

**DATED**

**2021**

**(1) THE LORD MAYOR AND CITIZENS OF THE CITY OF WESTMINSTER**

**AND**

**(2) THE MAYOR AND BURGESSES OF THE  
LONDON BOROUGH OF HAMMERSMITH AND FULHAM**

**AND**

**(3) THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF  
KENSINGTON AND CHELSEA**

**TRI-BOROUGH JOINT WORKING AGREEMENT**

**PENSIONS AND TREASURY SERVICES**

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64 Victoria Street  
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## **SECTION 1 - DATE OF AGREEMENT, PARTIES AND BACKGROUND**

**THIS AGREEMENT** is made on the                      day of **X 2021**

### **PARTIES**

**(1) THE LORD MAYOR AND CITIZENS OF THE CITY OF WESTMINSTER**  
of City Hall, 64 Victoria Street, London SW1E 6QP

**(2) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF  
HAMMERSMITH AND FULHAM** of the Town Hall, King Street, London,  
W6 9JU

**(3) THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF  
KENSINGTON AND CHELSEA** of The Town Hall, Hornton Street,  
London W8 7NX

### **1. BACKGROUND**

1.1 The Parties wish to realise future efficiencies and resilience through the combination, sharing and closer integration of a range of services including pensions and treasury services.

1.2 Although the Parties wish to combine and integrate the Services, they wish to do so initially through a process of alignment, joint working and co-location rather than through the appointment of a lead authority to whom all relevant functions are delegated and staff transferred. The Parties intend that the pension fund and other investment funds of each authority shall remain separate and segregated and shall not be pooled. The Parties have given a Sovereignty Guarantee to ensure that the independence of the authorities as political and legal entities is protected.

1.3 To combine and integrate the Services in the manner described in Paragraph 1.2, the Parties have agreed to develop a bespoke joint

working arrangement. The terms of this arrangement are documented in this Agreement and includes the exercise of powers contained in Section 113 of the 1972 Act so that officers of each authority are made available to the other authorities for the purposes of performing functions as an officer of the other authorities for the purpose of co-locating and integrating the future marketing and delivery of the Pensions and Treasury Service. In the future it is intended that the arrangements described in this Agreement will be further developed to improve the resilience of the team and its capacity to take on additional work from other London Boroughs.

## **SECTION 2 - INTERPRETATION, DURATION & THE ARRANGEMENTS**

### **2. DEFINITIONS AND INTERPRETATION**

This Agreement shall be interpreted in accordance with **Schedule 1**.

### **3. DURATION OF THE AGREEMENT**

This Agreement shall commence on the Commencement Date and shall continue in force until it is terminated in accordance with **Clause 25**.

### **4. THE ARRANGEMENTS**

4.1 The Parties agree that **Schedule 2** sets out the:

- 4.1.1. aims, benefits and intended outcomes of the Parties in entering into the Arrangements; and
- 4.1.2. high level principles which underpin the delivery of the Parties' obligations under this Agreement
- 4.1.3. key tasks and activities to be provided as part of these arrangements
- 4.1.4. key performance targets and quality standards anticipated.

4.2 The Parties agree that the aims, benefits and intended outcomes and the principles set out in **Schedule 2** are aspirational and are not

intended to give rise to legally binding rights and obligations between the Parties.

4.3 Subject to and in accordance with the terms of this Agreement and with effect from the Commencement Date, the Parties have agreed to implement the Arrangements, being:

4.3.1 the arrangements regarding Combined Teams in **Section 3**

4.3.2 the governance arrangements in **Section 4**; and

4.3.3 the financial arrangements in **Section 5**;

4.4 The Arrangements shall not affect the liabilities of the Parties to any third parties for the exercise of their respective functions and obligations.

## **5. DELEGATION OF FUNCTIONS**

5.1 Nothing in this Agreement has (or is intended to have) the effect of transferring statutory functions from one Party to another. This means that the performance by a Post Holder of their S113 Duties is done in their capacity as an officer of the Non-Employing Party. That Post Holder is not exercising functions delegated by the Non-Employing Party to the Employing Party.

5.2 Parties may only delegate their statutory functions to each other in exercise of the powers contained in S101 of the Local Government Act 1972 and S17 of the Local Government Act 2000. In the event that any of the Parties agree to enter into such an arrangement it will be recorded in a separate agreement that has been signed by participating Parties.

## **SECTION 3 – SECTION 113 ARRANGEMENTS**

## **6. SHARING EMPLOYEES**

6.1 With effect from the Commencement Date, it is agreed that, in exercise of the powers contained in Section 113 of the 1972 Act and in accordance with **Schedule 5** the Parties will make those individuals identified in **Schedule 5**, available to the other Parties for the purposes of enabling each Post Holder to deliver the Services through the combined performance of their Employee Duties and, in accordance with their individual Agreement, their S113 Duties.

6.2. **Tri-borough Director of Pensions and Treasury Post**

6.2.1. The Employing Party shall at its absolute discretion deal with any management issues relating to the Tri-borough Director of Pensions and Treasury, including but not limited to those relating to capability, performance and conduct, as it considers appropriate in consultation with the Non-employing Parties. Before taking any decision to act, or to decline to act, the Employing Party shall consider any representations from the Non-employing Parties and, if requested by either of them, provide reasons for its decision in writing.

6.2.2 The Non-employing Parties will provide information with structured comment and feedback on the performance reviews of the Tri-borough Director of Pensions and Treasury which shall be conducted using the Employing Party's appraisal and performance management scheme in force from time to time. The Employing Party undertakes to take the Non-employing Parties views and representations into consideration in conducting the performance review.

6.2.3 The Parties may carry out joint supervisions of the work of the Tri-borough Director of Pensions and Treasury. at six monthly intervals or as otherwise agreed..

6.2.4 Without prejudice to Clause 6 1-3 above, if a Non-employing Party is dissatisfied with the capability, performance or conduct of the Tri-borough Director of Pensions and Treasury it may request a meeting with the Employing Party by giving five (5) working days notice to that effect.

6.2.5 At such a meeting the Parties will discuss and agree an action plan under which the Employing Party and the Tri-borough Director of Pensions and Treasury will be give a reasonable period of time to resolve the Non-employing Party's concerns ("the agreed period").

6.2.6 Where the Non-employing party is not reasonably satisfied that their concerns have been resolved within the agreed period they may initiate the Dispute Resolution Procedure.

6.2.7 The Non-employing Parties shall provide any information, documentation, access to their premises, employees and assistance (including but not limited to providing witnesses to attend before any committee, court or tribunal) as may reasonably be required by the Employing Party to enable it to deal with any management issues in relation to the Tri-borough Director of Pensions and Treasury whether under its own procedures or before any court or tribunal.

#### **SECTION 4 – GOVERNANCE, ACCOUNTABILITY, MONITORING AND REVIEW**

### **7. ACCOUNTABILITY**

7.1 For the purposes of these Arrangements, the Post Holder will be accountable to:

7.1.1 the Non-Employing Party for the performance of their S113 Duties; and

7.1.2. the Employing Party for the performance of their Employee Duties



## 8. ANNUAL REVIEW

- 8.1 The Tri-borough Director of Pensions and Treasury shall carry out an annual review of the Arrangements for the purpose of evaluating;
- 8.1.1 performance of the Arrangements against the targets, priorities and outcomes specified in this Agreement (or such other targets, priorities and outcomes as may be agreed between the Parties in writing from time to time);
  - 8.1.2 targets and priorities for the next Financial Year;
  - 8.1.3 the operation and effectiveness of the Arrangements;
  - 8.1.4 delivery of agreed outcomes and benefits and the role of the arrangements in relation to such delivery.
- 8.2 Following a review held in accordance with **Clause 8.1**, the Tri-borough Director of Pensions and Treasury will make recommendations to the Parties in respect of Arrangements.
- 8.3 The Parties will consider the recommendations made by the Tri-borough Director of Pensions and Treasury pursuant to **Clause 8.2** with a view to agreeing an “Annual Pensions & Treasury Services Strategic Business Plan” summarising the priorities, targets, budgets for the next Financial Year together with any variations to the Arrangements.

## SECTION 5 – FINANCIAL & HR ARRANGEMENTS

### 9. FINANCIAL ARRANGEMENTS FOR POST HOLDERS

- 9.1 In respect of each Post Holder, the Employing Party shall be responsible for the payment (**subject to Clause 9.2 and 12**) of all sums due and payable to that Post Holder in accordance with their Employment Contract, including (without limitation) all tax, national insurance and pension contributions.

- 9.2 The Non-Employing Party will reimburse the Employing Party for all expenses incurred by a Post Holder in the performance of their S113 Duties (where such expenses are recoverable from the Employing Party's expenses policy). In the event that expenses relate to both S113 Duties and Employee Duties, the Non-Employing Party will reimburse the Employing Party for such proportion as is agreed between the Parties.
- 9.3 The costs of any training which a Post Holder is required or requested by the Non-Employing Party to attend for purposes connected with the performance of a Post Holder's S113 Duties, or which is requested by the Post Holder and agreed to by the non-Employing Party, will be funded by the Non-Employing Party.

## **10. FINANCIAL PROTOCOL**

- 10.1 As part of the Parties wider commitment to combination, integration and joint working, the Parties have developed a Financial Protocol set out in **Schedule 4** that establishes the principles of their financial relationship with effect from the Commencement Date. The Parties agree to be bound by the terms of the Financial Protocol and to fulfil their respective obligations there under.
- 10.2 The Parties may agree to vary the Financial Protocol from time to time in accordance with **Clause 26**.

## **11. HUMAN RESOURCES (HR) PROTOCOL**

- 11.1 The Parties have jointly developed the HR Protocol set out in **Schedule 3** for the ongoing management of the combined teams arising out of or in relation to the Arrangements. This protocol is designed to support the Arrangements but is not intended to be (and, unless the Parties expressly agree otherwise in writing, will not have the effect of being) a substitute for a Party's existing HR policies and procedures.

11.2 The Parties agree to be bound by the terms of the HR Protocol and to fulfil their respective obligations there under.

11.3 The Parties may agree to vary the HR Protocol in accordance with **Clause 26**.

## **SECTION 6 - LIABILITIES AND INSURANCE**

### **12. INDEMNITIES, LIABILITIES AND INSURANCE**

12.1 Each Party shall indemnify the other Party against any Loss (excluding Indirect Loss) suffered or incurred by the indemnified Party arising out of or in connection with:

12.1.1 the indemnifying Party's negligence or breach of contract; and

12.1.2 any claim made by a third party arising out of or in connection with the indemnifying Party's negligence or breach of contract, in each case in connection with the performance or failure of performance of the indemnifying Party's obligations under this Agreement, except to the extent that such Loss has been caused by any negligence, act or omission by, or on the part of, or in accordance with the instructions of the other Party.

12.2 Subject to clause 12.3 the Parties agree that they will be responsible for the activities of a Post Holder as follows:

12.2.1 the Non-Employing Party will be responsible for the acts or omissions of any Post Holder when performing their S113 Duties or otherwise acting in their capacity as an officer of the Non-Employing Party; and

12.2.2 the Employing Party will be responsible for the acts or omissions of any Post Holder when performing their Employee Duties or otherwise acting in their capacity as an officer of the Employing Party.

12.3 Subject to **Clauses 12.4 to 12.7**, any Loss incurred in relation to or arising from a Post Holder's employment whether or not following termination of employment of a Post Holder or termination of this Agreement including any award by a court or tribunal shall be the responsibility of the Employing Party. As between the Parties to this Agreement, the Non-Employing Party shall have no liability in respect of such Loss and the Employing Party agrees to indemnify the Non-Employing Party against any such Loss.

12.4 The Parties hold the view that TUPE will not apply on the commencement of this Agreement, during the term of the Agreement or on the expiry or termination of this Agreement (in whole or in part). However if TUPE operates so as to transfer the contract of employment of any Post Holder due to a Relevant Transfer from one Party ("the Transferor Party") to the other Party ("the Transferee Party"), the Parties shall comply with their legal obligations under TUPE.

12.5 Subject to **Clause 12.7**, the Transferor Party shall be liable for and shall indemnify the Transferee Party against any Employee Liabilities incurred by the Transferee Party which arise before on or after the Relevant Transfer and out of an act or omission of the Transferor Party in connection with:

12.5.1 the Post Holder's employment with the Transferor Party;

12.5.2 any failure to comply with the obligations under Regulations 13 and 14 of TUPE (including any claim brought by an employee representative for breach of Regulations 13 and/or 14 of TUPE) except where such failure arises from the Transferee Party's failure to comply with its obligations under Regulations 13 and/or 14 of TUPE.

12.6 Subject to **Clause 12.7** the Transferee Party shall be liable for and shall indemnify the Transferor Party against any Employee Liabilities incurred by the Transferor Party which arise before on or after the

Relevant Transfer caused by an act or omission of the Transferee Party in connection with:

12.6.1 the Post Holder's employment with the Transferee Party;

12.6.2 any failure to comply with the obligations under Regulations 13 and 14 of TUPE (including any claim brought by an employee representative for breach of Regulations 13 and/or 14 of TUPE.

12.7 Where any Employee Liabilities arise partly as a result of any act or omission of the Transferee Party and partly as a result of any act or omission of the Transferor Party whether before on or after the date of the Relevant Transfer, the Parties shall indemnify each other against only such part of the Employee Liabilities sustained by the other Party as is reasonably attributable to the act or omission of that Party.

### **Mitigation**

12.8 In relation to the indemnities of this **Clause 12**, the Parties agree to cooperate with each other and take all reasonable steps to mitigate any costs and expenses and any adverse effect on industrial or employee relations.

## **13. INSURANCE**

13.1 Each Party may choose to maintain policies of insurance in respect of all potential liabilities arising from these Arrangements (as outlined in the Financial Protocol). A decision not to insure does not relieve a Party of its responsibilities under this Agreement.

13.1.1 Each Party agrees to ensure that:

13.1.2 where they are the Non-Employing Party, the insurance policies maintained pursuant to **Clause 13.1** cover liabilities that may be incurred through the performance, by a Post Holder, of their S113 Duties;

13.1.3 where they are the Employing Party, the insurance policies maintained pursuant to **Clause 13.1** cover liabilities that may be incurred through the performance, by a Post Holder, of their Employee Duties.

## **SECTION 7 - OVERARCHING OPERATIONAL ISSUES**

### **14. STANDARDS OF CONDUCT**

- 14.1 The Parties will comply and will ensure the Arrangements comply with all statutory requirements national and local and other guidance on conduct and probity and good corporate governance (including the Parties' respective Constitutions and Standing Orders).
- 14.2 The Parties will review and, where permitted and appropriate, amend their Constitution including but not limited to Standing Orders, Financial Standing Orders Schemes of Delegation, Banking Mandates and other relevant documents as necessary to ensure compliance with their obligations under this Agreement and to enable the Arrangement to operate as smoothly and efficiently as practicable. Nothing in this clause shall require a Party to make amendments which in its reasonable belief would be inconsistent with the Sovereignty Guarantee.

## 15. CONFLICT OF INTEREST

15.1 The Parties acknowledge that conflicts of interest may arise during the course of this Agreement. The Parties agree that circumstances in which a conflict of interest may arise include, but are not limited to, the following:

15.1.1 when the private interests of a Post Holder conflict with the interests of the Non-Employing Party in the context of the Arrangements (a “**Private Interest Conflict**”);

15.1.2 when the duties of a Post Holder arising under or in connection with the furtherance of integrated working conflict with the duties owed by that Post Holder to the Employing Party (a “**Combined Working Conflict**”).

### **Private Interest Conflict**

15.2 In the event that a Private Interest Conflict arises, or a Post Holder suspects that it will arise, the Employing Party shall procure that full details of such Private Interest Conflict shall as soon as possible be reported to and recorded by the Employing Party in accordance with the Employing Party’s policies and procedures for handling conflicts of interest.

15.3 When an Employing Party receives notification or otherwise becomes aware of a Private Interest Conflict pursuant to **Clause 17.2** the Employing Party shall as soon as possible notify the Chief Executives of such Private Interest Conflict who shall take such action as is appropriate in the circumstances to resolve the conflict.

15.4 In the event that the Chief Executives receives notification of a Private Interest Conflict pursuant to **Clause 17.3** and any Chief Executive considers that he is likewise subject to that or another conflict of interest

that Chief Executive shall as soon as possible notify the Leaders of the relevant Parties.

- 15.5 Upon receiving notification from a Chief Executive pursuant to **Clause 17.4** the Parties shall ensure that the Leaders of the relevant Parties shall do what is required in order to ensure that the interests of the Parties are protected in accordance with applicable best practice for the management of conflicts of interests and having due regard to the employment policies and procedures of the Employing Party.

### **Combined Working Conflict**

- 15.6 In the event that a Combined Working Conflict arises and which affects the Tri-borough Director of Pensions and Treasury's or member of the Pension and Treasury team ability to act in the best interests of both Parties, the Tri-borough Director of Pensions and Treasury shall as soon as possible inform Parties that a Combined Working Conflict exists.
- 15.7 On receiving notice from the Tri-borough Director of Pensions and Treasury pursuant to **Clause 15.6** the Non Employing Party or Parties shall appoint an interim Director on such terms and for such duration as they believe is reasonably necessary and appropriate in the circumstances.
- 15.8 In the event that a Combined Working Conflict arises which is not covered by **Clause 15.6**, the Parties will ensure that the Tri-borough Director of Pensions and Treasury shall ensure that immediate steps are taken to promote and protect the interests of all Parties and their respective employees and where necessary the Parties shall use reasonable endeavours to procure that the Tri-borough Director of Pensions and Treasury seeks appropriate independent professional advice.



15.9 The Parties acknowledge that a Combined Working Conflict arising may require each of the Parties to seek separate and independent legal advice.

15.10 The Parties acknowledge and agree that nothing in this **Clause 15** replaces either Party's obligations to comply with all relevant Law in relation to conflicts of interest.

## **16. COMPLAINTS**

16.1 Subject to **Clause 17**, complaints by third parties arising out of or in connection with these Arrangements will be dealt with in accordance with the complaints policy of the appropriate Party in force from time to time.

16.2 Subject to all relevant law and guidance, the Parties reserve the right to agree a combined complaints procedure(s). Any such procedure(s) shall be documented in writing and signed by the Parties.

## **17. OMBUDSMAN**

The Parties will co-operate with investigations undertaken by their respective Ombudsman.

## **18 INTELLECTUAL PROPERTY**

18.1 The Parties shall to the extent permissible by law grant to each other a licence to use the other Party's relevant IPR solely and exclusively for the purposes of and in connection with this Agreement and the Arrangements.

18.2 Subject to **Clauses 18.1 and 18.3**, neither Party shall acquire from the other Party any rights to that other Party's IPR.

18.3 If any IPR is created, brought into existence or acquired in relation to anything jointly developed by the Parties in relation to the Agreement

or the Arrangements, the Parties shall negotiate in good faith and use all reasonable endeavours to agree the rights that each Party shall have in relation to such IPR. Following any such agreement the Parties shall to the extent permissible by law do all things and execute all documents necessary to give full effect to the agreement. If the Parties are unable to reach agreement the matter shall be referred to the Dispute Resolution Procedure.

## **19. CONFIDENTIALITY & DATA PROTECTION**

19.1 Subject to the disclosure requirements of any Laws, nothing in this Agreement shall oblige a Party or a Post Holder to disclose information where such disclosure would be in breach of:

19.1.1 any contract; and/or

19.1.2 any other relevant and applicable internal or external policies or codes of conduct in relation to a confidentiality and disclosure of information

19.2 Each Party agrees at all times during the continuance of this Agreement and after its termination to keep confidential all information or data that it receives or otherwise acquires in connection with the other Parties and which by its nature is confidential or which has reasonably been marked with such words signifying that it should not be disclosed, except where:

19.2.1 the disclosure is made in connection with the Dispute Resolution Procedure or any litigation between the Parties;

19.2.2 the disclosure is required to comply with Law (including the FOIA);

19.2.3 the disclosure is made to a Party's professional advisors who owe a similar obligation of confidentiality; or

19.2.4 the information was in the possession of the Party without obligation of confidentiality or was in the public domain (otherwise than by breach of this Agreement) before receiving it from the other Party.

19.2.5 The Employing Party shall take reasonable steps to procure that staff who process any Personal Data or Sensitive Personal Data in accordance with or in the course of this Agreement, and

19.2.6 the Non-Employing Party shall take reasonable steps to procure that Post Holders who, while undertaking S113 Duties, process any Personal Data or Sensitive Personal Data in accordance with or in the course of this Agreement, to do so in accordance with the provisions and principles of the 1998 Act and any other relevant data protection legislation and guidance (including but not limited to the Employment Practices Data Protection Code).

## 20. FREEDOM OF INFORMATION

20.1 The Parties will each comply with their respective obligations pursuant to the FOIA but, without prejudice to this general obligation, will consult the other Parties prior to the disclosure of any information relating to these Arrangements.

20.2 Each Party will co-operate fully with the other Party for the purposes of enabling that other Party to properly fulfil its obligations under the FOIA.

## SECTION 8 - DEFAULT, DISPUTES AND TERMINATION

### 21. DEFAULT

21.1 In the event of a Party (the “**Defaulting Party**”) being, in the reasonable opinion of the either or both Parties (the “**Other Party**”), in breach of its obligations under this Agreement and such breach being capable of remedy, the following procedure will apply:

21.1.1 the Other Party may request a meeting with the Defaulting Party by giving five (5) Working Day's written notice to that effect. The meeting will include the Representative of each Party.

21.1.2 following such a meeting, the Parties will discuss and agree an action plan under which the Defaulting Party will be given a reasonable period of time to remedy the default to the satisfaction of the other Party (the "**Remedial Action Plan**").

21.1.3 Where an Other Party is not reasonably satisfied that the Defaulting Party has complied with the Remedial Action Plan, the Other Party will have the right, at its discretion, either to initiate the Dispute Resolution Procedure or to exercise its right to terminate this Agreement in accordance with **Clause 23.6.2**.

## **22 DISPUTES**

22.1 In the event of a dispute between the Parties in connection with this Agreement the Parties shall refer the matter to their Representatives (or their nominated deputies) who shall endeavour to settle the dispute between themselves.

22.2 In the event that the Representatives (or their nominated deputies) cannot resolve the dispute between themselves within a reasonable period of time having regard to the nature of the dispute, the matter will be referred to the responsible cabinet members of the Parties for resolution. In the event that the dispute cannot be resolved within a reasonable period of time (having regard to the nature of the dispute) by the relevant cabinet members, the matter will be referred to the Leaders of the Parties for resolution.

22.3 In the event that the dispute cannot be resolved in accordance with **Clause 22.2** within a reasonable period of time (having regard to the nature of the dispute) the Parties will attempt to settle it by mediation in

accordance with the CEDR Model Mediation Procedure or any other model mediation procedure as agreed by the Parties ("Mediation").

- 22.4 To initiate the Mediation, a Party or Parties may give notice in writing (a "**Mediation Notice**") to the other Party or Parties requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Parties asking them to nominate a mediator. The Mediation shall commence within twenty Working Days of the Mediation Notice being served.
- 22.5 The Parties will co-operate with any person appointed as mediator, providing him or her with such information and other assistance as he or she shall require and will pay his or her costs as he or she shall determine or in the absence of such determination such costs will be shared equally between the participating Parties.
- 22.6 No Party may commence any court proceedings/arbitration in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other Party or Parties have failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

## **23 TERMINATION**

### **General**

- 23.1 This Agreement may be terminated (in whole or in part) at any time by written agreement between the Parties.
- 23.2 Any Party shall have the right to terminate this Agreement at any time by service of 12 Months' written notice to the other Parties.
- 23.3 This Agreement may be terminated immediately at any time in respect of any or all of the Post Holders by written agreement between the Parties.

- 23.4 This Agreement, in respect of any individual Post Holder, will terminate forthwith in respect of that particular Post Holder upon the dismissal or resignation of the Post Holder from their Employing Party or upon the Post Holder withdrawing their consent to being made available pursuant to these Arrangements where applicable.
- 23.5 This Agreement will terminate in respect of any individual Post Holder upon any reorganisation or reconstruction affecting any Party whereby the Post Holder no longer holds office with their Employing Party.
- 23.6 A Party may at any time by notice in writing to an other Party terminate this Agreement upon service of 20 Working Days written notice if:
- 23.6.1 the other Party commits a material breach of any of its obligations hereunder which is not capable of remedy; or
- 23.6.2 the other Party commits a material breach of any of its obligations hereunder which is capable of remedy but has not been remedied in accordance with **Clause 21**.
- 23.7 A Party may by written notice to an other Party in accordance with **Clause 24.8** terminate this Agreement if:
- 23.7.1 as a result of any change in law or legislation it is unable to fulfil its obligations under this Agreement;
- 23.7.2 its fulfilment of its obligations hereunder would be in contravention of any guidance from any Secretary of State issued after the Commencement Date;
- 23.7.3 its fulfilment of its obligations would be ultra vires or otherwise unlawful, and the Parties shall be unable to agree a modification or variation to this Agreement (which may include termination in part only) so as to enable the Parties to fulfil its obligations in accordance with law and guidance.

- 23.8 In the case of notice pursuant to **Clause 23.7.1 or 23.7.2**, the Agreement shall terminate after such reasonable period as shall be specified in the notice having regard to the nature of the change referred to in **Clause 23.7.1** or the guidance referred to in **Clause 23.7.2** as the case may be. In the case of notice pursuant to **Clause 23.7.3**, the Agreement shall terminate with immediate effect.
- 23.9 Notices served pursuant to **Clause 23.6 or 23.7** will result in termination of the whole of the Agreement unless the Parties agree otherwise in writing.

### **CONSEQUENCES OF TERMINATION**

- 23.10 Termination of this Agreement in whole or in part (whether by effluxion of time or otherwise) shall be without prejudice to the Parties' rights in respect of any antecedent breach and the provisions of this Clause and **Clauses 2, 14, 15, 19-25 (inclusive), and 27-34 (inclusive)** shall continue in full force and effect.
- 23.11 In the event of termination of this Agreement, the Parties will use all reasonable endeavours to agree arrangements which will minimise disruption to:
- 23.11.1 the continued delivery of the Services to service users;
- 23.11.2 staff working within the Arrangements.
- 23.12 In the event that this Agreement is terminated in part only, the Parties will agree appropriate variations to the Agreement. Such variations will be documented in writing and signed by all Parties.
- 23.13 Where the Agreement is terminated in part, then except for that part of the Agreement that has been terminated, this Agreement shall continue in full force and effect.

## SECTION 9 - GENERAL PROVISIONS

### 24 VARIATIONS

- 24.1 The Parties may agree to vary the Agreement including for the avoidance of doubt the HR Protocol and the Financial Protocol, from time to time in accordance with this **Clause 24**.
- 24.2 Any Party may propose a variation to the Agreement and the Parties shall use reasonable endeavours to agree the variation. In the event of any disagreement in relation to the variation any Party may refer the matter to the Dispute Resolution Procedure.
- 24.3 Any variation of the Agreement, the HR Protocol and Financial Protocol must be in writing and signed by, or on behalf of, each of the Parties.

### 25. NOTICES

- 25.1 Any notice of communication shall be in writing.
- 25.2 Any notice or communication to the relevant Party shall be deemed effectively served if sent by registered post or delivered by hand at an address set out in **Clause 25.4** and marked for the Representative or to such other addressee and address notified from time to time to the other Parties.
- 25.1 Any notice served by hand delivery shall be deemed to have been served on the date it is delivered to the addressee if delivered before 15.00hrs on a Working Day. Hand delivery after 15.00 and or on a weekend or English public holiday shall be deemed served on the next Working Day. Where notice is posted it shall be sufficient to prove that the notice was properly addressed and posted and the addressee shall be deemed to have been served with the notice 48 hours after the time it was posted.



25.2 For the purposes of this **Clause 25**, the addresses at which notice must be served are, unless either Party is notified otherwise in writing as follows:

25.2.1 CEO

Westminster City Council  
City Hall  
64 Victoria Street  
London  
SW1E 6QP

25.2.2 CEO

The London Borough of Hammersmith and Fulham  
Town Hall  
King Street  
London  
W6 9JU

25.2.3 CEO

The Royal Borough of Kensington & Chelsea  
Town Hall  
Hornton Street  
London  
W8 7NX

## 26 WAIVERS

26.1 The failure of any Party to enforce at any time or for any period of time any of the provisions of this Agreement shall not be construed to be a waiver of any such provision and shall not in any way affect the right of that Party thereafter to enforce such provision.

26.2 No waiver in any one or more instances of a breach of any provision hereof shall be deemed to be a further or continuing waiver of such provision in other instances.

## **27 SEVERANCE**

27.1 If any provision of this Agreement becomes or is declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such unenforceability shall in no way impair or affect any other provision of this Agreement all of which will remain in full force and effect.

## **28 TRANSFERS**

28.1 A Party may not assign, mortgage, transfer, sub-contract or dispose of this Agreement or any benefits and obligations hereunder without the prior written consent of the other Parties except to any statutory successor in title to the appropriate statutory functions.

## **29 NO PARTNERSHIP**

29.1 Nothing in this Agreement shall create or be deemed to create a legal Partnership or the relationship of employer and employee between the Parties or render any Party directly liable to any third party for the debts, liabilities or obligations of an other party.

29.2 Save as specifically authorised under the terms of this Agreement no Party shall hold itself out as the agent of another party.

## **30 ENTIRE AGREEMENT**

30.1 The terms contained in this Agreement together with the contents of the Schedules and Appendices constitute the complete agreement between the Parties with respect to the Arrangements and supersede all previous communications, representations, understandings and agreement and any representation, promise or condition not incorporated herein shall not be binding on any Party.

30.2 No agreement or understanding varying or extending any of the terms or provisions hereof shall be binding upon a Party unless in writing and signed by a duly authorised officer or representative of each Party.

### **31 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Unless the right of enforcement is expressly provided, no third party shall have the right to pursue any right under this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

### **32 GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with English law and, without prejudice to **Clause 22**, shall be subject to the exclusive jurisdiction of the English courts.

**IN WITNESS** whereof this Agreement has been executed by the Parties on the date of this Agreement

**EXECUTED BY  
THE CITY OF WESTMINSTER**

by:

Signed (Authorised Officer):.....

Name/Position: .....

Signed (Authorised Officer):.....

Name Position: .....

**EXECUTED BY  
THE LONDON BOROUGH OF HAMMERSMITH AND FULHAM**

by:

Signed (Authorised Officer):.....

Name/Position: .....

Signed (Authorised Officer):.....

Name/Position: .....

**EXECUTED BY  
THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA**

by:

Signed (Authorised Officer):.....

Name/Position: .....

Signed (Authorised Officer):.....

Name/Position: .....

## **SCHEDULE 1: DEFINITIONS AND INTERPRETATION**

In this Agreement the following expressions shall have the following meanings:

**"1972 Act"**

the Local Government Act 1972;

**"2018 Act"**

the Data Protection Act 2018;

**"Agreement"**

this agreement and the Schedules annexed as may be varied from time to time;

**"Arrangements"**

the arrangements made by the Parties for combination and integration pursuant to this Agreement, as summarised in **Clause 4**;

**"Cabinet Member"**

a member appointed by the Leader of a Party to its executive pursuant to Part II of the Local Government Act 2000

**"CEDR"**

Centre for Effective Dispute Resolution;

**"Chief Executive Officer"**

a Party's Head of Paid Services designated pursuant to s.4 of the Local Government & Housing Act 1989.

**"Combined Team"**

a team created by the Parties in accordance with Section 113 of the 1972 Act and established pursuant to **Clause 12 and 13**;

**"Combined Working Conflict"**

has the meaning given to it in **Clause 15.1.2**;

.

**"Commencement Date"**

20th February 2012 "Dispute Resolution Procedure"  
the procedure set out in **Clause 24**;

**"Employee Duties"**

the duties which a Post Holder performs on behalf of the Employing Party as determined in accordance with their Employment Contract;

**"Employee  
Liabilities"**

all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law;

**"Employing Party"**

in respect of each individual Post Holder the Party that employs that Post Holder. Subject to the subsequent operation of TUPE, the Parties shall agree which Party shall be the Employing Party in accordance with the HR Protocol;

**"Employment Contract"**

the contract of employment between the Post Holder and the Employing Party;

**"Financial Protocol"**

the financial protocol included at **Schedule 4** as amended or replaced by the Parties from time to time;

**"FOIA"**

the Freedom of Information Act 2000;

**"HR"**

human resources;

**“HR Protocol”**

the document entitled “HR and Management Protocol for Establishing and Working in Combined Teams” included at **Schedule 3** as amended or replaced by the Parties from time to time;

**“Indirect Loss”**

loss of profits, loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or any other basis;

**“Intellectual Property Rights” or “IPR”**

all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;

**“Internal Governance Documents”**

each Party’s internal governance documents which includes its constitution, maintained pursuant to s.37 of the Local Government Act 2000, standing orders and procedure rules;

**“Law”**

- (a) any applicable statute or proclamation or any delegated or subordinate legislation;

- (b) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;
- (c) any applicable guidance, regulations, direction or determination with which the Parties are bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to it by the other Party; and
- (d) any applicable judgement of a relevant court of law which is a binding precedent in England;

in each case in force in England;

**“Loss”**

all damage, loss, liabilities, claims, actions, costs, expenses (including cost of legal or professional services), proceedings, demands and charges whether arising under statute, contract or at common law;

“

**"Non-Employing Party"**

in respect of each individual Post Holder the Party that is not the Employing Party;

**"Ombudsman"**

the Local Government Commissioner for England (or any successor to their functions);

**"Party"**

each of the parties to the Agreement;

**“Personal Data”**

as defined in Section 1(1) of the 1998 Act;

**"Post Holders"**

individuals made available by the Parties for a Combined Team in accordance with the HR Protocol;



**“Private Interest Conflict”**

has the meaning given to it in **Clause 15.1.1**;

**"Relevant Transfer"**

a relevant transfer for purposes of TUPE;

**“Representative”**

the individual appointed by the Council from time to time (and notified to the other parties) as its representative for the purposes of the Arrangements;

**“Sensitive Personal Data”**

as defined in Section 2 of the 1998 Act;

**“Services”**

Pensions and Treasury Services

**“Sovereignty Guarantee”**

the principles agreed by the Parties confirming their independence set out in **Schedule 5**

**"S113 Duties"**

those duties which a Post Holder will perform for and on behalf of the Non-Employing Party being the duties identified in the documentation establishing the Combined Team under the HR Protocol (subject to such variations as may be agreed between the Parties (and, where appropriate, the Post Holder) from time to time);

**“Term”**

the duration of the Agreement in accordance with **Clause 3**.

**“Tri-borough Director of Pensions and Treasury”**

The shared Tri-borough Director of Pensions and Treasury Services appointed by the Parties to lead and manage the co-located Teams;

**"TUPE"**

the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No. 246) as amended;

**"Transferee Party"**

the Party to whom, subject to Regulations 4 (7) and 4 (9) of TUPE, a Post Holder's employment contract transfers, or a Post Holder contends that his or her employment contract transfers, due to a Relevant Transfer;

**"Transferor Party"**

the Party who immediately before the Relevant Transfer was the employer of a Post Holder whose contract of employment, subject to Regulations 4 (7) and 4 (9) of TUPE, is subject to a Relevant Transfer or of a Post Holder who contends that, subject to Regulations 4 (7) and 4 (9) of TUPE, his or her contract of employment is subject to a Relevant Transfer;

**"Working Day"**

8.00am to 6.00pm on any day except Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday (in England) under the Banking & Financial Dealings Act 1971.

References to statutory provisions shall be construed as references to those provisions as respectively amended or re-enacted (whether before or after the Commencement Date) from time to time.

The headings of the Clauses in this Agreement are for reference purposes only and shall not be construed as part of this Agreement or deemed to indicate the meaning of the relevant clauses to which they relate.

References to Clauses, Sections and Schedules are references to the clauses, sections and schedules to this Agreement respectively and a reference to a Paragraph is a reference to the paragraph in the Schedule containing such reference.

References to a person or body shall not be restricted to natural persons and shall include a company corporation or organisation.

Words importing the one gender only shall include the other genders and words importing the singular number only shall include the plural.

References to the Parties shall include any statutory successors to those local authorities.

## SCHEDULE 2: AIMS, INTENDED OUTCOMES AND PRINCIPLES

### Objective

1. To form a single delivery service that provides Treasury Management and Pension Fund services within a combined team to improve service resilience and mutual support.

### Key Elements

2. That services are to be provided by the combined team by mutual agreement and in accordance with Appendix 1, with Westminster as the Lead Borough.
3. That the quality targets and performance indicators set out in Appendix 2 will apply
4. That both Treasury and Pension Fund monies will continue to be managed separately (**not pooled**) in accordance with the strategies agreed by the home boroughs
5. That benefits will arise from having a larger team to provide resilience and give support to the other team members and share skills, knowledge and expertise.
6. That the Tri-borough Director of Pensions & Treasury reviews the future potential for generating income, or reducing costs through the:
  - (a) Rationalisation of the use of current software/applications;
  - (b) Rationalisation or price reduction of treasury advisers;
  - (c) Rationalisation or price reduction Pension Fund Investment Advisers, Custodians, Actuaries and Fund Managers;
  - (d) Increased returns which may be obtainable on larger tranches of investment will be explored where possible;
  - (e) Offering the combined service to other local authorities in the future;
  - (f) Reviewing staffing arrangements in the event of retirement or resignation of team members.
7. That the combined team will not be directly responsible for delivering pension administration services but will have an oversight role in terms of ensuring that:
  - (a) contracts with third party providers are subject to market testing via appropriate tendering and procurement processes at least once every five years;
  - (b) clear and consistent standards are in place regarding speed and accuracy of transactions processing (see below);
  - (c) regular performance reports are presented to pensions committee and local pension board;
  - (d) action is taken to address any performance issues identified.
8. The combined team will be located at Westminster City Hall. Westminster will be the Host Borough.

## Appendix 1 - Key tasks and activities undertaken by the combined Treasury Management and Pension Fund services

### 1) Treasury and Investment Management

Key Task for each Council	Timing
Treasury Management (TM) Strategy to be discussed and agreed with s151 officers (including key prudential indicators, expected CFR, MRP policy and overall financing of the expected capital programme)	By 31 December each year
Investment Strategy to be discussed and agreed with s151 officers (including overall investment allocation strategy, due diligence/credit rating requirements and benchmark returns for each category of investments)	By 31 December each year
TM and Investment Strategies drafted and reviewed by s151 officers	By 31 January each year
Confirm that content of TM and Investment Strategies meet relevant CIPFA and MHCLG requirements	By 31 January each year
Ensure TM Strategy is consistent with the Capital Budget and other Council plans	By 31 January each year
TM and Investment Strategy approved by members following pre-meeting briefing, and presented to Full Council as part of budget reports pack	As part of budget setting each year
Agree and deliver a programme of added value activities with each s151 officer. Report monthly to s151 and quarterly to members on work done and outcomes achieved.	Strategic Finance Manager to spend 33%- 50% of their time on these activities
TM and Investments year-end report discussed with s151 and presented to members	By 30 April each year
Evaluate the potential for, and value for money offered by, current opportunities for early debt repayment or rescheduling	Quarterly
TM monitoring reports discussed with officers and presented to members	Quarterly
Investment monitoring reports discussed with officers and presented to members	Quarterly
Hold regular meetings with Link Asset Management and other TM advisers to identify new borrowing and investment opportunities (s151 officers to attend)	Quarterly
No breach of Prudential Indicators set out in TM Strategy and monitoring reports	Monitor quarterly
Reconcile TM Strategy to capital outturn reports and update as necessary	Monitor quarterly
Ensure full compliance with agreed due diligence policies	Monitor quarterly
No late payments or default events on investment balances and counterparty loans	Monitor quarterly
All investment and loan transactions processed in line with strategies once agreed	Monitor monthly
100% accuracy rate in posting treasury and investment journals to relevant GL	Monitor monthly
Counterparty list ratings in line with TM and Investment Strategies	Monitor monthly
Average bank balances maintained in line with TM Strategy approved by members.	Monitor weekly
No overdrawn cash balances outside of agreed limits	Monitor weekly
Ensure each Council has sufficient liquid funds available to make payments as liabilities fall due	Monitor weekly
Counterparty list ratings updated within 24 hours of notification of change	Monitor weekly
All bank transfers, CHAPS payments and treasury management transactions processed within 24 hours of receiving authorisation/ request	Monitor weekly
100% accuracy rate in processing cash, bank and treasury transactions	Monitor weekly
Ensure each investment portfolio achieves diversification/asset allocation targets	Cover in year-end report
Confirm that CFR disclosures in each council's year end Statement of Accounts are consistent with Prudential Indicators	As part of year end close

## 2) Pensions

Key Task for each pension fund	Timing
Ensure adequate arrangements are in place to review and re-tender contracts for pensions administration services, including appropriate performance targets where required.	At least once every 5 years
Update strategy statements and policies as follows - obtain member approval following s151 review: <ul style="list-style-type: none"> <li>• Pensions Administration Strategy</li> <li>• Funding Strategy Statement and Investment Policy</li> <li>• Communications Policy</li> <li>• Policies on local discretions</li> <li>• Policy for managing conflicts of interest</li> </ul>	Update each key policy document at least once every 2 years
Ensure relevant legal and corporate requirements are met when appointing fund managers, custodians and other advisers	As part of ongoing work programme
Draft annual Governance Compliance Statement and obtain member approval following s151 review	By 31 March each year
Commission external training and ensure that the agreed training programme is delivered as planned	By 31 March each year
Complete training needs assessment and agree training programmes with each committee and pension board	By 1 April each year
Review and update pensions administration contract with third party provider(s), including new performance targets where required.	By 1 April each year
Update annual business plan for each LGPS, including forward work programmes for pension/investment committees and local pension boards	By 1 April each year
Liaise with Actuary and employing bodies to provide information for triennial revaluations and IAS 19 reports	Each year in line with timetable set by actuary
Obtain third party assurances from fund managers, custodians, and administration providers	By 31 May each year
Draft pension fund accounts and disclosure notes	By 31 May each year
Draft pension fund annual report and	By 30 September each year
Publish annual report following s151 review and member approval	By 1 December each year
Update ESG policy and keep under review as a regular agenda item for members	At least twice a year
Ensure that a formal review of pensions administration performance is presented to each pension board and committee, and that any remedial action required has been put in place.	Every 6 months
Prepare agendas for committee meetings and pension boards	Quarterly
Liaise with independant advisor to obtain reports and address any issues arising	Quarterly
Prepare summary budget and cash flow report comparing actual vs expected fund transactions and balances to committee and board members	Quarterly
Ensure correct recovery of early retirements and other employing body costs	Monthly
Post Valuations and Fund movements to relevant GL	Monthly
Review payroll reports and post journals to the relevant GL	Monthly
Clear pension transactions from suspense accounts	Monthly
Reconcile actual and expected contributions received. Chase up late or missed contributions	Monthly
Reconcile Fund Manager and Custodian Reports	Monthly
Post LGPS transactions to relevant GL (including early retirement and other costs)	Monthly
Prepare and monitor cash flow forecasts (short and long term)	Monthly
Prepare and monitor annual budget for administration, IM and governance costs	Monthly

### 3) Generic

<b>Key Task</b>	<b>Timing</b>
Independent review of LGPS governance to ensure compliance with The Pension Regulator's Code of Practice 14	At least once every 3 years
Annual review of performance against agreement for shared service activities, discuss/agree key performance indicators, cost sharing arrangements and budgets for the forthcoming year	Annual meeting with s151 officers
Monitor MIFID II compliance and update annual assessment of professional investor status for each council's TM and pension functions	Formal review at least once a year
Complete annual staff survey	Satisfaction good or better
Monitor average sickness per FTE	5 days absence or less per FTE each year
Ensure Council finance staff are seconded to shared service teams (especially CIPFA trainees)	At least 1 secondment each year
Draft and present committee and pension board reports as required. Ensure all reports are presented in an appropriate format and on time.	Quarterly meetings
Attend all committee and board meetings and training events relevant to treasury and pensions functions	All events
Informal briefing sessions to take place between Tri-borough Director and committee chairs/portfolio holders	At least twice a year
Director to meet with or teleconference all 3 s151 officers regularly. Meetings to be minuted and informed by follow-up action plans.	At least monthly
Prepare monthly "dashboard" reports and discuss with s151 officers	Within 2 weeks of each month end
Arrange interim cover for long term sick and other absences	All absences over 20 days
Ensure all shared service staff hold, or are working towards, recognised CCAB or TM qualifications	Ongoing
Ensure all staff attend regular update training and participate in local TM and pensions networks	Ongoing
Participate in appropriate benchmarking activities for TM and pension functions and report on outcomes and benefits achieved	Ongoing, with annual report to members
Staff from Tri-borough team to work at RBKC and LBHF offices	At least one day per week

## Appendix 2 - Quality targets and performance indicators:

### Quality Standards

1. All work undertaken by the combined team will meet the following quality standards:
  - full compliance with statutory requirements and MHCLG guidance
  - all CIPFA Code of Practice requirements met in full
  - all functions maintain MIFID II professional client status
  - all LGPS meet the Pension Regulator's Code of Practice requirements
  - all staff to hold, or be working towards, recognised CCAB or Treasury Management qualifications
  - all staff to attend regular technical training and participate in local Treasury Management and LGPS networks
  - all team members comply with their own professional bodies' requirements
  - all services provided will be subject to regular Internal Audit coverage
  - obtain annual independent assurance reports from 3rd party service providers
  - no significant issues raised by Internal Audit work
  - no material errors identified by external audit.

### Key Performance Indicators

2. The following key performance targets will be applied:

#### Pensions

<i>Key performance target</i>	<i>Measured by</i>
Funding level at least equal to LGPS averages	Actuarial revaluation every 3 years
Investment management costs under 0.5% of year end net asset value (NAV) of each fund	Calculate based on year end Fund Accounts
Maintain asset allocations in line with strategy approved by members	Confirmed (or otherwise) by the independent investment advisor's quarterly review
All contributions due from employing bodies are collected promptly	Reported quarterly to members and monthly to s151
Sufficient cash is available to pay pension benefits as they fall due	Reported quarterly to members and monthly to s151

#### Treasury management

<i>Key performance target</i>	<i>Measured by</i>
No breach of Prudential Indicators	Confirmed by year end Treasury Management report
Each Council has sufficient funds to make payments as they fall due	Reported monthly to s151
Investment income matches or exceeds budget	Confirmed by year end revenue outturn report
Interest paid does not exceed budget levels	Confirmed by year end revenue outturn reports
New borrowing does not exceed Bank of England base rate +2%	Confirmed by year end Treasury Management report
Annual investment yield exceeds LIBID 7-day rate	Confirmed by year end Treasury Management report



## Schedule 3 HR Protocol



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## HR Protocol for Establishing and Working in Integrated Teams

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In terms of employment legislation the procedure is for guidance only and does not form part of an employee's contractual rights.

The contents may be subject to revision as required.

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## **1. Purpose of the Protocol**

### 1.1 Guiding principles are:

- To protect the rights and duties of our staff under their contract of employment
- To ensure staff within integrated teams are treated fairly and equitably
- To resolve any difficulties and other issues as far as is practicable at local management level
- To develop a shared set of working standards
- To ensure managers receive clear guidance and advice from the respective Human Resource Departments on how to apply HR policies and procedures appropriately.

## **2. Clarity in the contractual relationship**

2.1 The HR policies, procedures and terms and conditions of staff and the statutory obligations of the partner organisations are unchanged by this protocol. Staff employed in integrated teams (WCC & RBK&C) will continue to be contracted to their current employer on the same terms and conditions provided under the respective individual and organisations contract of employment. Plus:

- The employing organisation remains responsible for exercising the rights and duties of the employer
- The HR Protocol requires parties to liaise with each other regarding the contracts of employment of those they manage and to take advice from HR staff of the employing organisation where interpretation or formal action under the contract of employment is required
- Existing and established posts that have become part of an integrated team arrangement should normally be filled on the same and continuing basis unless otherwise agreed between the partners.

## **3. The status of the Protocol**

### 3.1 This protocol :

- will complement, but not replace, the HR Policies and Procedures of the partner organisations. However, where any conflict/disagreement occurs between the protocol and any HR Policies/Procedures, then the HR Policy/Procedure will take precedence;

- In no way affects the statutory obligations of the Partner organisations;
- In no way affects the contracts of employment or terms and conditions of the staff of the Partner organisations; and
- Is designed to support those working in joint or integrated teams.

#### **4. What is an integrated Team?**

4.1 For the purposes of building a partnership between LBH&F, RBK&C and WCC, an integrated team will usually be based on a mix of the 2 Council's staff (WCC & RBK&C) who:

- Will retain their employment role and status with no material changes to their terms and conditions, which means that employees of RBK&C and WCC will work alongside each other on the different terms and conditions of each organisation, staff working on LBH&F will be employed by WCC;
- Will be managed by the Tri-Borough Director of Treasury & Pensions, whom is employed by WCC;
- May be co-located with the rest of the team;
- May include colleagues from other partnership organisations;
- Will be part of an identified Team who report through to a designated Director, Executive Director or Chief Executive;
- Will share team goals and objectives but will continue to be subject to the staff / individual performance review process relating to the organisation that employs them;
- Work within a team that can be integrated as part of an organisational restructuring; and
- Can be part of organisation under a joint budgeting agreement.
- Will work under a S113 arrangement agreed between the three Boroughs

4.2 An integrated team at this point in time will not usually be:

- A team where all members are employed by the same organisation;
- A team involving TUPE processes: roles/employment will not be transferred; and
- A team made up solely of secondees.

## **5. Recording agreement to create an integrated team**

- 5.1 When agreement has been reached to create an integrated team, the details of such team, must be recorded using the template.
- 5.2 The template should be signed by the appropriate lead Directors of the 3 Boroughs and the completed copy will be kept by the HR Departments on behalf of all 3 organisations.
- 5.3 Any subsequent changes to the financial arrangements must be updated on the template.

## **6. Recruitment to an integrated team**

- 6.1 In all cases, whether for new posts, reorganisations or replacements RBK&C and WCC agree that the terms of the employing organisation will prevail and the integrity of the terms and conditions and job evaluation processes to determine those terms will be upheld. No individual shall be subject to a hybrid set of terms and conditions.
- 6.2 Regardless of the sources of funding for posts within the team, all staff will be treated fairly and equitably and in accordance with the policies of RBK&C and WCC.
  - In relation to the appointment of a new member of staff, managers should refer to local policies on recruitment and should work with the appropriate Human Resources team who will advise on applying the following criteria: How the vacancy is to be managed and the nature of the replacement post
  - Job descriptions should reflect the integrated nature of the structure, the role and duties expected of the post-holder in accordance with integrated team and service requirements.
  - The evaluated salary range
  - The process of advertising; and
  - Recruitment costs.
- 6.3 There might be a joint appointment. Where the post is a joint appointment, the contract of employment will reside with one of the 3 Boroughs and should detail the role and accountabilities reflecting the integrated nature of the joint appointment
- 6.4 The recruitment process will be in accordance with the employing Borough's policies and procedures and will conform to the principles for safer recruitment.

- 6.5 The manager designated to lead the recruitment process will ensure appropriate use of employer brand, logo and internal / external vacancy circulation appropriate to the posts being advertised. Recruitment literature to reflect the joint nature of the service.
- 6.6 There are separate job evaluation schemes in place in the three Boroughs. The employing Borough will evaluate the post where appropriate.

## **7. Management Arrangements**

- 7.1 This protocol sets out the line management arrangements for an integrated team. The manager of an integrated team:
- Shall have the right to give any reasonable instructions to staff of the Boroughs, who are members of the team
  - Will manage staff in accordance with the expectations of the 3 Boroughs (reflecting the relevant policies and procedures) in matters relating to a range of areas, including but not exclusively relating to :
    - Health and safety;
    - Training and Development;
    - Code(s) of Conduct;
    - Conflict of Interests/Confidentiality;
    - Communications;
    - Performance Management & Appraisal;
    - Recruitment and selection;
    - Sickness Management;
    - Annual leave;
    - Grievance and discipline;
    - Whistle-blowing;
    - Bullying and harassment;
    - Work life balance/Improving Working Lives policies;
    - Equal opportunities; and
    - Staff and Trade Union Consultation.
  - It must be acknowledged that the management of integrated teams, particularly those that are not co-located, will place additional demands upon the manager of the team. Knowledge of many aspects of the 3 Boroughs HR policies and procedures will be a pre-requisite to applying staff management processes across the team. This will require training and support, with guidance from HR and line management, encouraging the development of managerial confidence and skill

- The team manager must clarify roles and set clear outcomes for the team as a whole and ensure that there are regular meetings balanced with one to ones in order to develop team skills and coherence
- Clear lines of accountability must be established, including responsibilities and reporting requirements.

## **8. Training and Development**

- 8.1 The manager of the integrated team should be able to access development opportunities for staff they manage across the 3 Boroughs unless exceptional circumstances prevail where funding is identified (ring fenced) for specific service areas and/or staff groups.

## **9. Induction**

- 9.1 Consistent induction should be developed across integrated teams.
- 9.2 Newly appointed team members should participate in a full induction, within their employing organisation, which will be tailored to individual need, to ensure they can operate effectively within the integrated environment.
- 9.3 Managers of integrated teams must ensure that they undertake a familiarisation session with each team member based on filling in the gaps regarding the knowledge needed to function effectively in the host organisation.
- 9.4 Managers will receive appropriate induction/management development in accordance with their individual need. All existing, as well as new managers, who are managers of staff from across the 3 Councils, must familiarise themselves with the key policies and procedures of LBH&F, RBK&C and WCC.

## **10. Performance Appraisal Process**

- 10.1 Staff will be performance managed in accordance with their employing Council's contractual policies and procedures.

- 10.2 All of the staff across the 3 Boroughs are subject to the annual appraisal process which should also include, at least, a mid-year review.
- 10.3 Key objectives will be set which support the aims of the team, the organisational priorities and the integrated arrangement. Individual training and development needs will be identified through the process. The 3 Boroughs will provide appropriate training to supervisors to enable them to effectively undertake the relevant appraisal processes for their staff.
- 10.4 To ensure all staff are appraised according to their employing organisations' procedures, all managers of integrated teams, regardless of their own employment status, must ensure that they have good working knowledge of the appraisal procedures applicable for staff at all levels in each of the 3 Boroughs.
- 10.5 This means that the manager of the integrated service/team must clarify his/her responsibilities under their own Council's appraisal scheme as well as those in each of the 2 other Boroughs. Support should be accessed through the local HR team do we mean local or employing.

## **11. Poor Performance**

- 11.1 The capability procedure for the relevant employing Borough should be used to manage any problems that arise, irrespective of the employing organisation of the line manager concerned.
- 11.2 Managers contemplating taking formal poor performance action will take advice from the employee's HR service to ensure adherence to contractual procedures.
- 11.3 Any decision to dismiss can only be taken by a senior manager, as identified within the employing organisation's HR policy, based on the recommendation and case presented by the manager of the integrated team, allow the concerned the opportunity to full representation.

## **12. Grievance**

- 12.1 Any grievance issues will be dealt with under the appropriate employing organisation's grievance procedure.



- 12.2 It is essential that managers of integrated teams make themselves aware of the timescales under the procedure.
- 12.3 HR advice will be provided, from within the employing organisation on the application of the grievance procedure.
- 12.4 Where one Council employee in an integrated team submits a grievance about an employee in another HR in the two Councils will identify how the investigation and resolution process should be managed; practically applying the relevant grievance procedure
- 12.5 Collective grievances or disputes can only be raised by trade unions.
- 12.6 Pay and Terms & Conditions remains the province of the relevant Council, therefore there can be no shared dispute on these grounds.

### **13. Disciplinary**

- 13.1 Any formal action against an employee will be taken under their employing Borough's Disciplinary Policies and Procedures. Where these procedures state the immediate line manager, this will mean the employee's line manager, regardless of the line manager's employing organisation.
- 13.2 Appropriate HR advice from the employing organisation must be sought, but always in the following instances:
- in all cases of potential gross misconduct;
  - when there is police, fraud or safeguarding involvement;
  - where a trade union representative is involved; and
  - where there is an allegation of bullying or harassment made by an employee of one organisation against an employee of another organisation.

### **14. Job Evaluation**

- 14.1 The Councils use the GLPC job evaluation schemes at various levels in the separate organisations.
- 14.2 Market supplements may be paid across the 2 Boroughs (WCC & RBK&C) in line with the employing boroughs policy

- 14.3 These arrangements will continue, as at present, and will therefore apply to each team member of an integrated team, as appropriate and in line with the policy of their employing organisation

## **15. Sickness/Absence Management**

- 15.1 Any issues arising from the sickness and/or absence of members of staff within the integrated team will be managed in accordance with the employing organisation's policies and procedures and contract of employment.
- 15.2 Managers will need to be mindful of the relevant trigger points for consideration, under the relevant sickness procedure, in line with the HR and Occupational Health advice available. Appropriate direction will be provided through the relevant HR function.
- 15.3 Line managers will have access to advice from the relevant HR Team/Occupational Health service representing the employing organisation on issues of long-term sickness line

## **16. Smoking and the Consumption of Alcohol or Drugs**

- 16.1 The rules of the employing organisation must be followed with regard to the consumption of alcohol during working hours.
- 16.2 Smoking whilst on duty is allowed only in accordance with the employing organisation's policies and procedures and also in accordance with the policies and procedures of the organisation in whose premises staff are working.

## **17. Leave**

- 17.1 The policies of the employing organisation apply.

- 17.2 The immediate line manager, regardless of employing organisation, can authorise flexi/annual leave for staff. It is the immediate line manager's responsibility to ensure that this is done in a planned manner according to the exigencies of the service. It is the line manager's responsibility to keep a record of staff leave and to ensure that this information is forwarded as required to the relevant payrolls and/or HR Teams.
- 17.3 The immediate line manager, regardless of employing organisation, should in the first instance refer to the appropriate policy and ultimately seek guidance, from the HR team of the employing organisation, regarding Special Leave, Compassionate Leave, Maternity Leave, Paternity Leave and other forms of paid and unpaid leave.
- 17.4 For matters of Maternity and Paternity Leave, the integrated team manager must seek advice as soon as possible. This should be from the relevant HR section of the employer of the member of staff concerned.
- 17.5 For matters concerning Sabbaticals or employment breaks, the integrated team manager must seek advice from the relevant HR section according to the employing organisation of the member of staff concerned.

## **18. Shared policies and procedures**

- 18.1 In adopting the principle of best practice in an integrated service, it is determined that some policies, procedures and protocols may be adopted jointly, regardless of their employing organisation. Individual policies and procedures will make it clear if this applies. Opportunities to integrate and harmonise policies and procedures will be maximised, as will partner organisations commitment to respond joint to new legislation and initiatives.

## **19. Whistleblowing**

- 19.1 The policy of the organisation employing the whistleblower will apply. However, it is accepted that if the member of staff reveals concerns that are related to one or both of the other Boroughs, these will be shared on a confidential 'need to know'/'need to act' basis and managed in accordance with best practice.

## **20. Code of Conduct**

- 20.1 The code of conduct of the employing organisation will apply to its own staff regardless of their place of work and their team/managerial arrangements.
- 20.2 Any local protocols as part of the integrated teams will apply.

## **21. Equal Opportunities/ Equalities and Diversity**

- 21.1 Staff will adhere to the relevant organisation's policy and comply with the requirements regarding Race/Equality Impact Assessments.

## **22. Bullying and Harassment**

- 22.1 The Bullying and Harassment Policies of the relevant organisations will be used and applied in relation to the staff concerned in any bullying/harassment allegations and/or situations.

## **23. Staff Consultation**

- 23.1 Staff consultation processes within each organisation will continue, namely informal sessions, and formal meetings. Joint meetings will also be arranged as the HR and Integrated Managers determine, in consultation with the trade unions.

## **24. Sharing of Information**

- 24.1 Information will be shared across the 3 organisations, in relation to the effective operation of the integrated team, with due adherence to any legal requirements e.g. data protection act and any logistical/ICT restraints

## **25. Notes**

- 25.1 Action initiated under one procedure may be changed to an alternative procedure if investigation of the circumstances indicates this would be more appropriate.

25.2 In applying this protocol the council will pay due regard to providing reasonable adjustments under the Disability Discrimination Act 1995 to an employee who has a disability.

## **26. Compliance**

26.1 Failure to follow the procedure set out in this protocol may impact on good employee relations and the reputation of the council as a good employer. In addition, it may result in the council breaching employment legislation, incurring financial penalties and / or damage to its reputation.

## **27. Impact on individual Council Key Priorities**

27.1 The protocol provides the cornerstone for developing integrated teams, which will be one of the key elements in enabling the 3 Boroughs to deepen and strengthen their partnership working. This underpins service provision and enables each organisation to effectively meet its key priorities.

## **28. Training and Awareness Requirements**

28.1 Managers and employees will be informed about this policy and procedure via relevant communication channels.

28.2 HR will liaise with directorate management teams to establish and agree support arrangements to assist managers to carry out their responsibilities.

## **29. Monitoring**

29.1 HR will be notified of any cases where it is concluded that the policy was breached. The notification will indicate whether there are any changes or improvements required to the policies, procedure, training, support or any other aspect of the council's approach to dignity at work matters.

29.2 HR will monitor the effectiveness of the policy through information received via feedback from managers and employees through, for example, management team meetings, Employee Surveys and exit interviews, as well as the numbers of employees using this procedure.

## **30. Review**

30.1 This document will be regularly reviewed to ensure relevance and fitness for purpose.

## APPENDIX 1

### HEALTH AND SAFETY FRAMEWORK

#### 1 INTRODUCTION

- This agreement supplements, but does not replace the Health and Safety policies and procedures of each of the 3 Councils.
- This agreement in no way dilutes or undermines the statutory duties of each of the partner organisations.

#### AIMS OF LOCAL AGREEMENT

- The aim of the local agreement is to ensure that whilst the statutory duties of Health and Safety are met by the 3 Councils, they work together in an integrated manner to assess and manage the risks to the Health and Safety of their staff and others who may be affected by work activities.

#### GENERAL PRINCIPLES

- LBH&F, RBK&C and WCC are committed to achieving the highest level of Health and Safety management.
- Every effort will be made to harmonise the Health and Safety policies and procedures of the 3 Councils and to provide clarity for staff of each of the 3 Councils.
- The 3 organisations will work towards harmonising the risk assessment process.
- The 3 organisations will work toward harmonising the accident /incident reporting and investigation process.
- All relevant information obtained from accident/incident investigation will be shared between the 3 organisations.
- The 3 organisations will work towards harmonising Health and Safety Training.
- The 3 organisations will share between them all relevant Health and Safety information.

## **POLICIES AND PROCEDURES**

- The Health and Safety policies and procedures of the relevant organisation will be available to staff in all places of integrated working. This information will be updated and maintained by a designated responsible manager.
- A designated manager will be responsible for the fire and emergency arrangements at each integrated location.

## **2 RISK ASSESSMENT**

- Designated managers will be responsible for the implementation of the risk assessment process at all integrated workplaces.

## **3 INCIDENT REPORTING**

- Until harmonisation of accident/ incident reporting investigation procedures are established, the existing arrangements of the partner organisation will continue.
- Where appropriate the results and follow up actions of any investigation will be shared by health and safety managers of each partner organisation.

## **TRAINING**

- All line managers will be provided with familiarisation in the Health and Safety procedures and protocols of each partner organisation.
- A designated manager at each integrated workplace will be responsible for the arrangement of fire and emergency training and drills in respect of all staff based at the premises.

## **INDUCTION**

The senior manager, regardless of employing organisation, will be responsible for ensuring that all staff receive a comprehensive local Health and Safety induction, as soon as is practicable on joining the integrated team.



## SCHEDULE 4: FINANCIAL PROTOCOL

1. In principle, it is agreed that the total cost of the combined team, including:

- staff costs and training
- employers national insurance and superannuation contributions
- IT provision
- Accommodation, and
- Other support service costs

are apportioned across all three participating boroughs in line with ratios agreed at the start of each financial year.

2. For financial periods commencing on and after 1 April 2021, these ratios will be:

(a) For staff costs relating to shared posts:

- Westminster City Council 40%
- Royal Borough of Kensington and Chelsea 30%
- London Borough of Hammersmith and Fulham 30%

(b) For IT, accommodation and overhead costs incurred by Westminster City Council, the Royal Borough of Kensington and Chelsea and the London Borough of Hammersmith and Fulham shall each pay 24% of budget charges allocated to the Tri-borough team.

3. Recharges between authorities will be adjusted to reflect any expenditure pertaining to the activities of the combined team which has been incurred directly eg staff currently employed by Royal Borough of Kensington and Chelsea.

4. Recharges will be calculated based on the annual revenue budget for the combined team and will be fixed and agreed as part of the corporate budget setting process at the start of each financial year.

5. As the host authority, Westminster City Council will be responsible for managing actual costs against budget and will be accountable for any under or overspends that might occur.

## SCHEDULE 5: S113 ARRANGEMENTS

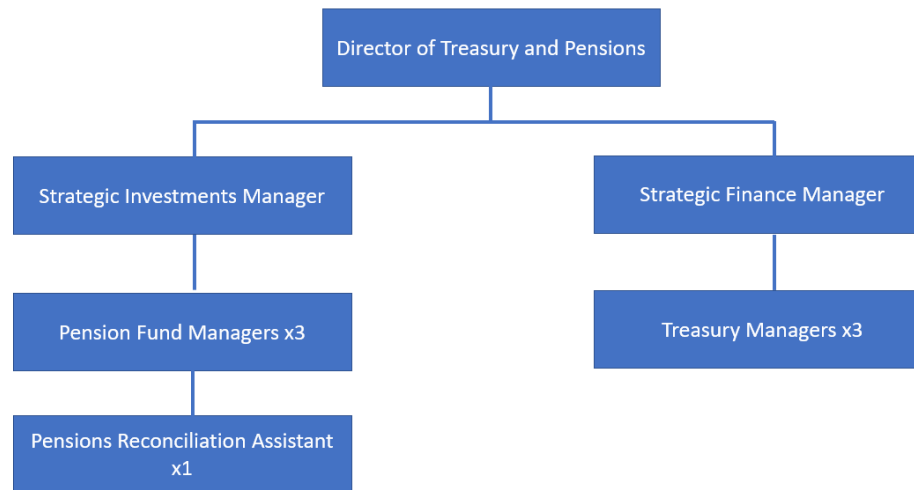
1. The permanent shared posts subject to the Arrangements are as follows:

<b>Role</b>	<b>FTE</b>	<b>Employing Party</b>	<b>Allocated to</b>
Director of Pensions and Treasury	1	WCC	Shared post
Strategic Finance Manager	1	WCC	Shared post
Strategic Investment Manager	1	WCC	Shared post
Pension Fund Manager	1	RBKC	RBKC
Treasury Manager	1	RBKC	RBKC
Pension Fund Manager	1	WCC	WCC
Treasury Manager	1	WCC	WCC
Pension Fund Manager	1	WCC	LBHF
Treasury Manager	1	WCC	LBHF
Pensions Reconciliation Assistant	1	WCC	Shared post

2. The management arrangements for the combined team are set out in Schedule 6.
3. The Director of Pensions and Treasury will be authorised to recruit engage new staff within this overall structure and to engage agency staff as necessary to fill vacancies in the above structure for the purposes of the Arrangements.
4. Recharging mechanisms for shared posts and for staff employed by one borough but allocated to the activities of another borough are set out in Schedule 4.
5. The combined team will provide each authority with a monthly report to:
- summarise key transactions and balances
  - confirm that these transactions and activities have taken place in line with strategies and policies approved by s151 officers and elected members
  - confirm that the key tasks, activities and processes set out in Schedule 2 are taking place as anticipated.
  - confirm that the quality assurance processes set out in Schedule 2 Appendix 2 are in place
  - confirm that key performance targets set out in Schedule 2 Appendix 2 have been met.
6. Monthly reports, together with outcomes from monthly meetings, will be used as the basis for each s151 officer to carry out annual reviews of the Arrangements and, where necessary, changes to service requirements for the following financial year.

**SCHEDULE 6: TRI-BOROUGH DIRECTOR PENSIONS AND TREASURY AND COMBINEDTEAM**

Tri-borough Team staff structure – August 2020



## **SCHEDULE 7: SOVEREIGNTY GUARANTEE**

All three Councils are committed to continuing to represent the needs, priorities and ambitions of local people in their neighbourhoods.

They are exploring reducing costs by working together. They are also keen to take new devolved responsibilities from Government and manage these together, where this makes sense.

Commissioning or delivering services together is not designed to change how residents experience services. It is about how to get things done more efficiently.

### **To safeguard local autonomy the Council confirm:**

1. Local residents will continue to elect the same number of councillors to each Council.
2. Each Council will retain its own constitution, setting out how it makes decisions, organises scrutiny and delegates authority.
3. Each Council will continue to set its own council tax and publish its own budget and accounts.
4. Each Council will continue to be able to set out its own spending priorities.
5. No Council can be 'out-voted' by the two other Councils in a way which requires that Council to adopt a policy, accept a cost or change a priority that its decision makers are not willing to support.
6. There will be no change in the name of any of the Council.
7. The costs of changes and the benefits achieved from change will be fairly attributed and shared to the satisfaction of all three Councils, if necessary using mediation.
8. No Council will be obliged to break an existing contract.
9. The boundaries of the areas for which each Council is responsible will not change. Each Council will continue to speak up for its own residents, even where there is an apparent conflict of interest between the boroughs.
10. Each Council will be able to set its own policy for how services are delivered.
11. The Councils will commission service from contractors, voluntary bodies and others together, but can also decide to commission, or grant aid, on their own.
12. Nothing in these proposals is intended to stop Councils developing local ideas about how to support their local communities.

### **A commitment to shared learning, innovation and value for money**

13. The Councils will share what works in service delivery and encourage their neighbours to learn from successful innovation.

14. The Councils will adopt common specifications where these are compatible with each Council's policy objectives and budget preferences and where these are likely to give best value to taxpayers.
15. The Councils commit to a continuing process of exploring how working together might lower costs; be a better platform for developed responsibilities from Government; and/or improve the quality of service delivery.
16. The Councils will commit to exploring how by working together, councillors can enhance the ways in which their Councils deliver their responsibilities.
17. The Councils will expect to keep these arrangements under review, in order to ensure they remain fit for purpose.
18. Any of the arrangements that constitute agreements between the Councils can be ended on notice, though any Council withdrawing will be responsible for its own consequent costs. Any joint external contracts will be covered by the same legal considerations as now.
19. Where shared services arrangements are brought to an end then the notice period will be twelve months, unless a shorter period is expressly agreed by the other parties and the costs arising from termination will be fairly shared between the Councils in a pre-agreed manner.

