility in business rates income is managed. The Pool will be operated on the basis of a Safety Net Guarantee, guaranteeing each Pool member as a minimum 92.5% (Pilot – 95%) of its MHCLG determined Baseline Funding.

The Parties agree to share volatility in business rates revenues across billing authorities and accordingly accept the risk of funding losses equivalent to the 92.5% Safety Net (Pilot – 95%). If one or more Parties experiences a shortfall in business rates income in the Pool and, consequently, retains funding at less than the MHCLG determined 92.5% (Pilot – 95%) Safety Net, a payment shall be made by the Pool to bring those Parties up to the Safety Net level.

- 3.9 Under the agreement, funds to make the equivalent Safety Net payments will be obtained in the following order:
- Use of the Local Volatility Fund - £1m was set aside within the Norfolk pool to cover any fluctuation locally.
 - For the Pilot only - Any pilot gain over the existing 50% Scheme
 - Use of any available Joint Investment Fund – remaining funding available in the Pool
 - Use of remaining growth retained by other Parties in proportion to growth experienced under the scheme.
 - Use of baseline funding down to 92.5% (Pilot – 95%) for all Parties in proportion to growth experienced under the scheme.
- 3.10 A report on the proposed allocation of the 2018/19 Joint Investment Fund pool income is due to be presented to Leaders in November 2019. In view of the significant risk associated with the NHS Trust Business Rates Challenge, this will recommend that allocations of 2018/19 funding are provisional only, pending the outcome of the NHS Trust Business Rates Challenge. The available Joint Investment Fund would include unallocated 2018/19 pool funds due to be allocated November 2019 which total £5.643m. In a worst-case scenario, further consideration could also be given to the scope to claw back previous year pool funds which have been allocated to projects, but which remain unspent and are not contractually committed.

Impact of the NHS Trust Business Rates Challenge on the 2019/20 Pool

3.11 Leaders were advised at their meeting on the 17 October that updated forecasts for the 2019/20 pilot were not be available until the end of October, but the latest available information indicated no material changes and the benefit of piloting remains forecast to be approximately £7m for Norfolk. However, as set out above, the NHS Trust business rates challenge has the potential to significantly reduce business rates income in Norfolk. Dependent on the timing of any decision, this could potentially impact on the 2019/20 pilot, however it is too late to make any amendments to the membership of the pool for this current year. The table below illustrates the impact on the 2019/20 of the outcome of the NHS Trust Business Rates Challenge.

Council	Scenario 1	Scenario 2
	Resolved in 2019/20 in favour of Local Authorities	Resolved in 2019/20 in favour of NHS Trusts
	£m	£m
Breckland	0.815	0.793
Broadland	0.704	0.638
Great Yarmouth	0.533	0.434
King's Lynn and West Norfolk	1.718	1.577
North Norfolk	0.812	0.770
Norwich	0.365	0.260
South Norfolk	1.834	1.424
Pool	6.781	5.895

3.12 If the challenge is resolved in 2019/20 in favour of NHS Trusts, the impact of the challenge will have been absorbed within the 2019/20 pilot.

Impact on the 2020/21 Pool

3.13 On 17 September, MHCLG confirmed that 2019/20 pilots will operate for one year only and issued an invitation to form business rate pools in 2020/21 with a deadline for pooling proposals of 25 October 2019. MHCLG assume that the current pilot pool (of all Norfolk councils) will continue (in the 50% scheme) unless explicitly requested to change or revoke the pool by the deadline.

3.14 Due to the timescales set a decision has to be made prior to the outcome of the NHS Trust Business Rates Challenge being known. Officers collated the most up to date information with regards to the impact of a decision being made in 2020/21 in favour of the NHS Trusts, and Norfolk Finance Officers met to discuss this.

3.15 The biggest impact, should the NHS Trusts be successful, is with South Norfolk due to the Norfolk and Norwich University Hospital. For South Norfolk the impact

of a favourable NHS challenge, would be to trigger the safety net arrangements if the District was excluded from the Pool, subsequently this would also be the case for both Great Yarmouth Borough Council and The Borough Council of Kings Lynn and West Norfolk.

- 3.16 A report was presented to Leaders on 17 October recommending that the pool for 2020/21 should exclude South Norfolk Council. This recommendation was based on the financial risk of having South Norfolk Council in the pool should the case be resolved in favour of the NHS Trusts. However, excluding South Norfolk would have the detrimental impact of losing approximately £1.834m in retained levy if the NHS Trust case is resolved in favour of the Councils. See table below:

(Table 2 Revised from the version within the Leaders report): 2020/21 pooling decision scenarios	Challenge is not resolved and there is continuing uncertainty about 2020/21	
	<i>Remains unresolved or resolved in favour of Local Authorities</i>	<i>Resolved in favour of NHS Trusts in 2020/21</i>
	£m	£m
Breckland	0.815	0.679
Broadland	0.704	0.369
Great Yarmouth	0.533	-0.658
King's Lynn and West Norfolk	1.718	0.579
North Norfolk	0.812	0.520
Norwich	0.365	-1.031
Pool excluding South Norfolk	4.947	0.458
South Norfolk	1.834	-4.883
Pool including South Norfolk	6.781	-4.425

Please note: The figures in the above table differ slightly to those contained in the Leaders report as further claims were received by both Norwich and South Norfolk

Council after the Leaders meeting. The figures above now include potential claims as well as those received by districts.

3.17 Norfolk Leaders considered the report and the recommendations of the S151 Officers at their meeting on 17 October, however all the Leaders present decided to continue to pool including South Norfolk for 2020/21. They considered the likelihood of both the NHS winning the legal challenge and the Government not stepping into to mitigate the impact and based this decision on the following despite their reluctance to overrule their S151 officers:

- The risks had not materially changed except the announcement of a court date
- Norfolk Councils stand united
- The risks of central government allowing the case to undermine local government funding nationwide were deemed to be small
- Changing pooling arrangements will not affect the majority of the potential liabilities but only those going forward

3.18 Should the NHS Trusts Business Rate Challenge be resolved in favour of the NHS and the Government does not act to mitigate the impact then in this worst-case scenario the trigger for the safety net would come into effect as described in paras. 3.8 to 3.10 above to recover the loss of £4.425m (table in 3.16 above).

3.19 The Local Volatility Fund stands at £1m which would leave £3.425m (£4.425m – £1m) of safety-net payment to be funded. The pool could also consider holding back payment to economic development projects from the 2018/19 pool levy / 2019/20 pilot pot to fund the safety-net payments above the £1m. In the worst-case scenario if all of the available funding is allocated to economic development projects the remaining £3.425m would need to be funded from the other authority revenue budgets as follows:

Table 3: Forecast funding of £3.425m Safety-Net	
	£m
Breckland	-0.728
Broadland	-0.405
King's Lynn and West Norfolk	-0.646
North Norfolk	-0.559
Norfolk County Council	-1.087
	-3.425

3.20 The consequences for South Norfolk, of the NHS Trust Business Rates Challenge being resolved in favour of the NHS with no mitigation from Government, would be

the trigger of the safety net arrangements regardless of whether the Council is or is not in the Pool. The difference in being in the pool, is the safety net payment will be via the arrangements within the Governance Agreement (which could ultimately mean other pool members making a contribution as per the table above), while being outside the pool the safety net payment would come from the Government.

Benefits of Pooling for Norfolk

- 3.21 As stated above in 3.11 the benefits of pooling in 2019/20, subject to the outcome of the NHS Legal Challenge, is approximately £7m is retained within Norfolk to promote future economic growth.
- 3.22 Provided the NHS case is resolved in favour of the Councils or the Government takes mitigating action to negate the impact on Councils if the NHS win then the benefits of pooling with all Districts within the pool for 202/21 is £6.8m (3.16 above).

4 PROPOSED ACTION

- 4.1 Due to the timescales, as stated in 3.17 above the Leaders agreed to continue to pool with all districts. For South Norfolk the Director of Resources in Consultation with the Leader has agreed in principle, subject to ratification by Council, to keep the option open for South Norfolk Council to participate in the Pool.
- 4.2 Notwithstanding the deadline of 25 October, the Local Government Finance Act 1988 confirms that members of a pool have a period of 28 days from the date of publication of the provisional local government finance settlement to make a request to revoke a pool – in this case the only option would be to dissolve the pool entirely, not alter membership. For clarity, changes to the makeup of the pool must be submitted by 25 October, but a decision to pool could still be revoked entirely within 28 days of the provisional settlement.
- 4.3 The County Council as the lead authority has communicated this to MHCLG on the 25 October with the caveat that both South Norfolk and Broadland Council need to ratify the decision at their respective Council meetings. In addition, the response to MHCLG also made the following points in response to the invitation to pool:

Norfolk Local Authorities:

- Consider that the timing of the deadline for decisions about the 2020/21 pool is unhelpful in light of the timing of the NHS Trust challenge due to be heard by the High Court in November 2019.
- Are very supportive of the principle of pooling business rates and have used the additional funds retained locally to date to fund a Joint Investment Fund to support economic development projects delivering economic growth in Norfolk.
- Wish to highlight to MHCLG that there are significant concerns about the risk posed by the NHS Trust challenge estimated to total £42m in Norfolk in 2020/21 (including backdated element) to both 75% pilots in 2019/20 and 2020/21 pools. The NHS Trust challenge could result in a significant reduction

in Norfolk rates income which would eliminate growth achieved in the pool area.

- Consider that they have no influence on the outcome of the NHS Trust challenge, which could fundamentally undermine the reasons for pooling and is highly destabilising for the system as a whole. The challenge has the potential to effectively eliminate seven years of business rates growth achieved in Norfolk.
- Intend in principle to continue pooling in 2020/21, but wish to highlight to MHCLG that in light of the uncertainty around the NHS Trust challenge, they will regretfully need to reserve the right to revoke the pool subject to the outcome of (or any latest information about) the NHS Trust challenge which may be available at the time of the Provisional Settlement in December 2019, as provided for in Part 9 of Schedule 7B to the Local Government Act 1988.
- Recognise that withdrawing from a 2020/21 pool late in the process in December 2019/January 2020 would be problematic for MHCLG but consider that if Government cannot offer assurances that the NHS Trust challenge will not impact on pools, local authorities may have no choice but to revoke the decision to pool.
- Urge MHCLG to therefore consider providing some form of guarantee or no detriment clause for pools in respect of 2020/21, so that the NHS Trust challenge is not allowed to impact on the Business Rates Retention System and 2020/21 pooling decisions.

5 OTHER OPTIONS

- 5.1 The other option is for Council not to agree to pool in 2020/21, this would cause the Pool to be revoked in its entirety as under the current arrangements changes to the membership of the pool can no longer be made after the 25 October and will result in all levy income being retained by central government in 2020/21.

6 ISSUES AND RISKS

- 6.1 **Resource Implications** – The report above covers the financial implications.
- 6.2 **Legal Implications** – Legal implications of the decision are covered above.
- 6.3 **Equality Implications** – There are no equality implications resulting from the proposal.
- 6.4 **Environmental Impact** – There are no environmental impact arising from the proposal.
- 6.5 **Crime and Disorder** – The proposal will have no impact upon crime and disorder.
- 6.6 **Risks** – There are two major risks for Members to take into consideration:
- 6.6.1 **Financial** – As detailed above the risk for South Norfolk in 2020/21 is the NHS Trust Business Rate Challenge being resolved in favour of the NHS and this triggering the safety net limit. Whether or not South Norfolk Council is in the pool it would be reimbursed up to the safety net limit. The report outlines that

should this scenario occur the Government could act to reimburse the Local Authorities who have been affected by the NHS Trust legal case to mitigate this situation. As the Safety net payment would only bring the level up to 92 ½% of the baseline funding level (which excludes any growth) South Norfolk Council has a £2m earmarked Business Rates Reserve which it could draw on to support it in the short term.

- 6.6.2 Although the Norfolk Councils alerted MHCLG that the decision for the current pool membership to continue was subject to ratification by some Councils, any change in membership of the pool would now lead to the whole pool collapsing with the potential of retaining significant sums within Norfolk for Economic Development lost for 2020/21.

7 CONCLUSION

- 7.1 The decision whether to participate in the pool has significant consequences for both the Council and the other Norfolk Councils. If a decision is made not to ratify the agreement in principle, then the Norfolk Business rates Pool will collapse as the regulations do not permit changes to the membership. This would mean a potential loss of funding for Norfolk wide Economic Development projects.

However, as S151 Officers have highlighted, there is a financial risk in remaining in the pool should the legal case be won by the NHS Trusts although this could be mitigated by the Government, which the Leaders consider highly likely given the national implications which would be created, and the potential benefits of pooling are significant. For these reasons, Members are asked to agree that the Council participates in the pool in the next financial year.

8 RECOMMENDATIONS

- 8.1 That Council ratify the decision in principle to participate in the Norfolk Business Rates Pool for 2020/21.

Background Papers

Norfolk Leader Group 17 October 2019 – 2019/20 Business Rates Pilot update and Business Rates Pooling decision for 2020/21