

BUSINESS RATES POOLING 2022/23

Summary	This report reviews the potential for re-establishing the business rates pooling arrangements for Norfolk and for North Norfolk District Council to pool jointly with Norfolk County Council and other Norfolk district councils for the 2022/23 financial year. The report considers the financial advantages to the Norfolk council tax payer and the potential risks to the councils involved.
Options considered	To join a County wide business rates pool in 2022/23 or not.
Conclusions	Re-establishment of business rates pooling arrangements has the potential to achieve financial benefits for Norfolk through increased retention of business rates generated locally that can then be re-invested in Norfolk.
Recommendations	It is recommended that Cabinet be asked to resolve that: <ol style="list-style-type: none">1) North Norfolk re-joins the business rates pooling arrangement with Norfolk County Council and other Norfolk district Councils subject to the financial forecasts demonstrating this would result in additional growth being retained;2) That the power be delegated to the Chief Executive Officer in consultation with the Leader of the Council and the Chief Finance Officer to agree the detailed pooling and governance arrangements for the pool with Norfolk County Council and other Norfolk Districts.
Reasons for Recommendations	To maximise the amount of additional business rates income that is retained in Norfolk and invested in Norfolk.

LIST OF BACKGROUND PAPERS AS REQUIRED BY LAW

(Papers relied on to write the report and which do not contain exempt information)

Norfolk Leaders Group Report on Business Rates Pooling
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Cabinet Member(s) Cllr Eric Seward	Ward(s) affected All
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1. Introduction and Background

- 1.1 The Local Government Finance Act 2012 introduced a number of changes to the funding system for local government, with funding from April 2013, via a mix of locally retained business rates and government grants that are allocated from centrally retained business rates which continues today.

- 1.2 Previously business rates were collected locally and pooled centrally for reallocation by the redistribution of business rates through formula funding. The intention of the updated business rates retention scheme was to provide incentives for local authorities to increase economic growth, through retention of a share of revenue generated from locally collected business rates. The current system uses a mechanism of 'levy' and 'safety net' for authorities that experience disproportionate and negative growth respectively.
- 1.3 While there has been ongoing discussion now for a number of years about a further review of this system this has still not been completed and the timescales for this are currently unclear.
- 1.4 In order to provide opportunities for the same incentives across all areas, the Government included arrangements within the updated funding scheme for councils to be allowed 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 can reduce or remove the levy on business rates growth paid to the Government by billing authorities. This enables more business rates growth to be retained locally and used as agreed by the authorities within the pool.
- 1.5 Members will recall that the Council has been part of pooling arrangements in previous years and both NNDC and the wider county have benefited from these arrangements. In 2021/22 the County Council and the districts took the decision not to pool and dissolved the pooling arrangements due to the perceived levels of risk and uncertainty which included potential government reviews and the unknown impact of Brexit. A further and potentially more significant issue revolved around the uncertainty of the continuation of the expanded retail discount, which would have potentially put all the Councils several millions of pounds into a safety net position if it had not been continued.
- 1.6 Following discussion at Norfolk Leaders' Group on 23rd September the consensus was that re-establishing the pool would be beneficial subject to consideration of the individual assessment of business rate projections. It should be noted that, as with previous years, not all districts would need to join the pool for it to be established.
- 1.7 The aim of the pool is to help support the economic growth strategy through the potential to use additional retained business rates to provide funding for joint projects, including key infrastructure and provide a pathway for future pooling arrangements with authorities across the county. Governance arrangements were agreed by Councils for the previous arrangements and included provision for dissolving and reforming a new pool, should other councils wish to pool business rates in future years. It is anticipated that the previous governance agreement could be used again but this will be subject to review and updating as required.
- 1.8 In two tier areas such as Norfolk the upper tier authority, in this case Norfolk County Council, will normally receive a top up from government and the district authorities will normally pay a tariff (levy) to government. The levy rate for any increase in business rates growth over and above the baseline funding level, adjusted for inflation for all Norfolk District authorities is 50%.
- 1.9 The effect of pooling is that the levy rate will be reduced or eliminated completely. However, there are also financial risks associated with pooling. Some local authorities may find that a reduction in their local business rates income which would have qualified for a safety net payment (where business

rates income falls by more than 7 ½% below the baseline funding position) if they are part of a pool, will no longer qualify where the overall pool is above its combined safety net threshold.

- 1.10 Clearly it is not possible to predict with certainty some five months before the start of a financial year the outturn position for the forthcoming period.

2. Proposed Pooling Arrangements 2022/23

- 2.1 The Government has recently issued a prospectus for business rates pools for 2022/23, with a requirement for notification of pool membership by 8th October 2021. It will not be possible to the membership arrangements after this date.

- 2.2 It is possible to provisionally provide a draft Memorandum of Understanding (MoU) in principle, and then a revised (final) MoU would be required by end of October. Confirmation would be needed from all Local Authorities in the pool that they are content with being members of the pool alongside accepting the risk that the draft MoU holds if a revised one cannot be sent in due course. The draft MoU is included within Appendix A.

- 2.3 As in previous years, following the publication of the Provisional Local Government Finance Settlement, there is a 28-day period in which any Local Authority that is part of a pool can inform Government they wish to revoke their pooling arrangement. The pool will then be revoked and none of the authorities in the revoked pool will be able to pool in 2022-23.

- 2.4 In terms of the governance and retained levy split options the principles around the MoU are broadly as follows;

- As per the default MoU position from Government, to allocate 50% to Districts based on growth and 50% to County;
- As per the original pool governance agreement, to establish a Joint Investment Fund;
- As per the 2020-21 approach, to allocate 1/10th per District and 3/10ths to County;
- Potentially an alternative basis which Leaders wish to propose to Government.

- 2.5 It should be noted that the share of risk will also differ according to whichever option is adopted.

3. Options for Pooling

- 3.1 There are essentially two options available, either to join a pooling arrangement with Norfolk County Council and other interested Norfolk districts or not to pool.

- 3.2 A county council can only be part of one pool. Therefore, decisions affecting pooling in 2022/23 will need to be made collectively.

- 3.3 Work is currently ongoing to establish if, in overall terms, there would potentially appear to be financial benefits across Norfolk from re-establishing the previous pooling arrangements for 2022/23.

- 3.4 The **provisional figures** below for the last pooling arrangements (2020/21) indicate the pool has been successful in generating a saved levy of £6.747m across the county.

Local Authority	Outturn saved levy 2020-21	Provisional share of 2020-21 Pool
Breckland District Council	£0.905m	£0.675m
Broadland District Council	£0.827m	£0.675m
Great Yarmouth Borough Council	£0.542m	£0.675m
Borough Council of King's Lynn and West Norfolk	£2.036m	£0.675m
North Norfolk District Council	£1.201m	£0.675m
Norwich City Council	£0.000m*	£0.675m
South Norfolk District Council	£1.235m	£0.675m
Norfolk County Council	n/a	£2.024m
Pool total	£6.747m	£6.747m

* Norwich City Council is above safety-net threshold

- 3.5 Although the details have yet to be agreed, the model endorsed by the Norfolk Leaders is that the arrangement is established whereby the business rates are pooled for the purpose of the Government calculation of tariffs, top up and levy payments but in practice only the sum “saved” in levy payments is actually pooled for joint decision making, as per the previous arrangements.
- 3.6 In order to reduce the risk to participating councils of the unanticipated loss of one or more major business rate payers in individual districts it would be prudent for the Norfolk pool to replicate the safety net support which the individual participating districts would lose access to, as a first call on the pooled payments. This is in line with previous arrangements.

4. Governance Arrangements

- 4.1 If a pool is to be established it will be important to be clear about the governance arrangements for the investment decisions with respect to the pooled funds.
- 4.2 The table below shows the current proposals and how these compare with previous arrangements.

	Template MoU for 2022-23	Approach to 2020-21 pool agreed by Leaders (May 2021)	Prior to 2020-21
District	50% of the net retained levy (gain) split among the Pool's remaining authorities based on business rates growth. This will be achieved by splitting the remaining 50% in proportion to the actual levy payment of the councils, had they acted individually.	1/10 per District	Joint investment fund open for bids
County	50% of the net retained levy (gain) will be allocated to the Pool's top up authorities	3/10	

4.3 The overarching principles in terms of the use of any saved levy remain is broadly as follows;

- The rationale for the Pool is to encourage economic growth therefore Pool Members are encouraged to use the additional resource to promote further economic growth.

5. Financial Implications and Risks

5.1 There is a risk that a major business could close in the district leading to a reduction rather than an increase in the amount of business rates collected. This is still a risk to the Council whether it is in a business rates pool or not.

5.2 Outside of the pooling arrangement, if the business rates income for an authority falls by more than 7.5% below the baseline funding position they will qualify for a safety net payment which will provide some mitigation from reduced business rates.

5.3 Similarly, within a pool arrangement if the business rates income for an authority falls this reduces the amount available for investment in the business rates pool. It is possible that this could lead to a reduction below the business rates safety net level of business rates baseline, i.e. the level that would have received a payment from the government. This will however be mitigated by replicating the “safety net” provisions available to authorities outside business rate pooling arrangements as a first call on surpluses generated within the pool.

5.4 As outlined above at present the forecasts are being pulled together by each individual District across the County, once these have been established an informed decision can be reached regarding the potential benefit of new pooling arrangements.

6. Sustainability

6.1 None as a direct consequence from this report.

7. Equality and Diversity

7.1 This report does not raise any equality and diversity issues.

8. Section 17 Crime and Disorder considerations

8.1 This report does not raise any Crime and Disorder considerations.

Named Local Authority(ies) area Business Rate Pool 20xx/xx

Memorandum of Understanding

This Memorandum of Understanding is made between the following councils

- ## County Council
- London Borough of ##
- ## Borough Council
- ## District Council

(Together referred to as the 'Pool' or 'Pool Members').

1. Purpose

- 1.1. The main aim of the pool is to maximise the retention of locally generated business rates and to ensure that it further supports the economic regeneration of the wider **specified area or named local authority area**. The modelling work that has been undertaken by the Pool demonstrates that financially the **named local authority** would retain a greater share of business rates revenue through pooling than it would otherwise do, as long as it experiences economic growth. This will act as a further incentive for all the pooling authorities to proactively work together to drive economic growth within **[specific centralised Areas at county or district level]**.
- 1.2. It is the purpose of this Memorandum of Understanding to act as a statement of intent that will support the realisation of these benefits. The Pool Members have agreed to enter into this Memorandum of Understanding to formalise their commitment and to set out their respective roles and responsibilities from the 20xx/xx financial year.

2. Glossary of Key Terms

- 2.1. There are a number of technical terms used throughout this document. The meanings of these terms are as follows:

Levy

A formulaic mechanism to pay a percentage of additionally raised local business rates income over to central government when a target (set nationally for each billing authority) has been exceeded.

Pool

A voluntary arrangement amongst a group of local authorities to pool the business rates generated locally to ensure at least some of any levy is retained locally.

Net Retained Levy

The amount of levy retained locally. This is calculated as the sum of levies to be paid by individual Pool members if the Pool did not exist less the levy to be paid by the Pool less any safety net funding that would have been due to individual Pool members if the Pool did not exist and less the administrative costs of the Pool.

Safety Net

The additional funding received by an authority, from central government, if, in the government's opinion, the decline in business rates in any year would leave an authority with insufficient resources. Calculated using a national formula.

Lead Authority

The Pool member who will act as the lead in managing the Pool's resources and being the key contact between central government and the Pool

Schedule of Payments

The Lead Authority will prepare an annual schedule that reflects all the financial payments to be processed through the pool, clearly indicating the amount and timings of each payment and who needs to make what and payment to whom.

3. Key Principles

- 3.1. The Pool Members agree that they will operate the Pool in accordance with the following principles:

Increase in Resources

The Pool Members recognise that the fundamental objective of the Pool is to generate increased resources for the area, and individual Pool Members

Risk Management

The Pool Members agree to protect and mitigate as far as possible the risks associated with the level of business rate income. Income streams to the Pool Members may be more volatile, whether as the result of a one-off event (for example a successful large appeal) or something structural within an area (for example the closure of a major plant). The pooling arrangements should reduce this volatility.

Fairness

The Pool Members agree to share the costs, risks and benefits of local business rate retention proportionately. Pool Members should be no worse off than if they were outside the Pool.

Transparency, Openness and Honesty

Pool Members will be open and trusting in their dealings with each other, make information and analysis available to each other, discuss and develop ideas openly and contribute fully to all aspects of making the Pool successful. It also includes

sharing data and intelligence outside of the formal reporting mechanisms on any substantive issues relating to business rate retention within their area.

Reasonableness of Decision-Making

Pool Members agree that all decisions made in relation to this Memorandum of Understanding shall be made by them acting reasonably and in good faith.

4. Binding Memorandum

- 4.1. This Memorandum of Understanding is produced as a Statement of Intent and, with the exception of Sections 5, 10 and 11, is not intended to be legally binding.
- 4.2. Sections 5, 10 and 11 are intended to be legally binding and to create obligations between Pool Members with immediate effect from the execution of this Memorandum of Understanding.
- 4.3. Pool Members have approved this Memorandum of Understanding in advance of the Secretary of State designating the Pool for the purposes of the Business Rates Retention Scheme. If the Secretary of State adds conditions to the designation, either initially or at any point in the future an immediate review of this Memorandum of Understanding, as outlined in Section 12, will be triggered.

5. Term of Memorandum

- 5.1. This Memorandum of Understanding shall continue to be in place unless terminated in accordance with these terms.
- 5.2. Any Pool Member can leave the Pool from 1 April of the following financial year providing:
 - Written notice is given to other Pool Members and MHCLG in at least sufficient time for the Pool to apply to continue for the remaining Pool Members, should they wish it to continue. Sufficient time is taken to be at least the time specified by MHCLG in regulations and/or guidance.
 - All liabilities to and from the Pool are paid.

6. Decision-Making

- 6.1. The statutory finance officers (Chief Finance Officer) from each Pool Member shall collectively be responsible for overseeing the operation of the Pool and making recommendations to their respective authorities about the way forward.
- 6.2. The Lead Authority shall ensure that reports are sent to the Chief Finance Officer of each Pool Member at least on a quarterly basis updating them of the performance of the Pool and advising them of any issues. These reports should be available within four weeks of the quarter end.
- 6.3. The Lead Authority is able to appoint external support in order to assist with the undertaking of its responsibilities (as per section 9 below) on behalf of the pool. The

costs incurred by the lead authority will be shared across the group, as outlined in section 11 below.

- 6.4. For the avoidance of doubt, any substantive decision e.g. commitment of resources, changes in governance or major operational changes shall be referred to each Pool Members' decision-making regime.

7. Dispute Resolution

- 7.1. The Pool Members shall attempt in good faith to negotiate a settlement to any dispute arising between them arising out of or in connection to this Memorandum of Understanding. If this cannot be resolved by the Chief Finance Officers it will be referred to a meeting of all member authorities' Heads of Paid Service for resolution.

8. Resourcing

- 8.1. Each Pool Member will provide the appropriate resources and will act with integrity and consistency to support the intention set out in this Memorandum of Understanding.
- 8.2. In the event that the Lead Authority needs to incur additional expenditure in order to administer the pool, any reasonable costs agreed by pool members should be the first call on the Net Retained Levy.

9. Lead Authority

- 9.1. **Named Local Authority will act as the Lead Authority for the Pool.**

- 9.2. The responsibilities of the Lead Authority are:

- to make payments on behalf of the Pool to central government and Pool Members on time and in accordance with the schedule of payments,
- to liaise with and complete all formal Pool returns to central government on behalf of Pool Members,
- to keep Pool Members informed of all communications with central government,
- to manage the resources of the Pool in accordance with this MoU,
- to prepare quarterly reports and consolidate intelligence on future resource levels on behalf of the Pool,
- to convene an urgent meeting of the Chief Finance Officers if there is the possibility that the pool could make a loss.
- to prepare the annual report of the Pool's activity,
- to co-ordinate the annual review and refresh of the Pool's governance arrangements and the methodology for the allocation of resources,
- to consult on and administer a schedule of all payments in respect of all financial transactions that form part of the Pool's resources, and

- to lead on the timely provision of the information required, by Pool Members, in preparing their annual Statement of Accounts in relation to the activities and resources of the Pool.

9.3. To assist the Lead Authority in fulfilling this role, the responsibilities of individual Pool Members are:

- to make payments on time and in accordance with the schedule of payments,
- to provide accurate, timely information to the Lead Authority to enable all formal Pool returns to central government to be completed,
- to inform the Lead Authority, as soon as is practical, of any intelligence that may impact on the resources of the Pool either in the current year or in future years,
- to provide such information as the Chief Finance Officers agree is reasonable and necessary to monitor/forecast the Pool's resources within the timescales agreed,
- to provide such information as the Chief Finance Officers agree is reasonable and necessary on the use of the Pool's resources for inclusion in the Pool's annual report, and
- to provide accurate and timely information on the end of year financial performance of the business rates collection fund to enable the Lead Authority to calculate the end of year accounting entries needed.

10. Cash Management

10.1. The governing principle for the cash management of the Pool is that no individual Pool Member, including the Lead Authority, should incur a cash flow gain or loss as a result of the transfer of funds between Pool Members.

10.2. The Pool will receive/pay interest annually on any retained resource at the average investment rate of the Lead Authority.

10.3. Interest will be calculated on an annual basis and allocated to Pool Members based upon a method agreed by the Chief Finance Officers.

10.4. Where the Pool is required to make a payment to the Secretary of State, each authority in the Pool is jointly and severally liable to make that payment.

10.5. Any late payment may be subject to a late payment interest charge at base rate plus 4%.

11. Allocation of Pool Resources

Principles

11.1. The allocation of resources will be based on the following principles.

- Each individual authority, will receive at least the same level of funding they would have received without the Pool. The remaining amount will be the "Net Retained Levy".

- Any additional resource that is generated will be shared by pool members using the basis of allocation below. This allocation methodology looks to reward members of the pool for achieving business rate growth.
- The rationale for the Pool is to encourage economic growth therefore Pool Members are encouraged to use the additional resource to promote further economic growth.

Basis of Allocation

11.2. The underlying basis of allocation is as follows:

- A - The running costs of the pool, if any, will be initially paid by the lead authority and will be re-imbursed to them from the Net Retained Levy.
- B - If after A, the net retained levy is greater than £0 (i.e. the pool has made an overall gain), then it will be shared out using the following apportionments.
- 50% of the net retained levy (gain) will be allocated to the Pool's top up authorities – **Named local Authority(ies)** and will be allocated between these councils in proportion to the top ups received from MHCLG in 20xx/xx.
 - The remaining 50% gain will be split among the Pool's remaining authorities based on business rates growth. This will be achieved by splitting the remaining 50% in proportion to the actual levy payment of the councils, had they acted individually.
- C - Where the Net Retained Levy is less than £0, (i.e. where the Pool makes an overall loss) – the loss will be shared in the following proportions:
- 50% of the net retained levy (loss) will be allocated to **named Local Authority (and other named Local Authorities, if applicable)** and will be shared between these councils in proportion to the top ups received from MHCLG in 20xx/xx.
 - The remaining 50% loss will be split among the Pool's remaining authorities based on business rates growth. This will be achieved by splitting the remaining 50% in proportion to the cash amount that would have been received from MHCLG as part of the annual Settlement, as if the Pool arrangement was not in operation.

12. Review Arrangements

12.1. A review and refresh of the Pool's governance arrangements and the methodology for the allocation of resources will be undertaken on an annual basis. It will be co-ordinated by the Lead Authority on behalf of the Chief Finance Officers and in sufficient time for any changes in Pool Membership to be in place before the start of the following financial year.

13. Signatories on behalf of the Pool – **[SIGNED BY ALL AUTHORITIES with electronic signatures]**

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Official 1
Authority 1

Official 2
Authority 2 (and so on)