

Meeting	Pensions Fund Committee
Date	13 June 2012
<b>Subject</b>	<b>Implications to the Pension Fund of the transfer of staff from the Legal Service to the London borough of Harrow for the purposes of establishing a Shared Legal Service</b>
Report of	Deputy Chief Executive
Summary	<p>This report details the pension implications of the TUPE transfer of staff out from Barnet and to Harrow for the committee to note.</p> <p>The new provider London Borough of Harrow operates its own Local Government Pensions Scheme (LGPS). The LGPS scheme rules do not allow employees of one council to remain in the LGPS of another council. This means that Barnet employees transferring to Harrow will be transferred into Harrow LGPS. The staff will transfer to Harrow on a fully funded basis.</p>

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Status (public or exempt)	Public
Wards Affected	Not Applicable
Key Decision	Not Applicable
Reason for urgency / exemption from call-in	Not Applicable
Function of	Council
Enclosures	None
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## **1. RECOMMENDATIONS**

- 1.1 That the Pensions Fund Committee note the Transfer of LBB employees to Harrow Local Government Pensions Scheme (LGPS), consequent on the Shared Legal Service TUPE transfer.**

## **2. RELEVANT PREVIOUS DECISIONS**

- 2.1 Cabinet, 20 February 2012 (Decision Item 5), as part of business planning for 2012/13 – 2014/15, approved savings in respect of the Corporate Governance Directorate incorporating those specifically relating to the Legal Service over the period 2012-15; and
- 2.2 Council, 6 March 2012 (Item 4.1) approved the business planning report described in section 2.1 (above).
- 2.3 The Cabinet Resources Committee, 4 April 2012 approved the business case for a shared legal service with Harrow Council.
- 2.4 General Functions Committee meeting, 23 April 2012 approved the report on the shared Legal service (Item 7) for the transfer of Barnet Council staff to the London Borough of Harrow in accordance with the Transfer of Undertakings (Protection of Employment) Regulation 2006 (TUPE) with effect from 1 July 2012 and that the posts in scope for transfer then be deleted from the Council's establishment.

## **3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS (insert section from any of the above reports).**

- 3.1 Maintain the integrity of the Pension Fund by considering the implications of the deficit implementing GFC committee and CRC committee approvals.
- 3.2 These proposals will ensure the delivery of a cost effective legal service that is fit for purpose to support the Council's corporate priorities:
- better services with less money;
  - sharing opportunities, sharing responsibilities;
  - a successful London suburb.
- 3.3 The legal shared services project is being taken forward through the corporate transformation programme, which is the London Borough of Barnet's primary vehicle for implementing significant changes to the provision of public services. The work of this programme is led by three principles:
- a relentless drive for efficiency;
  - a new relationship with citizens;
  - a one public sector approach.
- 3.4 The Council is committed to working with the trade unions and consulting with them on the people implications of this transfer.

#### **4. RISK MANAGEMENT ISSUES**

- 4.1 There is a risk to the Council that the employer contribution rate is insufficient to fund the pension liabilities. This risk is mitigated by ensuring that the calculation of the deficit payment to Harrow is accurate and that sufficient budget is clawed back from the transferring legal service to fund any change in the contribution rate.

#### **5. EQUALITIES AND DIVERSITY ISSUES**

- 5.1 Pursuant to the Equalities Act 2010, the council is under an obligation to have due regard to eliminating unlawful discrimination, advancing equality and fostering good relations in the contexts of: age, disability, gender reassignment, pregnancy and maternity, religion or belief, and sexual orientation.
- 5.2 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 Paragraph 4, above, deals with the financial implications within the risk management implications section of this report.
- 6.2 Staff will transfer on a “fully funded basis”. This means that the pensions deficit will not transfer to Harrow from Barnet in respect of these staff. To reflect that the liability will remain with Barnet, the employee budget associated with the recovery of the pension deficit (the difference between the total contribution rate of 24.8% and the fully funded contribution rate) will be removed from the Legal Service funding and will remain with Barnet. The calculation of the deficit is subject to an actuarial assessment.

#### **7. LEGAL ISSUES**

- 7.1 This is a TUPE transfer to another LGPS council hence there are no direct legal implications on Barnet.
- 7.2 One of the principal 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 *occupational* pension scheme).
- 7.3 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.

## **8. CONSTITUTIONAL POWERS**

- 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 Financial due diligence has been carried out to compare the costs of the proposed shared service with the current legal service budgets and medium term financial strategy projections.
- 9.2 The core cost of the service as set out in the Harrow proposal (Section 7, Appendix 1 of the CRC Report), is in line with the Legal Service budget for 2012/13. The Harrow proposal reduces the cost of the service in 2013/14 by £50,000 and in 2014/15 by a further £50,000 to enable the Legal Service Medium Term Financial Strategy targets to be met.
- 9.3 The past service pension fund deficit in respect of the staff transferring will not transfer to Harrow. It will remain with Barnet, and the employee budgets associated with the recovery of the pensions deficit will also remain with Barnet. These total £121,000 and have been removed from the Legal Service baseline.
- 9.4 Currently circa 38 FTE are employed by the London Borough of Barnet, though this employment relationship will change when the staff are transferred from the council to London Borough of Harrow under the principles set out in the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) and the Council's TUPE Transfer Commitments.
- 9.5 The transferred employees will become members of the Local Government Pension scheme administered by LB Harrow from the date of the transfer. An option will be provided to the employees to elect to transfer their accrued pensionable membership within the LB Barnet pension fund to the LB Harrow pension fund.
- 9.6 An actuarial assessment of the pension fund associated with the transfer was undertaken by Barnett Waddingham LLP (9 January 2012), to determine the amount of deficit attributable to transferring members. The estimated share of the deficit attributable to Legal Shared Services as at 31 March 2012 is £462,000. This will change over time until the transfer date as the investment returns earned by the fund may vary from the assumptions made. In addition the assumptions that will apply to calculate the liabilities may change in line with the financial conditions suitable at the date of transfer. The final deficit will

be calculated by the pension fund actuary at the transfer date and taken into account in the calculation of the bulk transfer payment to LB Harrow. The bulk transfer payment will be made to LB Harrow in respect of the pension liability being transferred to LB Harrow for the transferring staff.

- 9.7 Staff will transfer on a “fully funded basis”. This means that the pensions deficit will not transfer to Harrow from Barnet in respect of these staff. To reflect that the liability will remain with Barnet, the employee budget

associated with the recovery of the pension deficit (the difference between the total contribution rate of 24.8% and the fully funded contribution rate) will be removed from the Legal Service funding and will remain with Barnet

## **10. LIST OF BACKGROUND PAPERS**

- 10.1 Barnett Waddingham’s Deficit Report for London Borough of Barnet, 9 January 2012

<b>Cleared by Finance (Officer’s initials)</b>	<b>JH/MC</b>
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