



REPORT TO EXECUTIVE

PORTFOLIO AREA: HEALTH AND WELL BEING

Date of Meeting: 17th October 2002

Public

Key Decision: Yes

Recorded in Forward Plan: Yes

Inside Policy Framework

Title: LEISURETIME EXTERNALISATION - FINAL REPORT
Report of: Director of Leisure and Community Development
Report reference: LCD 30/02

Summary:

The report deals with outstanding items on the externalisation process and was considered by the Overview and Scrutiny (Community) Committee on 10th October.

Recommendations:

- 1.1 To agree the terms being proposed for the contract with CLL
- 1.2 To agree the term of the contract and the financial implications of a reduction in the term.
- 1.3 To nominate two representatives to serve on the Board of CLL.
- 1.4 (Recommendation on Pensions/Guarantor to follow – and consequential start date).

Contact Officer: Euan Cartwright

Ext: 7350

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers: None

Leisuretime Externalisation – Final Report

1 Introduction

The Executive, meeting on 8th July 2002, Leisuretime NPDO (to be known as Carlisle Leisure Ltd (CLL)) was selected as the preferred partner for the operation of the tendered facilities. (Minute attached Appendix 1) Negotiation on the details of the arrangements have proceeded and the Executive dealt with the outstanding issue of the preferred option for the provision of capital on 2nd Sept.

This report is to advise the Executive of the final terms and arrangements which have been negotiated for the operation of the contract. With one exception, finalising details of the pension scheme, all of the outstanding matters have been resolved though some decision remain for the Executive and these are detailed below. The issue of the pension scheme arrangements is also dealt with below (para 4.9).

2 Amended Contract Terms

In approving the tender documentation the Executive, with input from the Overview and Scrutiny (Community) Committee, considered in details the terms being proposed for the Contract for the supply of these services by the successful tenderer. Tenders were submitted on the basis of this contract and was anticipated that the successful tenderer would have little ground to argue for changes in the terms proposed. This has indeed been the case and apart from some minor adjustments in wording the contract terms are essentially unchanged from those originally proposed. We have not therefore resubmitted the entire contract for consideration though a copy is available from the Director of Leisure and Community Development should any Member wish to consider the minor changes that have been made.

3 Proposed period of contract

The Executive has decided that it is in the best interests of the Council for it to provide the necessary capital finance thereby benefiting from improve revenue savings. Concern has been expressed that under these circumstances the Council should consider a contract term of less than the 15 years originally proposed. The officer group steering this process has considered this proposal and is unanimously of the view that since the contract was advertised for a 15 year period it is inappropriate to change such a fundamental consideration at this stage.

Nevertheless Carlisle Leisure Ltd have been asked for their views on the impact on their organisation of reducing the period from 15yrs to 10 yrs and to 7 yrs. These comments are attached (Appendix 2). The Executive needs to determine it's preferred option.

4 Outstanding Issues

When the Executive considered the evaluation of the tenders on 8th July a number of details within the bid from CLL remained to be resolved. These were:

4.1 Catering Method Statement

A revised method statement has been received and considered by the Portfolio Holder, the Director of Leisure and another member of the Executive. The revised statement is considered to be an entirely satisfactory response to the requirements of the Best Value Improvement Plan. This matter has therefore been resolved.

4.2 Detailed Plant and Equipment Maintenance/Renewal Programme

This programme has been the subject of detailed discussions between CLL and staff representing the Director of Environment and Development. All major issues have been resolved. At the time of writing some minor details remain to be clarified but these will have been completed by the time of the Executive meeting.

4.3 Provision of Support Services

The contractor has advised that the following arrangements have been made for the provision of support services:

- Payroll - externally procured from Moorpay
- IT – procured from Council IT services
- Personnel, Finance, Creditors – provided by the contractor in house.
- Legal – to be purchased locally as and when.
- Auditors – currently tendering for provision of this service.

We are entirely satisfied with these arrangements.

4.4 *Bond in Respect of Service Discontinuation*

Tenderers were required to allow for the cost of a bond in respect of service discontinuation. In the case of CLL the cost was £3,500. The officer group was asked to give further consideration to the need for such a bond in the light of the choice of contractors. The Officer groups remains of the opinion that such a bond is necessary and since the costs has been allowed for in the tender submissions the contractor should be required to take out such a bond. This has no financial implication over and above those already considered by the Executive.

4.5 *Decision re Preferred Option – Capital Investment Programme*

This matter was considered by the Executive on 2nd September. A copy of the Minute is attached (Appendix 3). The outstanding matters referred to in part 2 of the decision have been the subject of discussions between the Contractor, the Portfolio Holder, the Contract Services Manager and the Director of Leisure. The results of those discussions are detailed in Appendix 4 and are recommended to the Executive. As each elemnt of the capital improvement programme comes forward a more detailed proposal will be prepared and presented to the Executive.

5 Amended Leases

As with the contract terms the Lease terms originally agreed by the Council when preparing the tender documentation have been subject to discussions with the contractor as a result of which they are materially unchanged. We have not therefore resubmitted the entire lease for consideration though a copy is available from the Director of Leisure and Community Development should any Member wish to consider the minor changes that have been made.

6 Acknowledgement of City Council Support

Agreement has been reached between the Communications Unit and CLL on the arrangements for ensuring that the continuing support of the City Council for the services is fully acknowledged in promotional materials. A copy of these arrangements are attached (Appendix 5)

7 St James Park

The provision of services at St James Park, which are currently operated by Leisuretime, were originally excluded from the list of services to be tendered the expectation being that they could be absorbed by an expanded Parks section. In the light of the Organisational review this is not considered to be a viable proposition and so the preferred partner was asked for a price for the inclusion of this service as part of the contract. This has been provided, is within the existing budget and was taken into account in the calculation of the contract costs/savings considered by the Executive on 2nd September.

8 Pensions Admitted Body Status and Guarantee

The City Treasurer is seeking a clearer understanding of the precise implications of the transfer and more details will be available at the time of the Executive meeting. His present understanding is explained in Appendix 7.

9 Representation on Board

Under the constitution of Carlisle Leisure Ltd the City Council is entitled to two seat on the Board of the organisation. The Executive will need to nominate these representatives for approval by Council.

10 Risk Assessment

The risk assessment for the project with an updated commentary is attached (Appendix 6).

11 Recommendations

11.1 To agree the terms being proposed for the contract with CLL

11.2 To agree the term of the contract and the financial implications of a reduction in the term.

11.3 To nominate two representatives to serve on the Board of CLL.

11.4 (Recommendation on Pensions/Guarantor to follow – and consequential start date).

12 CONSULTATION

12.1 Consultation to Date.

Prior to the request for submissions detailed consultations were held with the Overview and Scrutiny Committee and with staff representative.

12.2 Consultation proposed.

O&S are considering this report before it goes to Executive so that any comments can be considered by the Executive.

13 STAFFING/RESOURCES COMMENTS

The Personnel and Training Officer has been involved in the working group progressing this matter and his views are hence incorporated into this report.

14 CITY TREASURER'S COMMENTS

Specific comments on the Pensions situation are appended otherwise the City Treasurer has been represented on the working group progressing this matter.

15 LEGAL COMMENTS

The City Solicitor has been represented on the working group progressing this matter.

16 CORPORATE COMMENTS

This report has been produced by a corporate working group.

17 EQUALITY ISSUES

These are provided for in the documentation and contract.

18 ENVIRONMENTAL IMPLICATIONS

These are provided for in the documentation and contract.

19 CRIME AND DISORDER IMPLICATIONS

Not applicable.

Euan Cartwright
1st October 2002

Appendix 1

Executive Minute on selection of preferred partner.

EX.178/02 LEISURETIME EXTERNALISATION – CHOICE OF PREFERRED PARTNER (Key Decision)

(Under Rule 15 (1) of the Overview and Scrutiny Procedure Rules, the Mayor had agreed that the decisions proposed on this item were reasonable and should be treated as a matter of urgency and be not subject to call-in.)

Portfolio Health and Wellbeing

Subject Matter

The Director of Leisure and Community Development reported (LCD.18/02) on the procedures followed, the conclusions reached and the reasons for the conclusions with regard to the selection of a preferred partner for the future operation of the facilities currently managed by Leisuretime.

The Chairman of the Community Overview and Scrutiny Committee was present at the meeting and indicated that the Committee were satisfied with the procedures used in the tendering process. The Committee had suggested the Executive should look at areas where Leisuretime had scored lower than rival tenderers on the points scoring matrix in order that performance in these areas could be improved. Particular attention should be given to catering provision.

Summary of options rejected

Appointment of an alternative partner.

DECISION

That the Executive recommend to full Council -

- (1) that Leisuretime Non-Profit Distributing Organisation (NPDO) be selected as the preferred Partner for the future operation of the facilities as defined;
- (2) that Officers report further on which of the financial options identified in Section 5 of Report LCD.18/02 is to be preferred;

- (3) that Officers be authorised to enter into negotiations to formalise a contract whereby Leisuretime NPDO is appointed as the Council's partner for delivery of the services and the Capital Improvement Programme and, in consultation with the Portfolio Holder, to take all necessary actions to achieve this;
- (4) that the matters in Paragraphs 1-3 inclusive of this Recommendation be subject to the requirements of the Tender Documentation being met, that the terms of the Tender submitted by Leisuretime NPDO are adhered to, and that the issues set out in Section 5 of Report LCD.18/02 are resolved to the entire satisfaction of the Director of Leisure and Community Development;
- (5) that the proposed final terms of the Contract be reported back to the Overview and Scrutiny Committee (Community) and through the Executive before the Contract is entered into;
- (6) that to the extent that the appointment of Leisuretime NPDO may represent a change to the Council's current policy framework for the delivery and methodology of these particular services, the Council be recommended to give approval to this.

Reasons for Decision

The Qualitative Evaluation demonstrated that Leisuretime NPDO is capable of delivering the required service standards and the systems are in place to secure continuous improvements in those standards and in customer satisfaction. They were at least equal to the best alternative.

The Financial Evaluation demonstrated that Leisuretime NPDO can deliver the greatest reduction in revenue costs and at the same time provide the required capital investment (alternatively the Council could choose an option proposed by Leisuretime under which the Council provides the capital investment in exchange for a greater revenue reduction. (Both options produce better financial benefits than any alternatives.)

References supported the conclusion that the quality of services offered by one of the competitors was likely to be equivalent to the services offered by Leisuretime but the performance of the other company was less consistent.

Interviews allowed the clarification of many points in all of the submissions but provided no reason to change the conclusion to be drawn from the other elements of the Evaluation.

Appendix 2 – CLL views on Contract Period

COMM.	
REC'D	26 SEP 2002
REFERT	
MAIL	

Mr. E. Cartwright,
 Director of Leisure & Community Development,
 Leisure Services Department,
 Carlisle City Council,
 Civic Centre,
 Carlisle.

Our ref: JD/LM/SC

24th September, 2002

Dear Mr. Cartwright,

Length of Contract

I refer to the above and your request for Carlisle Leisure Limited to consider a reduced contract term of 10 or 7 years.

Our initial response to this is that we would not wish to reduce the length of contract from the tender of 15 years. The reasons for this are:-

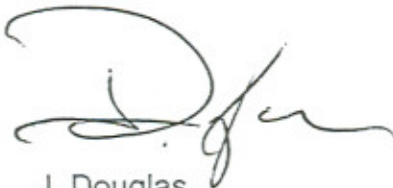
- Security and certainty of jobs for the transfer of staff.
- The ability to secure long-term partnerships and relations with others (PCTs, Education, Businesses, Financial Institutes).
- Ability to develop and invest further into the services for the benefit of the community and the Council.
- Long-term business planning and investment/maintenance needs.
- Ability to secure loans and financial needs to deliver an improved service.
- Tender documents intimated a 15-25 year contract and that the contract length was not dependent on capital input.
- We believe that we are being treated differently to that of private contractors.
- The net savings to the Council per annum increase as a result of a long-term contract.

We have however looked closely at the impact of a 7 year and 10 year contract and our full response is that we do not feel that a 7 year contract is in the interests of any party and therefore we have concluded that we do not wish to consider this length.

We will, however, agree to a 10-year contract providing the financial submission tender price is uplifted per annum. This uplift is created due to financial pressures on CLL delivering our commitments and responsibilities for equipment replacement, lease arrangements, maintenance schedules and business growth and performance throughout the life of the contract. The costs of these areas in the bid amount to £390,000 and we would be prepared to enter into a 10 year contract for an increased payment per annum of £23,400 (6% of effected expenditure) in order to build up finance to carry out our obligations under a shortened contract length of 10 years.

We await your response.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'J. Douglas', written over a horizontal line.

J. Douglas,
Managing Director (Designate)
For and on behalf of Carlisle Leisure Ltd.

Appendix 3 – Exec minute on Capital

EX.277/02 LEISURETIME EXTERNALISATION - CAPITAL INVESTMENT OPTIONS (Non Key Decision)

(Public and press excluded by virtue of paragraphs 7, 8 and 9 of Part 1 of Schedule 12A of the Local Government Act 1972)

Portfolio Health and Wellbeing, Finance and Resources

Subject Matter

To consider a report from the City Treasurer setting out the investment options open to the Council following the decision to appoint Carlisle Leisure Limited as the preferred partner for the future operation of the Sands Centre, the Pools and the Outdoor Recreation facilities.

Summary of options rejected

Options of investing in facilities through revenue only with no capital investment or revenue and capital funding with the capital funding being provided by the contractor were rejected.

DECISION

1. That the option of capital investment funded by the City Council be approved.
2. That the Health and Wellbeing Portfolio Holder and Director of Leisure and Community Development be requested to consider the options for new build and refurbishments in respect of capital works and submit a report with recommendations to a future meeting of the Executive.
3. That it be agreed in principle to earmark up to £1,406,980 of capital receipts and the transfer of funds from reserves to the Large Projects Fund to facilitate funding of the works.
4. That the City Treasurer be requested to submit a further report to the Executive -
 - (a) detailing up to date estimates of the works that are chosen to be progressed and together with the actual costs and savings compared to the existing budget;
 - (b) considering the issue of the Development Agreement;

(c) the period to be applied to the contract and whether any break clauses should be included.

Reasons for Decision

To enable progress to be made with the Leisuretime externalisation proposals.

Appendix 4

Capital Works Recommendations

Following the decision of the Executive the Portfolio Holder has met with the Director of Leisure, the Contractor and the Contract Services Manager to discuss the capital improvements programme. The recommendations are:

Project	New/ Refurb	Class 1 Estimate 2002/3*	Anticip ated Comple tion Date	Notes
Sands Healthy Living Centre	New	£220,000	Aug 2003	Design work is already under way on this to ensure that completion date is achieved.
Sands Restaurant Extension	New	£110,000	Dec 2003	
Sands New Entrance	New	£200,000	June 2004	
Sands Main Hall Seating	New	£300,000	Sept 2003	
Pools Conservatory	New	£70,000	Sept 2004	
Stoney Holme Pavilion	Refurb	£250,000	Dec 2005	We will be looking for grant aid and partnership funding to increase the budget for this work.
		£1,150,000		

*A Class 1 estimate, as previously advised, must be treated with caution. It is based solely on a multiplier of recent square meter costs for similar work or equivalent base information. No detailed design work has been undertaken at this stage, no detail costing by a Quantity Surveyor and no tendering exercise has been undertaken. In the light of the prolonged timetable for carrying out this work, and present high inflation rates in the building industry

the Council must be aware that out turn prices could vary significantly from the present estimates.

In each instance a detailed design brief and more accurate costings will be reported back to the Executive before each element proceeds.

Appendix 5

Carlisle City Council and Carlisle Leisure Ltd Communications protocol

Introduction:

This paper has been prepared following a meeting between Martin Horne of Leisuretime and Carolyn Taylor and Sarah Irving of the Corporate Communications Unit on Tuesday, 3rd September 2002, at The Sands Centre, Carlisle.

The aim is to reach agreement on the future use of the Carlisle City Council brand in the lead-up to the externalisation of the City Council's leisure facilities and once Carlisle Leisure Ltd takes over the management of these facilities.

General:

Carlisle City Council, post externalisation, retains ownership of the Leisuretime facilities, including The Sands Centre, The Pools and Stony Holme Golf Course. Recognition of this must be acknowledged in all Leisuretime and Carlisle Leisure Ltd communications both internally and externally.

Posters/ Leaflets:

All posters and leaflets on leisure activities should, as a minimum, contain a strap line referring to the partnership between Carlisle Leisure Limited and the City Council. The suggested strapline is 'Carlisle Leisure Limited in partnership with Carlisle City Council'. Where print and publications are being externally printed on a large scale a City Council logo should be featured prominently with CLL's. Current publications where a logo is appropriate include:

- Sands What's On
- Leisure Access Card print
- Ultimate Card print
- Classical Subscription Series print

Advertising:

All advertising of events at City Council-owned leisure facilities to include the Carlisle City Council logo, where possible, or the strapline at the very least.

Carlisle City Council Corporate Communications Unit will continue to accept advertisements from Leisuretime and, in the future, from Carlisle Leisure Ltd. for inclusion in the Carlisle Focus at agreed rates. The Unit will also be in a position to design such advertisements, as required, at a price to be agreed.

Currently, Carlisle City Council is not credited when Leisuretime advertises on local CFM radio. There must be acknowledgement of the City Council's ownership of the leisure facilities in future advertisements in a formula to be agreed.

The current position with advertising on Border TV, where the City Council logo is used, should continue.

Website:

Carlisle City Council will continue to include information on Council-owned leisure facilities on its website and provide links with the Leisuretime site and, subsequently, the site to be set up by Carlisle Leisure Ltd. The Communications Unit is happy to discuss any further developments of the site with Leisuretime/ Carlisle Leisure Ltd.

Signage:

The City Council's logo must continue to be displayed on buildings owned by the City Council.

Press and PR:

Carlisle Leisure Ltd will handle its Press and Public Relations requirements internally.

The City Council's Communications Unit will be available to offer advice if there is a requirement for City Council involvement at launches/ events/ press conferences or if there is a need for input in press releases. Quotes will be prepared and approved by the Unit before passing them to Leisuretime/ Carlisle Leisure Ltd.

Any Press Releases that do not have a City Council input will be forwarded to the Unit for information either in advance of, or as part of, the general distribution. This ensures the City Council is aware of all issues relating to its leisure facilities.

Consultation:

Martin Horne, Business and Performance Manager for Carlisle Leisure Ltd, will be the contact point for members of the Communications Unit. It is expected that there will be fortnightly update meetings between the Business and Performance Manager and a member of the Communications Unit.

Market research:

Martin Horne will contact Jim White, head of the City Council's Policy Unit, to explore the possibility of Carlisle Leisure Ltd using the City Council's Citizens' Panel for research purposes. The cost of this service will be discussed separately.

September 2002

Appendix 6

Risk Assessment

Appendix 7

Pensions Admitted Body Status and Guarantor

The City Treasurer has commented as follows:-

1. The intention from the outset was to maintain a position whereby Council employees transferring to the Trust would have the capacity to remain in membership of the Cumbria Pension Fund.
2. This is to be achieved by the Trust making application to the Cumbria Pension Fund for "Admitted Body Status" under regulations which apply in cases where major contracts for local government services are awarded (as in this instance) to an external contractor, and to whom the Council staff will be transferred under TUPE arrangements.
3. However, it has been indicated that the County Council will require the City Council to act as the "Guarantor" of the Trust's Pension Fund obligations to its employees in the event that the Trust ceased functioning at some time in the future and was not in a position to discharge its Pension Fund obligations.
4. Similar arrangements were agreed in July 2000 when staff were transferred from the City Council to the Management Committees of individual community centres. However, whereas the community centres represented a very small and stable number of employees, which were unlikely to change materially in numbers over time, the position of the Trust is potentially quite different.
5. It is likely that the Trust will seek to expand its workload, both with the City Council, and perhaps more particularly with other local bodies and public authorities (e.g. schools, NHS etc). This would likely result in some staffing increases and increase the numbers comprised within the City Council's exposure to the Pension Fund guarantee.
6. However, if the Trust were at some time in the future successful in securing a contract for the provision of leisure services to another local authority, this would result in a significant increase in staff admissions to (or within) the Pension Fund, as employees of the Trust. The City Council's exposure as "Guarantor" would increase proportionately.

7. It is also possible that the City Council could at some point in the future when the present contract expired or reached a breakpoint, take the work and staff relating to the present contract back within the Council's activities. But it would also be possible that the Trust could potentially continue as an employer and as an admitted body within the Pension Fund, based on any non City Council contracts which it had won, but for which the City Council would remain as the Pension Fund Guarantor.
8. Although these scenarios might be viewed as remote in the short to medium term, they are not impossible and cannot be discounted in the longer term.
9. If subsequent to one of the scenarios outlined, the Trust ceased to function and was unable to meet its Pension Fund obligations to its remaining staff, then the City Council, as Guarantor, would have to make good those obligations. These were identified by the Pension Fund Actuary at the time of transferring the community centre staff, and are detailed as follows.
10. "The risk to the Fund from an admission agreement stems from the possibility that the body in question is not able or willing to meet its liabilities arising under the Scheme, ie an unfunded liability. Any unfunded liability (or deficit) will normally be assessed at a time when the body ceases to contribute to the Fund. This might be because it wishes to cease participation, or because the body has closed/been wound up etc.
- 10.1 A deficit might arise in these circumstances for a number of reasons; these are:
 - (i) The non-payment of the required contributions to the Fund by the body prior to the closure.
 - (ii) The experience of the body in the Fund being less favourable than the assumptions adopted in setting contribution rates. For example higher than expected rates of early retirement (particularly in ill health) or excessive pay increases for the employees.
 - (iii) Additional liabilities created as a result of the body closing, in particular the possible payment of immediate retirement benefits to all those over age 50 at that time.
 - (iv) A pre-existing deficit in the Fund arising from the past circumstances or experience of the body, which was to have been met by additional future contributions payable by the body.

- 10.2 On the cessation of an admission agreement the Local Government Pension Scheme Regulations 1997 (Regulation 78) provide that the contributions due must be revised, which may allow the recovery of any deficit arising on closure. However, it is possible that some or all of the additional contributions required may not be recoverable by the Fund from the body in question. If there is a guarantor to the admission agreement, the Fund may well turn to this body to meet the unfunded liabilities arising”.
11. I have written to the County Treasurer seeking advice as to how the City Council could legitimately restrict the width of the guarantee so as to encompass just those staff supporting the contract to be awarded by the City Council, and also requested that similar advice is obtained from the Scheme Actuary.
12. It would be important that any measures were legally enforceable against the Trust under the contract to be awarded, rather than reliant upon subsequent exchanges of correspondence, which may not be enforceable at law.
13. The only certain way that I am aware of would be make the Trust’s membership of the Cumbria Pension Fund on a “closed scheme basis” in respect of those staff transferring. On this basis, separate pension arrangements would (if the Trust chose to) have to be made for all subsequent staff engaged post-transfer, whether replacing existing staff subject to the transfer, or recruited to support any expansion in services.
14. The City Council will remain liable for any Pension Fund deficit on the transfer date in respect of the past service record of those staff transferring to the Trust.

CITY OF CARLISLE

To: The Executive
17 October 2002

Addendum to Appendix 7
Report LCD30/02

LEISURETIME EXTERNALISATION – PENSION FUND IMPLICATIONS OF TRANSFER

1. Introduction

- 1.1 In Appendix 7 to Report LCD 30/02, prepared by the Director of Leisure and Community Development, I outlined the present status of the application by Carlisle Leisure Ltd (CLL) to become an "Admitted Body" within the Cumbria Pension Scheme and my concerns at the wide ranging "Guarantee" which the County Council as Administering Authority would likely seek from the City Council.
- 1.2 Since then, I have had the opportunity to review the guidance to the Pension Fund Regulations dealing with outsourced contracts procured under a "Best value" regime, and to discuss the implications with a senior representative of the County Corporate Finance division.

This note updates members on my conclusions.

2. Admitted Body Status.

- 2.1 CLL have applied to become an Admitted Body under two provisions within the LG Pension Fund Regulations 1997.
- Regulation 5 (3) (a) – is a wide ranging provision for bodies providing public services in the United Kingdom, otherwise than for the purpose of gain. The County Council would seek a wide ranging guarantee from the City Council as CLL's sponsor, and if not forthcoming, could refuse admission.
 - Regulation 5.(3) (h) has a narrow admission criteria based upon providing services under a "Best Value Arrangement". The Admission Agreement would be restricted to the staff employed in providing the services under the contract awarded. A further Admission Agreement would be required for any new contract awarded in the future, whether by the City Council or by another body or local authority. Most of the concerns expressed in my earlier note would be resolved if CLL were admitted under this route.
- 2.2 In discussion with the Director and the contractor on this issue, the contractor has agreed to withdraw the application under 5 (3) (a) and leave the application under 5(3) (h) as the sole basis of application for Admitted Body status.
- #### **3. Closed or Open Ended admission arrangements.**
- 3.1 The regulations and guidance are written with the presumption that admission to the scheme will be sought on a "closed scheme" basis. That is, only employees who were in membership when the transfer took place, or were entitled to become members at that time, could retain or become members of the Cumbria pension scheme.

- 3.2 It is an option for the contractor to make the scheme available to new and replacement employees engaged specifically in the delivery of the services under the contract covered by the Admission Agreement. This cannot be imposed on the contractor or made a condition of the contract. It is also important to understand that any staff employed other than in the delivery of the services under the contract, cannot join the pension scheme. Any existing staff who change their duties post transfer so that they are no longer engaged in the delivery of the contract will cease their membership of the Cumbria pension scheme from that point in time onward.
- 3.3 Periodic Warranties are required from the contractor to ensure compliance with these provisions. The City Council is strongly recommended to advise all transferring staff of the changes in duties and responsibilities which could make them ineligible to continue their membership of the Cumbria pension scheme and the precise definition of what constitutes employment in the delivery of the contract.
- 3.4 Overview and Scrutiny Committee, when discussing the issue at its meeting on 10 October, expressed a preference for the Scheme to be on an open basis.
- 3.5 The main argument in favour of an open admission arrangement is from the contractor's viewpoint in that it largely (but not completely) avoids the need for different terms for those staff who would not be admissible under a closed scheme. There will always be a requirement for the contractor to provide other arrangements for any staff not engaged in the provision of the services under the contract.
- 3.6 The main arguments in favour of a closed admission arrangement are from the City Council's perspective, in that
- it gives certainty as to who is admissible
 - it limits the risks and exposure in respect of any guarantee given by the City Council to the Pension Fund
 - avoids the need for periodic warranties in this respect or the need to 'police' the admissions made to the scheme.
- 3.7 The Executive is asked to indicate whether it wishes Officers to discuss this with the contractor, but note that it will widen any guarantee required to be given by the Council, so as to embrace replacement and new employees engaged in the delivery of the contract, rather than restricted to those employees transferring at start of the contract.
- 4. Indemnities and Bonds**
- 4.1 The regulations envisage that a contractor will be required to provide an indemnity or bond to a value advised by the Actuary having regard to the length of the contract and the actuarial risks on the pension fund if the contractor were to cease trading. Those risks would reduce substantially (or could be extinguished) if there is a high likelihood that the services will be taken back in house if the contractor were to fail at any time during the contract period. (This is because the employees engaged in delivering the contract would become employees of the City Council. For those staff aged over 50 at the time of such an event, this would avoid the immediate payment of their pension which would otherwise be the case if they were made redundant as a result of the failure of the contractor and the services were not taken back in house).

- 4.2 Officers believe that the nature of the services to be provided under the contract are such that the services would be taken back in house until any decision were taken to re-tender the services or continue to provide them by the City Council on a more permanent basis. The Executive is asked to confirm the Officers view on this point.
- 5. Employer's Contribution Rate.**
- 5.1 The Actuary will calculate the Employer's Contribution rate to be paid by the contractor and we anticipate having this information on or about 25 October. Members need to be aware that the rate may be significantly more than the current rate of 10.7% struck when the fund was last valued at 31 March 2001. This is because of the significant reduction in the value of the equity investments comprised within the fund and which will likely reflect in an increased rate of contribution. Contractors were advised to base their bids on a rate of 10.8% and any increase beyond this rate will have to be met by the City Council as an adjustment to the contract terms.
- 6. Discretions within Scheme**
- 6.1 The contractor is required to determine and publish the policies on which the exercise of those discretions available to the Employer under the LG Pension Scheme Regulations will be based. This matter is to be addressed by the Management Committee at an early date and will likely be modelled on the Council's existing policies.
- 7. Transfer cannot precede Admission Agreement.**
- 7.1 Under the regulations, the transfer of staff to the contractor cannot take place before the Admission Agreement has been signed by the County Council (as Administering Authority) the City Council (as transferring and contracting Authority) and the Trust as the body seeking admission. On this basis it would seem unlikely that the contract can commence on 01 November as originally intended, but will commence as soon as practicable thereafter.
- 8. Conclusions and Recommendations**
- 8.1 The Executive are asked to determine whether the City Council should agree to "guarantee" an admission agreement on a closed basis as discussed in paragraphs 3.5 and 3.6.
- 8.2 If the Executive agree to an open admission agreement, the Executive is asked to authorise the Director of Leisure and Community Development, in consultation with the Head of Personnel Services and the City Treasurer, to negotiate an agreed definition as to what constitutes "delivery of services under the contract" and some overall capping as to the numbers of staff admitted under that definition at any one time.
- 8.3 The Executive is asked to confirm the views of officers that in the unforeseen event of the contractor failing during the life of the contract, there is a high likelihood that the City Council should take the services back in house pending any decision to re-tender the services or provide them in house on a permanent basis (paragraphs 4.1 and 4.2 refer).

Douglas Thomas
City Treasurer