BRENT COUNCIL	**General Purposes Committee** 26th January 2010 **Report from the Director of Business Transformation**
For Action	Wards Affected: ALL

Amendments to the Council's policy for Admission Agreements

1.0 Summary

1.1 Under the One Council initiative the Council has launched a range of projects designed to achieve significant cost savings and deliver quality services. One aim is to ensure better procurement of services from external organisations. As some procurements require the transfer of staff it is timely that there is consolidation of the Council's approach to Admission Agreements that allow transferring staff continued access to the Local Government Pension Scheme (LGPS).

2.0 Recommendations:

2.1 That Members agree the new process and criteria for non community admission bodies detailed in Appendix A.

2.3 That Members note the criteria for community admission bodies detailed in Appendix A will remain unchanged.

3.0 Detail

3.1 Members are reminded that there are different types of organisation that may request access to the LGPS via an admission agreement, namely:

(a) Community admission bodies; and

(b) Non-community admission bodies

3.2 Charitable and not for profit organisations, are entitled to request access to the LGPS under regulation 5 of the Local Government Pension Scheme (Administration) Regulations 2008 ("the Regulations"). Such organisations are referred to in the Regulations as “community admission bodies”. The current Council policy for their admission to the scheme is:

(i) That the body has a potential pension membership exceeding 25 staff; and

(ii) That the organisation pays for any actuarial work required in setting up the admission agreement.

and at least two of the criteria below are met:-

(iii) 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 reports and accounts)

(iv) Evidence that the organisation's sources of income and business plan for the next three years are satisfactory

(v) Affiliation to a national organisation or existence of a parent body that will provide a financial guarantee

3.3 In the current economic climate it is unlikely that charitable organisations will apply for access to the scheme due to its expense. Officers can confirm that the trend in recent years is that organisations of this type are leaving, rather than joining, the pension fund.

3.4 The LGPS is a final salary pension scheme that is available to the majority of council's non teaching staff. Where the whole or part of a Council service is outsourced and the outsourcing contract is entered into by the Council after 30th September 2007, a direction by the Secretary of State under section 101 of the Local Government Act 2003 requires that the contract with the third party provider must require the contractor to ensure pension protection for Council employees who transfer under TUPE to the contractor or to a sub-contractor as a result of the outsourcing. In order that pension protection is secured for these employees they must, as employees of their new employer, have rights to acquire pension benefits and those rights must be:

(i) the same as, or

(ii) count as being broadly comparable to or better than

those which they had, or had the right to acquire, as a Council employee (i.e. the rights they had to the future accrual of pension benefits as members of the LGPS or would have had if they had joined the LGPS). The direction does not give the Council any discretion to omit this term from the contract.

3.5 The Council is also required to ensure that former council staff who are transferred from an outgoing contractor to its successor also receive pension protection.

Pension Protection and its effect on Best Value:

3.6 The pension obligations on contractors where the whole or part of a Council service is outsourced can make it difficult for the contractor to place a competitive bid. The contractor has two choices:

(i) provision of a broadly comparable scheme; or

(ii) access to the LGPS via an admissions agreement

Provision of a Broadly Comparable Pension Scheme (BCPS)

3.7 A BCPS is a scheme that has been certified by a qualified actuary as being broadly comparable to the LGPS. An actuarially certified broadly comparable scheme will be one which, in the professional opinion of the actuary, satisfies the condition that there are no identifiable employees who will suffer material detriment overall in terms of their future accrual of pension benefits under the scheme. A contractor may have to set up or amend its existing pension scheme or require amendments from a third party pension scheme which will be quantifiable expense for the contractor. There are a number of areas of uncertainty with a BCPS for a contractor which may lead it to increase its bid price to cover the uncertainty. For example, the contractor would be required to pay an ongoing contribution to the BCPS and that contribution may increase due to market conditions. The contractor will have some control over the investment risk but the stock market is unpredictable which means that the contractor is likely to assess its potential loss and increase its bid price accordingly.

3.8 Council policy also requires in the case of an outsourcing that, except in exceptional circumstances, the staff can transfer their accrued pension rights from the LGPS to the contractor's scheme without any reduction in their pension entitlements. Council policy also requires that in the case of a retendering, except in exceptional circumstances, there are arrangements allowing transferring former Council staff to transfer their accrued pension rights from the outgoing contractor's pension scheme to a successor's pension scheme without any reduction in their pension entitlements. This is known as a bulk transfer arrangement and may also be costly for contractors.

Access to the Local Government Pension Scheme via an Admission Agreement

3.9 Regulation 6 (2) (a) (i) of the Local Government Pension Scheme (Administration) Regulations empowers the Council to allow organisations other than community admission bodies that provide it services or assets (called "transferee admission bodies") access to the LGPS. This means that staff transferring from the Council that provide services under the contract may remain members of the LGPS.

3.10 Access to the LGPS provides the most reassurance to the staff which may ensure their retention to deliver best value to the Council but represents unknown expense to the contractor. There are various risks including longevity and demographic risks in relation to those transferring but the main areas of risk are:

(a) **Investment Loss:** In order to maximise the value of the contributions made to it the pension fund it is invested. If returns are good the amount in the fund increases and employers may pay less but if returns are poor employers may be required to pay more. Contractors have no control over fund investment. So they may be required to be paid an unquantifiable additional amount to the pension fund.

(b) **Basis Loss:** The actuary carries out a valuation of the pension every three years. The actuary will assume various conditions for the future of the fund such as the level of anticipated retirements. The actuary may change the basis of his/her calculations which may lead to an increase in employers' contributions. Again the contractor would be required to manage an unknown risk over which it has no control.

(c) **Changes in Legislation:** The benefits payable under the LGPS are governed by legislation. The Government could decide to change the regulations so that members of the scheme get better benefits. Yet again the contractor would have no control over this but may be required to pay higher contributions to pay for the improved benefits.

3.11 It is possible that a naïve contractor may not consider the risk associated with entering an admission agreement. Its bid may therefore be competitive but the organisation may face financial difficulty during the contract which may lead to a decline in the service provided.

3.12 An informed bidder will consider the pension risk which it is likely to do in one of two ways:

(i) It may consider the potential cost that the pension risk will be. In order to protect itself fully the organisation may take the worst case scenario and raise its bid price accordingly. This should help it to avoid financial difficulty should its contributions increase but this may mean that its bid is no longer competitive. As a consequence the Council may discount a contractor that may have provided an excellent, value for money service. In short the Council may fail to achieve best value because of the pension risk.

(ii) In consideration of the potential cost, the contractor may suggest that it will, for example, take on the risks over which it has some control or over which the risk is manageable. Such risks include:

a. Early and ill health retirements
b. Excessive pay rises
c. Exercising its discretion e.g. deciding that it will allow a member to receive a higher pension

and that the Council takes on other risks such as the investment risk, basis risk and increases associated with changes in the legislation. With this assurance the contractor can place an informed competitive bid.

3.13 Officers believe that the alternative approach as detailed in 3.12 (ii), known as a risk sharing agreement, represents a pragmatic way of achieving best value because it:

(i) may encourage bids from quality organisations (whom may otherwise have been disinclined to do so because of the pension risk) thus increasing competition
(ii) enables bidders to submit an informed competitive bid
(iii) helps to ensure that there is clarity of financial information for the letting unit and the contractor.
(iv) is in line with guidance from the Local Government Employers (LGE) that recommends that there is due consideration of the pension risks by the Council and the contractor.

3.14 Members are asked to agree that where Council staff are to be TUPE transferred in connection with an outsourcing , or ex-Council staff are to be TUPE transferred in connection with a retendering, that contractors may be informed that the Council is prepared to enter into a risk sharing agreement relating to admission to the LGPS and that the principles of that agreement will be provided in the invitation to tender. At the discretion of the Director of Finance and Corporate Resources the Council may enter into risk sharing agreements with other organisations who may provide Council services such as Primary Care Trusts or Mental Health Trusts.

3.15 Members are also asked to agree that a risk sharing agreement may be entered into :-

(i) where as a result of an outsourcing staff are TUPE transferred from the Council, or where as a result of a retendering former Council staff are TUPE transferred from a contractor to a successor organisation and

(ii) the Director of Finance and Corporate Resources is satisfied that the pension fund is and will be no worse off than it would have been had the staff remained in their current employment, that the risk sharing agreement ensures best value and that the circumstances do not require a further decision by the General Purposes Committee.

Current council criteria for Admission Agreements for transferee admission bodies

3.16 The Council's policy for the admission of transferee admission bodies to the pension fund has been agreed by various Council committees. These are that:

(i) The organisation will be required to pay a contribution rate that is set by the council's actuary sufficient to meet only the future service liabilities of transferring staff.

(ii) Undertake to pay the capitalised cost of any ill health retirements (over and above the budget set by the actuary in the triennial valuation) by way of equal lump sums over three years or at the end of the contract whichever is soonest

(iii) Pay any estimated actuarial deficit calculated by the councils actuary within six months of the end of the contract

(iv) Where available, a parent guarantee should be obtained

(v) That the organisation pays for any actuarial work required in setting up the admission agreement

3.17 The Council's constitution delegates to the Director of Finance and Corporate Resources the decision whether or not an admission agreement shall be entered into but if there is a departure from the criteria in paragraph 3.16 the matter must be referred to the General Purposes Committee.

3.18 The criteria are designed to protect the pension fund but are inflexible and may delay the procurement process if officers are required to refer the matter to committee. They may also prevent best value being achieved as described in this report.

Proposed change to process and criteria for admission agreements for transferee admission bodies

3.19 For the reasons detailed above, Members are asked to approve a revised process and criteria that will apply to transferee admission bodies as set out in Appendix A:

4.0 Financial Implications

4.1 The measures proposed should assist the council to achieve best value and protect the pension fund. 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.

6.0 Diversity Implications

6.1 There are no diversity issues arising from this report.

7.0 Staffing Implications

The provision of an admission agreement will allow the transferring staff continued access to the LGPS. This means that the staff will have access to the same pension rights they would have had if they had remained council employees. This assurance may assist in retaining key transferring staff. Their retention may assist the council in achieving best value.

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Criteria for Admission Agreements for Community Admission Bodies

(i) That the body has a potential pension membership exceeding 25 staff; and

(ii) That the organisation pays for any actuarial work required in setting up the admission agreement.

and at least two of the criteria below are met:-

(iii) 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 reports and accounts)

(iv) Evidence that the organisation's sources of income and business plan for the next three years are satisfactory

(v) Affiliation to a national organisation or existence of a parent body that will provide a financial guarantee

Process and Criteria for Admission Agreements for Non-Community Bodies (Transferee Admission Bodies)

(i) Project and/or procurement officers intending to conduct a procurement exercise in which Council or ex-Council staff may be TUPE transferred, are required to contact the Council's pension manager at the earliest possible opportunity to ensure that the pension implications of a transfer are identified. Consideration will be given as to whether the proposed outsourcing fulfils legislative requirements as to matters such as pensions protection and if so will include a decision, following consultation with Legal Services, as to whether a risk share agreement will be offered.

(ii) The unit or school will be required to obtain from the Council's pensions manager the actuarially assessed employer's costs associated with an admission agreement. The actuary's fees will be met by the unit's or school's budget. The unit or school will also be required to meet the cost of any additional actuarial work associated with the admission agreement and/or the risk share agreement.

(iii) The non-community body will pay an employer rate that is commensurate with 100% notional funding at the beginning of the admission agreement and will make payments to the fund in accordance with the actuary's assessment of future liabilities of transferring staff or in accordance with a risk sharing agreement if one is entered into.

(iv) Where the Council has made a decision to offer a risk share agreement and the non-community body propose an admission agreement subject to a risk share agreement, the Director of Finance and Corporate Resources may agree to enter into such risk sharing agreement if satisfied that the pension fund will be no worse off than if the transferring staff had remained in their current employment and that the risk sharing agreement achieves best value

(v) The matter may be referred to the General Purposes Committee by the Director of Finance and Corporate Resources if the proposed risk share agreement is not in accordance with paragraph (iv) above or if it is the Director's opinion that the circumstances otherwise require it.