

PENSIONS COMMITTEE – 2 JULY 2007

REQUEST FOR ADMISSION TO THE COUNCIL'S PENSION SCHEME

SUMMARY

This report considers a request for staff to be transferred to Kier Limited to be admitted to the Council's Pension Scheme. This is as a result of a transfer of the grounds maintenance and cemeteries service to Kier Limited from Bexley Trading Services. The staff have been offered membership of the Kier Pension Scheme which has been assessed as broadly comparable by the Council's actuary. In offering this pension the Council have complied fully with the governmental best practice regarding the transfer of staff and pension issues.

FOR DECISION

Either A

- (1) Admission to the Council's Pension Scheme be denied because of the risk and costs which could potentially fall to the Fund or the Council as Scheme employer.

Or B

- (1) Subject to the conditions of the Local Government Pension Scheme, the admission to the Council's Pension Scheme be approved for Kier Limited in respect of those grounds maintenance and cemeteries staff entitled to join the Council's Pension Scheme at the date of transfer and who are transferring to Kier Limited.
- (2) Admission be subject to the company:-
 - i) paying to the Council the employees' contributions;
 - ii) paying to the Council the employer's contributions as determined by Fund Actuary;
 - iii) providing an indemnity or bond to the level determined by the Fund Actuary on an annual basis;
 - iv) paying for the annual risk assessment by the Fund Actuary; and
 - v) entering into an appropriate legal agreement in a form agreed by the Council.
- 3) The Assistant Director (Legal Services) be authorised to enter into the necessary agreements.

1. Introduction

Local authorities have the power to admit employees of organisations who provide a public service other than for profit ("Community Admission Bodies") and in certain restricted circumstances companies undertaking Council work ("Transferee Admission Bodies") into their pension schemes by way of "admission agreements". Whilst employees pay a standard contribution of their pensionable earnings, each employer's contribution rate is determined by the Council's Actuary and depends on factors such as the age, length of scheme membership etc. of the employees involved.

All current admissions into the Council's Pension Scheme have been from not for profit Community Admission Bodies. This report considers the first request for admission involving a company (Transferee Admission Body).

Details of the regulations applying to Transferee Admission Bodies are shown in Appendix 1, but they can be summarised as:-

- The company must be undertaking a service which would usually be carried out by the Local Authority.
- The regulations restrict the eligibility of the scheme to those employees who are employed in connection with the provision of the service which has transferred. They also provide that the 'exporting' employer must be a party to the admission agreement. Only those employees working on the Council service are eligible to join the pension scheme.
- An assessment of risk arising on premature termination of the admission agreement must be made (taking actuarial advice) and, if the level of risk requires it, the company must enter into an indemnity or bond to meet the level of risk identified.
- If the company meets the requirements of the LGPS regulations, the Council as administering authority must admit the eligible employees of that Company to the Council's scheme.

The main advantage of admission is the continuity in the Local Government Pension Scheme that it affords to the staff who are transferring to Kier Limited under the TUPE regulations. Kier Limited would be a Transferee Admission Body under the LGPS regulations

2. Request for Admission – Grounds Maintenance and Cemeteries Staff transferring to Kier

The Cabinet have approved the transfer of the Grounds Maintenance and Cemeteries Service currently undertaken by Bexley Trading Services to Kier Limited. This decision was taken based on the staff joining Kier's pension scheme which is broadly comparable to the LGPS, which requirement was included in the specification for the tenders submitted. Kier Ltd currently manage Bexley Trading Services as agents of the Council. As a result of this change, some 40 members of staff will transfer to become direct employees of Kier Ltd under the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006. The Code of

Practice on Workforce Matters in Local Authority Service Contracts (2003) requires that transferring staff are offered a broadly comparable pension scheme to that offered by the Council. This can be achieved either by granting admitted body status to Kier Ltd for those staff working on Council contracts or by Kier Ltd offering membership to their own broadly comparable scheme.

The staff through their Trade Union representatives have expressed a wish to remain members of the Council's scheme through Kier Ltd being granted admitted body status.

Kier Ltd's own position is that they are "happy to go along" with the Council's wishes. However should they be granted admitted body status they would require the Council to:

- (1) compensate the company for any increases in employer contributions over and above the Council's current planned level of contributions.
- (2) reimburse the company for the cost of any bond which may be required to protect the Council from the company defaulting on contributions.

The Committee will need to consider carefully the risk implied from the requirements set out above, particularly in respect of item (1), where Kier Ltd are effectively seeking a cap on their contributions. This reduces the level of control the Council can exert on the Fund. It leaves the company with the power to make decisions which can cause a strain on the fund without having to meet the financial consequences. This would particularly be the case in redundancy, ill-health and other early retirement situations.

Should the Committee not grant admitted body status then transferring staff will have the right to join Kier Ltd's broadly comparable scheme. This scheme contains many of the features included in the Council's scheme, the main points being:-

- it is a final salary scheme based on $1/60^{\text{th}}$ for each year of service with the option to convert some of the annual pension to a lump sum.
- Retirement age is 65.
- Contribution rate for Council employees will be fixed at 5% or 6%, but will be reviewed in line with changes proposed to the LGPS in 2008.

The Council would usually require the scheme to be certified as broadly comparable by the Government's Actuary Department (GAD). The Kier scheme has been issued with a draft certificate but the GAD have recently withdrawn all such certificates pending the changes to the Local Government Pension Scheme (LGPS) planned for 2008. The Council's Actuary, Mr Steve Jacquest of Mercer Consulting, has undertaken a comparison of the current Kier scheme with the current LGPS and has assessed the scheme as broadly comparable. A summary of the main points (rather than an exhaustive list and based on the draft GAD certificate supplied by Kier) has been included in Appendix 2. The staff have attended a pensions workshop led by

Mr Jacquest where the Kier scheme was compared to the Council's and questions answered. In addition, the contract with Kier requires them to:

- offer equivalent service should any of the staff choose to transfer their accrued service. This means that if a member of staff has 20 years 3 months service in the Council scheme, he or she will be entitled to 20 years and 3 months in the Kier scheme. Alternatively staff can choose to leave the accrued pension with the Council where it will increase in line with price inflation until retirement.
- to adjust their scheme to reflect the changes to LGPS, planned for 2008.

The granting of Admitted Body Status would of course offer the transferred staff total continuity of their Local Government Pension.

3. Summary of Financial Implications

The Cabinet Member's decision was taken on the basis of Kier's original offer, including their own broadly comparable pension scheme, which was containable within existing budgets.

It is likely that the Kier's employer contribution rate to the LGPS, like that of many of the Fund's admitted bodies, would be higher than the Councils'. Kier Ltd have stated that they would only be prepared to fund employer contributions up to the Council's current planned level. Additionally they would wish to pass on the cost of the bond and the annual risk assessment to the Council. This additional cost would fall onto the scheme employer namely the Council.

4. Other implications

Human resource implications have largely been covered by the transferring staff being covered by TUPE. Representatives of staff side and the appropriate Trade Unions have been invited to make representations. Their response will be tabled at the meeting by the employees' observer, Carl Millin.

5. Conclusion

The Pensions Committee practice to date has been to admit not for profit organisations who are often not in a position to offer a final salary scheme which is broadly comparable to the Council's. Kier Ltd have effectively sought to cap their contributions at the Council's current planned levels. This potentially exposes the fund to an increased level of risk.

The Committee will need to balance the staff's desire to remain within the LGPS against the potential risk to the Council as the cost of decisions affecting the contribution rate is divorced from those responsible for taking decisions on issues such as early retirements.

It should also be noted that Kier Ltd offer a broadly comparable pension scheme, which has been the subject of a detailed review by Mr Jacquest of Mercer Consulting. In addition, Kier Ltd are required to offer like for like service should staff opt to transfer their accrued service with the Council, and also to amend the scheme to reflect the planned changes in 2008.

Local Government Act 1972 – section 100d

List of background documents

Contact Officer: Mike Ellsmore, Assistant Director (Audit, Technical and Exchequer) Ext 2646.

Reporting to: David Berry, Deputy Chief Executive and Director of Finance and Business Services, ext 2300.

APPENDIX 1

Local Government Pension Scheme Regulations: Admitted Bodies

Transferee Admission Body

These occur where a service is being outsourced as a result of a best value exercise and include private sector employers.

Regulation 5A sets out the conditions for a transferee admission body as follows:-

- (2) *A transferee admission body is a body, other than a community admission body, that is providing, or will provide*
 - (a) *a service or assets in connection with the exercise of a function of a Scheme employer as a result of -*
 - (i) *the transfer of the service or assets by means of a contract or other arrangement;*
 - (ii) *a direction made under section 15 of the Local Government Act 1999; or*
 - (iii) *directions made under section 497A of the Education Act 1996; or*
 - (b) *A public service and which is approved by the Secretary of State for the purposes of admission to the Scheme*

- (6) *An admission agreement with a transferee admission body shall require that:*
 - (a) *In the case of a body under -*
 - (i) *paragraph 2(a), the Scheme employer; or*
 - (ii) *paragraph 2(b), the transferee admission body, to the satisfaction of the administering authority,**shall carry out an assessment, taking account of actuarial advice, of the level of risk arising on premature termination of the provision of the service or assets by reason of the insolvency, winding up or liquidation of the transferee admission body, and*
 - (b) *that where the level of risk identified by the assessment is such as to require it, the transferee admission body shall enter into an indemnity or bond to meet the level of risk identified.*

- (9) *Where a transferee admission body undertakes to meet the relevant requirements of this regulation, and*
 - (a) *in the case of a body under paragraph 2(a), the Scheme employer undertakes to meet the relevant requirements of this regulation; or*
 - (b) *in the case of a body under paragraph (2)(b), the Secretary of State approves the body for admission to the Scheme and the conditions, if any, to which the approval is subject have been met;*

an administering authority does not have any veto on an agreement for transferee admission body and must admit to the Scheme the eligible employees of the transferee admission body specified by the body and where it does so, the terms on which it does so are the admission agreement for the purposes of these Regulations.

The admission may either be a closed scheme arrangement where only staff working on the contract at the time of outsourcing are eligible to become pension members or an open arrangement where new members working on the contract are allowed in. This would be specified within the admission agreement.

In the event of the admission body failing to comply with the admission agreement, the scheme employer would be required to make good any shortfall above the value of any bond or indemnity.

Admissions under this route are usually not employer linked but confined to specific contracts.