Havering
LONDON BOROUGH

PENSIONS COMMITTEE 17 December 2013	REPORT

Subject Heading:	HM Treasury New Fair Deal guidance
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Policy context:	Local Government Pension Scheme
Financial summary:	No direct costs to the Pension Fund

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

Clean, safe and green borough	[]
Excellence in education and learning	[]
Opportunities for all through economic, social and cultural activity	[]
Value and enhance the life of every individual	[X]
High customer satisfaction and a stable council tax	[]

SUMMARY

This report is to inform the London Borough of Havering Pension Fund Committee of the HM Treasury published new guidance setting out a reformed Fair Deal policy published on 4 October 2013 and how this may impact the London Borough of Havering pension fund

RECOMMENDATIONS

1) That the London Borough of Havering Pension Fund note the new guidance setting out a reformed Fair Deal Policy published on 4 October 2013 by HM Treasury.

REPORT DETAIL

New Fair Deal Guidance

1. On 4 October 2013 HM Treasury published new guidance setting out a reformed Fair Deal policy. Fair Deal is a non-statutory policy which sets out how pensions' issues are to be dealt with when staff are compulsorily transferred from the public sector to independent providers delivering public services (see Appendix A).

Prior to New Fair Deal

2. Where Best Value and Fair Deal obligations exist - the outsourcing Employer should ensure that staff who are either current members of the LGPS, or who have an entitlement to become a member of the LGPS, on being transferred under TUPE have access to either:

   - Continuing Membership of the LGPS; or
   - A GAD-certified Broadly Comparable Pension Scheme (the outsourcing contract would normally be expected to include a bulk transfer arrangement for accrued LGPS Membership).
   - Where Fair Deal only was applied the provisions allowed for:

     - Membership of the LGPS through an admission agreement;
     - A Final Salary Defined Benefit pension scheme; or
     - A Defined Contribution/Stakeholder pension scheme where member contributions were matched by the employer up to 6%.

Impact of New Fair Deal

1. Staff whose employment is compulsorily transferred from the public sector to independent providers of public services will generally have a right to continued access to relevant public service pension arrangements. These continued access arrangements will replace the current broad comparability and bulk transfer approach under the existing Fair Deal policy.

2. The new guidance also confirms that where contracts involving staff covered by the existing Fair Deal policy are retendered there will be a presumption that staff should be offered access to the appropriate public service pension scheme.
3. The new Fair Deal policy covers staff transfers from central government, so applies to central government departments, agencies, the NHS, certain maintained schools (including academies) and any other parts of the public sector under the control of government ministers, where staff are eligible to be members of a public service pension scheme.

Impact of the New Fair Deal

4. Two Academies in the Borough have outsourced public sector employees to private sector contractors.

    - One of the Academies did not seek to tender with the provision of providing the LGPS for transferred public sector employees and it is unknown what pension provision has been put in place for the staff who were TUPE'd from the Council The former council employees were moved to deferred status in the pension fund, which means that the fund liabilities for the former scheme employer are growing, although without increased years, but there is a cashflow impact on the fund due to the loss of the employee and employer contributions. Due to pension increases being greater than salary increases deferred benefits could potentially be greater than continued earned benefits.
    - The other Academy sought an Admission Agreement, which was approved by the Pension Committee, but has not been fulfilled by the admission body to date.

    The guidance now underpins the general right to continued access to the relevant public service pension scheme.

5. The future impact of the New Fair Deal guidance, which was with immediate effect, will be to increase the volume of smaller admission bodies to the fund. Managing admission bodies is resource intensive, together with managing the admission process to ensure correct compliance by contracting authorities. Any potential increase in smaller admitted bodies will impact on the costs of administering the fund, although recent system improvements and future plans to move to self service should release resources to mitigate any additional resource requirements arising from the guidance.

IMPLICATIONS AND RISKS

Financial implications and risks:

There are no financial implications arising directly from this report.

There is a risk with the increasing number of admitted bodies to the fund that the costs of administration will increase. However, it is expected that this will be mitigated through increased efficiencies and the levying of charges on new employers wherever possible.

Legal implications and risks:

None other than set out in this report.

Human Resources implications and risks:

The guidance now underpins the general right to continued access to the relevant public service pension scheme

Equalities implications and risks:

TUPE transfers relating to Best Value and Fair Deal authorities ensure continued access to the Local Government Pension Scheme or a broadly comparable scheme. Local Government employees providing services under contract to Academies who were transferred under TUPE to private contractors did not transfer under Best Value with continued access to the LGPS or a broadly comparable scheme unless the new employer opted to seek admission to the scheme. This was an anomaly because Academies were not considered to be Best Value authorities.

In October 2013 the HM Treasury set out the revised Fair Deal guidance which widened access to the LGPS for Local Government employees providing services under contract to Academies who were subsequently TUPE transferred to private sector contractors. The Fair Deal is a non-statutory policy setting out how pensions issues are to be dealt with when staff are compulsorily transferred from the public sector to independent providers delivering public services.

The Council welcomes the new Fair Deal guidance because it will provide an appropriate level of protection to public sector employees' pension provision when the services they deliver are outsourced and will enable its current employees to continue to enjoy pension protection when transferred to a new employer.

It should be noted, however, that he Fair Deal policy does not apply to staff members of the independent contractor, including any staff employed to deliver the outsourced service or function who were not compulsorily transferred from the public sector. Any proposals to allow these staff access to a public service pension scheme are out of the scope of this guidance, regardless of whether or not TUPE applies. Such staff will remain members of the public service pension scheme they were in immediately prior to the transfer, subject to the eligibility criteria of the relevant scheme. This means that those staff members 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 Council.

BACKGROUND PAPERS

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

Government Actuary's Department Technical Bulletin – New Fair Deal Guidance

Appendix A

Government Actuary's Department Technical Bulletin
New Fair Deal Guidance