Aelod Portffolio ar faterion Cyllid, Cefn Gwlad a Thrafnidiaeth

Man Cyfarfod

Dyddiad y Cyfarfod
Dydd Iau, 11 Ebrill 2019

Amser y Cyfarfod

Neuadd Y Sir
Llandrindod
Powys
LD1 5LG

05/04/2019

I gael rhagor o wybodaeth cysylltwch â

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Mae croeso i'r rhai sy'n cymryd rhan ddefnyddio'r Gymraeg. Os hoffech chi siarad Cymraeg yn y cyfarfod, gofynnwn i chi roi gwybod i ni erbyn hanner dydd ddau ddiwrnod cyn y cyfarfod

AGENDA

1.	**CYTUNDEB RHANNU RISG Y GRONFA BENSIWN RHWNG CYNGOR SIR POWYS A SHAW LTD**

(Tudalennau 1 - 4)

Mae'r dudalen hon wedi'i gadael yn wag yn fwriadol

CYNGOR SIR *POWYS* COUNTY COUNCIL

PORTFOLIO HOLDER DELEGATED DECISION
by
COUNTY COUNCILLOR ALED DAVIES
(PORTFOLIO HOLDER FOR FINANCE)
4th April 2019

REPORT AUTHOR: **Head of Finance**

SUBJECT: **Pension Fund Risk Sharing Agreement between Powys County Council and Shaw Ltd**

REPORT FOR: **Decision**

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1. Summary

1.1 The tender for the contract to manage the Council's residential care homes (to commence from June 2019 to May 2023 (with option to extend), has now been awarded to Shaw Ltd (previously BUPA).

1.2 The award of the contract involves the TUPE transfer of 25 members of staff from BUPA to Shaw Ltd, who have accrued pension rights in the Local Government Pension Scheme. A requirement under TUPE is the protection of pension rights (as required under the Welsh Authorities Staff Transfers (Pensions) Direction 2012) and it is proposed that Shaw Ltd are awarded Admitted Body status as a participating Employer within the Powys Pension Fund to facilitate this.

1.3 A policy around TUPE and the pensions risks which arise as a result of such a transfer, was agreed by Cabinet in a meeting of 26th July 2016. This policy states that where a TUPE transfer of more than 20 staff occurs, a requirement is placed on the third party provider to provide the Powys Pension Fund with a "Performance Bond" which the Fund can call upon should the new provider become insolvent. In this case, the bond value was estimated at around £880,000 by the Pension Fund Actuary.

2. Proposal

2.1 There are 25 individuals TUPE transferring from BUPA to Shaw at the end of the BUPA contract and it is proposed that the requirement for a pension bond be removed. This effectively means that the Council are underwriting all the pensions risks (costs associated with redundancy (pension strains for early release of pension benefits), unpaid contributions and a cessation deficit).

2.2 The reason for this is because that in the case of insolvency, the service would have to be continued, either by the appointment of another third party or brought back in house to be provided by the Council. There would be no need to call on a performance bond in this instance, due to there being no redundancies and pension strain/costs arriving from that exercise. The Pension Fund would suffer no losses as a result of this, due to the risk being passed on to Powys County Council. However, as this is outside agreed policy, it would require approval from the Portfolio Holder for Finance.

2.3 The Pension Fund Actuary is aware of this approach and suggested that an argument could be made for not providing a bond in this instance, due to the nature of the service and the guarantees provided by the Council.

3. Options Considered / Available

3.1 The removal of the requirement of a bond reduces the costs on the provider and provides them with assurances around the pension risks associated with the transferring staff. If a bond was required, the provider would price the contract accordingly and potentially increase the contract cost.

3.2 The setting up of a bond would effectively be a waste of money, inasmuch as the bond would be obtained from a bank/provider at a large expense and would never be called upon, even in the event that Shaw became insolvent, since services will have to continue to be delivered.

4. Preferred Choice and Reasons

4.1 Removal of the requirement for a performance bond, with the Council providing the guarantees to the Pension Fund in the unlikely event of the insolvency of Shaw Ltd. This removes the risk for Shaw Ltd yet still provides the Pension Fund with the assurances with regards to any potential insolvency (and redundancy pension strain costs arriving therefrom), unpaid contributions and cessation deficit at the end of the contract.

4.2 Potential reductions to contract price since Shaw would not have to price a bond into their valuation of the contract.

5. Impact Assessment

5.1 Is an impact assessment required? ~~Yes~~/No

5.2 If yes is it attached? ~~Yes~~/No

6. Corporate Improvement Plan

6.1 The risk to the Council should be minimal, since it is only in reference to 25 transferring staff. However, the financial risks would be in the event of the insolvency of Shaw Ltd and any potential redundancy costs and unpaid pension contributions.

6.2 There could potentially also be the risk of a cessation deficit at the end of the contract, which would fall onto Powys County Council's deficit.

7. Local Member(s)

7.1 N/A

8. Other Front Line Services

Does the recommendation impact on other services run by the Council or on behalf of the Council? ~~Yes~~/No

If so please provide their comments

9. Communications

Have Communications seen a copy of this report? ~~Yes~~/No

Have they made a comment? If Yes insert here.

10. Support Services (Legal, Finance, Corporate Property, HR, ICT, Business Services)

10.1 Legal; The recommendation can be supported from a legal point of view

10.2 Finance – due to the reasons outlined in the report the requirement for a bond is not appropriate in this instance. If agreed the Council will benefit from reduced revenue costs over the period of the contract as the provider will not be incurring the cost of having the performance bond.

11. Scrutiny

Has this report been scrutinised? ~~Yes~~ / No?

If Yes what version or date of report has been scrutinised?
Please insert the comments.
What changes have been made since the date of Scrutiny and explain why Scrutiny recommendations have been accepted or rejected?

12. Data Protection

If the proposal involves the processing of personal data then the Data Protection Officer must be consulted and their comments set out below.

13. Statutory Officers

13.1 The Solicitor to the Council (Monitoring Officer) commented as follows : " I note the legal comments and have nothing to add to the report."

13.2 The Head of Finance (Section 151 Officer) notes the comments from Finance.

14. Members' Interests

The Monitoring Officer is not aware of any specific interests that may arise in relation to this report. If the Portfolio Holder has an interest, he/ she should declare it, complete the relevant notification for and refer the matter to Cabinet for decision.

Recommendation:	**Reason for Recommendation:**
In respect of this contract only to deviate from policy and not require a Performance Bond for pension purposes.	**Only 25 staff transferring, small risk to the Council.**

Relevant Policy (ies):			
Within Policy:	**~~Y~~ / N**	**Within Budget:**	**Y**

Relevant Local Member(s):	

Person(s) To Implement Decision:	**Jane Thomas**
Date By When Decision To Be Implemented:	**Upon approval**

Is a review of the impact of the decision required?	**N**
If yes, date of review	
Person responsible for the review	
Date review to be presented to Portfolio Holder/ Cabinet for information or further action	

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Background Papers used to prepare Report: