

WILTSHIRE COUNCIL

STAFFING POLICY COMMITTEE 06 November 2013

WILTSHIRE COUNCIL – COMMITMENT TO THE LOCAL GOVERNMENT PENSION SCHEME (LGPS)

Purpose of Report

1. The purpose of this report is to update the committee of Wiltshire Council's legal obligations and options in relation to the Local Government Pension Scheme. It also highlights the areas of which Wiltshire Council has discretion and key considerations that need to be taken into account when providing services.

Background

2. The LGPS is currently a defined benefit, final salary scheme. There are 89 local authorities nationally who administer the scheme. All staff contributes between 5.5% and 7.5% of their pay, depending on their salary. Employer organisations pay a contribution rate which is assessed every three years by the Fund's actuary.
3. Wiltshire Council is the administering authority to the Wiltshire Pension Fund (WPF). It's managed by the Wiltshire Pension Fund Committee under delegated authority from the full Council.
4. The WPF is administered on behalf of over 120 different employer organisations, Wiltshire Council representing one such employer, albeit the largest.
5. Wiltshire Council has 9,066 active contributors to the WPF, 6,794 pensioners with a further 13,864 with deferred benefits.
6. At the last Valuation in 2010, Wiltshire Council's share of the WPF represented liabilities of £792m and assets of £572m showing a pension funding deficit of £220m (72% funding level). The current cost to Wiltshire Council of pension provision is 15% of pensionable pay plus an annual payment of £7.2m per annum towards the funding deficit. These amounts will increase by 1% per annum from April 2014.

Main Considerations for the Committee (including Risk Assessment)

Wiltshire Council Employees

7. The LGPS is a statutory scheme whose regulations are set by the Government and are the responsibility of the Department for Communities and Local Government (CLG). Under these regulations all local authorities are known as "Scheduled Bodies" which means that all employees not eligible for either the Teachers or NHS pension schemes must be given access to the LGPS by reason of statute.
8. With the implementation of Automatic Enrolment (AE) legislation, from March 2013 this now includes all staff including those who are casual workers. Every three years all staff must be put back into the scheme even if they opted out and must make another election to leave the scheme.

Schools

9. All schools under the control of the Wiltshire LEA form part of Wiltshire Council's share of the Wiltshire Pension Fund and currently pay 19.8% of pensionable pay.
10. Foundation schools differ in that their governors can decide if they wish to provide access to the LGPS for their staff. This must then be approved by Wiltshire Council as Foundation School staff are not directly employed by Wiltshire Council but are assumed to be for pension purposes.
11. If Wiltshire Council removed this eligibility this could lead to a potential challenge from these staff on the basis of equal treatment when compared to other non-teaching staff in Wiltshire schools. In addition, if Wiltshire Council did not agree eligibility to LGPS for Foundation Schools, then an alternative pension scheme would need to be set up. At this committee on 4 September 2013 it was agreed to grant this eligibility to all current and future foundation schools.

Academies

12. All schools that convert to Academy status are treated as separate employer bodies under the LGPS regulations and hence within the WPF. They must operate under the same rules as Wiltshire Council in that all their non-teaching staff must be given access to the LGPS by reason of statute.
13. On conversion, the pension liabilities are taken away from Wiltshire Council's share along with a corresponding share of assets and Academies become responsible for all their own pension costs and have new employer contribution rates set based on their membership profile. These employer contribution rates can vary from those paid by Wiltshire Council schools.

Outsourcing

14. When Wiltshire Council outsources a service, all staff that transfer under TUPE arrangements have to be provided with either access to the LGPS or a "broadly comparable" scheme by their new employer. Under the proposed changes to "Fair Deal" legislation, in the future access must be provided to the LGPS for all transferring members of staff.
15. When a contract is outsourced, the company taking on the contract will apply to the WPF to become an Admitted Body. This requires the new employer, Wiltshire Council and the Wiltshire Pension Fund to sign an Admission Agreement which commits the employer to the terms and conditions of the Wiltshire Pension Fund and makes them responsible for their pension costs.
16. An Admitted Body normally has its own employer contribution rate based on the profile of the members transferring and usually starts from a 100% funded position unless otherwise agreed. The funding position is reviewed every three years as part of the WPF triennial Valuation process and contribution rates adjusted to try and ensure a 100% funding position at the end of the contract but this depends on financial conditions at the time. At the end of the contract or when the last active member leaves the WPF a cessation event will occur and any funding deficit at that time will become payable to the Fund. As the outsourcing authority, Wiltshire Council acts as the ultimate guarantor to the WPF for these costs.

17. An Admitted Body may operate a “closed” scheme which allows access only to those that have transferred. Only those staff members that undertake duties falling under the remit of the local authority’s outsourced contract are eligible. The Admitted Body can only grant access to new staff if they have an “open” scheme in place. This status will be outlined in the Admission Agreement but must be agreed by all parties.
18. However, the provision of the LGPS is costly and represents a significant pension risk to employers. Many companies will, as part of the commercial negotiations, try to pass this risk back to the local authority, through the setting up of “pass-through” arrangements or pension cost caps as part of the commercial contract between Wiltshire Council and the outsourced company.
19. Therefore it is essential that as part of the procurement process, pension costs are considered and form part of the evaluation process so that the service contract reflects where the pension risk sits, ensuring the Council achieves best value.

Discretions

20. Wiltshire Council has limited discretions in respect of the LGPS. It sets its own Discretion Policy which must be submitted to the WPF and should be kept under review. These mainly relate to Wiltshire Council’s policy for allowing early / flexible retirements and transfer in of pensions from other funds.

LGPS 2014

21. From April 2014, the scheme will move from being a final salary to a Career Average Re-valued Earnings (CARE) scheme. The purpose is to ensure the cost of the benefits package is lower and cost mechanisms will be implemented at a national level to limit employer cost for the future. Communications of these changes has commenced with employees and employers but will significantly increase in the New Year.

Financial Implications

22. The WPF is funded in line with the average scheme with employer contribution rates in line with those being paid nationally.
23. Wiltshire Council is responsible for the pension costs attributable to its entire staff within the LGPS. The employer contribution rates are assessed every three years when new rates are set by the Fund’s actuary. However, there is a Stabilisation Policy in place for employers like Wiltshire Council, who have tax-raising powers, which takes a long term approach to volatility in these contributions so these increases are limited to 1% per annum from April 2014 onwards.
24. Wiltshire Council must also pay up-front costs resulting from the early retirement of staff. This mainly applies to those who have attained age 55, who have been made redundant and under the regulations have the right to access their pensions immediately. Other pension’s costs arising from early access of benefits such as ill health retirements are included as part of the employer contribution rate.
25. Wiltshire Council can be potentially liable to pension costs from outsourcing depending on the agreed commercial agreement with the new provider, for example if pension risk is passed back to the authority. Wiltshire Council, also represents the ultimate guarantor for its outsourced companies should the WPF be unable to recover any outstanding amounts on a cessation event (this is when either all the active members have left or the contract is terminated). This guarantee has only been used once but

remains an important consideration when Wiltshire Council contracts with new providers.

Legal Considerations

26. There are no legal implications arising from this report.

Safeguarding Considerations/Public Health Implications/Equalities Impact

27. There are no known implications at this time.

Environmental and Climate Change Considerations

28. There are no known implications at this time.

Impact of the Proposals

29. There are none.

Risk Assessment

30. The report itself attempts to summarise Wiltshire Council's commitment to the LGPS and highlight the associated risks.

Conclusions

31. Wiltshire Council has limited discretion in respect of their ability to offer LGPS membership. We have a legal obligation to provide LGPS membership to all Wiltshire Council employees, local authority schools and Academies. The only discretion Wiltshire Council has concerning LGPS admittance is to Foundation Schools. If we denied LGPS access to Foundation Schools, Wiltshire Council would be required to provide an alternative pension scheme of a similar value.

32. The organisation does need to be aware of its long term financial commitments arising from its membership, especially in terms of restructuring its services and any potential indirect pension risks arising from commercial arrangements with new providers.

Proposals

33. The Committee is asked to note the report.

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Unpublished documents relied upon in the production of this report: