



## PENSIONS COMMITTEE

15 March 2016

## REPORT

**Subject Heading:**

The Admission of Accent Catering to the London Borough of Havering Pension Fund

**CMT Lead:**

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**Policy context:**

Local Government Pension Scheme Regulations 2013. Schedule 2 part 3

**Financial summary:**

The pension fund actuary has assessed the level of Indemnity bond at £195,000.00

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

Value and enhance the life of every individual	X
High customer satisfaction and a stable council tax	X

### SUMMARY

The purpose of this report is to inform the London Borough of Havering Pension Fund committee of the proposed “closed agreement” admission of Accent Catering Services Ltd into the London Borough of Havering Pension fund under the provisions of The Local Government Pension Scheme Regulations 2013, Schedule 2, Part 3 and follows New Fair Deal Guidance.

This is due to the TUPE of Catering staff from Coopers Coborn Academy to Accent Catering Services Ltd for the provision of Catering services to the Academy.

## RECOMMENDATIONS

That the admission of Accent Catering Services Ltd into the London Borough of Havering Pension Fund as an admitted body to enable 7 members of staff who transferred from Cooper's Coborn Academy to continue membership of the Local Government Pension Scheme (LGPS) 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 pension fund.

## REPORT DETAIL

1. Accent Catering Services Ltd succeeded in winning the contract to provide catering services to the Coopers Coborn Academy. The contract is for five years and commenced on 1<sup>st</sup> September 2015.
2. When the Coopers Coborn Academy catering services transferred from the Academy to Accent Catering on 1<sup>st</sup> September 2015, the contracts of employment of 7 employees transferred from the Academy to Accent Catering Services Ltd. The Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) Amendment Regulations 2014 ("TUPE") protects the employment terms and conditions of the relevant employees except for pension rights which in this instance are covered under the New Fair Deal guidance 2013. All of the employees concerned were members of the LGPS at the date of transfer.
3. New Fair Deal Guidance is a non-statutory policy setting out how pension's issues are to be dealt with when staff are compulsorily transferred from the public sector to independent providers delivering public services. The guidance is needed to address Pension rights not covered by TUPE.
4. 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.
5. Where a transferee admission body and the scheme employer undertake to meet the relevant requirements of Schedule 2, Part 3, 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.

6. Accent Catering falls within the definition contained in Schedule 2, Part 3 of the Local Government Pension Scheme Regulations 2013 and as such will be eligible to become a transferee admission body. Under Schedule 2, Part 3, 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.
7. The London Borough of Havering will seek to sign appropriate transferee admission agreements to allow Accent Catering Services Ltd to be admitted to the London Borough of Havering Pension Fund. When the admission agreement is formed Accent Catering will be required to pay contribution rates as determined by the Fund Actuary. This has been set initially at 29.9% of pensionable pay.

## 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.

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 and the level of bond set by the actuary is £195,000.

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 cash flow 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.

**Legal implications and risks:**

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 provision 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" (published with immediate effect on the 4<sup>th</sup> October 2013) when outsourcing services. Where staff are compulsorily transferred (TUPE) from the public sector (the Academy) to an independent provider of public services (Accent Catering services Limited) those staff will generally have a right of continued access to the relevant public service pension arrangements (Havering LGPS)

In the case of the Academy employees transferring to their new catering contractor, Fair Deal obligations can be achieved by means of an admission body agreement, between the administering authority (Havering) and the letting authority (the Academy) and the employing/admission body (the contractor) allowing the transferring employees to remain members of the Local Government Pension Scheme. The Academy and the contractor have applied for admission on a closed basis and actuarial assessments have been undertaken on that basis in order to assess contributions and the bond value.

In agreeing the recommendation, the Pension Fund Committee will ensure that the Academy's current employees enjoy their current pension protection when transferring to their new employer and will reduce the risk of any complaints to the Pension Regulator and Pensions Ombudsman resulting from a failure to ensure Fair Deal pension protection for its employees on transfer, particularly as that took place on the 01/09/2015.

**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.

Geraldine Minchin, Strategic HR Business Partner

**Equalities implications and risks:**

The proposed admission of Accent Catering Services Ltd into the London Borough of Havering Pension Fund will not only ensure that New Fair Deal guidance has been followed but will also enable the Cooper's Coborn staff who were compulsorily transferred to Accent Catering Services 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 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 Pensions Scheme regulations 2013  
HM Treasury Fair Deal for staff pensions

