

SURREY COUNTY COUNCIL**PENSION FUND COMMITTEE****DATE: 23 SEPTEMBER 2016****LEAD OFFICER: SHEILA LITTLE, DIRECTOR OF FINANCE****SUBJECT: CONSULTATION ON DEVELOPING AN INSOLVENCY REGIME FOR HIGER EDUCATION COLLEGES: RESPONSE OF THE COUNCIL****SUMMARY OF ISSUE:**

This report summarises the proposed development of an insolvency regime for the further education sector within a consultation document issued by the Department for Business, Innovation and Skills (DBIS) on 6 July 2016. This report also provides details of the response to this consultation by the Council.

RECOMMENDATIONS:

It is recommended that the Pension Fund Committee:

Note the report.

REASON FOR RECOMMENDATIONS:

The Pension Fund Committee must be aware of the risks presented to the Fund by the potential insolvencies of the employers within the Surrey Pension Fund.

DETAILS:**Background**

- 1 On 6 July 2016, the DBIS consulted on the proposed development of an insolvency regime for the further education sector (FE sector).
- 2 Colleges in the FE sector are statutory corporations incorporated under the Further and Higher Education Act 1992 (the Act). They are also exempt charities regulated by the DBIS and the Department for Education (DfE) respectively.
- 3 Under the Act, FE sector colleges are able to transfer their “property, assets and liabilities” to another willing party in order to dissolve. However, the Act does not provide for what should happen if there is no such willing party, most likely because the liabilities of the dissolving college exceed its assets.
- 4 In practice, Exceptional Financial Support (EFS) has been used to protect learners and avoid disorderly closures where prior interventions have been unsuccessful or creditors move on college debts. However, there is no obligation on government to provide such exceptional funding.

- 5 The DBIS proposal is to bring insolvency procedures for the FE sector in line with those provided for companies under the Insolvency Act 1996, including administration and liquidation.
- 6 Employees of FE sector employers are eligible for membership of the Local Government Pension Scheme (LGPS) under Schedule 2, Part 1 of the LGPS regulations.
- 7 In the event of the full closure of a FE sector college, where the college has no active members in the relevant Local Government Pension Scheme (LGPS) fund, the college becomes an exiting employer. Regulation 64 of the LGPS 2013 requires an exiting employer to pay an exit payment
- 8 The Surrey Fund includes 18 employers in the FE sector.
- 9 The consultation is shown as Annex 1.

The DBIS proposals for an insolvency regime

- 10 The proposals closely mirror the insolvency arrangements afforded to companies under the Insolvency Act 1986 and the proposed regime would include:
 - Company Voluntary Arrangement
 - Administration
 - Compulsory Liquidation
 - Creditors' Voluntary Liquidation
- 11 In addition, it is proposed to establish a Special Administration Regime (SAR) for FE sector colleges which would be triggered where a college becomes insolvent and the Secretary of State deems it appropriate to apply for a SAR.
- 12 The SAR will allow more time than normal insolvency procedures to mitigate the risk that a FE sector college is wound up quickly and in a way which, by focusing only on creditors, would be likely to damage learners. In addition, it will protect taxpayers by not propping up failing colleges indefinitely.

Response of Surrey County Council to the Consultation

- 13 The Director of Finance responded to the consultation on 4 August 2016, after conferring with the Chairman of the Pension Fund Committee.
- 14 The response expressed the support of the Council for the proposals to develop an insolvency regime for the FE sector.
- 15 The response goes on to consider the relative merits of each of the insolvency options outlined in the consultation from the perspective of the pension fund as a potential unsecured creditor.
- 16 With regard to the proposed SAR, specific assurances are sought in respect of the continued obligation of FE sector colleges to maintain pension payment obligations during the SAR process and that any resulting Transfer Scheme would not override the third party rights or security of the pension fund.

- 17 The response provides three options for the government to consider, which it contends will support LGPS pension funds and local taxpayers, whilst simultaneously supporting the FE sector. These are:
- A change in the LGPS regulations to mandate the provision of security to LGPS funds by FE sector colleges
 - The removal of FE sector colleges from the LGPS
 - The provision of a government guarantee for FE sector colleges
- 18 The consultation response is shown as Annex 2.

CONSULTATION:

- 19 The Chairman of the Pension Fund Committee has been consulted on the report.

RISK MANAGEMENT AND IMPLICATIONS:

- 20 Risk related issues are contained within the report.

FINANCIAL AND VALUE FOR MONEY IMPLICATIONS

- 21 Financial and value for money implications are discussed within the report.

DIRECTOR OF FINANCE COMMENTARY

- 22 The Section 151 Officer (Director of Finance) is satisfied that all material, financial and business issues and possibility of risks have been considered and addressed.

LEGAL IMPLICATIONS – MONITORING OFFICER

- 23 There are no legal implications or legislative requirements.

EQUALITIES AND DIVERSITY

- 24 No equality analysis is required, as there is no major policy, project or function being created or changed.

OTHER IMPLICATIONS

- 23 There are no potential implications for council priorities and policy areas.

WHAT HAPPENS NEXT

- 25 A response is now due from DBIS and DfE.

Contact Officer:

Phil Triggs, Strategic Finance Manager (Pension Fund and Treasury)

Consulted:

Pension Fund Committee Chairman

Annexes:

Annex 1: Consultation on developing an insolvency regime for the FE sector

Annex 2: Consultation response of Surrey County Council

Sources/background papers:

None
