

AGENDA ITEM: 6

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Meeting	Pension Fund Committee
Date	17 March 2010
Subject	Admission of Organisations into the London Borough of Barnet Pension Fund
Report of	Cabinet Member for Adult Services
Summary	Adult Social Services is in the process of re-tendering the provision of home and community support services in Barnet. Due to regulations that require organisations to provide an equivalent pension scheme to those employees transferring from a previous provider, and given that the current block provider, Housing 21 is an admitted member of the London Borough of (LB) Barnet Pension Fund, it is proposed to agree in principle to admit any such bodies to the LB Barnet Pension Fund in accordance with the standard terms for agreeing admittance.

Officer Contributors	Andrew Filby, Head of Finance, Adult Social Services
Status (public or exempt)	Public
Wards affected	All
Enclosures	None
For decision by	Pensions Fund Committee
Function of	Council
Reason for urgency / exemption from call-in	Not Applicable

Contact for further information: Andrew Filby – phone no 0208 359 7114

1. RECOMMENDATION

- 1.1 To agree, in principle, to the admission of organisations awarded the home and community support contract currently being tendered into the LB Barnet Pension Fund in relation to any LB Barnet Pension Fund members transferring into that organisation under TUPE arrangements.

2. RELEVANT PREVIOUS DECISIONS

- 2.1. None

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The corporate priority “More Choice, Better Value” requires the Council to make better use of resources across the Borough in the context of the Medium Term Financial Strategy. The arrangements for the commissioning of a home and community support service, including the transfer of pension responsibilities under TUPE regulations, need to support this objective.

4. RISK MANAGEMENT ISSUES

- 4.1. Failure to abide by the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), the Pension Pensions Act 2004, and the Transfer of Employment (Pension Protection) Regulations 2005, would place the Council and/or the new employers at significant risk of legal challenge. The recommendation of this report seeks to abide by the statutory obligations whilst promoting the highest possible level of competition for the home and community support contract, and in so doing promoting value for money.
- 4.2 To protect the Council’s interests, any admission to LB Barnet Pension Fund would be consistent with the standard terms of admission for other member organisations, with the Council’s Section 151 and Monitoring officers agreeing an appropriate amount payable as a bond from the transferee employers (that is new employers), along with any deviation from these standard terms if required to protect the Council’s legal and fiduciary interests. In particular, it is expected that the agreement would stipulate that the organisation would be fully responsible for any liabilities accrued at the point the contract’s termination.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 This decision would not give rise to any issues under the Council's Equalities or Diversity policies

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

- 6.1 On the basis that the recommendation of this report is accepted, prospective providers will be asked through Home and Community Support Invitation to Tender (ITT) documents to determine how they propose to meet their obligations to provide comparable pension. The prospective provider would state a preference either to:

- Use a pension scheme with which they currently participate and had been certified as being comparable to the Local Government Pension Scheme by the Government Actuary's Department (GAD), or
- Use the London Borough of Barnet Pension Fund on the basis of being admitted to membership

- 6.2 The prospective provider would then calculate their proposed prices to incorporate their pension responsibilities under TUPE. LB Barnet would provide the prospective provider with sufficient anonymised information in relating to Housing 21 employees that are currently members of the LB Barnet Pension Fund to enable this calculation to occur.

- 6.3 By providing the option for prospective providers to apply to become admitted to membership of the LB Barnet Pension Fund, organisations who currently do not operate GAD compliant pension schemes will be in a position to tender for the contract. This potentially increases the competition to be awarded the contract, and in so doing promotes the achievement of Value for Money.

- 6.4 Ensuring that adequate pensions provisions are in place for those members of the Local Government Pension Scheme who will potentially be transferring to a new employer following the award of the Home and Community Support contract is a key requirement under the relevant legislation and is essential if legal challenge against the Council and/or the new employer is to be avoided.

- 6.5 Prior to the start of the new Home and Community Support contract, the LB Pension Fund's actuaries would complete necessary calculations to determine the pension liabilities to transfer.

7. LEGAL ISSUES

7.1. Under the Pension Pensions Act 2004, and the Transfer of Employment (Pension Protection) Regulations 2005, transferee employers are obliged to provide pension benefits for transferring employees where the following conditions are satisfied:

- there is a TUPE transfer resulting in the transfer of employment of employee from the transferor employer (ie old employer) to the transferee employer; and
- immediately before the employee becomes employed by the transferee there is an occupational pension scheme in relation to which the transferor is the employer and the employee is:
 - an active member of the scheme; or
 - eligible to be such a member; or
 - in a waiting period to become eligible to be a member.

7.2 In addition, since 1 October 2007, local authorities have been required by a direction made by the Secretary of State for Communities and Local Government to include provision for pension protection in their outsourcing agreements. The Best Value Authorities Staff Transfers (Pensions) Direction 2007 (2007 Direction) applies both to new service contracts and to re-lets of existing service contracts. The 2007 Direction has statutory force. However, it does not automatically override the terms of contracts. The Council therefore needs to ensure that any service contract includes suitable pension provisions to give effect to the 2007 Direction.

8. CONSTITUTIONAL POWERS

8.1 The Council's constitution, Part 3 – Responsibility for Functions, Pension Fund Governance Compliance Statement, paragraph 2.2.13 empowers the Pension Fund Committee to “approve applications from organisations wishing to become admitted bodies into the Fund where legislation provides for discretion, including the requirements for bonds.”

9. BACKGROUND INFORMATION

9.1 Adult Social Services is in the process of re-tendering the provision of homecare in Barnet. The current block provider, Housing 21, employs a number of former Council employees transferred under TUPE, many of which retained their membership of the London Barnet Pension Fund when they transferred employer.

9.2 As stated above, where there is a TUPE transfer, an organisation to which employees are transferred is obliged to provide an equivalent pension scheme. Given the nature of the home and community support market, many potential providers do operate such schemes. In order to encourage those providers to tender and maximise competition for this contract, and thus

promote the achievement of value for money, it is proposed that the winners of the contract would be given the option of providing an equivalent pension scheme through becoming an admitted member of the London Borough of Barnet Pension Fund.

9.3 This Committee is therefore asked to agree in principle to admit any such bodies in accordance with the standard terms for agreeing admittance. This is of course subject to the bodies applying to be admitted to the London Borough of Barnet Pension Fund. This would include that:

- the employees transferring to the organisation would not bring any accrued liabilities associated with any prior period of LB Barnet Pension Fund membership, with any such liability being fully settled as part of the arrangements for any termination of the existing contracts
- the organisation would be responsible for any liabilities accrued at the point the contract's termination.