



PENSIONS COMMITTEE

Subject Heading:

The admission of Urbaser Limited in to the London Borough of Havering Pension Fund for the provision of Integrated Recycling, Waste Collection and Street Cleansing Contract to the London Borough of Havering

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Policy context:

Local Government Pension Scheme Regulations 2013. Schedule 2 part 3

Financial summary:

The Pension Fund Actuary has assessed the level of Indemnity and Urbaser Limited will secure a bond. The employer contribution rate has been set initially at 43.0%.

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

Communities making Havering
Places making Havering
Opportunities making Havering
Connections making Havering

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[x]
[x]
[x]

SUMMARY

The purpose of this report is to request the London Borough of Havering Pension Committee agree to the proposed closed agreement admission of Urbaser Limited into the London Borough of Havering Pension Fund (“the Fund”) under the provisions of The Local Government Pension Scheme (LGPS) Regulations 2013, Schedule 2, Part 3 and follows New Fair Deal Guidance. This is due to the TUPE of street cleansing staff from Havering Council to Urbaser Limited for the provision of street cleansing services.

RECOMMENDATIONS

That the admission of Urbaser Limited into the London Borough of Havering Pension Fund as an admitted body to enable approximately 64 members of staff who will transfer from Havering Council to continue membership of the LGPS be agreed, subject to:

- (a) All parties signing up to an Admission Agreement, and
- (b) Urbaser Limited securing a bond in an approved form to protect the pension fund.

REPORT DETAIL

1. Urbaser Limited succeeded in winning the contract to provide Integrated Recycling, Waste Collection and Street Cleansing Services to Havering Council. The contract with Havering is for a minimum of eight years (subject to another eight years extension) and is due to commence on 22 October 2023.
2. The contracts of employment of the affected staff will transfer when the street cleansing service transfers from Havering Council to Urbaser Limited on 22 October 2023. 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 the New Fair Deal Guidance 2013. 64 employees are a member of the LGPS as at 31 January 2023.
3. New Fair Deal Guidance is a non-statutory policy setting out how pension issues are to be dealt with when staff are compulsorily transferred from the public sector to independent providers delivering public services. The guidance is needed to address Pension rights not covered by TUPE.

4. The Pension Regulations require the 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.
5. 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.
6. Urbaser Limited falls within the definition contained in Schedule 2, Part 3 of the LGPS 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.
7. The London Borough of Havering will seek to sign appropriate transferee Admission Agreements to allow Urbaser Limited to be admitted to the Fund. When the Admission Agreement is formed Urbaser Limited will be required to pay contribution rates as determined by the Fund Actuary. This has been set initially at 43.0% of pensionable pay but will be re-assessed at the transfer date based on the actual profile of staff in post at the transfer date.

IMPLICATIONS AND RISKS

Financial implications and risks:

Continued membership in the LGPS means there is no loss to contributions into the Fund. As noted in the report, employer contributions to be paid by admitted bodies are determined by the Fund's Actuary. Urbaser Limited's employer contribution rate has been initially set at 43.0%. Urbaser Limited are allocated a share of assets to ensure they are fully funded at the transfer date.

There is a pass through agreement in place between the Council and Urbaser Limited. The pensions liability clause (covered within the Contract between the Council and Urbaser) means that the Council agrees to reimburse Urbaser in respect of the employer contributions under the Admission Agreement

The Fund's actuary has determined a bond or indemnity is required to cover the assessed level of risk arising in relation to premature termination of the provision of

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service or assets provided by Urbaser Limited by reason of insolvency, winding up or liquidation and the level of bond set by the actuary is £5.641m. Urbaser Limited will seek to secure a bond in an approved form.

There are risks to the letting authority (Havering Council) if the indemnity levels are not reviewed in line with employee and legislative changes. This risk will be managed by putting in place a timescale for reviews and ensure this is included in the Admission Agreement. Indemnity reviews 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 Urbaser Limited's employer rates. Any deficit not met by Urbaser Limited at the end of the contract will be met by the letting authority.

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.

Urbaser Limited are an existing transferee admitted body within other Local Government Pension Funds, so have experience of the implications of being a Scheme Employer.

Hymans Robertson have carried out an assessment which shows (at 31 January 2023) Urbaser Limited are a low risk employer for the Pension Fund. This will be reviewed on an annual basis.

There are no immediate financial implications to the Fund arising from the Fair Deal arrangements

Legal implications and risks:

Local Authorities are scheme employers for the purposes of the local government pension scheme. Where they let contracts for the provision of services, their contractors are eligible to become admission bodies, subject to the completion of an admission body agreement and the provision of a 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.

Local Authorities are public sector bodies required to 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) to an independent provider of public services (Urbaser Limited) those staff will generally have a right of continued access to the relevant public service pension arrangements (Havering LGPS) where they are classified as non-teaching staff

In the case of the Havering Council employees transferring to the new street cleansing contractor, Fair Deal obligations can be achieved by means of an admission body agreement, between the administering authority (Havering) and the letting authority (Havering) and the employing/admission body (Urbaser Limited) allowing the transferring employees to remain a member of the Local Government Pension Scheme. The Council and the contractor have applied for admission on a closed basis and actuarial assessments have been undertaken on that basis in order to assess contributions and the indemnity level.

The admittance of Urbaser Limited into the Havering Pension Fund will ensure the current employees 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 Fair Deal pension protection for its employee on transfer.

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

Human Resources implications and risks:

Admitted body status will allow the Havering Council employees (who will transfer to the new provider on 22 October 2023) continued membership eligibility of the LGPS.

Equalities implications and risks:

The proposed admission of Urbaser Limited into the London Borough of Havering Pension Fund will not only ensure that New Fair Deal guidance has been followed but will also enable the Havering Council employees who will be compulsorily transferred to Urbaser Limited to continue to enjoy pension protection when transferred to the 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

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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.