



General Purposes Committee
7 September 2010

**Report to the Director of
Finance and Corporate Resources**

For Action

Wards Affected: All

**Pension arrangement for staff transferred between
contractors**

1.0 Summary

- 1.1 On 27th September 2007 the General Purposes Committee agreed the Council's policy in respect of pension arrangements for staff transferred to provide contracted services to the council. This report proposes an amendment to that policy to bring about cost savings and clarity for bidders.

2.0 Recommendations

- 2.1 That members agree the amendment to the council's policy as set out in paragraph 3.6 concerning the pension arrangements for former council staff who transfer pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 from an existing contractor providing services to the Council to a successor contractor.

3.0 Detail

- 3.1 On the 27th June 2007 the Secretary of State for Communities and Local Government issued a direction under section 101 of the Local Government Act 2003. That direction entitled The Best Value Authorities Staff Transfers (Pension) Direction 2007 (the "2007 Direction") placed a legal obligation on the council to secure pension protection for employees. The protection applies where the whole or part of a service is outsourced on or after 1st October 2007 and that protection applies to:

- (i) staff who are transferred under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) from the council to a contractor as a result of the outsourcing (a "first generation outsourcing"); and
 - (ii) former council staff who are transferred under TUPE from an incumbent contractor to a successor contractor as a result of a retender of a council service (a "second or subsequent generation outsourcing").
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3.2 A report to the General Purposes Committee dated 27 September 2007 led to Members agreeing the council's policy in connection with the securing of a pension scheme for former Council staff in relation to both first and second and subsequent generation outsourcing. With regard to second generation outsourcing, in summary Members agreed a policy whereby the council would ensure that any contract with a new contractor must:

- (a) require the new contractor to ensure there is made available to employees:-
 - (i) who originally transferred from the Council under TUPE when the service was outsourced; and
 - (ii) who have transferred between contractors and/or subcontractors under TUPE each time the contract for the service has been retendered; and
 - (iii) who transfer under TUPE to the new contractor or a subcontractor as a result of the retendering of the contract

a pension scheme which is either the same as, counts as broadly comparable to or counts as better than the pension scheme made available to them by their current employer. Except in exceptional circumstances, the contract must also require the contractor to ensure there is made available to these employees either access to the Local Government Pension Scheme ("LGPS") or an alternative pension scheme which is at least broadly comparable to the LGPS. If there are exceptional circumstances justifying the Council not requiring an alternative pension scheme to the LGPS being offered by the contractor to be broadly comparable to the LGPS, then the contract must require the alternative pension scheme to be one the Council considers of good quality and the contractor to offer appropriate compensation to any of these employees who will be disadvantaged by the alternative pension scheme.

- (b) allow the transferring former Council employees to enforce these contractual requirements against the new contractor.

Members also agreed that in relation to second generation outsourcing, the Director of Finance and Corporate Resources was authorised to decide, whether there are exceptional circumstances justifying the Council not requiring in the contract either access to the LGPS or an alternative pension scheme which is at least broadly comparable to the LGPS.

3.3 Whilst the policy adopted for second and subsequent generation outsourcings required the contractor to ensure there is made available to former council employees either access to the LGPS or an alternative pension scheme at least broadly comparable to the LGPS, the 2007 Direction requires that the transferred staff will, under the successor organisation, have access to a pension scheme that is broadly comparable to the scheme offered by the incumbent. Current council policy therefore imposes a more stringent requirement than that imposed by the 2007 Direction though there is

discretion for the Director of Finance and Corporate Resources to depart from this in exceptional circumstances.

- 3.4 Officers have encountered the situation that the outgoing contractor's pension scheme is not broadly comparable to the current LGPS and as such the successor contractor is likely to incur more expense in providing a scheme that is better than the outgoing contractor's scheme in order to ensure broad comparability with the current LGPS. The corollary may be that bidders will increase their contract cost to accommodate the enhanced pension protection.
- 3.5 To avoid potential additional cost, ensure that procurement exercises run more smoothly Members are asked to agree an amendment to the council's policy in respect of second and subsequent generation outsourcings as set out in paragraph 3.6. Members are reminded that the proposed amendment is compliant with the 2007 Direction which requires as a minimum that the staff have access to a scheme that is broadly comparable to the pension scheme provided by their current employer.
- 3.6 Members are also asked to agree that where the whole or part of a Council service is transferred by the retendering of a contract and the contract with the new contractor is entered into by the Council after 30th September 2007, the contract must:
- (a) require the new contractor to ensure there is made available to employees:-
 - (i) who originally transferred from the Council under TUPE when the service was outsourced; and
 - (ii) who have transferred between contractors and/or subcontractors under TUPE each time the contract for the service has been retendered; and
 - (iii) who transfer under TUPE to the new contractor or a subcontractor as a result of the retendering of the contract

a pension scheme which is either the same as, counts as broadly comparable to or counts as better than the pension scheme made available to them by their current employer.
 - (b) allow the transferring former Council employees to enforce these contractual requirements against the new contractor.

4.0 Financial Implications

- 4.1 The financial implications are provided in the detail of this report.

5.0 Legal Implications

- 5.1 The legal implications are provided in the detail of this report.
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6.0 Diversity Implications

- 6.1 Officers have considered this report and there are no diversity implications arising from it

7. Background Papers

- 7.1 The direction order made by the Secretary of State under regulation 101 of the Local Government Act on 27th June 2007.
- 7.2 The report "Pension Implications for transferred staff" to the General Purposes Committee 27th September 2007.

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