

LONDON BOROUGH OF BRENT

GENERAL PURPOSES COMMITTEE 27th April 2004

REPORT FROM THE DIRECTOR OF FINANCE

AMENDMENTS TO THE POLICY ON ADMISSION AGREEMENTS

1. SUMMARY

- 1.1 This report advises Members of changes to the Local Government Pension Regulations and recommends an amendment to the Council policy that allows outside organisations access to the Local Government Pension Scheme via an admission agreement with the Council.

2. RECOMMENDATIONS

- 2.1 That the Council policy on admission agreements be amended so that transferee admission bodies (non associated bodies) that enter into an admission agreement with the Council are required to pay an employer's contribution that covers only the future service liability of the admitted staff.
- 2.2 That Members note that:
- (a) the Local Government Pension Scheme Regulations have been amended so that a transferee admission body (non associated body) is now required to provide an indemnity or bond only in circumstances where the need for such an indemnity or bond has been identified following a risk assessment; and
 - (b) officers shall seek to agree with scheme employers and transferee admission bodies that where they have responsibility under the Regulations to undertake the risk assessment referred to in recommendation 2.2(a) they will request the Council to undertake that assessment on their behalf.

3. FINANCIAL IMPLICATIONS

3.1 Employer's Contribution Rate

- 3.1.1 The adoption of the proposed change of policy will mean that any past service deficiency (PSD) would be borne by the Brent pension fund. Members are reminded however that this loss would have been borne by the pension fund had those transferring remained Council employees.
- 3.1.2 Brent's current policy places an additional financial burden upon contractors who are likely to seek to recover the increased employer rate incurred in

meeting the PSD by an equivalent increase in the contract cost. The result being that the Council (or other Scheme Employers) would continue to bear the PSD via that contract cost. Given that the Council is likely to meet the cost of the PSD through the contract price, there is no advantage in including the PSD in the employer contribution rate. The proposed new policy which does not take historical deficits into account but only new costs secures a more predictable financial basis for future contracts where staff are likely to transfer. As a consequence service providers can better assess their financial obligations and submit a realistic contract price.

- 3.1.3 Brent's actuary Hewitt Bacon and Woodrow have stated that applying the new policy may not have a significant impact on the Brent Pension Fund if future transfers involve staff numbers similar in size to those involved in the BCAH and Wettons transfers. It is not possible to identify specifically the extent of the impact on the Pension Fund however, as this would depend on factors such as the number of staff transferring and the age of those staff. However, none of the 3 admission agreements which the Council has entered into with transferee admission bodies since the policy was agreed in January 2002 have included the PSD in the employer contribution rate. On 2 occasions an exemption from the policy was sought from members and in the other agreement there was no PSD relating to the particular transferring staff.

3.2 Provision of a Bond or Indemnity

- 3.2.1 The purpose of an indemnity or bond is to protect the pension fund from unexpected loss. The most prominent risk being the early retirement liability of paying immediate benefits in the event of the service provider becoming insolvent.

4. **STAFFING IMPLICATIONS**

- 4.1 The amended criterion is likely to make the provision of the LGPS more attractive to outside organisations. Transferring staff will benefit from continued membership of the LGPS should this be offered as a consequence.

5. **DIVERSITY IMPLICATIONS**

- 5.1 Officers have screened this report and there are no diversity implications arising from it.

6. **LEGAL IMPLICATIONS**

- 6.1 The legal implications are set out in the body of this report.

7. DETAIL

7.1 Employers Contribution Rate

- 7.1.1 The Corporate Deciding Committee agreed the current policy for admitted bodies on 16 January 2002. A copy of the current policy is attached as Appendix A to this report.
- 7.1.2 The current policy covers criteria for admission agreements with Associated Bodies and Non-Associated Bodies. Associated Bodies are organisations which provide a public service other than for the purposes of gain and which either have a community of interest with the Council or are approved by the Secretary of State for the purposes of admission to the scheme. The Local Government Pension Regulations now refer to these organisations as community admission bodies.
- 7.1.3 Non-associated bodies are organisations that provide services or assets to the Council (or other scheme employers) as a result of a transfer of the service or assets by means of a contract or other arrangement or an organisation which provides a public service and which is approved by the Secretary of State for the purposes of admission to the scheme. The Local Government Pension Regulations now refer to these organisations as transferee admission bodies.
- 7.1.4 The current criteria for transferee admission bodies include a requirement that the terms of the admission agreement require the transferee admission body to pay a contribution rate, as determined by the Council's actuary, sufficient to meet the full liabilities of transferring staff including any past service deficiency (PSD). The term past service deficiency refers to the amount by which liabilities in respect of a scheme member or group of members' accrued pension rights at a given time exceed the assets held in the fund for that member or group of members.
- 7.1.5 This report recommends that where the Council enters into an admission agreement with a transferee admission body the employer's pension contribution rate is set to cover only the future service liability (members benefits are notionally 100% funded at the commencement of the admission agreement) for the scheme members.
- 7.1.6 The criterion which requires the PSD to be taken into account in determining the employer contribution rate was designed to ensure that any strain on the pension fund as a result of the Council entering into an admission agreement with a transferee admission body was limited. On paper the requirement that the employer contribution rate include any PSD represented protection for the Brent pension fund. However, in practice, organisations were reluctant to bear a past service deficit that was not of their making. Contractors' wished to protect their financial position, tender for contracts on a "level playing field" with tenderers who would seek to transfer employees to a broadly comparable pension scheme and submit a tender that was competitive.

7.1.7 This is illustrated by the fact that of the 3 admission agreements that the Council has entered into with transferee admission bodies since the policy was agreed in January 2002 two of those have involved the transferee admission body objecting to bearing the cost of the PSD. This resulted in a report from officers to members seeking an exemption to the policy and for these agreements there was:

- (i) an undue cost on officer time;
- (ii) additional committee time to gain Council approval to the departure from policy.

and in one case a cost to the Council for additional third party advice.

In the third agreement PSD was not an issue as there was no PSD associated with the transferring staff.

7.1.8 In addition to the above, as set out in the Financial Implications contractors are likely to seek to recover the costs of an employer contribution rate which is increased to cover PSD by increasing their contract price to the Council (or the scheme employer if not the Council). The effect of this is that the Council indirectly bears the cost of the PSD through the contract price. Accordingly, there is no advantage to the Council in including the PSD in the employer contribution rate.

7.1.9 Including the PSD in the employer contribution rate also has the effect of making the Local Government Pension Scheme (LGPS) appear artificially more expensive to a contractor than an alternative broadly comparable pension scheme. Even if a contractor opted for a broadly comparable pension scheme, the Council would remain responsible for the PSD but this would not have been factored into the contract price.

7.1.10 Guidance from the Association of Consulting Actuaries Local Government Committee issued in April 2000 states that surpluses or deficiencies accrued prior to the start of the contract will not normally be charged to the new employer. The purpose of this is stated as enabling a level playing field between tenderers wishing to participate in the LGPS and those who would seek to transfer employees to a broadly comparable scheme. In addition, as detailed in 7.1.9 above including the PSD in the employer contribution rate makes the LGPS appear artificially more expensive.

7.1.11 The Council must have due regard to the Government's statutory code on Two Tier Workforce issues. That Code requires for all contracts advertised on or after 13 March 2003 that former Council staff transferred to a contractor must continue to have access to the LGPS or be offered an alternative good quality pension scheme, which save in exceptional circumstances must be broadly comparable to the LGPS. Contractors may decide to offer a broadly comparable pension where the LGPS employer rate is perceived as a higher cost than a broadly comparable scheme. Provision of the LGPS will reduce disruption to transferring staff thereby assisting a smooth transition of services to the contractor.

7.1.12 As there is no power to back date the commencement of admission agreements it is important that an admission agreement is in place before a contract with a transferee admission body commences. Without this, transferring staff would suffer a break in service for the purposes of the scheme. Given this, there are often tight timeframes around finalising an admission agreement. As the Director of Finance cannot make decisions regarding admission agreements which are an exception to the criteria agreed by Members, amending the criteria as recommended in the report will enable officers to agree an admission agreement within predictable timescales, thus smoothing negotiations with contractors.

7.2 Provision of a Bond or Indemnity

7.2.1 The Local Government Pension Scheme Regulations were amended from December 2003 in response to a consultation exercise on admission agreements with outside organisations who provide contract services to local authorities. The general function of the amendment is to simplify the process of admission agreements, which includes the removal of the absolute requirement for an indemnity or bond for admission agreements with a transferee admission body.

7.2.2 The purpose of an indemnity or bond is to provide protection to the pension fund against the risks arising on premature termination of the contract with the Council (or another scheme employer) or by reason of insolvency of the transferee admission body. The amended Regulations state that where the level of risk identified by an assessment, taking account of actuarial advice, is such as to require it, the transferee admission body shall enter into an indemnity or bond to meet the level of risk identified.

7.2.3 The regulations now stipulate that for admission agreements with a transferee admission body entered into after 19th December 2003 the assessment for the requirement of a bond or indemnity shall be carried out as follows:

(a) Where the transferee admission body is providing or will provide a service or assets in connection with the exercise of a function of a scheme employer as a result of:

- (i) The transfer of the service or assets by means of a contract or other arrangement
- (ii) A direction made under 15 of the Local Government Act 1995
- (iii) Directions made under section 497A of the Education Act 1996

the assessment of the level of risk will be performed by the scheme employer.

(b) Where the transferee admission body is providing a public service and which is approved by the Secretary of State for the purposes of admission to the scheme the assessment of the level of risk will be made by the transferee admission body to the satisfaction of the Council.

- 7.2.4 In relation to 7.2.2(a) above, where the scheme employer is not the Council it is possible that the scheme employer will not have the relevant expertise to make an assessment as to the level of risk. Furthermore, as the risk is to the Brent pension fund it is undesirable that a third party make such an assessment. An example of where the Council would not be the scheme employer is where Council staff are transferred to an external organisation pursuant to a contract with Brent Housing Partnership. In this case, Brent Housing Partnership would be considered to be the scheme employer for the purposes of the Local Government Pension Regulations.
- 7.2.5 It is recommended that in the above circumstances officers should endeavour to agree with the scheme employer that at its own cost it will request the Council to undertake, on the scheme employer's behalf, an assessment of the risk thus ensuring relevant expertise as well as due regard to the interests of the pension fund. Any legal or actuarial costs of undertaking the assessment would be the responsibility of the scheme employer and would not rest on the pension fund.
- 7.2.6 In relation to 7.2.2(b) above, the assessment as to the level of risk must be to the Council's satisfaction. It is the view of officers that the most comprehensive way of ensuring that an assessment is to the Council's satisfaction is for the Council to undertake the assessment on behalf of the transferee admission body. In these circumstances, it is recommended that officers also seek to agree with transferee admission bodies that at its own cost it will request the Council to undertake, on the transferee admission bodies behalf, the assessment of the level of risk.
- 7.2.7 Members will note that the assessment of risk must take account of actuarial advice but that there is no indication in the Regulations as to what level of risk would require a bond or indemnity. It is the view of officers that the assessment of when a bond or indemnity is required will need to take place on a case by case basis. Factors that will be considered include:
- (a) the number of staff that will be admitted to the scheme pursuant to the admission agreement;
 - (b) the demographics of those staff including age, gender and years of service; and
 - (c) the contractor.
- 7.2.8 The existing powers delegated to the Director of Finance allow him to take decisions in relation to admission agreement in so far as the proposed agreement accords with the criteria set by the General Purposes Committee or the Pension Fund Sub-Committee.

8. BACKGROUND INFORMATION

8.1 Report to Corporate Deciding Committee 16 January 2002

8.2 Local Government Pension Scheme Regulations 1997 (as amended)

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Appendix A

Current Criteria

Criteria for Admission of Associated Bodies (Community Admission Bodies)

Two of these criteria must be met

- The organisation has been a viable entity for a period of not less than 36 months (evidence required by the provision of 2 years audited financial report and accounts).
- Evidence that the organisation's sources of income and business plan for the next three years are satisfactory.
- Affiliation to a national organisation or the existence of a parent body that will provide a financial guarantee.

The following criteria must also be met:

- That the body has a potential pension membership exceeding 25 staff.

Criteria for Admission of Non-Associated Bodies (Transferee Admission Bodies)

That admission agreements in respect of non-associated bodies require the applying employer to:

- Pay a contribution rate determined by the council's actuary sufficient to meet the full liabilities of transferring staff including any past service deficiency.
- Undertake to pay the capitalised cost of any early or ill-health retirements (over and above the budget set out by the actuary in the triennial actuarial valuation) by way of equal lump sums over three years or at the end of the contract, whichever is soonest.
- Pay any estimated actuarial deficit calculated by the council's actuary under regulation 78 of the 1997 Regulations, within six months of the end of the contract.
- Where available a parent guarantee should be obtained