
Meeting	Pensions Fund Committee
Date	4 December 2012
Subject	Admission of Barnet Education Arts Trust (BEAT) Ltd into London Borough of Barnet Pension Fund
Report of	Director of Adult Social Care and Interim Director of Children's Services
Summary	This report sets out information on the application from Barnet Education Arts Trust Ltd for Community Admitted Body status within the Local Government Pension fund administered by LB Barnet and seeks Committee approval to allow this.

Officer Contributors	Ruth Murphy - Project Manager
Status (public or exempt)	Public
Wards Affected	Not applicable
Key Decision	No
Reason for urgency / exemption from call-in	Not applicable
Function of	Council
Enclosures	None
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1. RECOMMENDATIONS

- 1.1 That the Committee approve admission to the Local Government Pension Scheme under Community Admission Body Status for Barnet Education Arts Trust (BEAT) Ltd, subject to sign off of the Business Transfer Agreement between the Council and that company.**
- 1.2 That the Committee approve that the admission agreement shall provide that the admission body secures a guarantee from the Council in place of an indemnity or bond.**

2. RELEVANT PREVIOUS DECISIONS

Cabinet Resources Committee, 18 October 2012 agreed the following:

- 2.1 To authorise the Director of Adult Social Care and Interim Director of Children's Service to commence activities to create a new corporate entity that is able to register as a charitable organisation and deliver Music Service activities as Barnet's Music Hub.
- 2.2 To authorise the Director of Adult Social Care and Interim Director of Children's Service to commence activities to transfer the provision of the Council's Music Service to the new corporate entity in 2.1.
- 2.3 That subject to final approval of the Chief Finance Officer of the terms of such guarantee, that the Council guarantees the pension liabilities of the new corporate entity to the Teacher's Pension Scheme (for teaching staff) and (if so required by the administering authority of the Fund) to the Local Government Pension Scheme (for non-teaching staff), initially for a three year period and then subject to review.
- 2.4 That the Chief Finance Officer be authorised to approve the terms of the guarantee referred to in 2.3 above.
- 2.5 General Functions Committee, 7 November 2012 agreed the following:
That the Director of Adult Social Care and Interim Director of Children's Services be instructed to take the necessary action to transfer the in-house staff employed within the Council's Music Service to the Charity in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) and the Council's TUPE Transfer Commitments with effect from 01 February 2013.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The Council undertakes to maintain the integrity of the Pension Fund by ensuring robust monitoring of admitted body organisations and ensuring all third-parties comply fully with admission agreements and bond requirements. The principle supports the corporate priority of getting 'better services for less money'.

4. RISK MANAGEMENT ISSUES

- 4.1 The ongoing viability of the Pension Fund is dependent on maximising contributions to the Fund. All admitted bodies are subject to reviews and actuarial assessments to ensure compliance with admissions agreements 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 Local Government Pension Scheme (Administration) Regulations 2008, (as amended) (the 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 on behalf of the employer (the new company) has carried out an assessment with actuarial advice, as required under the Regulations, of the level of risk exposure arising on premature termination of the provision of service or assets by reason of the solvency, winding up or liquidation of the admission body. The employer contribution rate will be 18.90% and an actuarial assessment indicated that the bond or guarantee level required is £31,000. The actuarial assessment was based on an assumption that the transfer will be fully funded. However, if BEAT take on the part of the deficit that relates to the two staff members of the LGPS, a higher bond or guarantee level may be required. The bond level is assessed at regular intervals (at each valuation) and can increase or decrease. It is proposed that the admission agreement will be on a "closed" basis (i.e. limited to the employees transferring from the Council).
- 4.4 As it is not desirable for BEAT to enter into an indemnity or bond, Cabinet Resources Committee on 18th October 2012 authorised that the Council subject to final approval of the Chief Finance Officer of the terms of such guarantee, guarantee the liabilities of BEAT to the Local Government Pension Scheme, initially for a three year period and then subject to review. This report is also seeking the approval of Pensions Fund Committee that a guarantee is acceptable in place of a bond or indemnity as detailed in section 7.3 of this report.
- 4.5 If the Council acts as guarantor, then in the event of business failure of BEAT, the Council may have to meet pension liabilities for the two LPGS staff subject to TUPE if they have not transferred to another pension fund.

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 of this report.
- 6.2 There are no procurement, performance & value for money, staffing, IT, Property or Sustainability implications

7. LEGAL ISSUES

- 7.1 The Local Government Pension Scheme (Administration) Regulations 2008 (as amended), (the Regulations), provide that subject to the requirements of the Regulations, the Local Authority, as 'an administering authority' may make an admission agreement with any community admission body (Regulation 5). Community admission bodies are defined in Regulation 5. The new company will be providing services in both schools in Barnet and in the wider community. Consequently, it would appear that the new company would qualify as a community admission body, under Regulation 5(2) (a) (i) of the Regulations, as a body which provides a public service otherwise than for the purpose of gain and which has sufficient links with the Council to be regarded as having a community of interest through the support it gives the Council.
- 7.2 Regulation 7 provides that (i) "an admission agreement shall require the admission body to carry out, to the satisfaction of the administering authority, an assessment, taking account of actuarial advice, of the level of risk arising on premature termination of the provision of service or assets by reason of solvency, winding up or liquidation of the admission body". (ii) 'The admission agreement shall further provide that where the level of risk identified by the assessment is such as to require it, the admission body shall enter into an indemnity or bond in an approved form...' (iii) 'Where, for any reason it is not desirable for an admission body to enter into an indemnity or bond, the admission agreement shall provide that the admission body secures a guarantee in a form satisfactory to the administering authority from – (a) a person who funds the admission body in whole or in part; (b) a person who – owns, or controls the exercise of the functions of, the admission body...'
- 7.3 As the Council might need to support the new company's cash flow in the first year, the Council will be a person who funds the admission in whole or in part under Regulation 7.

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, 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 The Music Service is currently a traded service of the Local Authority. The Music Service has recently been successful in a bidding process for Arts Council applications to receive "Hub Status". The acceptance by the Arts

Council, means the Music Service will be eligible to receive the funding. The Arts Council expect new and creative models to be implemented for the delivery of the hubs and accepted the bid on the basis that the service will implement a new company vehicle which allows greater access to funds and an increase in percentage income spent on front line delivery.

- 9.2 Following the Cabinet Resources Committee decision referred to in 2.1, above, a Board of Trustees has been recruited and a new company Barnet Education Arts Trust (BEAT) Ltd, has been registered.
- 9.3 The company is in the process of seeking charitable status. Subject to the new company being awarded charitable status, the Council will transfer the Music Service to BEAT via a Business Transfer Agreement.
- 9.4 The relevant staff will transfer to the new company pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). TUPE is an example of European Union (EU) law, which by virtue of membership of the EU obliges each Member State to introduce its own domestic legislation which implements the broad principles set out in the EU legislation (generally known as Directives). 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.
- 9.5 In circumstances where TUPE applies, the employees transferred will become employees of the transferee (the new charitable trust in this case) 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.
- 9.6 There are two members of the Local Government Pension Scheme (LGPS) within the Music Service currently who are eligible to transfer to the new company.

10. LIST OF BACKGROUND PAPERS

- 10.1 None

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