

CABINET

19 November 2013

Title: Proposal for Elevate East London to Apply to Join the Modification Order	
Report of the Cabinet Member for Customer Services	
Open Report	For Information
Wards Affected: All	Key Decision: Yes
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Accountable Director: Jonathan Bunt, Chief Finance Officer	
Summary <p>Elevate East London has proposed that it would make an application to the Department of Communities and Local Government under the Redundancy Payments (Continuity of Employment in Local Government etc) (Modification) Order 1999 to join the 'Modification Order', meaning that affected staff would secure continuity of employment in the event of redundancy. This would also mean that staff joining Elevate from elsewhere in local government would bring years of service with them into their Elevate employment. Joining the Modification Order is not a contractual requirement of Elevate or Agilisys, but is in response to requests from staff and union colleagues that such an application be made. It is not clear whether any such application would be successful.</p> <p>In the event of staff redundancy, membership of the Modification Order could mean that the cost of redundancy is increased. The Council funds redundancies within Elevate where those redundancies deliver savings to the Council and therefore there is a potential financial cost to the Council from additional redundancy costs if the application is successful.</p> <p>Agilisys, as the Managing Partner of Elevate, has agreed to make a submission in the name of Elevate, and the Elevate Board have also agreed to this, subject to Cabinet agreeing the position, taking into account the possible increased financial exposure to the Council if the submission is successful.</p>	
Recommendation(s) <p>The Cabinet is recommended to support the making of an application by Elevate East London for membership of the Modification Order under the Redundancy Payments (Continuity of Employment in Local Government etc) (Modification) Order 1999.</p>	
Reason <p>Assisting in the Council's Policy aim of ensuring a well run organisation delivering its statutory duties in the most practical and cost-effective way. It will ensure the principle established as part of the creation of the Elevate joint venture, of parity for staff within both Elevate and the Council, is maintained to the maximum extent possible.</p>	

1. Introduction and Background

- 1.1 The Redundancy Payments (Continuity of Employment in Local Government etc) (Modification) Order 1999 modifies the Employment Rights Act 1996 by allowing employment with different local authorities and other 'Modification Order' employers to count for redundancy purposes as if it was service with one employer, as long as there is no break in service.
- 1.2 Appendix 1 to this report provides an explanation of the workings and applicability of the Modification Order, and is taken from the Local Government Employers website. Simplistically, the effect is to treat employees in a redundancy situation as if they were still employed by a local authority.
- 1.3 Upon the creation of Elevate East London (Elevate) in December 2010, Agilisys, as the managing partner, committed to the Council to enter Elevate into the Local Government Pension Scheme (LGPS), to honour through TUPE the terms and conditions of transferring staff. However admitted body status to the LGPS does not include admission to the Modification Order. Also, a successful application to join the Modification Order would not mean new employees would be eligible to join the Barking & Dagenham Pension Fund as Elevate would remain a closed employer within the fund.
- 1.4 Staff at the time of both service transfers raised concerns about this, and the Council's Corporate Management Team considered the matter on each occasion, and concluded that they would not ask Agilisys to seek admission, as evidence suggested such an application would have a low chance of success. This was consistent with the relationship with other service providers as the Council has never directly sought for organisations to join the Modification Order.
- 1.5 Agilisys had previously sought admission for the Hammersmith and Fulham Bridge Partnership and been rejected. This information has been shared with staff, and unions in the past. This matter however persists with staff, and Unions continue to champion the matter with Members, who in turn have raised it with the Council's Chief Executive. As a result, the issue has been considered within Agilisys and at the Elevate Board.

2. Agilisys View as Managing Partner and Elevate Board position

- 2.1 Agilisys have considered their position as Managing Partner, and have agreed to pursue an application, if the Council support it. As it is a Council request to apply, Agilisys are not willing to underwrite any additional future costs that could accrue as a result of a Council decision should an application be successful. Agilisys would, however, as noted in 5.6 below, fund any redundancy proposals which do not create savings for the Council.
- 2.2 The Board of Elevate agreed to pursue an application, also subject to approval by the Council. Elevate are not willing to underwrite any future additional costs that could accrue as a result of a successful application.

3. Proposal

- 3.1 The proposal is to make an application for membership of the Modification Order. Such an application would be compiled collaboratively with Union officers, and with full transparency, with the aim of maximising the chance of success. The decision of the Department of Communities and Local Government (CLG) as to admission would be final.

4. Options Appraisal

- 4.1 Given that neither Agilisys nor Elevate would be willing to meet the additional costs that could arise from an application, the only alternative is that no application is made. If such a decision is made then no financial risk arises for the Council. The requests of staff and Unions to make such an application would be denied.

5. Consequences of a Successful Application

- 5.1 Admission to the Modification Order is dependent on the approval of CLG, and requires evidence of a strong connection with Local Government. The reason given for the previous Agilisys application being refused was that the applying organisation was a 'for profit' organisation.
- 5.2 Elevate is also a 'for profit' organisation, but presently with only one client, no profits are generated, in strict accordance with the Elevate contract. If Elevate secures further clients then profits could be generated and as such, given the strict assessment criteria enforced by CLG, an application by Elevate has a low probability of success.
- 5.2 If an application was submitted and was successful it would apply retrospectively, i.e. it would apply to all staff who have been TUPE transferred to Elevate since 10 December 2010 along with all of those who have been employed by Elevate directly since that time, who have previous local government accumulated years of employment.
- 5.3 If the application was successful the implications would be:
- TUPE transferred staff would have continuity of service preserved in the event of redundancy, meaning that their number of years employment in local government would continue to accumulate if they went to a new local government employer, whereas presently the clock stops and they start from year one if they secure a new role. This would be advantageous to those staff affected.
 - This works in both directions, so new staff joining Elevate from local government could bring with them their years' service, which, if then made redundant, would result in them receiving a larger redundancy payment than if Elevate were not a member of the Modification Order.
 - Staff who choose to apply for roles back in local government would take their years service with them for redundancy purposes.
- 5.4 The risk therefore of a successful application to join the Modification Order, is of increased redundancy costs. Redundancy costs, where part of a scheme to deliver

savings to the Council are currently funded by the Council. Any such application would only apply to Elevate staff, and not staff employed by Agilisys.

- 5.5 Elevate currently has a mixed workforce of both TUPE and non-TUPE Elevate employed staff, and Agilisys employed staff. At the present time, 128 staff are on Elevate/Agilisys contracts, and 349 are under TUPE terms and conditions, though these numbers will change over time.
- 5.6 If there were a redundancy situation that did not relate to savings for the Council, then Agilisys would fund the cost of the redundancy, in accordance with the contract between the Council and Agilisys.

6. Financial Estimate of a Successful Application

- 6.1 It is important to emphasise that there would be no difference in redundancy costs for any staff TUPE transferred to Elevate with only staff who join Elevate from another local authority or who rejoin the Council from Elevate impacted.
- 6.2 The Council would continue to underwrite the costs of redundancy, where they help to deliver revenue savings to the Council, in accordance with the terms of the contract. It is difficult to estimate the potential cost of admission as it requires a number of assumptions to be made and the actual financial impact would be dependent on the individual circumstances of staff in a redundancy situation. To enable an illustration of the potential cost to the Council, it is assumed that:
- the average new employee would have 10 years additional continuous service to account for;
 - they would be under 50 years of age at the time of redundancy; and
 - they have a basic salary of £36,000.
- 6.3 This would mean on average each new employee would cost an additional £4,500 to make redundant over and above the current cost. Since December 2010, there have been 128 new starters, of which approximately 100 of are assumed to be Elevate rather than Agilisys employees. If 40 of these 100 are made redundant, based on the assumptions above, there is an estimated total potential additional cost to the Council of £180,000.
- 6.4 Given that redundancies will be funded when they contribute savings to the Council, there will be a cap on how many more require to be made as the savings expected from the Elevate contract are already known. Taking the assumption that approximately £1.5m of savings remain to be delivered from the target cost, and assume an average salary of £36,000 for each employee, then a maximum of 42 redundancies could be anticipated in total. In reality a realistic figure will be less than this, as savings will also be achieved from third party costs, and through the careful management of vacancies, as well as through redundancies. It is also the reality that a proportion of staff made redundant would be the transferred staff for which the modification order will not impact on their redundancy entitlement. The financial modelling below has assumed 40 redundancies to establish a worst case scenario in each case.
- 6.5 Given the many variables at play, various scenarios can be imagined. The following table provides some alternative financial outcomes to more fully explain

the potential risk, and includes the example given above for completeness. All scenarios assume an average salary of £36,000 and assume the staff members to be under 50 years of age:

No. of additional years service	Average additional cost of redundancy	Number of staff to be made redundant	Possible cost
5	2,700	40	108,000
10	4,500	40	180,000
15	6,750	40	270,000
20	9,900	40	396,000

As noted above this table reflects scenarios that are more worst case than probable scenarios and the likely additional cost to the Council could reasonably be expected to be much lower.

- 6.6 In addition to the contractually committed savings for Elevate, given the financial climate for local authorities, it is almost certain that the Council will request further savings against the target cost for the transferred services. Given the scale of the budget challenge between now and the end of the Elevate contract in 2017, the additional savings would be a significant sum and the number of potential redundancies would increase commensurately. This would increase both the probability and the scale of a potential impact of a successful application.

7. Consultation

- 7.1 The report is in response to representations from both staff and union colleagues. A paper has been considered by the Agilisys and Elevate Boards and also by the Council's Corporate Management Team. The Agilisys and Elevate Boards have approved an application, subject to Cabinet agreement.

8. Financial Implications

Implications completed by: Jonathan Bunt, Chief Finance Officer

- 8.1 The financial implications are largely outlined in section 6 above. This shows that, if the Modification Order is approved, there is a high likelihood that this will lead to extra costs being incurred by the Council in the form of higher redundancy payouts.
- 8.2 The Council budgets corporately for all redundancy costs included those for expected Elevate redundancies under the existing terms of employment, so any change brought about by the Modification Order would be an additional cost to the Council, which would have to be met within existing budgets.

9. Legal Implications

Implications completed by: Chris Pickering, Principal Solicitor

- 9.1 A successful application for joining the list of Modification Order bodies will have implications wider than redundancy calculations as noted in the risk management section. It would also have an impact on subsequent employers in the event of transfer or re-employment of current Elevate employees although this is not an

issue for the Council or Elevate. Applications to join the list of bodies are made frequently and in order for such a request to be successful there must be a strong connection with local government and LGE (Local Government Employers) will be consulted as part of that application process. There is no appeal as noted in the report. Agreement to make the application and consult fully with staff and Unions also shows a commitment to deal reasonably with employees, whether the application is subsequently successful or not.

10. Other Implications

- 10.1 **Risk Management** - If an application is made, and is successful, there is a subsequent risk of increased cost to the Council if one or more affected members of staff are then made redundant. This risk is hard to quantify as many variables, such as length of local government service, age, salary, come into play. This report provides some examples of the possible impact which have been modelled under various assumptions.

Background Papers used in the preparation of the report:

- Cabinet report and Minute 45, 28 September 2010 entitled “Business Case and Appointment of Preferred Bidder for Joint Venture Strategic Partnership”

List of appendices:

- **Appendix 1** – Explanation of Modification Order arrangements