

PENSION FUND COMMITTEE – 2 SEPTEMBER 2011

FUND MEMBERSHIP AND ADMISSION AGREEMENTS

Report by the Assistant Chief Executive and Chief Finance Officer

Introduction

1. This report sets out current issues around membership of the Oxfordshire LGPS Fund. These include the issues associated with the establishment of new Academy Schools, and around the new service delivery models developing as a result of the constraints on public sector expenditure and the Big Society model.
2. The report highlights potential issues arising from the current process for seeking Committee agreement to each application for Admitted Body status, and considers an alternative approach for Committee consideration. The report highlights a particular case for Committee consideration.
3. The report also reports a technical change to one of our Admission Agreements for the Committee to consider, and recommends the approval of the revised admission agreement.

Academies

4. All new Academies set up within Oxfordshire under the Academies Act 2010 are scheduled bodies under the LGPS Regulations, and as such are automatically members of the Oxfordshire LGPS Fund.
5. Two key issues which have prompted debate amongst Administering Authorities concern the treatment of past service deficit in respect of Academy staff. Whilst the Government have provided clear guidance that Academies are responsible for the past service deficit associated with their staff, they have left the precise details of how this deficit is calculated, and recovered through the employer contribution rate to individual Fund Actuaries.
6. The first issue is whether the past service deficit is calculated simply in respect of the scheme members at the point the Academy is established, or whether allowance is made for the deficit in respect of deferred and pensioner members of staff (noting that this figure is not normally directly identifiable as all figures would have been recorded as being part of the County Council as a whole).
7. A recent survey of Councils undertaken on behalf of the Society of County Treasurers identified that 50% of those who responded (11/22) indicated that they were calculating deficit on the basis of current employees at time of transfer only, whilst the other 50% were calculating the deficit figure including an allowance attributable to deferred and pensioner members.

8. Barnett Waddingham in undertaking the calculations for both King Alfred's and Wallingford schools have made an allowance for both active and deferred/pensioner members. They have argued that this is a fairer approach, particularly as the decision to seek Academy status is made by the school and not the Council. The funding for the past service deficit in respect of pensioners and deferred members is currently included in the delegated budgets for schools as part of the overall employer contribution rate, and therefore is transferred to the Academy. A decision to base the calculation of the past service deficit on just active members would therefore leave the Council with a significant un-funded liability where the majority of schools obtain academy status.
9. The second issue of debate is the period over which any past service deficit is recovered. Whilst the County Council itself has a constitutional permanence, the same is not true for an Academy school. Barnett Waddingham have therefore argued that it is prudent to recover the deficit over a shorter period so to protect local taxpayers who would be required to meet the shortfall in the event of the closure of the Academy.
10. In the case of King Alfred's and Wallingford, Barnett Waddingham have set the recovery period such that the overall contribution rate for the two schools is in line with that of the County Council. In the case of King Alfred's this has led to a recovery period of 22 years, and Wallingford, 19 years. (Differences explained by variation in the profile of the staff at the various schools).

New Admitted Body Arrangements

11. Alongside the development of Academy schools, the Pensions Team are also experiencing increasing requests for information regarding the pension implications of out-sourcing and new models of service delivery.
12. At the present time, where the new employer takes on staff under TUPE, the Fair Deal Regulations require them to offer the transferred staff comparable pension arrangements. (N.B. We are still awaiting the results of the recent Treasury consultation which could result in the Fair Deal provisions being withdrawn). This can be achieved through either admission to the LGPS, or by obtaining a certificate from the Government's Actuarial Department that they manage a broadly comparable scheme.
13. We are therefore facing a potential increase in applications for admitted body status from new employers. However the experience of the initial projects within Adult Social Care have highlighted that in a number of cases, potential contractors are querying whether TUPE does in fact apply. The argument is that where tenderers are asked to identify new models of service delivery, there is not a transfer of the existing undertaking, but the closure of one service and the establishment of a new service.
14. The merits of each case can only be judged at the end of the tender exercise when it is clear the nature of the service model being offered by the successful

tenderer. This will significantly reduce the planning period for the establishment of new admitted bodies. As each Admission Agreement is currently subject to approval from this Committee in advance, this in turn has the potential to delay the awarding of contracts.

15. We have been advised by colleagues in Adult Social Care of a specific example where this may well be the case. They have recently received tenders to provide a replacement service in respect of extra care provision within the County. Given the potential for providing the service in alternative ways, it has not been clear that TUPE will in fact apply.
16. We are now faced with the prospect that one of the favoured bidders will seek admission to the Oxfordshire LGPS Fund to meet their obligations under Fair Deal. At the time of writing this report, this has not been confirmed, as the selection process has not been completed. However, it is understood that the new contracts were targeted to be in place by November 2011 which will be before the next meeting of this Committee.
17. In this particular case it is felt that any new employer would be admitted as a transferee admission body, and therefore the Pension Fund would be protected for future financial risk as the County Council as previous employer would need to be party to the admission agreement and act as guarantor.
18. We have also be advised though of further cases in Adult Social Care where whilst TUPE may be deemed to apply, the Council will not be entering into a service contract with the new employer, and admission may be sought on a community admission basis. In such cases there would be no guarantor to underwrite the future risk to the Pension Fund.
19. To avoid the need to defer the implementation of new arrangements, the Committee has the option of delegating responsibility for agreeing Admission Agreements to officers (following consultation with relevant officers), or being prepared to hold additional meetings of the Committee. Officers do not believe that it is appropriate to delegate the decision to officers where the admission agreement is seen to increase financial risk to the Pension Fund as a whole.

New Admission Agreement

20. We have been advised that one of the Fund's existing admitted bodies (the Vale Housing Association) has agreed to merge with the Sovereign Housing Association. The new body will operate under the Sovereign name.
21. To avoid the need to terminate the existing admission agreement, which would require the calculation of a termination payment reflecting the current deficit on the pension account for the Vale Housing Association, Sovereign Housing Association have sought to novate the existing admission agreement. Under the novation, Sovereign take on all the liabilities and responsibilities of the Vale Housing Association.

22. Technically this requires the establishment of a new Admission Agreement with Sovereign Housing Association.

Recommendation

23. The Committee are **RECOMMENDED** to:

- (a) note the position on Academy Schools as set out in this paper;
- (b) consider what changes, if any, they would wish to make to the process for the approval of future admission agreements where approval before the next scheduled Committee is sought to avoid delaying the implementation of new service arrangements; and
- (c) agree the novation of the current admission agreement for Vale Housing Association to the Sovereign Housing Association.

Sue Scane
Assistant Chief Executive and Chief Finance Officer

Background Papers: Actuarial Valuation Reports for King Alfred's Academy and Wallingford Academy.

Contact Officer: Sean Collins, Service Manager (Pensions, Insurance and Money Management). Tel: 01865 797190

August 2011