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Meeting	Pension Fund Committee
Date	4 December 2012
<b>Subject</b>	<b>Admission of The Fremantle Trust to London Borough of Barnet Pension Fund</b>
Report of	Director of Adult Social Care
Summary	This report sets out further information on the application from The Fremantle Trust for Admitted Body status within the Pension Fund and provides details of the cessation of the current agreement.

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Officer Contributors	Iain Millar ,Head of Treasury Services Hansha Patel, Pension Services Manager
Status (public or exempt)	Public
Wards Affected	Not Applicable
Key Decision	Not Applicable
Reason for urgency / exemption from call-in	Not Applicable
Function of	Pension Fund Committee
Enclosures	None
Contact for Further Information:	Hansha Patel, Pension Services Manager

## **1. RECOMMENDATIONS**

- 1.1 That the Committee approves the use of the on-going cessation mechanism to determine the payment to be made on the termination of the current Admission Agreement between the Council, as 'Administering Authority' and the Fremantle Trust.**
- 1.2 That the Committee approves the provision, by the Fremantle Trust, of a bank guarantee on the basis that the guarantee provided is at the level determined as necessary by the Fund actuary.**

## **2. RELEVANT PREVIOUS DECISIONS**

- 2.1 The Fremantle Trust already has an admissions agreement with London Borough of Barnet in respect of a previous care contract which commenced on 2 April 2001.
- 2.2 Pension Fund Committee, 13 June 2012. Approved the admission of The Fremantle Trust to the Pension Fund under a new Admission Agreement.

## **3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS**

- 3.1 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 'better services with 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 actuarial assessments and are reviewed 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 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 dependent on the profile of the workforce and the potential risk to the Fund of admitting the body.
- 4.3 The risk has commonly been addressed by the employer being required to take out a Bond to ensure payment to the Pension Fund in case of default. However, the Local Government Pension Scheme Regulations 2012, which came into effect on 1 October 2012, include provision for a guarantee to be provided by the admission body where, for any reason, it is not desirable for the admission body to enter into an indemnity or bond. A guarantee would reduce the cost of the service to the contracting organisation. If a guarantee is to be provided by an admission body, the guarantee must be in a form which is satisfactory to the Administering Authority.
- 4.4 The Admission Agreement with the admission body must 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

insolvency, winding up or liquidation of the admission body. In practice, the Admission Body will be required to secure the required level of bond or guarantee prior to the completion of the Admissions Agreement.

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

- 5.1 Pursuant to section 149 of the Equality Act, 2010, the Council has a public sector duty to have due regard to eliminating unlawful discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; advancing equality of opportunity between those with a protected characteristic and those without; promoting good relations between those with a protected characteristic and those without. The, relevant, 'protected characteristics' are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. It also covers marriage and civil partnership with regard to elimination of discrimination
- 5.2 Ensuring the long term financial health of the pension fund will benefit everyone who contributes to it. Access to and participation in the Pension Fund is open to those with and those without protected characteristics, alike, provided that the criteria set out within the, relevant, Regulations are met

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

- 6.1 There is a possibility of financial losses on the Pension Fund where arrangements around admitted bodies and bond agreements or guarantees are not sufficiently robust. Monitoring arrangements are in place to ensure that Admissions Agreements and, where relevant, bonds or guarantees are in place and are renewed, as appropriate, during the lifetime of the relevant Admission Agreement.
- 6.2 The current Fremantle Trust Admission Agreement will automatically terminate when its existing contractual arrangement for the provision of care services changes and hence the need for a new Admission Agreement. This termination of the, existing, Admission Agreement, will trigger a cessation payment which is calculated by the Council's Actuary and is estimated to be £3.5 million based on current data. The cessation payment is required to correct any deficits arising on the fund that are applicable to the employer leaving the Pension Fund. In the case of The Fremantle Trust, an 'on-going' cessation payment estimated by the actuary to be about £900k will return the part of the Pension Fund applicable to its employees back to a fully funded position.
- 6.3 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) provide that a Local Authority, as an 'Administering Authority' for the Fund, may admit an organisation into the Local Government Pension Scheme, subject to that organisation, or the contractual arrangement between that organisation and the council, meeting the criteria set out in the Regulations. Under the Regulations, the form of admission available to a contractor would either be 'a community admission body', or 'a transferee

admission body' as defined in the Regulations. The Fremantle Trust would be 'a transferee admission body'.

- 7.2 With respect to an admission agreement with a transferee admission body, the Regulations further provide for an assessment of the level of risk arising on premature termination of the provision of the service or assets by reason of insolvency, winding up or liquidation of the transferee admission body. The assessment must be with the benefit of actuarial advice and, where the level of risk is such as to require it, the transferee admission body shall enter into an indemnity or bond in an approved form with a person or body meeting the requirements which are set out in the Regulations.
- 7.3 Alternatively, 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 person who meets the requirements which are specified in the Regulations.
- 7.4 Whether an indemnity, bond or guarantee, it must meet the level of risk actuarially assessed to arise on premature termination of the provision of the service or assets by reason of insolvency, winding up or liquidation of the admission body.
- 7.5 The Council's standard Admissions Agreement makes provision for the admission body to maintain a bond in an approved form and to vary the level of risk exposure under the bond as may be required from time to time. The standard Admissions Agreement will be amended to take account of the new provision relating to guarantees.

## **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 2.2.13 empowers the Pension Fund Committee to "approve applications from organisations wishing to become admitted bodies into the Fund where legislation provides for discretion."

## **9. BACKGROUND INFORMATION**

- 9.1 This report provides an update on the position of The Fremantle Trust since the report to this Committee on 13 June 2012.
- 9.2 The need for a new Admissions Agreement triggers the requirement for a cessation payment to be made in accordance with the scheme regulations. The original Admission Agreement does not specify the type of cessation mechanism to be used in these circumstances. Discussions with the Fund actuary have indicated two cessation mechanisms are available but also that the Council could be subject to legal challenge if an equitable basis is not adopted. Historic records indicate that when the original Admission Agreement was signed all of the employees transferred to The Fremantle Trust on a fully funded basis. It is therefore equitable if the Admission Agreement is terminated on the same basis i.e. an on-going cessation payment would be required, and the Committee is requested to approve the use of this cessation mechanism.

9.3 The Fremantle Trust has indicated it is unlikely to be able to obtain a pension an affordable price within the context of the contract with the London Borough of Barnet. This is due to it predominantly employing former local authority staff and, as an admitted body to a number of local government pension schemes, having a significant FRS17 provision on its balance sheet. The recent relaxation of the regulations outlined in 5.3 above would allow The Fremantle Trust to provide a guarantee instead of a Pension Bond. In terms of the Fund it is essential that such a guarantee is reliable and the guarantor is unlikely to default. The Fremantle Trust has indicated that its bank will provide such a guarantee on the basis that the Trust deposits the sum calculated as necessary by the actuary with the bank. This would therefore be a secure guarantee and it is recommended that the Committee approves this course of action.

## 10. LIST OF BACKGROUND PAPERS

10.1 None

<b>Cleared by Finance (Officer's initials)</b>	<b>JH</b>
<b>Cleared by Legal (Officer's initials)</b>	<b>SCS</b>