

AGENDA ITEM: 7Page nos. 23 - 27

Meeting	Pensions Fund Committee
Date	15 March 2012
Subject	TUPE transfer of staff from LB Barnet to Barnet Homes
Report of	Interim Director of Environment, Planning and Regeneration
Summary	All members of staff from the Housing Service will transfer to Barnet Homes in accordance with the Transfer of Undertakings (Protection of Employment) Regulation 2006 (TUPE) with effect from 1 April 2012. There will be a deficit of £629,000 to the pension fund which will transfer to Barnet Homes, an employer within the LB Barnet pension fund. The employer contribution rate for the transferring staff will include sufficient provision to ensure that the deficit is recovered over the timescales specified by the actuary

Officer Contributors	Paul Shipway, Head of Strategy and Performance David Walton, Interim Finance Manager Hansha Patel, Pensions Services Manager
Status (public or exempt)	Public
Wards Affected	All
Key Decision	Not Applicable
Reason for urgency / exemption from call-in	None
Function of	Council
Enclosures	None
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1. RECOMMENDATIONS

- 1.1 That the Pensions Fund Committee note the transfer of 79 staff from LB Barnet to Barnet Homes in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”). Barnet Homes is an employer within the pension fund.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 On 16 January 2012, Cabinet Resources Committee approved the Future of Housing Services Business Case in order for the Council to proceed with transferring the Housing Service to Barnet Homes and authorised the Interim Director of Environment, Planning and Regeneration to implement the transfer of the Housing Service to the Barnet Group Ltd, who will sub-contract with Barnet Homes (Decision item 6)
- 2.2 On 16 January 2012, General Functions Committee, subject to a decision at Cabinet Resources Committee on 16 January 2012, instructed the Interim Director of Environment, Planning and Regeneration to transfer the staff employed within the Council’s retained Housing Service to Barnet Homes in accordance with the Transfer of Undertakings (Protection of Employment) Regulation 2006 (TUPE) with effect from 1 April 2012 and that the posts in scope for transfer be deleted from the Council’s establishment (Decision item 6)

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The corporate priority *Better Services with Less Money* requires the Council to make better use of resources across the Borough in the context of the Medium Term Financial Strategy. The arrangements transferring the retained Housing Service to Barnet Homes, including the transfer of pension responsibilities need to support this objective.
- 3.2 Under the Corporate Plan priority *Better Services with Less Money*, bringing housing services delivered by the Council and Barnet Homes together has the potential to realise efficiencies through economies of scale and integrated management arrangements, whilst customers would benefit from a single provider incorporating Barnet Homes’ track record in providing customer focused services and high quality resident involvement. Additional service improvements would be delivered by having a more integrated approach to the delivery of housing related services, whilst enabling the Council to focus more on becoming a strategic commissioning organisation in line with One Barnet objectives

4. RISK MANAGEMENT ISSUES

- 4.1 The ongoing viability of the Pension Fund is dependent on maximising contributions to the Fund. All Employing Bodies are subject to reviews and actuarial assessments to ensure compliance with Pension Scheme Regulations and maintenance of appropriate employer contribution levels in order to mitigate against any risk to the financial viability of the pension fund.

- 4.2 The pension regulations require actuarial assessments of the value of the pension fund and the liabilities of the employer. This is done initially and at each triennial valuation. The actuarial assessment will determine the employer contribution rate required to be made to the fund dependant on the profile of the workforce and the potential risk to the fund of admitting the body.
- 4.3 The Authority has carried out an assessment with actuarial advice, as required under the Regulations, of the pension fund deficit as at 31/03/2012 in respect of the staff transferring to Barnet Homes and also the impact on Barnet Homes' employer contribution rate.
- 4.4 The LGPS provides for early payment of pension benefits on compulsory early retirement, redundancy or ill-health. As an employer in the pension fund, Barnet Homes will take responsibility for any potential strain on the fund resulting from any such early retirements. Payments will be made to the Pension Fund by Barnet Homes, as and when required, should there be any pension strain or contribution issues as a consequence of any decisions made by Barnet Homes.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 Under the Equalities Act 2010, the council and all other organisations exercising public functions on its behalf must have due regard to the need to :
- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
 - b) advance equality of opportunity between those with a protected characteristic and those without; c) promote good relations between those with a protected characteristic and those without. The 'protected characteristics' referred to are age; disability; gender reassignment; pregnancy; maternity; race; religion or belief; sex; and sexual orientation. The duty to eliminate discrimination also extends to marriage and civil partnership.
- 5.2 The equalities impacts of the substantive proposal to transfer the Housing Service were considered as part of the report that was approved by CRC on 16 January 2012.
- 5.3 Ensuring the long term financial health of the pension fund will benefit everyone who contributes to it.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

- 6.1 On 1 April 2012, all members of staff from the Council's retained Housing Service will transfer to Barnet Homes in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE").
- 6.2 This transfer of staff to Barnet Homes will not be on a fully funded basis which means that the estimated pension fund deficit of £629,000, relating to these employees, will transfer to Barnet Homes. The employer contribution rate for the transferring staff will include sufficient provision to ensure that the deficit is recovered over the timescale specified by the actuary.
- 6.3 Barnet Homes is classed as a "Scheduled Body" for pension fund purposes and, therefore, this report is not seeking permission for an admitted body into the Pension Fund. There is no bond requirement for a scheduled body.

7. LEGAL ISSUES

7.1 Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)

TUPE is to meet the obligations of the UK to ensure protection of employee rights when there is transfer of an undertaking in accordance with European directive. TUPE applies to a transfer of an undertaking, business or part of an undertaking or business situated immediately before the transfer in the United Kingdom to another person where there is a transfer of an economic entity which retains its identity.

In circumstances where TUPE applies, the employees transferred will become employees of the transferee (Barnet Homes) by virtue of the statutory novation of their employment contracts under TUPE. This means that, in most respects, employees are entitled to the same terms and conditions of employment after the transfer as they had before it.

7.2 Pensions

One of the principle provisions of TUPE is that the pre-transfer liabilities relating to the relevant employees are transferred to the new employer; this includes any contractual obligation to contribute to an employee's individual or group personal pension plan (as opposed to an *occupation* pension scheme).

Under regulation 10 of TUPE, provision of an occupational pension scheme is excluded from the transfer. This means the new employer has no obligation to provide the same or equivalent occupational pension rights for employees. However, The Pensions Act 2004 provides certain employees with a minimum level of protection in the event of a TUPE transfer. This is effected by means of the Transfer of Employment (Pensions Protection) Regulations 2005.

Employees eligible for protection

Employees involved in a TUPE transfer will be eligible for protection where:

- The employee is (or is eligible to be or would have been eligible to be) an active member of an occupations pension scheme in relation to which the transferor (i.e. the employer of the employee before the transfer takes place) is the employer; and
- Where the scheme provides money purchase benefits, the transferor is required or is not required but has made one or more contributions or, would be required had the employee been an active member to make contributions to the scheme in respect of the employee.

7.3 Staff in the Public Sector

The Cabinet Office Statement of Practice on Staff Transfers in the Public Sector 2000 applies directly to transfers involving central and local government departments and the NHS. It provides that TUPE is guaranteed to apply to these transfers. Annexed to the Statement of Practice is "A Fair Deal for Staff Pensions". This provides that the transferee must provide transferring employees with "broadly comparable" pension benefits.

8. CONSTITUTIONAL POWERS (Relevant section from the Constitution, Key/Non-Key Decision)

8.1 The Council's Constitution, Part 3 – Responsibility for Functions, Pension Fund Governance Compliance Statement, and paragraph 2.2.11 empowers the Pension Fund Committee to, “consider actuarial valuations and their impact on the pension fund.”

9. BACKGROUND INFORMATION

9.1 An options appraisal was undertaken and business case developed on the future of the council's housing service and presented to Cabinet Resources Committee (CRC) on 16 January 2012 with a recommendation that the Housing Service should be transferred to the council's Local Authority Trading Company (LATC) the Barnet Group, which the committee approved.

9.2 The business case identified that the transfer of the Housing Service will be able to deliver savings to the General Fund of £400k whilst ensuring that a high standard of service is maintained.

9.3 A saving of £400,000 in the general fund for 2012/2013 has been identified as the Housing Service's contribution to the Council's wider drive to reduce its expenditure. As the service is partially funded through the Housing Revenue Account, efficiencies that can be found in general fund costs will also have a beneficial impact on the Housing Revenue Account, releasing additional resources for improved services and additional affordable housing.

9.4 The transfer of the Housing Service is due to be implemented from 1 April 2012 and it is important that arrangements are made for the transfer of pensions protection for staff who are transferring to Barnet Homes.

9.5 An actuarial assessment of the pension fund associated with the transfer has been undertaken to identify the value of the fund and associated liabilities and risks; more detail is given on this in section 5 of this report.

10. LIST OF BACKGROUND PAPERS

10.1 None

Cleared by Finance (Officer's initials)	JH/MC
Cleared by Legal (Officer's initials)	PJ