

**\*PART 1 – PUBLIC DOCUMENT**

**TITLE OF REPORT: PENSION POOLING WITH ‘ORPHANED EMPLOYERS’**

REPORT OF: SERVICE DIRECTOR: RESOURCES

EXECUTIVE MEMBER: Non-executive

COUNCIL PRIORITY: SUSTAINABILITY

**1. EXECUTIVE SUMMARY**

North Hertfordshire District Council is a Scheduled Body within the Hertfordshire Local Government Scheme (LGPS). We are required to offer LGPS membership to our employees.

In the past, when we have contracted out services, the LGPS membership of the employees that transferred was retained. The employing organisations became Admitted Bodies to the LGPS. The employers and employees continued to make contributions to the LGPS, whilst those employees were still employed. Over time those employees will leave employment (e.g., due to retirement) and when there are no active members left the organisation becomes known as an Orphaned Employer.

Parish and Town Councils can be Designated Bodies. They are not required to offer the LGPS to their employees, but they can if they wish to. Letchworth Garden City Town Council (LGCTC) became a designated body when they were formed. They were then abolished by the District Council in 2013, following a governance review. LGCTC then became an Orphaned Employer.

Orphaned Employers can (and in some cases, should) be pooled with their relevant Admitted Body. This report recommends that the Council pools with three Orphaned Employers.

**2. RECOMMENDATIONS**

- 2.1. That Council approve that North Hertfordshire District Council (as the relevant Admitted Body) be pooled with the following Orphaned Employers: Letchworth Garden City Town Council, Veolia ES Services team and Hitchin Markets.

**3. REASONS FOR RECOMMENDATIONS**

- 3.1. All of the Orphaned Employers (based on the 2019 valuation) have over 100% funding, which is better than the Council's funding position. Therefore, it is probably in the Council's best interest to be pooled with them.

- 3.2. In the case of Letchworth Garden City Town Council, Hertfordshire County Council (HCC) (as the Hertfordshire LGPS administrator) have legal advice that we are required to be pooled with LGCTC.

#### **4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1. We could choose not to pool with Veolia ES Services team and Hitchin Markets Limited, as HCC are not requiring us to pool with them. This is rejected as there should be a benefit to pooling with these Orphaned Employers.
- 4.2. HCC have sought legal advice and have stated that this requires us to be pooled with LGCTC. This was initially being treated as a cessation valuation, which would have required us to pay a one-off bill of almost £400k. Following negotiation this will now be treated as an ongoing pooling. As in 4.1, the pooling should be a net benefit. The only alternative would be to seek contrary legal advice. HCC have said that they are not able to share the legal advice that they have received.

#### **5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS**

- 5.1. The requests for pooling with Orphaned Employers was initiated by HCC. There have been discussions at the regular Hertfordshire Chief Finance Officers meetings as to whether there should be a consistent county-wide approach. In principle it was agreed that this should be the approach, as any Orphaned Employers that were not taken on by a Scheduled Body would become a shared burden if there was a shortfall in their funding. It was therefore appreciated that Councils shouldn't cherry-pick which Orphaned Employers that they took on. However in practice it was determined that there would be no way to enforce a consistent approach.

#### **6. FORWARD PLAN**

- 6.1 This report does not contain a recommendation on a key Executive decision and has therefore not been referred to in the Forward Plan.

#### **7. BACKGROUND**

- 7.1 North Hertfordshire District Council is a Scheduled Body within the Hertfordshire Local Government Scheme (LGPS). We are required to offer LGPS membership to our employees.
- 7.2 In the past, when we have contracted out services, the LGPS membership of the employees that transferred was retained. The employing organisations became Admitted Bodies to the LGPS. The employers and employees continued to make contributions to the LGPS, whilst those employees were still employed. Over time those employees will leave employment (e.g., due to retirement) and when there are no active members left the organisation becomes known as an Orphaned Employer. This also happens where the contract moves to a new provider. The employees that are still members of the LGPS will move to the provider under TUPE. The employees that have left during the contract period, will not transfer. That leaves the old contractor as an Orphaned Employer. The contract would have included provisions relating to any pension deficit in that eventuality.
- 7.3 Parish and Town Councils can be Designated Bodies. They are not required to offer the LGPS to their employees, but they can if they wish to. They usually become Orphaned

Employers if they decide to stop offering LGPS to their staff, and then get to the point where all the employees that had LGPS rights have left the organisation (e.g. through retirement).

- 7.4 Community Admission Bodies can also seek to join the LGPS. These bodies are “not for profit” organisation that normally have a community of interest with local government employers.
- 7.5 Every active employer (i.e. has employees who are accruing LGPS pension rights) has a triennial valuation to determine the contribution rate that they need to pay in to the pension scheme. This contribution rate is set to ensure that their element of the scheme is at least 100% funded (i.e. the forecast returns on pension assets matches the forecast retirement payments that will need to be made). For most employers the period over which they need to be fully funded is quite short, so they will generally stay very close to being 100% funded. For Scheduled Bodies there is a much longer period over which they can catch-up to being 100% funded. These estimates are carried out by a pension actuary as they are modelled on lots of different assumptions and scenarios. Orphaned employers also have a triennial valuation, but this is for information only.
- 7.6 If an employer chooses to leave the LGPS whilst they still have active employees (i.e. still accruing pension rights, then that triggers a cessation valuation. Note that this can only be achieved by buying-out the employees, e.g. offering an equivalent pension benefit, a lump-sum payment or a combination. A cessation valuation is the amount that that employer would need to pay and can be punitive. Rather than assuming that the employer’s assets will be kept in a broad range of investments (which over the medium to long-term will provide a good level of investment return), it assumes that all those investments will be moved to Government Bonds (with a safer, but much lower level of return). This therefore results in a much bigger gap between the forecast funding returns and forecast costs.
- 7.7 LGCTC was formed in 2005. It chose to be a designated body and offered its staff access to the LGPS. Some of those staff also chose to transfer in existing pension pots. Following a governance review, LGCTC was dissolved in March 2013. This was a decision made by Full Council. The Council were aware of a need to cover an outstanding pension strain cost, and it was understood that there would be a net surplus that would cover the pension fund balance. Some time later, we were notified by HCC that there was an overall pension deficit of £393k which we were liable to pay. At some point, HCC obtained external legal advice to confirm that we were liable to pick up that shortfall. HCC have been asked to share that advice but say that they are unable to do so. As well as the cost involved, we were concerned that we were not fully aware of the deficit when making the decision in 2013, as that value of deficit would have been a more major consideration in making that decision. During follow-up discussions in 2017 it was determined that the £393k cost was on a cessation valuation basis, and that we could take on the pension position on an ongoing basis. This is probably therefore the same basis on which the original cessation decision was taken. Progress on resolving this has been very slow as it is not a significant priority for either us or HCC, and has also been affected by HCC staff changes. In summary, the HCC view is that LGCTC are an orphaned employer that we are required to take on.
- 7.8 More recently, HCC have also looked at other orphaned employers that could be pooled with a Scheduled Body. For North Herts Council, the initial list added Veolia ES Services

team and Hitchin Markets. A later list added North Hertfordshire Hospice Care Association and Codicote Parish Council.

## **8. RELEVANT CONSIDERATIONS**

- 8.1. If the Council was to pool with an orphaned employer then the immediate impact is that the assets and liabilities of that orphaned employer would be combined with those of the Council. From that point forward it would not be possible to re-split the assets and liabilities, so you would not be able to go back later and see if the Council had gained or lost out of the arrangement.
- 8.2. Each of the orphaned employers is far smaller (in terms of numbers of LGPS members, value of assets and value of liabilities) than the Council, so any impact on the Council would be minimal. But if an orphaned employer is in surplus then (at that point in time) it will improve the Council's funding position. That could have a small impact on the timing of when the Council moves in to being 100% funded, and in theory could have an impact on the Council's contribution rate (i.e. how much it is required to pay in to the pension fund each year).
- 8.3. For an Admitted Body, the LGPS regulations (2013) place a requirement on the Scheduled Body that contracted out the service (to the Admitted Body) to make up any shortfall in the assessed levels of pension contributions required, including at the point where the Admitted Body leaves the fund. In the case of an orphaned employer, they have effectively left the fund when they no longer have any active employees who are in the LGPS. Whilst not as clear in the regulations, the presumption is therefore that the Admitted Body should remain the responsibility of the relevant Scheduled Body, even after they have left the fund. The Council could choose to argue against this.
- 8.4. Hitchin Markets and Veolia ES Services team were both Admitted Bodies as a result of contracts let by the Council.
- 8.5. For a Designated Body, the Local Government (Parishes and Parish Councils) Regulations determine that the assets and liabilities of that body will transfer to the principal Council if that Designated Body ceases to exist. In 2013, the decision by the Council meant that the assets and liabilities of LGCTC were taken on (as referenced in 7.7). Codicote Parish Council still exist so there is not a need for the Council to take them on as an orphaned employer.
- 8.6. North Hertfordshire Hospice Care Association (now known as Garden House Hospice Care) were a Community Admission Body. Whilst they are located within North Hertfordshire, there are no contractual ties with the Council in relation to pensions. Indeed the type of services that they offered could equally be aligned with HCC functions. For these reasons, it is not proposed that the Council seeks to pool with North Hertfordshire Hospice Care Association.
- 8.7. For the three employers where pooling is being considered, there are two elements to the decision. (1) are we required to pool, and (2) if there is not a definite requirement, it is in our interests to pool. The answer to (2) would primarily depend on the funding position for that employer. The 2019 triennial valuation is the latest available information, and is shown in table 1 below:

Employer	Active members	Deferred members	Pensioner members	Ongoing liabilities (£000)	Assets (£000)	Surplus (£000)	Funding Level
Veolia ES Services team (UK) Limited (238)	-	9	5	954	1,744	791	183%
Letchworth Garden City Council (273)	-	2	3	626	710	84	113%
Hitchin Markets (288)	-	2	-	87	103	16	118%

Table 1

- 8.8. For each of the three employers, they were in a surplus position. As at the 2019 valuation, if the Council had been pooled with all 3 employers, then the Council's funding level would have improved from 92.5% to 93.3% (net liabilities would have reduced from £10.22m to £9.33m). It is appreciated that this is relatively old information, but it is based on taking a long-term future look. We could choose to get the actuary to do an updated valuation, but that would need to be paid for. Indications of the Council's valuation position (in advance of the 2022 full valuation results) are that it is an improved position compared to 2019. This is based on actual and forecast investment returns, so should be similar for other employers too. As this valuation takes a long-term outlook and looks at lots of different scenarios, we have been told that the economic instability in the Autumn will not affect this overall outlook.
- 8.9. As referenced in the legal implications section, there seems to be a clear obligation for the Council to be pooled with LGCTC. Any obligations to pool with Veolia and Hitchin Markets are less clear, but there are clear links with the Council. From a financial perspective there is a benefit to pooling with all three.

## 9. LEGAL IMPLICATIONS

### Admitted bodies- i.e., organisations delivering services on behalf of a Scheduled Body

- 9.1 The Local Government Pension Scheme Regulations 2013 provide for a link between a Scheme employer and a body "that is providing or will provide a service or assets in connection" with that Scheme employer. Regulation 64 (3) (a) advises: "

*"Where for any reason it is not possible to obtain all or part of the exit payment due from the exiting employer, or from an insurer, or any person providing an indemnity, bond or guarantee on behalf of the exiting employer, the administering authority must obtain a further revision of any rates and adjustments certificate for the fund showing- (a) in the case where a body is an admission body falling within paragraph 1(d) of Part 3 of Schedule 2 to these Regulations (Scheme employers: bodies providing services as a result of transfer of a service), the revised contribution due from the body which is the related employer in relation to that admission body;*

- 9.2 This regulation broadly details that where there is a need for further funding requirement for this admission body it is sought from the attached Scheme employer – not shared amongst all employers in the Fund. Whilst not completely clear, it could then be

reasonable to conclude that this funding 'attachment' will continue throughout the membership of this body, even post cessation event and for the actuary to pool the funding position for these bodies (e.g. when carrying out a triennial valuation).

**Designated bodies and Community Admission Bodies i.e. Parish and Town Councils, and "not for profit" organisation that have a community of interest with local government employers**

- 9.3 There is no direct agreement between these employers and the Scheduled Body. Therefore, when they cease to have any active members, there is no obligation on any Scheduled Body to make good on any deficits, or to be pooled with that body on an ongoing basis. The exception to this is where the Scheduled Body decides to dissolve a designated body.

**Letchworth Garden City Town Council (LGCTC)**

- 9.4 In 2012, LGCTC made a request to North Hertfordshire District Council for a community governance review to be carried out under section 82 of the Local Government and Public Involvement in Health Act 2007. This request was agreed and the outcome of the review was a recommendation that LGCTC be dissolved. The making of the North Hertfordshire District Council (Re-organisation of Community Governance) Order 2013 under ss86 and 240(10) of the 2007 Act therefore resulted in the abolition of the parish of Letchworth Garden City and dissolving the LGCTC, with effect from 31 March 2013.
- 9.5 Under the Local Government (Parishes and Parish Councils) Regulations, North Herts Council is the transferee authority of LGCTC as it is the principal council in which the transferred area is situated. Consequently, all property, rights and liabilities of LGCTC transferred to North Herts Council on 31 March 2013. As a result, the exit payment liability for LGCTC upon cessation is a liability which has now been transferred to North Herts Council.

**Decision making process**

- 9.6 The Local Government Pension Scheme Regulations 2013 are made under sections 7 and 12, and Schedule 3 of the Superannuation Act 1972. Under the Local Government Functions and Responsibilities Regulations 2000 (as amended) [2853], this Act (and specifically the sections and functions referred to under the LGPS Regulations) are "Functions not to be the Responsibility of an authority's Executive" as per Regulation 2(1) and Schedule 1. Therefore under the Local Government Act 1972 such functions would have had to be bestowed upon a body/ or person as per s101. There is no such delegation to a non-Executive Committee or Officer in the Council's constitution, so the decision has to be made by Full Council under the Regulations 2000/2853.

**10. FINANCIAL IMPLICATIONS**

- 10.1 As detailed in Table 1 and paragraph 8.8, there seems to be a financial benefit to the Council from pooling with these orphaned employers. As detailed in 11.1, the decision has some risk.

**11. RISK IMPLICATIONS**

- 11.1. The decision is being made based on 2019 valuation data. However, pension valuations are also based on looking a long way in to the future, so would tend not to change much over 3 years. The valuation estimates are based on making assumptions across a wide range of factors, and also considering the impact of variations in those factors.
- 11.2. Each of the orphaned employers is much smaller (in terms of LGPS assets and liabilities) than the Council, so the actual impact of the decision is fairly minimal.

## **12. EQUALITIES IMPLICATIONS**

- 12.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2. There are no equalities implications arising from this report.

## **13. SOCIAL VALUE IMPLICATIONS**

- 13.1. The Social Value Act and “go local” requirements do not apply to this report.

## **14. ENVIRONMENTAL IMPLICATIONS**

- 14.1. There are no known Environmental impacts or requirements that apply to this report.

## **15. HUMAN RESOURCE IMPLICATIONS**

- 15.1 There are no HR implications arising from this report.

## **16. APPENDICES**

- 16.1 None.

## **17. CONTACT OFFICERS**

- 17.1 Ian Couper, Service Director: Resources, [ian.couper@north-herts.gov.uk](mailto:ian.couper@north-herts.gov.uk), Ext: 4243
- 17.2 Jeanette Thompson, Service Director: Legal & Community; [jeanette.thompson@north-herts.gov.uk](mailto:jeanette.thompson@north-herts.gov.uk)
- 17.3 Reuben Ayavoo, Policy and Communities Manager, [reuben.ayavoo@north-herts.gov.uk](mailto:reuben.ayavoo@north-herts.gov.uk)
- 17.4 Jo Keshishian, HR Operations Manager, [jo.keshishian@north-herts.gov.uk](mailto:jo.keshishian@north-herts.gov.uk)

## **18. BACKGROUND PAPERS**

- 18.1 Council Meeting 31<sup>st</sup> January 2013 Minute 90 <https://democracy.north-herts.gov.uk/CeListDocuments.aspx?Committeed=136&MeetingId=483&DF=31%2f01%2f2013&Ver=2>

Council Meeting 22<sup>nd</sup> November 2012, Minute 57 [Meeting of Council on Thursday, 22nd November, 2012, 7.30 pm | North Herts Council \(north-herts.gov.uk\)](#)