



SCOTTISH
FIRE AND RESCUE SERVICE

Working together for a safer Scotland

22 February 2019

TO ALL MEMBERS OF THE SCOTTISH FIRE AND RESCUE SERVICE

Dear Member

You are invited to attend a special meeting of the Scottish Fire and Rescue Service Board as follows:

Date: Thursday 28 February 2019

Time: 0900 hrs

Venue: Braidwood Suite, Scottish Fire and rescue Service Headquarters, Westburn Drive, Cambuslang, G72 7NA

The business for the meeting is detailed overleaf.

Tea/coffee will be available from 0830 hrs.

Should you require any other information, please contact Debbie Haddow on 07341 880523, or Group Manager Alasdair Cameron on 07786 856986.

Yours sincerely

Kirsty L. Darwent

KIRSTY DARWENT
Chair



SCOTTISH
FIRE AND RESCUE SERVICE

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SPECIAL PUBLIC MEETING - SCOTTISH FIRE AND RESCUE SERVICE BOARD
THURSDAY 28 FEBRUARY 2019 @ 0900 HRS
BRAIDWOOD SUITE, SCOTTISH FIRE AND RESCUE SERVICE HEADQUARTERS,
WESTBURN DRIVE, CAMBUSLANG, G72 7NA

AGENDA

- 1 CHAIR'S WELCOME**
- 2 APOLOGIES FOR ABSENCE**
- 3 CONSIDERATION OF AND DECISION ON ANY ITEMS TO BE TAKEN IN PRIVATE**
- 4 DECLARATION OF INTERESTS**

Members should declare any financial and non-financial interest they have in the items of business for consideration, identifying the relevant agenda item, and the nature of their interest.

- 5 SOFT FM – LGPS ADMISSION AGREEMENTS - UPDATE** *(attached)* **S O'Donnell**

The Board is asked to approve the report.

- 6 DATE OF NEXT MEETING**

Thursday 28 March 2019 at 1330 hrs
SFRS HQ, Westburn Drive, Cambuslang, G72 7NA



Report No: B/FCS/02-19

Agenda Item: 5

Report To:	BOARD OF THE SCOTTISH FIRE AND RESCUE SERVICE		
Meeting Date:	28 FEBRUARY 2019		
Report Title:	SOFT FM – LGPS ADMISSION AGREEMENTS - UPDATE		
Report Classification:	For Decision	Board/Committee Meetings ONLY	
		For Reports to be held in Private	
		Reason	
1	Purpose		
1.1	The purpose of this report is to seek Board approval to extend the Local Government Pension Scheme (LGPS) Guarantor Agreements to include former Council employees that are transferring to Sodexo Limited as a result of the Soft Facilities Management contract award.		
2	Background		
2.1	The Soft Facilities Management contract will consolidate cleaning, caretaking, catering, security and waste management services for SFRS under a single management arrangement across all sites, rationalising the c.80 existing providers. The existing providers consist of both Councils (including collaborative local authority organisations) and private sector companies, as well as SFRS employees.		
2.2	As part of the contract implementation process, all providers were asked to identify individuals whose primary role was the delivery of services to SFRS and who would transfer to the new provider under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). Alongside SFRS employees, a number of private sector and Council employees are due to transfer.		
2.3	Throughout the tender process, SFRS has maintained a strong commitment to ensuring Fair Work Practices for employees working on the contract, in support of the Fair Work Framework, as commissioned by the Scottish Government. As such, the contractor has been asked to ensure continuing access to the Local Government Pension Scheme for those transferring employees for whom this is currently available.		
2.4	The table below shows the up to date analysis of transferring employees who currently have access to the LGPS, by pension fund and current employer;		

	Pension Fund	Current Employer					TOTAL
		SFRS	Argyll & Bute Council	Falkirk Council	Fife Council	Tayside Contracts	
	D&G	9	-	-	-	-	9
	Falkirk	-	-	3	-	-	3
	Fife	1	-	-	13	-	14
	Lothian	17	-	-	-	-	17
	Strathclyde	20	4	-	-	-	24
	Tayside	1	-	-	-	22	23
	TOTAL	48	4	3	13	22	90
2.5	<p>The Board, at its meeting in December 2018, agreed to delegate authority to the Director of Finance and Contractual Services to sign Guarantor Agreements for the Local Government Pension Scheme on behalf of the Scottish Fire and Rescue Service (SFRS), to enable continued access to the Scheme for SFRS employees transferring to Sodexo Limited (currently 48).</p>						
3	Main Report and Discussion						
3.1	Work has been progressing well in preparation for contract Go Live on 1 March, and pension arrangements are on track for SFRS employees.						
3.2	As part of this process, the new contractor is required to engage with all current employers to obtain the necessary people information to facilitate a smooth employment transition.						
3.3	Within the past week it has been brought to SFRS attention that progress is slow in relation to the Council transfers, which is giving Sodexo cause for concern. The most significant issue relates to completing the complex paperwork for each individual to maintain their LGPS membership under the new employer. A key stumbling block is the pension fund requirement for a Guarantor Agreement, as the new employer is an “admission body” rather than a main “scheme employer”.						
3.4	Through the Soft FM Project Board, a commitment was given to Sodexo that SFRS would use its best endeavours, through our networks, to assist. To this end, the relevant Local Senior Officers have engaged with Council Chief Executives seeking their support.						
3.5	<p>Current indications are that the Councils remain reluctant to act as guarantors. If this remains the case, the following options/scenarios arise;</p> <ul style="list-style-type: none"> • The former Council employees cannot continue in the LGPS, • If the particular Pension Fund is willing, Sodexo can provide a bond, which will have an immediate financial impact, and will ultimately be rechargeable to SFRS, • SFRS can act as Guarantor for these employees, similarly to SFRS employees. 						
3.6	It is therefore proposed that, where Councils will not act as Guarantor, SFRS provide this security to the relevant pension funds, supporting our commitment to Fair Work Practices, while minimising the financial burden on SFRS.						
4	Recommendation						
4.1	<p>The Board is asked to approve the following recommendation;</p> <ul style="list-style-type: none"> • That where it is not possible to secure LGPS Guarantor arrangements from Council employers, SFRS agrees to act as Guarantor for Sodexo with the relevant pension funds, in relation to transferring Council employees, as outlined in paragraph 2.4. 						

5	Key Strategic Implications
5.1	Financial
5.1.1	The Guarantor Agreement places a <i>potential</i> financial burden directly on SFRS, in relation to maintaining employer pension contributions, and any other employer liabilities, for any of the applicable employees, in the event of the failure or other default by the contractor. This exposure is limited to the specific employees who are transferring at this stage. Over time, as these individuals retire, this exposure will reduce.
5.1.2	The current annual employer's contribution cost for SFRS employees that are LGPS members is £111,000. If all eligible employees chose to join this would rise to £126,000.
5.1.3	Including the former Council employees within the Guarantor Agreement increases the potential financial burden. While SFRS does not have access to specific employee details, assuming a similar mix of hours and grades, the additional maximum annual employers contribution would be c.£112,000.
5.1.4	If the contractor delivers its responsibilities as intended, there is no additional cost to SFRS as payment for pension contributions is included within the budgeted cost of the contract.
5.1.5	Irrespective of employer, SFRS will continue to require the services which these employees provide and would require to pay the associated employment costs, including pension contributions, either directly or through an external contractor.
5.2	Legal and Regulatory
5.2.1	Legal Services has reviewed this proposal, discussed with finance and is content the LGPS Regulations allow for SFRS to act as a Guarantor to Council employee's transferring to Sodexo under this contract where each pension fund is satisfied with the form of guarantee provided by SFRS.
5.2.2	The Scottish Public Finance Manual (SPFM) requires such arrangements to be brought to the attention of the Scottish Government Finance Business Partner (FBP). This has been done, and the proposal has also been highlighted to the SG Sponsor Team. Both FBP and Sponsor Team are supportive, while recognising the role of the Board.
5.3	Performance
5.3.1	As the Fair Work Framework highlights, employees who feel secure in their employment, and fairly rewarded, are best placed to perform effectively in their roles.
5.4	Environmental & Sustainability
5.4.1	There are no environmental and sustainability implications associated with this report.
5.5	Workforce
5.5.1	Ensuring that all transferring employees who currently have access to the LGPS can continue with these arrangements supports SFRS's commitment to Fair Work Practices.
5.6	Health & Safety
5.6.1	There are no health and safety implications associated with this report.
5.7	Timing
5.7.1	The contract is due to go live on 1 March 2019 and pension arrangements need to be in place for transferring employees in good time to ensure a smooth transition. The timeline is now extremely tight.

5.8	Equalities	
5.8.1	The Equality Impact Assessment included within the procurement Commodity Strategy for Soft FM has been updated to include reference to this proposal and is attached at Appendix A.	
5.8.2	Enabling continued access to the LGPS for all relevant employees avoids a disparity between employees of different former public sector employers.	
5.9	Information Governance	
5.9.1	All parties to the transfer are bound by information governance regulations in respect of employee personal data.	
5.10	Risk	
5.10.1	There is a risk that if this issue cannot be resolved, former Council employees will be removed from the Local Government Pension Scheme.	
5.11	Communications & Engagement	
5.11.1	Communications are ongoing between SFRS, the contractor, the Councils, the pension funds and the affected individuals.	
5.12	Training	
5.12.1	There are no training implications associated with this report.	
6	Core Brief	
6.1	The Director of Finance and Contractual Services sought Board approval to extend the Local Government Pension Scheme (LGPS) Guarantor Agreements to include former Council employees that are transferring to Sodexo Limited as a result of the Soft Facilities Management contract award.	
7	Appendices/Further Reading	
7.1	Appendix A – Soft FM Commodity Strategy – Equality Impact Assessment Addendum	
7.2	Previous Report – Delegation of Authority to Sign LGPS Documentation Associated with TUPE Transfer of SFRS Staff, Board, 13 December 2018 Fair Work Framework, Fair Work Convention, 2016	
Prepared by:	Sarah O'Donnell, Director of Finance and Contractual Services	
Sponsored by:	Sarah O'Donnell, Director of Finance and Contractual Services	
Presented by:	Sarah O'Donnell, Director of Finance and Contractual Services	
Links to Strategy		
Working Together for a Safer Scotland		
Governance Route for Report	Meeting Date	Comment
<i>SFRS Board (Special)</i>	<i>28 February 2019</i>	<i>For Approval</i>

**Soft FM Commodity Strategy – Board – August 2017
Appendix D: Equality Impact Assessment**

Equality and Diversity

SFRS Strategic Plan 2013-2016 sets out the Service commitment to improving Equality and Diversity. SFRS will remove unlawful discrimination, harassment, victimisation and other conduct prohibited in the Equality Act 2010. The Service will promote equality of opportunity through employment practices, service delivery and engagement activities. SFRS will ensure that corporate decision-making processes are used to identify and remove barriers and bias that would prevent equitable access and quality of service.

Third parties providing goods and services to SFRS must adhere to the principles of the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 which now confers the following specific duty on public bodies:

- Duty to consider award criteria and conditions in relation to public procurement.

Procurement Officers need to consider the nature of the goods or services being procured and consider the propensity to be at risk of breaching the Equality Act 2010 by taking account of the background information and by using the risk mitigation guidance provided.

High	<table border="1"> <tr> <td style="text-align: center; vertical-align: middle;">Implement Level 2 Mitigation</td> <td style="text-align: center; vertical-align: middle;">Implement Level 3 Implementation</td> </tr> <tr> <td style="text-align: center; vertical-align: middle;">Implement Level 1</td> <td style="text-align: center; vertical-align: middle;">Implement Level 1</td> </tr> </table>	Implement Level 2 Mitigation	Implement Level 3 Implementation	Implement Level 1	Implement Level 1
Implement Level 2 Mitigation	Implement Level 3 Implementation				
Implement Level 1	Implement Level 1				
E&D Risk of Breach					
Low	Value (£)				
	High				

Mitigation Strategies:

The following Mitigation Strategies must be followed depending on the Procurement Officers analysis of the propensity of the nature of the procurement to be at risk of breaching Equality and Diversity requirements.

Level 1: This is where the risk of breach is low. In such cases the agreement should ensure terms of conditions include the requirements in law regarding the Equality Act 2010.

Level 2: This is where the risk is high although the value is low. In such circumstances in addition to the Terms and Conditions the appropriate process should be undertaken to ensure that the proposed suppliers have the capacity to meet the E&D requirements of the Service. Officers should also consider including E&D requirements in the specification (e.g. no sexually exploitative advertising etc.). This will apply to procurements subject to formal tender. Lower value procurements at high risk will be assessed on a case-by-case basis.

NOT PROTECTIVELY MARKED

Level 3: This is defined as where there is a high risk of breach and the proposed procurement value is high (typically over the EU Procurement thresholds). In addition to the requirements of Level 2 above the contract agreements must include specific performance clauses with regards to E&D and E&D should form part of the award scoring criteria where relevant to the contract delivery.

Identification of Risk

The main areas where you may identify risk include:

- The nature of the proposed service and how it is delivered e.g. is there any aspect of the service which could discriminate against people with any of the Protected Characteristics. The higher risk areas will be those where service exclusions operate. For example the service may have an age cut-off or only deliver services to certain groups of people. Wherever these qualifiers exist, risk of discrimination will be high.
- If services are delivered to the public from non-SFRS premises there is a risk that they may not be accessible. Contracts need to require that barriers to physical access have been removed in accordance with the Act and that the requirement for 'reasonable adjustment' is evidenced. Note that the definition for reasonable adjustment has changed to strengthen the protection of disabled people.
- Where services are provided by suppliers employing significant numbers of employees there is a higher risk of direct or indirect discrimination. E.g.: Employment policies may be discriminatory.
- Where services are provided direct to members of the public, there is a higher risk that service provider staffs actions could discriminate against people with any of the Protected Characteristics.
- Where an industry sectors employment characteristics include high levels of workers with Protected Characteristics (e.g. migrant workers, predominant female workforce).

NOT PROTECTIVELY MARKED

The Procurement Lead shall complete the table below in relation to the proposed purchase:

Equality Target Group	Positive Impact		Negative Impact		Details
	High	Low	High	Low	
Age		✓		✓	There are no positive or negative impacts on Age.
Disability		✓		✓	There are no positive or negative impacts on Disability.
Sex		✓		✓	There are no positive or negative impacts on Sex.
Race/Ethnic Origin		✓		✓	There are no positive or negative impacts on Race/Ethnic Origin.
Religion/Belief		✓		✓	There are no positive or negative impacts on Religion/Belief.
Sexual Orientation		✓		✓	There are no positive or negative impacts on Sexual Orientation.
Gender reassignment		✓		✓	There are no positive or negative impacts on Gender reassignment.
Marriage or Civil Partnership		✓		✓	There are no positive or negative impacts on Marriage or Civil Partnership.
Pregnancy or maternity		✓		✓	There are no positive or negative impacts on Pregnancy or maternity.

Addendum – Access to Local Government Pension Scheme for Transferring Council Staff

The proposal to enable continued access to the Local Government Pension Scheme for both SFRS transfers and Council transfers, where both groups have existing access rights, will avoid creating a two-tier workforce.

Implementing the proposal will have a positive impact on all relevant employees, regardless of any protected characteristics.

If the proposal outlined is not implemented there is a risk that the two groups will be treated differently in relation to their ongoing pension entitlement.