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## **COUNCIL CARE COMPANY PENSION FUND CONSIDERATION**

**Report by Chief Executive**

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### **SCOTTISH BORDERS COUNCIL**

**29 JANUARY 2015**

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#### **1 PURPOSE AND SUMMARY**

- 1.1 **To advise Council of the position being recommended in relation to future pension liabilities of staff affected by the transfer to the Council Care Company Scottish Borders Cares (SB Cares).**
- 1.2 It is proposed that the Council will transfer Staff to SB Cares and maintain their membership in the LGPS through admitted body status. The admissions agreement will ensure that future members of staff employed by SB Cares have access through the scheme being set up on an 'open' basis.
- 1.3 Barnett Waddingham, the Pension Fund's actuary has provided a projected level for a bond of £6.167m, to reflect the pension fund liabilities of those staff transferring to the Care Company as at the 13 January 2015. This represents the current level of risk facing the Pension Fund in the event of a premature termination of the company's membership of the scheme and the Council will carry this risk. It is proposed that the company scheme is operated through a pooled arrangement with an employment rate of 18% of pensionable pay within the Council's Pension Fund and that the Council will underwrite the risk of premature termination of SB Cares admission agreement.
- 1.4 The underlying position has not fundamentally changed from the current position whereby the council effectively underwrites the risk associated with unfunded pension fund liabilities for all its staff. It is not proposed that the Care Company is required to establish a bond.

#### **2 RECOMMENDATIONS**

- 2.1 **It is recommend that the Council:-**
  - (a) **Agree that staff who will be employed by the care Company from 1 April 2015, who are currently members of the Council's Pension Scheme, will remain members of the pension scheme following the establishment of the new company**
  - (b) **Note that SB Cares is consequently required to apply to the Pension Fund for admission of Scottish Borders Cares LLP and Scottish Borders Supports LLP as 'admitted bodies'**

- (c) **Agree that future members of staff employed by the care company will also be covered by the admission agreement which will be on an 'open' basis.**
- (d) **Agree that the transfer of staff to SB Cares will not require any additional guarantor or bond arrangements from the Care Company and that the Council will underwrite any Admission Agreement premature termination risk.**

### **3 BACKGROUND**

- 3.1 Membership of the Local Government Pension Scheme (LGPS) is offered by local government employers and other organisations that have chosen to participate in it, known as "admission bodies".
- 3.2 These "admission bodies" make an "Admission Agreement" with the Administering Authority to allow their employees to access the LGPS. Local government employees have a statutory right to join the LGPS but the terms of the "Admission Agreement" determine which employees in other organisations can join.
- 3.3 Admission Agreements" can be "open" (i.e. new employees are able to join) or "closed" (i.e. not available to new employees).
- 3.4 The method used for determining the employer contribution rate for a closed agreement differs from that for the fund as a whole. The main difference is that the method used for a closed agreement allows for the inevitable ageing of the group where the method used for the whole fund assumes new entrants will replace leavers so the average age remains the same. The closed method therefore results in a higher cost as the average period to retirement reduces each year, reducing the investment return that can be earned on the contributions paid.
- 3.5 Most "Admission Agreements" within SBC Fund are "open" but not all new employees of those organisations are put forward for membership.
- 3.6 There are two broad categories of Admission Body:
  - a)Community Admission bodies - largely public, voluntary or charitable sectors
  - b)Transferee Admission bodies - largely profit-making private sector, dealing with functions which have been outsourced from local government e.g. under best value.
- 3.7 In the case of an admission agreement with a Transferee Admission body there is a requirement under the scheme regulations for the letting authority to carry out a risk assessment, which takes account of actuarial advice, concerning the level of financial risk that could arise on the premature termination of the provision of the service or the insolvency, winding up or liquidation of the transferee admission body leaving unfunded pension liabilities for other employers to pick up. When the risk is transferred to the contractor, the outsourcing employing body will need to determine if it requires the protection of a bond or guarantee. The requirement for a bond and its costs should be provided for in the contract documentation.
- 3.8 The same strict requirements for a bond do not attach under the regulations to a Community Admission body in relation to a bond. However there is still a need to build in some sort of safeguard to ensure that if the employer ceases to exist, any deficit or additional costs would be met. This would ensure that any deficit and additional costs do not transfer back to the pension fund and the remaining employers in the scheme. This can be done by asking the body to provide a guarantor or an indemnity bond.
- 3.9 Scottish Borders Council has a dual role in relation to the LGPS one as a

local government employer and one as the Administering Authority. Each role comes with different responsibilities.

- 3.10 The Council meeting on 26 June and 30 October 2014 agreed to a series of recommendations in relation to the transfer of additional staff into the Council Care Company.
- 3.11 Part of this is the transfer of pension obligations relating to future pensions benefits of transferring staff that are within the Local Government Pension Scheme (LGPS) administered by Scottish Borders Council.
- 3.12 SB Cares will be a Transferee Admission body. The risk around premature termination costs relating to the staff transfer lies with the Council, as they are the body taking the decision to outsource the staff/activities. The risk does not and should not lie with the Scottish Borders Council Pension Fund (the Pension Fund).

#### **4 PROPOSAL**

- 4.1 The Council agree that staff who are currently members of the Council's Pension Scheme will remain members following the establishment of the new company and SB Cares, comprising Scottish Borders Cares LLP and Scottish Borders Supports LLP, is consequently required to apply for admission as 'admitted bodies'. Future members of staff employed by the care company will also be covered by the admission agreement which will be on an 'open' basis.
- 4.2 As part of the work to transfer staff to SB Cares under the decision approved in October 2014, it is appropriate that the Council should consider the options available to it in relation to the issue of Pension Fund premature termination risk liabilities.
- 4.3 Barnett Waddingham, the Pension Fund's actuary, has provided a projected level of a bond, as at the 13 January 2015, that is required for the current staff employed by the Council in the Pension Fund. The projected level is £6.167m and this represents the currently accepted level of risk effectively underwritten by the Council.
- 4.4 The Council has several options available to it in relation to this risk:
  - a) The Council could require SB Cares to purchase a bond to cover the £6.167m risk. However this would create an additional cost of the transfer which would need to be funded and also would be inconsistent with the actions taken in the original transfer;
  - b) SB Cares could be required to find a Guarantor for the financial risk of premature termination. However as they are wholly owned by the Council the guarantor would be Scottish Borders Council; or
  - c) The Council underwrite risk associated with premature termination and should in the unlikely event this occur the Council would have to fund the additional liabilities created in the Pension Fund at that point; or
  - d) The Care Company could also be required to pay a higher employer

contribution of 18.5% as an alternative to providing a termination bond.

- 4.5 It is recommended however that in light of the strategic importance of the service to be provided by SB Cares under contract from the Council that no bond or guarantor arrangement or employer premium 0.5% is sought and therefore (4.4c) should be the adopted position.
- 4.6 The Council would therefore accept that in the event of premature termination should the company cease to trade it would carry the risk of providing for any additional funding requirements relating to the transferred staff currently in the Pension Fund. This is the same situation as presently within the staff group affected by the transfer.
- 4.7 The Council actuary has confirmed that under the arrangement proposed an employer rate of 18% will continue to apply to the care company staff.
- 4.8 Following approval by the Council to underwrite the risk in the event of premature termination a report will be presented to the Pension Fund Committee seeking approval for admitted body status SB Cares.

## **5 IMPLICATIONS**

### **5.1 Financial**

- (a) The estimated current value provided by Barnett Waddingham as being required is £6.167m for the risk of premature termination liability and therefore this is the current valuation of the underwriting risk that the Council is exposed to.
- (b) This financial risk would only be realised in event of premature termination of admission agreement between SB cares and the Pension Fund. As SB Cares is wholly owned by the Council delivering a critical service on behalf of the Council. It is not anticipating this risk being realised.
- (c) SB Cares will be charged a pooled employer rate of 18% per the approved business case.

### **5.2 Risk and Mitigations**

- (a) If SB Cares does prematurely terminate its admission agreement it is highly likely that the service provision/delivery and its liabilities will revert back to the Council responsibility and therefore the Council would still be exposed to the same level of risk.
- (b) SB Cares will run an open scheme, which will be part of the triennial valuation undertaken and the Pension Fund should make an informed decision on contribution rates in light of financial and other business strategic and operational considerations.
- (c) If the Council took the approach to insist on a Bond arrangement, SB Cares would incur additional costs which have not been factored into the negotiations and therefore this could delay the implementation of the Council's decision to transfer staff and service delivery.
- (d) There would be an option to charge an additional employer premium of 0.5%, but as SB Cares is a wholly owned Council company this

provision is considered not to be necessary.

### 5.3 Equalities

- (a) It is anticipated that there are no adverse impact due to race, disability, gender, age, sexual orientation or religion/belief arising from the proposals in this report.

### 5.4 Acting Sustainably

There are no significant impacts on the economy, community or environment arising from the proposals contained in this report.

### 5.5 Carbon Management

There are no significant effects on carbon emissions arising from the proposals contained in this report.

### 5.6 Rural Proofing

This report does not relate to new or amended policy or strategy and as a result rural proofing is not an applicable consideration.

### 5.7 Changes to Scheme of Administration or Scheme of Delegation

There are no changes to be made to either the Scheme of Administration or the Scheme of Delegation as a result of the proposals contained in this report.

## 6 CONSULTATION

- 6.1 The Monitoring Officer, the Chief Legal Officer, the Service Director Strategy and Policy, the Chief Officer Audit and Risk, the Chief Officer HR and the Clerk to the Council are being consulted in the preparation of this report and any comments received will be reported at the meeting.

### Approved by

**Tracey Logan**  
**Chief Executive**

**Signature .....**

### Author(s)

Name	Designation and Contact Number
David Robertson	Chief Financial Officer 01835825012

**Background Papers:** Scottish Borders Council 30 October 2014

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