



PENSIONS COMMITTEE

30 August 2012

Subject Heading:

The admission of Innovate Services Limited to London Borough of Havering's Pension Fund

CMT Lead:

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Policy context:

LGPS Regulations

Financial summary:

The Pension Fund's actuary has assessed the level of indemnity bond required at £64,000 (estimated)

The subject matter of this report deals with the following Council Objectives

Ensuring a clean, safe and green borough	<input type="checkbox"/>
Championing education and learning for all	<input checked="" type="checkbox"/>
Providing economic, social and cultural activity in thriving towns and villages	<input type="checkbox"/>
Valuing and enhancing the lives of our residents	<input checked="" type="checkbox"/>
Delivering high customer satisfaction and a stable council tax	<input type="checkbox"/>

SUMMARY

This report asks Members to consider whether to allow the six members of staff transferring under a TUPE arrangement from London Borough of Havering to a private contractor, Innovate Services Limited, to continue to be members of (or have the right to membership) of the Local Government Pension Scheme (LGPS),

by admitting Innovate Services Limited to the London Borough of Havering's Pension Fund as an Admitted Body.

RECOMMENDATIONS

That Members consider whether to admit Innovate Services Limited to London Borough of Havering's (LBH) Pension Fund as an Admitted Body to enable the members of staff who transferred from the Council under TUPE to continue membership (or have the right to membership) of the LGPS (Local Government Pension Scheme) subject to:

- (a) All parties signing up to an Admission agreement, and
- (b) An indemnity or insurance bond in an approved form with an authorised insurer or relevant institution, being put into place to protect the pension fund.

REPORT DETAIL

1. Innovate Services Limited succeeded in winning the contract to provide Catering services to Drapers Academy. The contract is for three years with the possibility to extend for a further two years. The contract is due to commence in September 2012, replacing the previous contract which was provided by LBH Catering Services.
2. When the Catering Service transfers from LBH's Catering Services to Innovate Services Limited, which is due to commence in September 2012 - the contracts of employment of six employees are to be transferred from London Borough of Havering to Innovate Services Limited. The Transfer of Undertakings (Protection of Employment) Regulations ("TUPE") applied to the employment terms and conditions of the relevant employees except for pension rights. Five of the employees concerned are members of the LGPS.
3. Innovate Services Limited has applied for Admitted Body Status in order to participate in the LGPS for the provision of pension benefits for the transferring employees.
4. Innovate Services Limited does not have a broadly comparable pension scheme and has applied to become an Admitted Body to Havering's Pension Fund, solely for the benefit of the transferred employees.

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5. If agreed, Innovate Services Limited would be admitted to the pension scheme under a 'closed' agreement i.e. only those employees transferring at the time the contract is effective would be admitted to the scheme, any new or existing employees of Innovate Services Limited, whether they are working on the Catering Services contract at Drapers Academy, or not, will not be eligible to join the pension scheme.
6. The Local Government Pension Scheme Regulations 1997 (As Amended) enable Innovate Services Limited to be admitted to the LGPS as a transferee Admission Body.
7. Admission of non-local authority employers to the LGPS takes place by the means of a formal, legal admission agreement drawn up between the interested parties. Under the terms of the regulations, the effect of such a step is that:-
 - (i) relevant employees of the Admitted Body can fully participate in the Scheme and so can be described as pensionable employees; and
 - (ii) the Regulations governing the Scheme treat the Admitted Body in exactly the same way as if it were a Scheme employer. For admission status and membership status to continue, the Admitted Body must adhere at all times to the Scheme regulations, including, of course, the specified terms of their individual admission agreements
8. To bring greater certainty and clarity to the formulation of admission agreements between all the parties, the regulations set out a number of mandatory matters of substance which must, therefore, be included in each admission agreement prepared under the Regulations.
9. An admission body as defined by the regulations must secure an actuarially appropriate level of indemnity, or bond, in an approved form so as to be able, as required by Regulations to satisfy the relevant administering authority (The Council). The collective purpose of these particular requirements is to protect LGPS pension funds from risk of any permanent financial loss and to guard against any deficiencies or shortfalls in the event of insolvency, or from any default by a contractor in the payment of contributions due to pension funds as may be determined by an actuary.
10. The Pension Fund's actuary has assessed the level of indemnity bond required £64,000 (estimated), although the exact arrangements for the bond cover will have to be finalised and therefore the recommendation in the report is made on the condition that suitable arrangements agreeable to all parties, and in compliance with the Regulations, can be put into place.

IMPLICATIONS AND RISKS

Financial Implications and Risks:

The Contribution rate set by the Actuary for the membership involved in the contract is 20.07% (estimated) of pensionable pay. This is calculated on the basis that no new employees will be admitted to the Fund. The rate for Council employees is 22.00%. The deficiency that has built up in the Pension Fund remains with the Fund and previous contractor and does not transfer to the new contractor.

The Actuary has assessed the level of indemnity bond cover required in respect of this contract assuming that it is not open to new entrants. The objective of the bond is to make good the funding position of the scheme if the contractor defaults on his obligations under the agreement, such as meeting the costs of early payment of pensions on redundancy for the over fifties or early retirement. This could occur at the end of the contract term or at some mid point if the contractor, say, goes into liquidation.

The initial level of the bond cover is being set at £64,000 (estimated). If the contract is renewed this will be reviewed as part of the triennial valuation or more frequently if required.

It is essential that the cover level be reviewed regularly, and that it is made clear to the new body that this will occur and that further finance may be required. This will be included in the Admission Agreement.

There is also the risk that there may be a deficiency when the admission agreement is terminated. This risk is managed by the closure valuation and associated certificate, which will be included in the admission agreement. A determined amount will be required under the agreement terms to make good the deficiency.

Legal Implications and risks:

Where staff transfer from the public sector, the Cabinet Office, Statement of Practice (January 2000) requires 'broadly comparable' pension provisions to be made, by the recipient-contractor, for the staff who transfer. Granting Admitted Body status to Innovate Limited will enable this requirement to be met.

The Local Government Pensions Scheme Regulations (as amended) require an admission agreement to be entered into where Admitted Body status is granted to an 'external' body. In dealing with the admission agreement the Assistant Chief Executive – Legal and Democratic Services will address the question of whether Innovate Limited, should be made a party to the Admission Agreement. As set out,

within the body of the report, Innovate Services Limited will be required to provide a bond.

To comply with the requirements of the Local Government Pension Scheme Regulations 1997 (as amended), the Commissioner for Inland Revenue and the Secretary of State must be notified, within the required time periods, that the Council - as the 'Administering Authority' for the Havering pension fund - has entered into an admission agreement with Innovate Services Limited.

HR Implications and Risks:

The continued admission of these members of staff in the LGPS give them on-going equality of pension provision with Council employees.

Equalities Implications and Risks:

The same as the HR implications and risks.

BACKGROUND PAPERS

Admitted Body Status Provisions in the LGPS When Services are Transferred from a Local Authority or Other Scheme Employer

The Local Government Pension Scheme Regulations 1997 (As Amended) and the Guidance notes issued with them