



## PENSIONS COMMITTEE

2 October 2012

<b>Subject Heading:</b>	The admission of Family Mosaic to Havering's Pension Fund
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<b>Policy context:</b>	Local Government Pensions Scheme Regulations
<b>Financial summary:</b>	The Pension Fund's actuary has assessed the level of indemnity bond required at £3,646,000.

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

Ensuring a clean, safe and green borough	[ ]
Championing education and learning for all	[ ]
Providing economic, social and cultural activity in thriving towns and villages	[ ]
Valuing and enhancing the lives of our residents	[√]
Delivering high customer satisfaction and a stable council tax	[√]

### SUMMARY

This report recommends that 106 members of staff transferring under a Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) arrangement from the London Borough of Havering to Family Mosaic continue to receive admittance to the Local Government Pension Scheme (LGPS). This is due to the tendering of a contract to provide reablement services on behalf of the Council. The recommendation of the award of the contract was approved by Cabinet on 11<sup>th</sup> July 2012.

The members of staff will be able to continue to be members of the LGPS by admitting Family Mosaic to the London Borough of Havering's Pension Fund as an admitted body.

Family Mosaic is a large not-for-profit housing association. It has been delivering contractual supported housing services for over 25 years and care and support services for over 15 years.

It is an established and successful provider of care and support services in London and Essex and has an excellent reputation for delivering high quality services. Its specialism is outcome-focussed care and support, and for a number of years it has provided in Havering a range of reputable services which promote and maximise people's ability to live independently and which support them to develop skills to achieve this.

It also has a proven track record of working effectively in partnership with the London Borough of Havering.

Family Mosaic has extensive experience of TUPE, including a transfer involving 1200 staff. It has undertaken TUPE transfers for services transferred from NHS Trusts, Social Services and various providers as part of hospital and hostel closure programmes and new community support contracts in Essex.

## **RECOMMENDATIONS**

That Members consider whether to admit Family Mosaic to Havering's Pension Fund as an admitted body to enable those members of staff who will transfer from the Council under TUPE to continue membership of the LGPS 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. Family Mosaic succeeded in winning the contract to provide reablement services to the Council. The contract is for five years and will commence on 5<sup>th</sup> November 2012.
2. When the reablement service transfers from the Council's in-house team to Family Mosaic on 5<sup>th</sup> November 2012 the contracts of employment of a number of employees will transfer from the Council to Family Mosaic. The Transfer of Undertakings (Protection of Employment) Regulations ("TUPE") apply to protect the employment terms and conditions of the relevant employees except for pension rights. A number of the employees concerned are members of the LGPS.

3. In accordance with Government policy for Local Government employers, Family Mosaic are required to provide pension benefits for future service which are broadly comparable to those provided under the LGPS or to participate in the LGPS for the provision of pension benefits for the transferring employees.
4. Family Mosaic do not have a broadly comparable pension scheme and have applied to become an admitted body to Havering's Pension Fund, solely for the benefit of the transferring employees.
5. If agreed, Family Mosaic 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 Family Mosaic, whether they are working on the reablement contract or not, will not be eligible to join the pension scheme.
6. The Local Government Pension Scheme (Administration) Regulations 2008 enable Family Mosaic to be admitted to the LGPS as a transferee admission body.
7. Admission of non-local authority employers to the LGPS takes place by 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 to be £3,646,000 although the exact arrangements for the bond cover would 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 24.6% of pensionable pay. This is calculated on the basis that no new employees will be admitted to the Fund. The deficiency that has built up in the Pension Fund remains with the Fund and the Council 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, for example, goes into liquidation.

The initial level of the bond cover is being set at £3,646,000. This will be reviewed as part of the triennial valuation or more frequently if required. The cost of the bond is to be borne by Family Mosaic, and was considered as part of their tender submission.

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.

The Committee should also be mindful of the additional administrative obligations which fall upon the fund in respect of each admitted body. This includes the provision of valuation reports, annual accounting and statutory reporting requirements in addition to the implications of enrolling into the fund. Whilst the costs associated with these requirements will fall upon the relevant admitted body, the administrative functions associated with employers in the fund will increase.

The cost of establishing the likely employer contribution rate for an admitted body should be seen as a cost of the tendering exercise and would therefore be borne by the service letting the contract. When these costs have been determined this will be charged to the service and not the Pension Fund.

**Legal Implications and risks:**

Where staff transfer from a best value authority, The Best Value Authorities Staff Transfers (Pensions) Direction 2007 (the "Pensions Direction") requires 'broadly comparable' pension provisions to be made, by the recipient-contractor, for the staff who transfer. Granting admission body status to Family Mosaic will enable this requirement to be met.

The Local Government Pension Scheme (Administration) Regulations 2008 require an admission agreement to be entered into where admission body status is granted to an 'external' body. As set out within the body of the report, Family Mosaic will be required to provide a bond.

To comply with the requirements of the Local Government Pension Scheme (Administration) Regulations 2008, the Administering Authority must notify the Commissioner for Inland Revenue and the Secretary of State, within the required time periods, that the Council - as the 'Administering Authority' for the Havering pension fund - has entered into an admission agreement with Family Mosaic.

**HR Implications and risks:**

The continued admission of these members of staff to the LGPS gives them ongoing equality of pension provision with Council employees and meets the requirements of the Pensions Direction.

**Equalities implications and risks:**

A full equalities analysis has been carried out and formed an appendix to the report submitted to Cabinet on 11<sup>th</sup> July 2012.

As most of the reablement workforce is female and many are over 55 years of age, the transfer of the service to Family Mosaic will affect a disproportionately high number of staff falling within these groups. This impact is due purely to the make-up of the workforce. The impact on staff is justified because the decision to outsource the service was made in order to ensure that a greater number of people will be able to have access to reablement services at a sustainable cost, maximising and prolonging their independence.

As part of the tendering process, organisations had to indicate their intentions for the provision of pension arrangements for transferring staff, confirming that pension protection will be provided and that transferring employees will have the

right to acquire pension benefits which are the same as, or broadly comparable to, or better than, those they had the right to acquire before the transfer. In its tender submission, Family Mosaic indicated that it would be seeking Admitted Body Status to the local Government Pension Scheme.

As already indicated, staff will be transferred to Family Mosaic under the Transfer of Undertakings (Protection of Employment) Regulations 2006. They will therefore transfer under their existing terms and conditions of employment and without breaking their continuous service and, given Family Mosaic's intention to seek Admitted Body Status, with continuing membership of the LGPS.

### **BACKGROUND PAPERS**

'Admitted body status provisions in the Local Government Pension Scheme when services are transferred from a local authority or other scheme employer'  
(Department for Communities and Local Government guidance paper published December 2009)

The Local Government Pension Scheme Regulations 1997 (as amended), Local Government Pension Scheme (Administration) Regulations 2008 and the Guidance notes issued with them.

Cabinet Report, 11<sup>th</sup> July 2012: Approval of award of tender: Reablement Service

Equalities Analysis, Appendix 1, Cabinet Report, 11<sup>th</sup> July 2012: Approval of award of tender: Reablement Service