



PENSIONS COMMITTEE 17 December 2013	REPORT

Subject Heading:	The admission of three Transferee Admission Bodies to the London Borough of Havering's pension Fund
CMT Lead	Andrew Blake-Herbert
Report Author and contact details:	Contact: Karen Balam Designation: Transactional Manager Telephone: (01708) 432271 E-mail Address: Karen.balam@havering.gov.uk
Policy context:	LGPS Regulation 6
Financial summary:	The Pension Fund's actuary has assessed the level of Indemnity bonds required.

The subject matter of this report deals with the following Council Objectives

Clean, safe and green borough	<input type="checkbox"/>
Excellence in education and learning	<input type="checkbox"/>
Opportunities for all through economic, social and cultural activity	<input type="checkbox"/>
Value and enhance the life of every individual	<input checked="" type="checkbox"/>
High customer satisfaction and a stable council tax	<input checked="" type="checkbox"/>

SUMMARY

The purpose of this report is to inform the London Borough of Havering Pension Fund Committee of the proposed admission of three transferee admission bodies (as detailed on the attached appendices) into the London Borough of Havering Pension Fund under the provisions of The Local Government Pension Scheme (Administration) Regulations 2008, Regulation 6.

RECOMMENDATIONS

- 1) That the admission of Sodexo UK and Ireland Ltd, Breyer Group PLC and Mulalley and Company Limited as transferee admission bodies into the London Borough of Havering Pension Fund be noted subject to:
 - (a) All parties signing up to an Admission agreement, and
 - (b) An Indemnity or Insurance bond in an approved form with an authorised insurer or relevant institution, being put in place to protect the letting authority/pension fund.

REPORT DETAIL

1. The Pension Regulations require the Local Government Pension Scheme (LGPS) Pension Funds to allow an admission to its scheme if the organisation is one that provides or which will provide a service or assets in connection with the exercise of a function of a scheme employer, as a result of the transfer of the service or assets by means of a contract or other arrangement.
2. Where a transferee admission body and the scheme employer undertake to meet the relevant requirements of Regulation 6, an administering authority **must** admit to the LGPS the eligible employees of the transferee admission body, and where it does so, the terms on which it does are noted in the admission agreement for the purposes of these Regulations.
3. Investigations have been made to ensure that each body named in the attached appendices falls within the definition contained in Regulation 6 (2)(a)(i) of the Local Government Pension Scheme (Administration) Regulations 2008 and as such will be eligible to become a transferee admission body. Under Regulation 6 (10) & (11), the administering authority must admit to the scheme the eligible designated employees of the transferee admission body, provided the transferee admission body and the scheme employer undertakes to meet the relevant requirements of the regulations through an admission agreement. Legal engrossment of the admission agreement is subject to the service transfer taking place.

4. The London Borough of Havering will seek to sign appropriate transferee admission agreements to allow the bodies listed in Appendix A to C to be admitted to the London Borough of Havering Pension Fund. When the admission agreements are formed the admitted bodies will be required to pay contribution rates as determined by the Fund Actuary.

IMPLICATIONS AND RISKS

Financial implications and risks:

There are no financial implications arising directly from this report as continued membership in the LGPS means there is no loss to contributions into the fund. As noted in the report, employer contributions to be paid by admitted bodies are determined by the Fund's actuary.

There are no immediate financial implications to the Fund arising from the Fair Deal arrangements. However, it is likely that an increasing number of organisations will seek membership of the Fund which will give rise to a potential increase in administration costs. These costs may be mitigated through improved systems and processes or by raising charges on newly admitted bodies.

A bond or indemnity covers the level of risk arising on premature termination of the provision of service or assets provided by the body by reason of insolvency, winding up or liquidation.

There are risks to the letting authority if the bond levels are not reviewed in line with employee and legislative changes, this risk is being managed by putting in place a timescale for bond reviews and ensure this is included in the admission agreements.

The letting authority also faces risk if the admitted body is unable to meet any fund deficit's at the end of a contract. This risk is going to be managed by putting in place regular reviews of admitted body risks and their employer rates. Any deficit's not met from the bond at the end of the contract will be met by the letting authority.

The risk of non payment of contributions, which would have a cashflow impact, is actively managed by the Pension Administration team on a monthly basis with appropriate escalation for non compliance. This risk is reported in the Pension Fund Annual Report.

The risk of a contractor failing to secure a bond is managed by ensuring all employers are aware of their responsibility to notify the Pension Team at the outset of a contracting exercise. The risk to the fund is managed by deferring the pension benefits of any transferring employees where admission agreement and bond agreements are not complied with. This does result in a cashflow loss to the fund which cannot be managed.

Legal implications and risks:

Appendix A

Academies are scheme employers for the purposes of the local government pension scheme. Where they let contracts for the provision of services, their contractors are eligible to become admission bodies, subject to the completion of an admission body agreement and the provisions of a bond or indemnity, if required, to cover the risks to the pension fund arising from premature termination of the provision of service by reason of insolvency, winding up or liquidation of the admission body.

Academies are public sector bodies required to have regard to the Government's policy guidance "Fair Deal for staff pensions: staff transfer from central government" when outsourcing services. Previously this required public sector bodies to ensure pension protection by including provisions in contracts requiring contractors to offer transferring employees pension protection by offering the right to acquire pension benefits which are the same as, or broadly comparable to or better than those which the employees currently enjoy. In the case of the council employees transferring to the Oasis Academy's new catering contractor this can be achieved by means of an admission body agreement, allowing the transferring employees to remain members of the Local Government Pension Scheme.

In agreeing the recommendation, the Pension Fund Committee will ensure that its current employees enjoy pension protection when transferring to their new employer and will reduce the risk of any complaints to the Pension Ombudsman which might result from a failure to ensure pension protection for its employees when they transfer.

Appendix B and Appendix C

The Council is required to comply with the Best Value Authorities Staff Transfers (Pensions) Direction 2007 (the Direction) when entering into initial and subsequent contracts for the provision of services which were previously provided by the authority's employees. The services to be provided by the proposed admission bodies are services to the Council which fall within the scope of the Direction. Paragraph 8 of the Direction requires the Council to ensure that the contract provides pension protection for transferring original employees: pension protection is the right to acquire pension benefits which are the same as, or broadly comparable to or better than those which the employees currently enjoy. By allowing the contractors to enter into admission body agreements the Council can ensure that it meets its obligations under the Direction.

The Local Government Pension Scheme (Administration) Regulations 2008 enable the proposed admission bodies to apply for admitted body status, subject to compliance

with the requirements of the Regulations concerning the terms of the admission body agreement and the provision of an indemnity or bond, if required, to cover the risks to the fund arising from premature termination of the provision of service by reason of insolvency, winding up or liquidation of the admission body.

In agreeing the recommendations, the Pension Fund Committee will ensure that the financial risks to the pension fund are mitigated and that the Council complies with its obligations under the Direction.

Human Resources implications and risks:

Admitted body status will allow transferring staff continued membership eligibility of the LGPS.

Where the service transfer relates to employees of the London Borough of Havering, full consultation is undertaken with affected staff and the recognised trade unions in line with TUPE requirements. In respect of other service transfers the current employing body is responsible for undertaking the equivalent consultation.

Equalities implications and risks:

The proposed admission of three transferee admission bodies (as detailed on the attached appendices) into the London Borough of Havering Pension Fund will not only ensure that Council's compliance with the Best Value Authorities Staff Transfers (Pensions) Direction 2007, but will also enable its current employees to continue to enjoy pension protection when transferred to their new employer.

While the Council is in position to admit the transferee admissions bodies into LGPS scheme, the decision to allow an open or closed scheme is made by the transferee admission bodies, and the Council cannot influence their decision should they decide to opt in for a closed scheme.

If the transferee admission bodies decide to opt in for a closed scheme, staff members employed directly by them to deliver the outsourced function, will not be able to access the public service pension scheme, and will be potentially disadvantaged in terms of pension rights when compared with their colleagues employed by the private contractor as a result of compulsory transfer from the letting authority.

Currently, it is not possible to fully consider the impact on staff members who will benefit or be disadvantaged by the above arrangements.

BACKGROUND PAPERS

The Local Government Pension Scheme Regulations (various) and the Guidance notes issued with them.

Proposed admission of Sodexo UK and Ireland Ltd into the London Borough of Havering Pension Fund, as a transferee admission body under the provisions of the Regulation 6 of the Pension Regulations.

Sodexo UK and Ireland Ltd are to be the appointed Catering services contractor for Oasis Academy Pinewood (proof to be provided by Oasis Academy Pinewood to the Pension Administration Team). The contract is due to commence on 1 January 2014 to 31 August 2015, replacing the previous contract which was provided by LBH Catering Services. There is an option to renew for up to another five years (ie up to 31 August 2020).

When the Catering Service transfers from LBHs Catering Services to Sodexo UK and Ireland Ltd, which is due to commence in January 2014, the contracts of employment for the two employees are to be transferred from the London Borough of Havering to Sodexo UK and Ireland Ltd. The Transfer of Undertakings (Protection of Employment) Regulations ('TUPE') applied to the employment terms and conditions of the relevant employees.

Sodexo UK and Ireland Ltd intends to allow continuity of LGPS membership for the employees through a transferee admission agreements with the London Borough of Havering Pension Fund. The agreement will be a closed agreement. A closed agreement allows continued pension scheme access for the current LGPS members and other current employees transferring under TUPE from the Council only. An open agreement allows new employees to Sodexo UK and Ireland Ltd providing the catering service to Oasis Academy Pinewood to also have contractual membership of the LGPS. The decision to allow an open or closed scheme is made the scheme employer and reflected in the admission agreement, bond rates and employer rate. The option to join the LGPS will not be available to existing employees of the company who are not already members of the LGPS.

This contract award is impacted by the New Fair Deal policy, published by HM Treasury on 4 October 2013 and effective immediately, subject to specific provisions and the ability of public service schemes being in a position to allow continued access to its scheme. The LBH Pension Fund and LGPS is in the position to comply immediately with the New Fair Deal through the use of the existing Transferee Admission Agreements.

Contracting authorities are responsible for ensuring compliance with the new Fair Deal policy, and these rights will ultimately be enforceable by staff. Independent providers, as scheme employers, will also be subject to the requirements of the scheme regulations and the jurisdiction of the Pensions Regulator and the Pensions Ombudsman.

Pensions Committee, 26 March 2013

A scheme employer offering a 'broadly comparable' pension scheme to the LGPS would normally be an alternative to a Transferee Admission Agreement. Following advice from the Government Actuaries Department (GAD) and the Fund Actuary, who certify 'broadly comparable' schemes, this would not be an option currently due to the new LGPS Regulations being laid before Parliament and due to come into statute.

Proposed admission of Breyer Group PLC into the London Borough of Havering Pension Fund, as a transferee admission body under the provisions of the Regulation 6 of the Pension Regulations.

Breyer Group PLC is entering a contractual agreement with the London Borough of Havering for the provision of responsive repairs and maintenance services to Council owned and managed housing stock. The service transfer will take place from 6 January 2014. The contract period is for 5 years, with the option to extend for a further 2 years.

This arrangement will involve a second wave TUPE transfer of 30 employees of Morrison Facilities Services, owned by Mears Group PLC, of which 16 are currently members of the LGPS and currently engaged in the delivery of the service following the first wave TUPE transfer to Anglian Water Group (AWG) in August 2004.

Breyer Group PLC intends to allow continuity of LGPS membership for the employees through a transferee admission agreement with the London Borough of Havering Pension Fund. The agreement will be a closed agreement. A closed agreement allows continued pension scheme access for the current LGPS members and other current employees transferring under TUPE from the Council only. An open agreement allows new employees to Breyer Group PLC providing the provision of responsive repairs and maintenance services to Council owned and managed housing stock under the contract with the London Borough of Havering to also have contractual membership of the LGPS. The decision to allow an open or closed scheme is made by the scheme employer and reflected in the admission agreement, bond rates and employer rate. Hymans the fund actuary have calculated the employer's rate at 23.8% of pensionable pay and a bond value of £1,494,000.

It should also be noted that the employer's rates apply until 31/03/2014 and will be reassessed as part of the formal valuation of the fund as at 31/03/2013.

The option to join the LGPS will not be available to existing employees of the company who are not already members of the LGPS.

Appendix C

Proposed admission of Mulalley and Company Limited into the London Borough of Havering Pension Fund, as a transferee admission body under the provisions of the Regulation 6 of the Pension Regulations.

Mulalley and Company Limited is entering a contractual agreement with the London Borough of Havering to provide repairs to empty properties (Voids) in Council owned and managed stock. The service transfer will take place from 6 January 2014. The contract period is for 5 years, with the option to extend for a further 2 years.

This arrangement will involve a second wave TUPE transfer of 5 employees of Morrison Facilities Services, owned by Mears Group PLC, of which 3 are currently members of the LGPS and currently engaged in the delivery of the service following the first wave TUPE transfer to Anglian Water Group (AWG) in August 2004.

Mulalley and Company Limited intend to allow continuity of LGPS membership for the employees through a transferee admission agreement with the London Borough of Havering Pension Fund. The agreement will be a closed agreement. A closed agreement allows continued pension scheme access for the current LGPS members and other current employees transferring under TUPE from the Council only. An open agreement allows new employees to Mulalley and Company Limited providing the repairs to empty properties (Voids) under the contract with the London Borough of Havering to also have contractual membership of the LGPS. The decision to allow an open or closed scheme is made by the scheme employer and reflected in the admission agreement, bond rates and employer rate. Hymans the fund actuary have calculated the employer's rate at 20.1% of pensionable pay and a bond value of £384,000.

It should also be noted that the employer's rates apply until 31/03/2014 and will be reassessed as part of the formal valuation of the fund as at 31/03/2013.

The option to join the LGPS will not be available to existing employees of the company who are not already members of the LGPS.