

Personnel Committee – 7 December 2016

Walsall Council Approach to Requests for Pension Guarantees

1. Summary

- 1.1 This report seeks Personnel Committee's approval for the direction to responses to requests for pension guarantees.

2. Recommendations

- 2.1 That Personnel Committee approve the proposal in relation to any future consideration of pension guarantees for Council services which may be transferred / outsourced.
- 2.2 That Personnel Committee identifies and approves its preferred option in relation to any future consideration of pension guarantees for local authority schools in Walsall that are seeking to transfer / outsource services.

3. Report Detail

Admitted Body Status and Need for a Guarantor

- 3.1 The Local Government Pension Scheme (LGPS) is a multi-employer scheme, but each employer has its own 'pot' of assets and liabilities. The assets are invested as one block, with each employer receiving its share of the investment returns.
- 3.2 In the event of an employer ceasing to exist and there being no-one else to take over their asset / liability position, their sub-fund becomes 'divorced' (i.e. there is no employer that is responsible for it); in this case the net asset/liability becomes the responsibility of every other employer in the Fund, on a pro-rata basis. This is the case even if the other employers have never had any relationship with the 'divorced' employer.
- 3.3 The Administering Authority therefore has a responsibility to minimise, as far as is practical, the probability of 'divorced' assets and liabilities existing as they form a risk to every employing body. It is for this reason that the Administering Authority's policy is to only allow admission body status if there is a guarantor that is a tax-raising body or Academy.
- 3.4 If a tax-raising body (which for a Local Authority would include maintained schools) / Academy seeks to transfer services / outsource work, the new employer can seek an admission agreement as long as the tax-raising body / Academy is willing to be party to it.
- 3.5 In effect, the tax-raising body/Academy must act as a guarantor so that if the newly admitted body cannot pay for its part of the Fund the impact will be met by the outsourcing body. The guarantee will only become valid if the admitted

body ceased to exist (if they went into liquidation, for example) and the Fund will attempt all possible ways of receiving any deficit from the admitted body in the first instance.

Options for Consideration

- 3.6 Taking into account the above requirements it is recommended that Walsall Council's approach to consideration of pension guarantees for Council services which may be transferred / outsourced would be that a decision on whether or not the council would be willing to act as guarantor would need to be made as part of the decision to proceed with the transfer / outsourcing – with a full financial analysis of costs included within the supporting business case to ensure that members have the information required to reach an informed decision.
- 3.7 For local authority schools in Walsall that are seeking to transfer / outsource services, the Council has 2 options to consider with regard to its approach to pension guarantees:

Option 1:

The Council has determined that it will not act as guarantor.

The rationale for this option being that, although local authority schools will form part of the Council's admitted body status (and will not have their own separate membership) the current pension costs, and risks around increases / ability to pay going forward, for these services would at present need to be met from the delegated school budget. If the Council acted as guarantor this would move the risk to the Council – which would then, in the situation that the newly admitted body was unable to pay for its part of the fund, need to be met from the Council's resources, thus potentially placing an additional burden on Council tax payers.

However, although this option would remove any increased risk to the Council, the impact on local authority schools would be that, in essence, this would not allow them to transfer / outsource services going forward. Therefore if there are services currently being provided that could be delivered more efficiently by transferring / outsourcing to a different organisation schools would be unable to do this.

Option 2:

The Council has determined that it will only agree to act as guarantor for the transfer / outsourcing of local authority school services where the new provider puts in place a full bond to cover any potential liabilities that may be incurred if it failed to meet its pension obligations, and additionally that any relevant contract / transfer agreement included a requirement for the new organisation to review the potential liability and amount to be paid into any bond in line with revaluations of the fund.

This option would reduce, but not necessarily fully remove, the level of risk that the Council may incur, and would still allow local authority schools to progress with the transfer / outsourcing of services where they deemed this appropriate.

4. Council priorities

4.1 Lifelong health, wealth and happiness

The proposals set out in this report should not adversely impact on the ability of services to contribute toward Council priorities of increasing lifelong health. Wealth and happiness in the Borough.

5. Risk Management

- 5.1 The options set out within the report seek to reduce the financial risk to the Council in its approach to pension guarantees going forward.

6. Financial implications

- 6.1 There are no direct financial implications to the Council as part of this report that can currently be measured.
- 6.2 As set out it is recommended that for Council services which may be transferred / outsourced, a decision on whether or not the council would be willing to act as guarantor would need to be made as part of the decision to proceed with the transfer / outsourcing – with a full financial analysis of costs included within the supporting business case to ensure that members have the information required to reach an informed decision.
- 6.3 For local authority schools seeking to transfer / outsource services, the options set out seek to reduce the potential financial impact on the authority as much as possible.

7. Legal implications

- 7.1 As set out within the report the local government pension scheme administering authority has a responsibility to minimise, as far as is practical, the probability of 'divorced' assets and liabilities, by only allowing admission body status if there is a guarantor in place that is a tax-raising body or Academy. The options set out therefore seek to ensure the Council has a formal process in place in relation to pension guarantees that also reduce the risk to the Council as much as is possible.

8. Procurement implications/Social Value

- 8.1 For Council services which may be transferred / outsourced, a decision on whether or not the council would be willing to act as guarantor would need to be made as part of the decision to proceed with the transfer / outsourcing, and any contract that would be put in place would then need to ensure that this decision is clearly disclosed.
- 8.2 For local authority schools seeking to transfer / outsource services, if option 1 is supported this would not allow transfers to proceed, and hence procurement would be required. However if option 2 is supported, as set out any contract for services would need to specify that the new provider puts in place a full bond to cover any potential liabilities that may be incurred if it failed to meet its pension obligations, and additionally that any relevant contract / transfer agreement included a requirement for the new organisation to review the potential liability and amount to be paid into any bond in line with revaluations of the fund.

9. Property implications

- 9.1 There are no property implications arising from this report.

10. Health and wellbeing implications

- 10.1 There are no health and safety implications arising from this report.

11. Staffing implications

- 11.1 There are no staffing implications arising from this report.

12. Equality implications

- 12.1 There are no equality implications arising from this report.

13. Consultation

- 13.1 Consultation has been undertaken on this report with finance and Human Resources colleagues. Following Personnel Committees decision liaison will also take place with local authority schools.

Background papers

No reports on this matter have previously been reported to members.

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