

PENSIONS COMMITTEE (SPECIAL)

AGENDA

7.00pm

Tuesday,
22 August 2006

Havering Town Hall,
Main Road, Romford

Members 6: Quorum 3

COUNCILLORS:

Conservative Group

(4)

Melvin Wallace (Chairman)

Roger Ramsey (V.Chairman)

David Charles

Mark Gadd

Residents' Group

(2)

Clarence Barrett

Linda Van den Hende

Trade Union observers with no Voting Rights

(2)

Brian Long (Unison)

Michael Parker (TGWU)

For information about the meeting please contact:

Debbie Okutubo (01708) 432432

E-mail: deborah.okutubo@haverling.gov.uk

Note: This Committee has been convened in accordance with the urgency provisions of the Local Government Act 1972 in order to deal with one item of business.



NOTES ABOUT THE MEETING

1. HEALTH AND SAFETY

The Council is committed to protecting the health and safety of everyone who attends meetings of its Committees.

At the beginning of the meeting, there will be an announcement about what you should do if there is an emergency during its course. **For your own safety and that of others at the meeting, please comply with any instructions given to you about evacuation of the building, or any other safety related matters.**

2. MOBILE COMMUNICATIONS DEVICES

Although mobile phones, pagers and other such devices are an essential part of many people's lives, their use during a meeting can be disruptive and a nuisance. Everyone attending is asked therefore to ensure that any device is switched to silent operation or switched off completely.

3. CONDUCT AT THE MEETING

Although members of the public are welcome to attend meetings of the Committee, they have no right to speak at them. Seating for the public is, however, limited and the Council cannot guarantee that everyone who wants to be present in the meeting room can be accommodated. When it is known in advance that there is likely to be particular public interest in an item the Council will endeavour to provide an overspill room in which, by use of television links, members of the public will be able to see and hear most of the proceedings.

The Chairman of the meeting has discretion, however, to invite members of the public to ask questions or to respond to points raised by Members. Those who wish to do that may find it helpful to advise the Committee Officer before the meeting so that the Chairman is aware that someone wishes to ask a question.

PLEASE REMEMBER THAT THE CHAIRMAN MAY REQUIRE ANYONE WHO ACTS IN A DISRUPTIVE MANNER TO LEAVE THE MEETING AND THAT THE MEETING MAY BE ADJOURNED IF NECESSARY WHILE THAT IS ARRANGED.

If you need to leave the meeting before its end, please remember that others present have the right to listen to the proceedings without disruption. Please leave quietly and do not engage others in conversation until you have left the meeting room.

AGENDA ITEMS

1. CHAIRMAN'S ANNOUNCEMENTS

The Chairman will announce details of the arrangements in case of fire or other events that might require the meeting room or building's evacuation.

2. APOLOGIES FOR ABSENCE AND ANNOUNCEMENT OF SUBSTITUTE MEMBERS (if any) - receive.

3. DECLARATION OF INTERESTS

Members are invited to declare any interests in any of the items on the agenda at this point of the meeting. Members may still declare an interest in an item at any time prior to the consideration of the matter.

4. THE ADMISSION OF CATERING FOR HAVERING TO HAVERING'S PENSION FUND

Stephen Evans
Chief Executive



MEETING	DATE	ITEM
PENSIONS COMMITTEE	22 nd August 2006	4.

This report is submitted as a late report with the agreement of the Chairman as an urgent matter, pursuant to Section 100B(4) of the local Government Act 1972

REPORT OF THE CHIEF EXECUTIVE

SUBJECT: THE ADMISSION OF 'CATERING FOR EDUCATION' TO HAVERING'S PENSION FUND.

SUMMARY

This report recommends that the eight staff transferring under a TUPE arrangement from the Council to a private contractor (Catering for Education) are able to continue to be members (or have the right to membership) of the Local Government Pension Scheme (LGPS) by admitting Catering for Education to the London Borough of Havering's Pension Fund as an admitted body.

RECOMMENDATION

To admit Catering for Education to Havering's Pension Fund as an admitted body to enable staff transferring 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

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- (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. Catering for Education have succeeded in winning the contract to provide catering facilities to Abbs Cross School. This contract is for 2 years and will replace the current catering arrangements which are provided by the Council's in-house catering service.
2. When the catering service transfers from the Council's in-house team to Catering for Education, – on 1st September 2006 - the contracts of employment of a number of employees will transfer from the Council to Catering for Education. The Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") will apply to the employment terms and conditions of the relevant employees except for pension rights. The employees concerned are, presently, members of the LGPS.
3. In accordance with Government policy for Local Government employers, Catering for Education are encouraged 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. Catering for Education 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. The proposal is that Catering for Education are admitted to the pension scheme under a 'closed' agreement i.e. only those employees transferring at the time the contract is effective will be admitted to the scheme, any new or existing employees of Catering for Education whether they are working on the Abbs Cross School contract or not will not be eligible to join the pension scheme.
6. The Local Government Pension Scheme Regulations 1997 (As Amended) enable Catering for Education 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

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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 (£42,000) although the exact arrangements for the bond cover have still 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.

11. Financial Implications and risks

The Contribution rate set by the Actuary for the membership involved in the contract is 19.6 % of pensionable pay. This is calculated on the basis that no new employees will be admitted to the Fund. This contribution rate is lower than the rate for Council employees, 20.3%, as it reflects future service only. The deficiency that has built up in the Pension Fund remains with the Fund and does not transfer to the 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

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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 £42,000 although 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. Catering for Education will be required under the agreement terms to make good the deficiency.

12 HR Implications and risks

The continued admission of these staff in the LGPS gives them ongoing equality of pension provision with Council employees.

13 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 admission body status to Catering for Education will enable this requirement to be met.

The Local Government Pensions Scheme Regulations (as amended) require an admission agreement to be entered into where admission 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 Abbs Cross School, as well as Catering for Education, should be made a party to the Admission Agreement. As set out, within the body of the report, Catering for Education 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 Catering for Education.

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13 reasons for the decision:

Government guidelines are that staff transferring under a TUPE arrangement should, where possible, have their pension rights protected.

Staff Contact: Jeff Potter
Head of Exchequer Services
Jeff.potter@haverling.gov.uk
01708-434139

STEPHEN EVANS
Chief Executive

Background Papers

The Pension Implications of Transferring Employees to an External Provider
(Information guide issued by the Employers Organisation)

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