



PENSIONS COMMITTEE

Subject Heading:

The Admission of Essex Cares Ltd to the London Borough of Havering Pension Fund

SLT Lead:

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Policy context:

Local Government Pension Scheme Regulations 2013. Schedule 2 part 3

Financial summary:

The Fund's actuary has determined a guarantee, bond or indemnity is required to cover the assessed level of risk arising in relation to premature termination of the provision of service or assets provided by Essex Cares Ltd by reason of insolvency, winding up or liquidation and the level of bond set by the actuary is £435,000. Essex County Council will act as guarantors

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

Communities making Havering	[x]
Places making Havering	[x]
Opportunities making Havering	[x]
Connections making Havering	[x]

SUMMARY

The purpose of this report is to request the London Borough of Havering Pension Fund Committee agree to the proposed “closed agreement” admission of Essex Cares Ltd into the London Borough of Havering Pension Fund under the provisions of The Local Government Pension Scheme Regulations 2013, Schedule 2, Part 3 and follows Best Value Authorities Staff Transfer (Pensions) Direction 2007. This follows the re-tendering of the Havering Re-ablement service and the TUPE of the staff originally employed by the London Borough of Havering.

RECOMMENDATIONS

That the admission of Essex Cares Ltd into the London Borough of Havering Pension Fund as an admitted body to enable 26 members of staff who were part of the original Havering Re-ablement service to continue their membership of the Local Government Pension Scheme (LGPS) be agreed, subject to:

- (a) The Council and Essex Cares Limited signing up to an Admission agreement, and
- (b) An Indemnity of £435,000 by way of Essex Cares Ltd securing a guarantee in an approved form, duly executed from Essex County Council to protect the pension fund.

REPORT DETAIL

1. Essex Cares Ltd succeeded in winning the contract to provide Re-ablement services to the London Borough of Havering. The contract is for a minimum of three years and commenced on 1 April 2019.
2. The contracts of employment of affected staff transferred when the London Borough of Havering Re-ablement Service transferred from the current contractor North East London Foundation Trust to Essex Cares Ltd on 1 April 2019. The Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) Amendment Regulations 2014 (“TUPE”) protects the employment terms and conditions of the relevant employees except for pension rights which in this instance are covered under Best Value Authorities Staff Transfer (Pensions) Direction 2007. 26 employees were members of the LGPS on the transfer date.
3. The Pension Regulations require the Local Government Pension Scheme (LGPS) Pension Funds to allow an admission to its scheme if the organisation is one that provides or which will provide a service or assets in connection with the

exercise of a function of a scheme employer, as a result of the transfer of the service or assets by means of a contract or other arrangement.

4. Following guidance from MHCLG, where a transferee admission body and the scheme employer undertake to meet the relevant requirements of Schedule 2, Part 3, an administering authority cannot decline to admit to the LGPS the eligible employees of the transferee admission body. The terms on which the admission is permitted are noted in the admission agreement for the purposes of these Regulations.

5. Essex Cares Ltd falls within the definition contained in Schedule 2, Part 3 of the Local Government Pension Scheme Regulations 2013 and as such is eligible to become a transferee admission body. Under Schedule 2, Part 3, the administering authority must admit to the scheme the eligible designated employees of the transferee admission body, provided the transferee admission body and the scheme employer undertakes to meet the relevant requirements of the regulations through an admission agreement. Legal engrossment of the admission agreement is subject to the service transfer taking place.

6. The London Borough of Havering will seek to sign appropriate transferee admission agreements to allow Essex Cares Ltd to be admitted to the London Borough of Havering Pension Fund. When the admission agreement is formed Essex Cares Ltd will be required to pay contribution rates as determined by the Fund Actuary. This has been set initially at 38.4% of pensionable pay.

IMPLICATIONS AND RISKS

Financial implications and risks:

As noted in the report, employer contributions to be paid by admitted bodies are determined by the Fund's Actuary. Essex Cares Ltd employer contribution rate has been set at 38.4%.

The Fund's actuary has determined a guarantee, bond or indemnity is required to cover the assessed level of risk arising in relation to premature termination of the provision of service or assets provided by Essex Cares Ltd by reason of insolvency, winding up or liquidation and the level of bond set by the actuary is £435,000.

Essex Cares Ltd is a Local Authority Trading Company and has sought to opt for a guarantor which will be provided by Essex County Council.

There are risks to the letting authority if the bond levels are not reviewed in line with employee and legislative changes. This risk will be managed by putting in

place a timescale for bond reviews and ensure this is included in the admission agreement. Bond renewals are to be carried out by the Fund's actuary.

The letting authority also faces risk if the admitted body is unable to meet any funding deficits at the end of a contract. This risk will be managed by putting in place regular reviews of Essex Cares Ltd's employer rates. Any deficit not met by Essex Cares Ltd at the end of the contract will be met by the guarantor.

The risk of non-payment of contributions, which would have a cash flow impact, is actively managed by the Havering pension team on a monthly basis with appropriate escalation for non-compliance. Cash flow performance is reported in the Pension Fund Annual Report.

There are no immediate financial implications to the Fund.

Legal implications and risks:

When the Council lets a contract for the provision of services, the contractor is eligible to apply to become an admission body, subject to the completion of an admission body agreement and the provision of a guarantee, bond or indemnity, if required, to cover the risks to the pension fund arising from premature termination of the provision of service by reason of insolvency, winding up or liquidation of the admission body.

Public sector bodies required to have regard to Best Value Authorities Staff Transfer (Pensions) Direction 2007 and have regard to the Government's policy guidance "Fair Deal for staff pensions: staff transfer from central Government" (published with immediate effect on the 4 October 2013) when outsourcing services. Where staff are compulsorily transferred (TUPE) from the public sector to an independent provider of public services those staff will generally have a right of continued access to the relevant public service pension arrangements (Havering LGPS) or a right to a suitable broadly comparable scheme.

In the case of the Re-ablement Service, this is a third generation transfer to Essex Cares Ltd. The service was originally outsourced to Family Mosaic in 2012, moved to NELFT in 2017 and Essex Cares from 1 April 2019. Continued membership of the Havering LGPS can be achieved by means of an admission body agreement, between Havering (the administering and lettings authority) and Essex Cares Ltd (the contractor). The contractor has applied for admission on a closed basis and actuarial assessments have been undertaken on that basis in order to assess contributions and the bond value.

The admittance of Essex Cares Ltd into the Havering Pension Fund will ensure that the staff that originally worked for the Havering Re-ablement Service enjoy their current pension protection when transferring to their new employer and negate against any complaints to the Pension Regulator and Pensions Ombudsman resulting from a failure to ensure pension protection for its employees on transfer.

The admission to the Havering Pension fund is subject to an appropriate guarantee being given by Essex County Council accepting the level of risk as outlined by the Actuary.

The recommendations in this report are in keeping with the constitutional delegation.

Human Resources implications and risks:

Admitted body status will allow transferring staff continued membership eligibility of the LGPS. Essex Cares Ltd held consultations with affected staff and the recognised trade unions from the London Borough of Havering and HR representatives from both Essex Cares Ltd and NELFT in line with TUPE requirements.

Equalities implications and risks:

The proposed admission of Essex Cares Ltd into the London Borough of Havering Pension Fund will not only ensure that appropriate direction has been followed but will also enable the former Havering re-ablement staff who will be compulsorily transferred to Essex Cares Ltd to continue to enjoy pension protection when transferred to their new employer.

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

- (i) the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) the need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are: age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants. We will ensure that disabled people with sensory impairments are able to access the strategy.