PENSIONS – EMPLOYER OUTSOURCING GUIDE

An overview of pension implications and procedures for LGPS Scheme Employers

London Borough of Havering Pension Fund

Produced in association with Hymans Robertson LLP

Content

1. Introduction

How do I use this guide?

This guide provides an overview of all the major issues faced when a Local Government Pension Scheme (LGPS) scheme employer (detailed as a 'Letting Authority') outsources a service from their organisation. It also aims to make clear your organisation's responsibilities if required to provide pension protection to staff compulsorily transferred from your employment and sets out the procedures to be followed in relation to the LGPS.

The 'Responsibilities' section on **page 8** details the appropriate Government legislation that your particular organisation should be aware of and its impact on your outsourcing arrangements. There is a short synopsis of that section below:

Type of Organisation – Letting Authority	Applicable Government measures	Descriptions
Council Authorities / Police and Fire	Best Value Authorities Staff Transfers (Pensions) Direction 2007	Outsourcing must offer either continued LGPS access or an actuarially assessed broadly comparable Scheme
Academies	New Fair Deal	Continued LGPS access must be offered. Broadly comparable scheme only in **exceptional** circumstances
Others (such as Colleges/Charities)	No applicable government guidance but should follow TUPE principles	Under the LGPS Regulations, they can still offer a winning contractor a route to admitted body status **IF** they have received agreement from the London Borough of Havering

Legislative Overview

This guide should be read in conjunction with the London Borough of Havering Pension Fund's ("the Fund's") admission policy for new employers joining the fund, together with the Funding Strategy Statement and Scheme regulations (excerpt detailed within **Appendix B**) which are all available on the Fund's website http://www.yourpension.org.uk/handr/Home.aspx and the London Borough of Havering Council's ("the Council's") website at https://www.havering.gov.uk/.

Services that can be outsourced

Services that may be outsourced include the essential services that we all rely on such as street and school cleaning, catering, parking, parks maintenance, housing repairs, home helps, “back office” functions such as HR, pensions/payroll and the provision of services that support vulnerable families, children, young people and the elderly.

“When Should Employers Consider Pensions and what problems may arise if pension’s issues are not addressed appropriately?”

Two important issues of an outsourcing exercise – **Timing** and **Consequences**

Timing

If, following an assessment of their employer responsibilities (**Section 3** of the guide) an obligation to ensure pensions protection exists, Letting Authorities should not proceed with a TUPE transfer of staff until they have ensured that:

- Where appropriate the contractor has a valid Government Actuary Department (GAD) certified ‘broadly comparable’ pension scheme in place for the staff; or
- The transferring staff will have continuing membership entitlement of the LGPS by the contractor entering into an Admission Agreement to become an Admission Body of the Havering Pension Fund

It is important to recognise that where a contractor wishes to provide pension protection as an admission body in the Fund, that the Admission Agreement must be in place before the contract can start.

If, for example, an outsourcing contract were to start before pension protection had been put into place and an LGPS Member were to die in the meantime, then the Letting Authority could find themselves in potential legal difficulties. This is because, strictly speaking, the LGPS Member would have ceased to be an Active Member of the LGPS on the day the outsourcing contract started and their dependants would not receive the tax-free cash lump sum death grant payments and enhanced survivors pensions which would otherwise have been paid. Whilst this is a strict interpretation of this scenario, it is important to note the reality that could be faced by Letting Authorities. It is also worth highlighting that within the Best Value Direction order transferring employees have a legally enforceable right to pension protection against the Letting Authority.

Letting Authorities should ascertain the pension cost from the Fund’s Actuary before the publication of the invitation to tender (ITT). This allows contractors to fully understand what pension costs are before applying so they may build this into their cost models.

Ensuring that pension protection is in place can be a lengthy process, therefore, it is important that as soon as a Letting Authority is thinking of outsourcing a service they consider the pension implications. If pension protections are not considered until late in the outsourcing process, the Letting Authority may experience delays in being able to start the outsourcing contract.

The Fund will not normally backdate an Admission Agreement for a contractor to become a scheme employer of the LGPS as an Admission Body.

Consequences of outsourcing arrangements

Working in partnership with the private and third party sectors to modernise and reform the delivery of public services often involves the transfer of LGPS employees to new employers. The success of these projects will depend, critically, on the fair treatment of the transferring staff who will need reassurance that their rights will be fully respected and that they will be treated fairly throughout an outsourcing exercise.

Employers participating in the LGPS need to be aware of the legal position and their obligations when employees are transferring from their organisation to an external service provider (i.e. a Contractor) to ensure, where appropriate, 'pension protection' has been applied.

The consequences of ignoring pensions when outsourcing services can be frustrating and costly. This guide is primarily for employers with members in the London Borough of Havering Pension Fund who are looking to outsource a service to a private contractor through a contract or other arrangement and sets out your responsibilities and the pension related issues you will need to consider when outsourcing a service and the impact that your choices will have on the transferring staff.   Employment rights for pay, holidays etc., are protected by a law under the Transfer of Undertakings and Protection of Employment Regulations 2006 (or TUPE for short).

The Government measures on pensions sit alongside TUPE and are designed to ensure that pension rights, for <u>applicable</u> organisations (see **section 3** of the guide), are protected when jobs are transferred to another public sector employer or private contractor.

The majority of members of the LGPS **<u>are</u>** given pension protection by various Regulations and Government guidance if the service in which they are employed changes hands to a private contractor. As such, scheme members outsourced under a TUPE arrangement could have pension protection on the first and any subsequent transfers.

Employers participating in the LGPS should be aware of the legal position and their obligations when staff are transferring from their organisation to an external service provider (i.e. a Contractor) to ensure 'pension protection' going forward.

The Department for Communities and Local Government (DCLG) produced a useful guide *'Admitted body status provisions in the LGPS when services are transferred from a local authority or other scheme employer'* which contains background information and outlines the respective roles and obligations of the outsourcing scheme employer (i.e. the Letting Authority), the Administering Authority (e.g. the Council) and the contractor which has successfully tendered to provide the outsourced service. Though this guide is now out of date, it continues to provide very useful information on the process and responsibilities of affected parties within an outsourcing exercise.

The regulations governing the Local Government pension scheme and the guidance that sits alongside it are continuously under review and susceptible to change. Please ensure therefore that you are referring to the most current guidance or consult with your legal advisers

You should read this guide carefully. If you have any questions after reading it you should contact the Havering oneSource Pension Administration Team using the contact information in **Appendix A**.

2. Legislative / advisory background

Section 2 covers	• TUPE • Best Value Authorities Staff Transfers (Pensions) Direction 2007 • Fair Deal/New Fair Deal • LGPS Regulations

The provisions regarding pension protection have developed over a number of years, resulting in a complex structure emerging. It is for individual scheme employers to understand how these provisions relate to them and their employees, and to ensure that appropriate pension protection is put in place, where appropriate.

In this section we set out the main legislative and advisory elements that apply in relation to the provision of pension protection for LGPS employers.

TUPE

In broad terms, the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) protects employees' terms and conditions (except occupational pension arrangements that relate to old age, ill health or survivor benefits) when the services in which they work is transferred from one employer to another. Employment with the new employer is treated as continuous from the date of the employee's start with the first employer or, for redundancy payment purposes, related employer under the Redundancy Payments (Continuity of Employment in Local Government, etc.) Terms and conditions of employment cannot be changed where the operative reason for the change is the transfer itself although changes for other reasons in relation to economic, technical or organisational (ETO) may be negotiated.

The TUPE regulations provide some protection against unfair dismissal and state that trade union recognition and collective agreements in force at the time of the transfer are to be maintained.

Employers have a duty to consult representatives of employees who may be affected by a transfer. This must take place before the transfer to allow a full and proper consultation to take place.

While occupational pension arrangements for old-age, survivor and ill health pensions are not covered by the TUPE regulations, in applicable scenarios, there should be appropriate arrangements to protect occupational pensions, redundancy and severance terms of transferring staff in all these types of transfer.

Contractors bidding for tenders need to be aware of the right to an unreduced pension on redundancy transfers under TUPE.

Best Value Authorities Staff Transfers (Pensions) Direction 2007

Best Value Authorities Staff Transfers (Pensions) Direction 2007 came into force on 1 October 2007. The direction applies to all “Best Value Authorities” in England and Police Authorities in Wales (which therefore applies to all local authorities in England).

It requires the best value employer ensures the contractor secures pension protection for future accrual for each transferring employee through the provision of pension rights that are:

- the same as,
- broadly comparable to, or
- better than those they had as an employee of the authority.

Importantly it also provides that the provision of pension protection is enforceable by the employee.

As well as any immediate outsourcing by the best value employer the Direction also requires similar pension protection for staff originally transferred out from its employment to be carried over into any subsequent re-tenders. This also includes any pre 1st October 2007 outsourcing arrangements, requiring the best value employer to ensure pension protection for any remaining transferred employees (e.g. this might not be the LGPS).

While somewhat outdated the December 2009 DCLG Admission Body Guidance sets out some helpful pension considerations that arise when employees transfer from a local authority.

It is the **best value employer’s** responsibility to ensure pension protection is provided by any service provider in all cases, including any subcontracting arrangements that may be entered into.

Fair Deal/New Fair Deal

HM Treasury has issued guidance commonly referred to as ‘Fair Deal’, which aimed to address the pension position for employees being compulsory transferred from the wider public sector to private sector organisations delivering public sector services. This guidance has developed over a number of years and as a result had become outdated, no longer reflecting the changing working arrangements that existed in the public sector.

On 7 October 2013 HM Treasury issued revised Fair Deal guidance (commonly referred to as New Fair Deal). This revised guidance reset the pension protection for staff compulsorily transferred from the public sector and applies directly to central government departments, agencies, NHS, maintained schools (except local authority maintained schools), and academies where staff are eligible to be a member of a public service pension scheme.

The revised October 2013 guidance simplified the pension protection requirement for all academies and other non LEA maintained schools. From that date pension protection for future accrual is provided by enabling the transferring staff to remain in their public sector pension scheme (e.g. the LGPS for all non-teaching employees of academies).

However, beyond academies, the new guidance does not apply to best value authorities in England and Wales, or any other LGPS scheme employers. It is unclear at present to what extent New Fair Deal might be incorporated into the LGPS. This guidance document will be updated if, and when, anything further is known.

Local Government Pension Scheme (LGPS)

The LGPS Regulations 2013 provide the regulatory means by which scheme employers can provide pension protection via the scheme for employees when outsourcing services. It enables continued access to the LGPS for transferred staff, via an Admission Agreement. The processes and requirements to enable this to happen are set out in the remainder of this guidance document.

3. Responsibilities

Section 3 covers	• Council Service Departments (including schools under LEA control) • Academies • Other Scheme employers (College/Charities) • Bulk transfers and Risks

Your responsibility depends on what type of employer you are in the Fund:

Council Service Departments (including schools under LEA control)

You are required by law to ensure any contractor either:

1. Continues to offer transferring employees access to the LGPS via an admission agreement, or
2. Give access to a broadly comparable scheme with similar benefits to the LGPS

Councils, in their status as 'Best Value Authorities' have been legally required to ensure these options are available as part of any outsourcing or second generation outsourcing since October 2007 and this right is enforceable by the transferring employees. The transferring employees continue to be entitled to these options if their job is transferred or outsourced again in the future.

As LEA schools can make contracting decisions on their own, it is imperative that they too understand the implications of outsourcing and to ensure pension protection measures are put in place as part of any contractual arrangement. It is also imperative that the Council is aware of any such decisions being made by its maintained schools.

Academies, Free Schools, Foundation Schools, and Voluntary Aided Schools

The school is required, in accordance with New Fair Deal Guidance to ensure any contractor continues to offer transferring employees access to the LGPS via an admission agreement, or

It may be possible for them to provide access to a broadly comparable scheme with similar benefits to the LGPS, but government have made it clear this should only be in exceptional circumstances.

These requirements are set out in the Government's New Fair Deal guidance. New Fair Deal is a non-statutory policy setting out how pension issues are to be dealt with when staff are compulsorily transferred from the public sector to independent providers delivering public services. New Fair Deal is, though, enforceable by transferring employees and any organisation wishing to offer any sort of alternative would need to have a strong argument if they wished to go against the principles set out in the guidance.

Other Scheme employer bodies – e.g. Colleges / Charities

If your organisation does not fall within the parameter of a Best Value Authority or as an employer covered by New Fair Deal you do not have a specific requirement to provide pension protection when outsourcing services. You are free, however, to consider providing similar protection if you wish, which could either be via continued access to the LGPS or via a broadly comparable pension scheme.

Bulk transfers

Where pension protection is being achieved via a broadly comparable pension scheme there is a requirement under the former Fair Deal provisions to consider offering transferring employees the option to transfer their accrued pension rights in the LGPS under preferential terms (known as a 'bulk transfer').

If you do not follow the correct procedure, as per your organisations responsibility the risks faced are:

- The risk of a Pension Ombudsman review due to individuals not receiving pension protection from the outset of the transfer;
- The risk of referral to the Pensions Regulator (The contractor could be in breach of ist responsibilities under automatic enrolment, leading to the risks of fines or other sanctions from the Pension Regulator);
- Legal challenge by an individual or Trade Union;
- Retrospective admission to the Fund is not normally approved; therefore the Fund faces a loss of income from the employers and employees contributions during the delay period before an agreement is put in place;
- Transferring employees risk a break in pension rights;
- Breach of regulatory requirements;
- Potential for fund exit problems if full information on employees impacts on final valuation to determine the Contractor's exit payment;
- Individual retirement benefit calculations may be incorrect due to lack of correct information;
- There is no security to cover redundancy costs in the event that the contract fails commercially and therefore such costs may fall to the Letting Authority;
- Increased administrative and legal costs to be met by the Fund (which will be passed onto the Letting Authority or Contractor); and/or.
- Legal risks of an employee retiring or dying.

4. Admission Body Status

Section 4 covers	• Admission body status (ABS) provision in the Regulations • Can an Admission Agreement be 'closed' or 'open'? • Importance of the Funding Strategy Statement • Risk assessment – Bond / Guarantee • Details on 'Pass Through Agreements' • Pension Information Memorandum • The process to be followed to gain ABS • Subcontracting

Admission body status (ABS) enables contractors who take on local authority services or functions with any specific groups of transferring employees to offer them continued access to the LGPS during the period of the contract. As a result they will remain in the LGPS and continue to accrue benefits, for so long as they remain employed in connection with the delivery of the outsourced service.

Admission Agreements must contain certain provisions for the admission body as set out in the Local Government Pension Scheme Regulations 2013. The Admission Agreement will also include a requirement that, should the Fund approve a Pension Administration Strategy, that this will be adopted by the contractor.

Details of the provisions required by the Local Government Pension Scheme Regulations 2013 are contained in **appendix B**. The references to Regulations, unless specifically set out in full, relate to The Local Government Pension Scheme Regulations 2013.

Admission Body Status Provisions in the LGPS

This document offers a practical guide to the ABS provisions in the Regulations. It is recommended, however, that practitioners and any other interested parties take their own legal advice on the application of the regulations to their particular circumstances.

Where a Contractor is providing services under a number of different contractual arrangements in the Fund it will be required to enter **separate** Admission Agreements in respect of each contract.

Admission Agreements – 'closed' or 'open'

An Admission Agreement can be an 'open agreement' or a 'closed agreement'.

In an open agreement, new joiners, as well as transferring staff working on the contract or services, can be offered membership of the LGPS under the Admission Agreement.

A closed agreement will restrict LGPS membership to the transferring employees only.

It is important to agree with any Contractor what arrangement will be put in place, as it will impact on the actuary's assessment of the amount of employer contribution any Contractor will have to pay, as well as any bond, indemnity or guarantee requirements that may be imposed.

Complying with the Funding Strategy Statement

The Fund's current Funding Strategy Statement (available on the Council's website) sets out what is required for new admission bodies. The Fund requires the following from any potential Admission Bodies wishing to join the Fund.

Bond/indemnity

Any new admission bodies, including Contractors, are required to carry out an assessment, taking account of actuarial advice, of the level of risk arising from premature termination of the contract or arrangement by reason of insolvency, winding up or liquidation of the admission body. This assessment must be carried out to the satisfaction of the Fund (and in the case of a Contractor, the scheme employer letting the contract). Where a level of risk is identified, the Contractor will be required to obtain an indemnity or bond to meet the level of risk identified. Any bond must be in a form acceptable to the Fund. Even if a bond is not required at the outset it could be required at any point during the admission body's participation in the Fund.

The requirement to have a bond in place protects the scheme employer and all other scheme employers in the Fund from any liability in the event of commercial failure of the admission body and should cover some, or all, of the following:

- The strain cost of any redundancy early retirements resulting from the premature termination of the employer's contract;
- Allowance for the risk of asset underperformance; and
- Allowance for the risk of a fall in real gilt yields.

The Fund may also require employers to include their current deficit within the bond amount. Any bond amount MUST be kept under regular review, to ensure it still provides the required level of cover. As a result it will be reassessed on an annual basis. This review requirement will form part of the Admission Agreement.

IMPORTANT NOTE – The Fund will normally require a bond to be put in place by the contractor, which will be covered by a separate bond agreement in addition to the Admission Agreement.

Guarantee

If it is "not desirable" for the admission body to enter into a bond, the Admission Agreement will provide that the admission body must obtain a guarantee in a form satisfactory to the administering authority. This guarantee may be given by:

(a) a person who funds the admission body in whole or in part;

(b) in the case of an admission body falling within the description in paragraph 1(d), the Scheme employer referred to in that paragraph;

(c) a person who-

(i) owns, or

(ii) controls the exercise of the functions of, the admission body; or

(d) the Secretary of State in the case of an admission body-

(i) which is established by or under any enactment, and

(ii) where that enactment enables the Secretary of State to make financial provision for that admission body, or

(iii) which is a provider of probation services under section 3 of the Offender Management Act 2007 (power to make arrangements for the provision of probation services) or a person with whom such a provider has made arrangements under subsection (3)(c) of that section.

The 2013 Regulations do not specify who determines when it is "not desirable" for an admission body to enter into a bond but the route taken must be to the satisfaction of the administering authority (The London Borough of Havering).

Costs

The Fund will independently seek a risk analysis from the Fund Actuary, together with the employer contribution rate. The cost of obtaining this will normally be met by the Letting Authority and not the Fund (see **section 11** on Costs).

Ultimately, where a Letting Authority is entering into a contractual arrangement with a Contractor and that Contractor seeks admission body status in the Fund, the Letting Authority will be liable for any resulting pension liabilities in respect of the Contractor not covered by any bond or alternative guarantee.

There are other arrangements that Letting Authorities may wish to put in place between themselves and admission bodies with regard to sharing risk. Please contact the Pension Administration team who may be able to direct you to where you can seek specialist advice.

Technical Information

Pass Through

Outside of any Admission Agreements, bond agreements or letters of guarantee from Letting Authorities, a Letting Authority may also wish to agree a ‘Pass Through’ arrangement. There are a number of variations of pass though arrangements, but the two most common ones are:

- for the admitted body to pay a fixed employer contribution for the duration of the contract, or
- for them to only pay the future service contribution rate (i.e. the money needed to pay for new benefits accruing following the outsourcing).

In both these cases, the scheme employer (Letting Authority) will retain responsibility for any deficit/surplus at the start of the contract, its duration and its end. Here most of the pension risk remains with the scheme employer (Letting Authority), although this will vary depending on exactly what is agreed in relation to the pass through arrangements. You must contact the Pension Administration section if you are considering a 'Pass Through' arrangement for where you can obtain specialist advice.

Cessation / Exit Valuations

The Funding Strategy Statement sets out the responsibilities of the Contractor at the cessation of the Admission Agreement. In particular, a cessation valuation will be carried out to determine any exit payment due from the Contractor to discharge their obligations to the Fund. The Fund does not meet these costs, therefore the costs will be passed to the Contractor or Letting Authority depending on the circumstances of the cessation valuation. Please see **section 9** for more information.

Use of 3rd Party Actuaries

Changes in 2013 to the Pension Regulations allowed contractors to seek their own actuarial assessment (for bond rate and employer contributions). Where this option is taken, the Fund will require independent assessment of these via the Fund's own Actuary before they will agree to admit a new employer to the Fund. In these circumstances, all costs associated with the independent assessment will rest with the Contractor.

Getting to Admission Body Status

Pension Information Memorandum

A 'Pension's Information Memorandum' (PIM) is a document setting out the pension aspects of becoming an admitted body in the Fund that can be included during the tender process for outsourcings. It gives bidders essential information on the scheme and its costs to help inform their tender pricing.

If a PIM has not previously been obtained, the process can be commenced by the completion of a revision template for the Fund Actuaries, who will then report back on the bond rate and the employer rate which will apply. If you do not have the staffing information necessarily available the Pension Administration Team Leader can gather the relevant employee data for the employees to be TUPEd to any new prospective contractor for the provision of the contracted service.

The Process

A PIM may be commissioned at the beginning of the procurement process, as it allows you to state the level of bond in the tender documents, together with an indication of the employer contribution rate, ensuring that potential bidders have all the information available to them and are able to provide accurate costings as part of the procurement exercise. It is also advisable that you work through the checklists shown within **Appendix C** to help control this process.

At the end of the tendering process, when a contractor is selected, a paper will be presented to the Pension Committee notifying the committee that the contracting body are seeking admission as an admission body to the Fund. This has to be completed before the contract commencement date.

Prior to the contract commencement date, the Council's Legal Services will provide you with a copy of our standard Admission Agreement. Legal Services will be your day-to-day contact for the completion of the Agreement. The Admission Agreement has to be in place, with the bond (if required) before contract commencement.

For Council led procurements (i.e. Council staff transferring out to the new provider) oneSource Operational HR team will work with you and the HR contacts from your selected contractor to ensure that employees are consulted/communicated regarding the transfer in line with the TUPE regulations.

The paper for the Pensions Committee would be drafted and prepared by the Pensions Administration Team at the Council in conjunction with the Letting Authority and the selected contractor. All papers to the Committee have to be in the public domain at least 7 days before the relevant committee meeting under Local Government regulatory requirements. Please allow for this process in your timescales for contract commencement.

Outsourcing Risks

The rules governing the Local Government Pension scheme are complex. When considering a tendering exercise please contact the Havering Pension Administration team, so that we can provide the necessary support to you. Your own HR team can advise on the transfer in line with the TUPE Regulations.

Subcontracting

Where obligations to ensure pensions protection exist and a Contractor lets an outsourcing contract to a **sub-contractor** (i.e. a secondary outsourcing takes place), the sub-contractor must also provide pensions protection for TUPE transferring staff either via continuing Membership of the LGPS or a GAD-certified Broadly Comparable Pension Scheme. The Letting Authority is responsible for ensuring pension protection occurs in such circumstances.

5. Broadly Comparable Scheme

Section 5 covers	• Details on Broadly comparable scheme • Specific 2014 LGPS benefit details • Bulk transfer arrangements

What is meant by a broadly comparable pension scheme?
Broad comparability relates to the protection of transferring employees' future pension rights. This is to ensure that transferring staff are entitled to pensions in respect of future service that are worth as much as they would have had, were they to have remained with their original employer. As set out within the TUPE regulations 2006, for any alternative pension arrangement to be considered as 'broadly comparable' to the LGPS it does not need to offer identical benefits. However, it must offer the same range of benefits, with the same (or greater) overall value.

Letting Authorities are advised to ensure bidders, who intend to offer an alternative pension scheme to the LGPS, inform them early in the procurement process and advise details of the scheme they intend to use to establish broad comparability. This is because the pension scheme put forward by the contractor as broadly comparable should be assessed by an actuary in accordance with the Government Actuary's Department's Statement of Practice. The designated 'Lead Officer' (see page 18) from the Letting Authority should contact the pension team to progress this.

Where an employer is providing a broadly comparable scheme, that scheme must be certified against the LGPS as it applies at the point of staff transfer. Any broadly comparable certification prior to this are ineffective.

Please note the LGPS 2014 provides -

- A Career Average Re-valued Earnings (CARE) scheme;
- Annual revaluation of active members accrued pension – linked to CPI (consumers' price inflation);
- An accrual rate of 1/49th of each year's pay for the main section;
- For Normal Pension Age (NPA) to be in line with each members State Pension Age (SPA);
- Salary bandings for employee contributions ranging from 5.5% to 12.5%;
- Employee contributions to be paid on all salary received, which would include additional hours for part timers, and any non-contractual overtime for full timers;
- Part time scheme members to only pay contributions on their actual pay and not determined by their whole time equivalent pay;
- The introduction of a 50:50 section as an affordable alternative for those members thinking of opting out; and
- Retirement benefits for all membership prior to 1 April 2014 to be protected, including any remaining "rule of 85" protection.

Bulk transfer arrangements for numbers of transferring staff (2 members or more)

Where a broadly comparable pension arrangement is the preferred route to providing pension protection, consideration also needs to be given to the transfer of accrued LGPS pension rights to this scheme. One method of dealing with this is to consider bulk transfer arrangements. Letting authorities should make clear to potential contractors what sort of bulk transfer terms would be available. This will enable contractors to better estimate the costs of providing transferring staff with access to pension provision that is broadly comparable to what they were receiving prior to the transfer.

Where a broadly comparable scheme is to be provided for transferring staff, there should be an agreement with the new employer’s pension scheme which provides that staff will be able to transfer their accrued service credits (The rights related to service already completed to which a member is entitled under the LGPS) into that scheme on a day to day, or equivalent value, basis. It should be noted that an agreement should be sought during contract negotiations to achieve the above aim.

The Fund and its actuary will need to be involved very early in the procurement process, and the Letting Authority may be asked to bear the cost of the actuarial fees incurred.

6. Overview of outsourcing arrangements (Roles)

Section 6 covers	• First step – determine your organisations 'pension protection' obligation • Letting Authority – your **Lead officers** role • Outsourcing roles – Administering Authority / Scheme employer (Letting Authority) / Contractor

First Generation Outsourcing

Where a Letting Authority has determined that they are under an obligation to ensure pension protection for their transferring employees, the contract must provide for this to be achieved either via continuing membership of the LGPS or a broadly comparable pension scheme. However, the requirement for these options depends on the *type* of organisation outsourcing a service:

- In the case of a **Best Value Authority** (such as a Council, Police and Crime Commissioner) outsourcing, the company which is awarded the service contract (i.e. the contractor) decides which option will be used to achieve pension protection.

- For an organisation that falls under **'New Fair Deal'** guidance (such as Academies), the winning company should seek admitted body status within the LGPS and only in exceptional circumstances, the option of a Broadly Comparable scheme.

- An organisation such as a College or Charity do not fall within either the Best Value Authority direction or New Fair Deal guidance and therefore staff being outsourced do not retain the same level of protection as a Council or Academy staff member. However, although Colleges and Charities do not have the same pension protection obligation as the aforementioned groups, they still have the option of following similar protocols when completing an outsourcing exercise.

Important note - a company will not be in a position to make an informed bid to provide a service unless the costs and/or risks of ensuring pension protection via admission body status are understood and included as part of a tender document. Therefore the Letting Authority should obtain any necessary pension costs from the Fund to include in their tender document, before starting their procurement process

To help to inform bids, it is recommended that the Letting Authority request a Pension Information Memorandum (PIM) at the outset of the process which can be provided to all prospective bidders at their own cost.

Letting Authorities should understand from the outset that the process of obtaining pension costs to include in a tender document will involve work by the Fund Actuary after ensuring that transferring LGPS Members' pension records are up-to-date (the costs of any work by the Fund Actuary will be charged to the Letting Authority). In total this process will take a number of weeks, and sometimes several months, to complete. Therefore, if the outsourcing

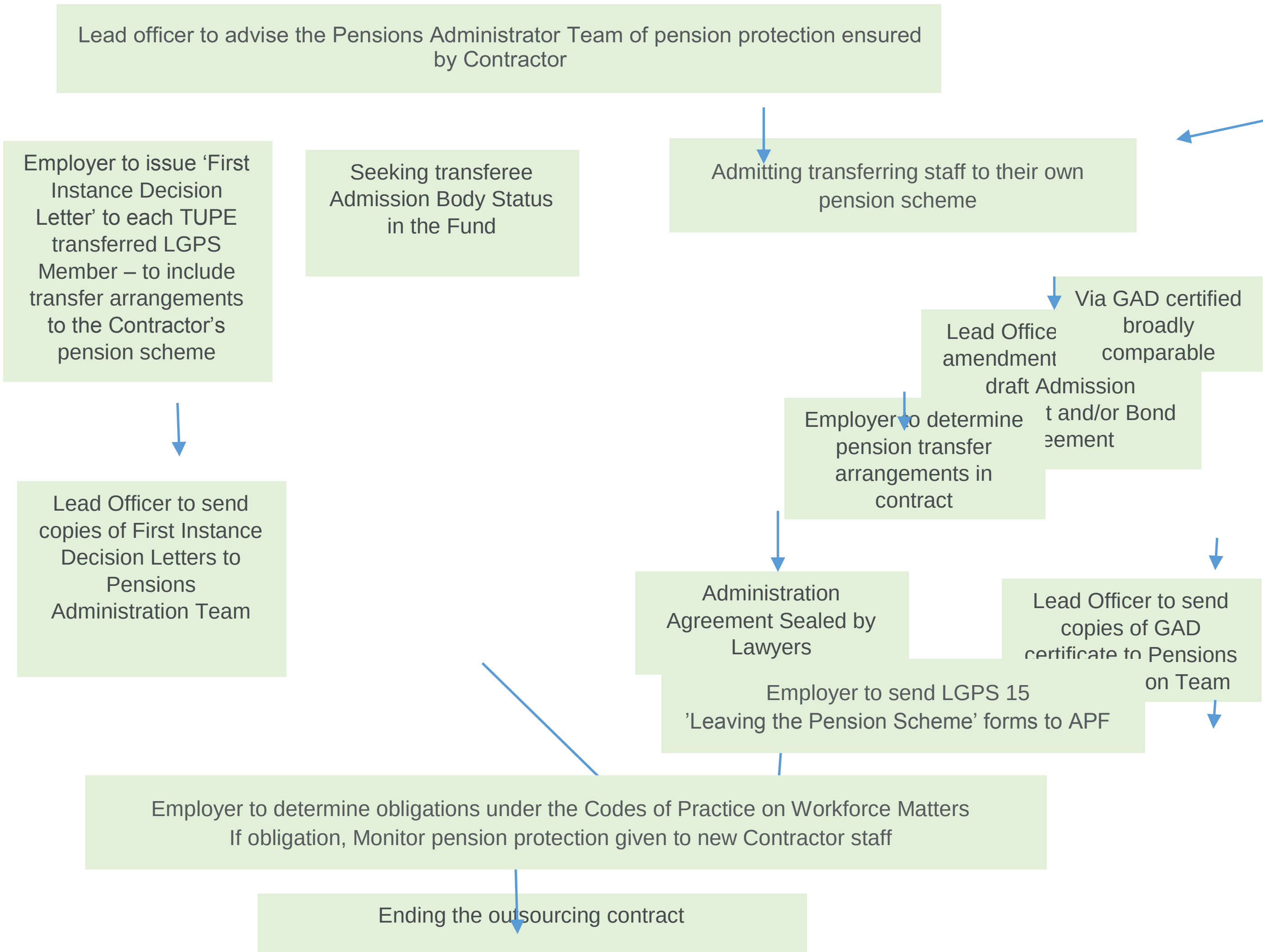
Scheme Employer wishes to avoid delays later on, the Fund should be consulted at the start of the outsourcing process.

Letting Authority – Lead officer role

The Fund does not ordinarily correspond with third party contractors and the Letting Authority should nominate a **Lead Officer** to liaise with all parties, including Havering's Pension Team.

The Lead Officer should be either the Letting Authority's nominated Pensions Officer, or a senior manager co-ordinating the organisation's outsourcing exercise. They should, ideally, have a good understanding of the LGPS, have read the background documents relating to pensions and TUPE which are referred to in this guide, and must not have any conflict of interest as regards the outsourcing exercise.

Where pension protection is to be ensured by the successful contractor choosing to offer continuing Membership of the LGPS as an admission body, the Lead Officer's role will be to co-ordinate and act as the main channel of communication between the Letting Authority, the contractor and Pensions Administration Team for all the information which will be required to draw up the Admission Agreement.



The outsourcing roles – Administering Authority / Scheme employer / Contractor

It is vital that all parties involved in the outsourcing process are aware of their role when it comes to the pension and Admission Agreement issues and the following paragraphs set out the main areas for each party.

Outsourcing – the role of the Administering Authority

The Administering Authority:

- Should encourage letting authorities and contractors to contact them early with all the relevant information, in an outsourcing process and at each stage in the process;
- Is responsible for the terms of Admission Agreements and many of the conditions for agreements with transferee bodies are required by legislation;
- Must protect their fund by prudent management and assessment of potential risks to the fund with the admission of non-scheme employers and have regard to the need for any indemnity or bond required under regulation;
- Will make the decision to admit a body (contractor) to the LGPS having established that it is possible to do so in accordance with the LGPS regulations and in consultation with the relevant Letting Authority and contractor. The administering authority cannot decline to admit a contractor if the contractor and the Letting Authority agree to meet the relevant requirements of the LGPS regulations and the Fund's requirements;
- Must keep under review the admission body's employer contribution rates to ensure that all liabilities can be met during the lifetime of the contract and that as far as is reasonably possible a surplus or deficit will not occur at the end of the contract;
- Must not agree to any bulk transfer to a broadly comparable scheme unless it is satisfied that each of the transferring members wishing to transfer pension rights will acquire rights under the new scheme at least equivalent to those which would have been obtained if a standard cash equivalent transfer value had been paid; and
- Will ensure the annual review of any bond/indemnity or guarantee takes place, to determine that the level of cover/protection in place remains appropriate, or amended, as required.

A standard data base of all current admission bodies participating in the Fund, recording relevant details of the Admission Agreement and funding arrangements for each body, is maintained by the Fund. This data base is a live document and will be updated as new bodies are admitted to the Fund.

Outsourcing – the role of the Scheme Employer (Letting Authority)

This is the employer or body seeking to contract for services, as an example, an Academy contracting for cleaning or catering services, is deemed the 'Letting Authority'.

The Letting Authority should

- Use, where it applies to them, the relevant Government guidance as it pertains to their organisation when completing an outsourcing of services (Best Value /Fair Deal/New Fair Deal);

- Ensure that pension's issues are considered early in the outsourcing exercise. This means right at the beginning when decisions are being taken about who is considered best to deliver a particular service or function, during the procurement process, and especially when the tender specification is being drawn up;
- Ensure early contact with the relevant administering authority is essential to avoid later confusion and potential delays and/or costs;
- Hold early discussions with the administering authority and especially where a potential contractor wishes to offer LGPS for transferring employees;
- Hold early discussions with staff and trade unions;
- Make the necessary assessments, in consultation with the contractor, concerning potential financial risks to any contract with the contractor, which may have implications for the on-going provision of the service or function being transferred, and where an Admission Agreement is to be entered into, consider the level of indemnity / bond, if any, they may wish the contractor to provide. Close liaison with the administering authority will also be needed when considering the level of risk and indemnity required;
- Where applicable be satisfied, where a contractor wishes to offer membership of its own pension scheme, that the scheme is broadly comparable to the LGPS and a current valid GAD certification is in force; and
- Where applicable discuss with the administering authority the bulk transfer terms to be offered to potential bidders if transferring staff are being offered a broadly comparable pension scheme

Outsourcing – the role of the contractor
The Contractor:

- Needs to establish from the Letting Authority the correct requirements for pension protection, based on the appropriate Government guidance (Best Value/New Fair Deal). Contractors are encouraged to seek this information from the Letting Authority if it is not clear in the tender or pre-tender documentation as some pension provision will always be expected for transferring local authority employees;
- Should enter into early discussions with the Letting Authority and trade unions, as they will help to make informed decisions about pension issues or resolve any potential problems before the process is too far underway;
- Will need to carry out, to the satisfaction of the administering authority, and to the satisfaction of the scheme employer that is letting the contract, an assessment, taking account of actuarial advice, of the level of risk arising on premature termination of the provision of the service or assets by reason of insolvency, winding up, or liquidation and enter into a bond or indemnity for that level of risk;
- Will, where it is not desirable to enter into a bond or indemnity, provide details of the appropriate guarantor;
- Will need to engage with an Actuary to assess the potential pension costs for them as an employer during the lifetime of the contract; and
- In appropriate outsourcing circumstance, will need to liaise closely with the Letting Authority and the relevant administering authority (either directly or through their actuary) to establish whether they meet the requirements of broad comparability of their own pension scheme if this is what is offered.

7. Pension outsourcing – procedure flow

Section 7 covers	• Procedure flow and Pre-tender issues • Revision template and data cleanse • Letting authorities outsourcing tender document • What to do once a contract has been awarded?

tender, or retender, a s

No obligation and admitted body route **not** chosen:

Send LGPS15

'Leaving the Pension Scheme' form to HPF

ermine pension's protect

Best Value Pensions Dir

New) Fair Deal for Staff

• LGPS Regulations (Admitted body option open to all scheme employers)

Yes obligation:

Establish cost of a Contractor becoming an Admitted Body in the Fund for Inclusion in Tender Document

Appoint 'Lead Officer' to liaise with the Fund's Pensions Administration Team and other parties

Complete and return 'Hymans Spreadsheet' and Assessment Information' form Pensions Administration Team

Receive a pension's database 'Report' from Pensions Administration Team

Report details **Correct**: Sign and return to Pensions Administration Team

Report details **not correct**: Send LGPS02 and LGPS03 Forms to Pensions Administration Team, as required

Pensions Administration Team collates data for Fund Actuary

Receive a **second** report from Pensions Administration Team

Fund Actuary calculates Risk Assessment and Employer Contribution Rate via PIM

Employer drafts and issues Tender Document including requirements to ensure pensions protection

Costs of becoming an Admission Body including any Bond requirement

Employer **awards** the service contract

The above **diagram** sets out what the overall procedural flow should look like and the relevant stakeholder responsibilities. From this we can trace the best practice route of an outsourcing exercise from pre-tender stage all the way through to a contract end date.

Pre-tender issues

As a outsourcing **Letting Authority** you should think about:

- The degree of pension risk which will pass to the contractor. This will almost certainly affect their tender price;
- What will happen with any current pension funding deficit in respect of the transferring employees – will this be transferred to the contractor (understanding that effect on the commercial contract) or be retained by outsourcing Letting Authority;
- What happens at the end of the contract? Has the exit position been fully clarified to the contractor? Ensuring that they understand what they may potentially be liable to pay to the Fund;
- The Letting Authority should understand that any pension deficit not met by the contractor on exit will be charged to them; and
- This may affect the decision as to whether a Bond should be required or whether the Letting Authority is comfortable with a Guarantee protection.

Completing the Revision Template (Process notes)

Where a Pension Information Memorandum (PIM) has not previously been provided by the Fund’s actuary, the Employer must provide the data which is requested in each column of the spreadsheet provided by the actuaries ensuring that it is in the required format.

The Fund holds a record of each LGPS Member’s membership details on its Pensions System. This holds the information which has been provided by the Letting Authority. It is essential that the data stored on the Pensions System is correct before pension costs are calculated by the Fund’s Actuary, otherwise the Employer Contribution Rate will be incorrect and the Risk Assessment flawed – consequently a data cleanse exercise may be required at the start of the outsourcing exercise.

The Fund’s oneSource Pension Administration Team will send a Report to the Lead Officer detailing the information which is held on our Altair Pensions System in respect of the LGPS Members to be transferred. If the data the Fund is holding is correct, the Lead Officer should sign and return the Report to the Fund.

Data Cleanse

Where the Fund’s records are inconsistent with the Employer’s records, the Lead Officer must complete a Form ‘LGPS 3’ detailing each item of data which needs to be updated and the effective date of the change. Where the Fund is not holding a record of a contributing LGPS Member, the Lead Officer must complete Form ‘LGPS 2’ so the Fund can set up a record. On receipt of any LGPS 2 and LGPS 3 Forms, the Fund will update our Altair Pensions system. The Fund will then send an updated Report to the Lead Officer to sign to confirm that the data the Fund is holding in respect of the transferring LGPS Members is correct.

The information the Lead Officer provides on this form will enable the Fund Actuary to calculate the pension costs, if the successful contractor were to offer TUPE transferring employees continuing membership of the LGPS. The extent of the risk assessment may depend on the covenant of the Letting Authority.

The Fund's Actuary will calculate an Employer Contribution Rate on the scenarios of an Admission Agreement being both Open and Closed (i.e. that new staff employed to work on the service contract will be able to join the LGPS, or that membership will be restricted to employees TUPE transferred), unless instructed otherwise. This is because the option of whether to be Open or Closed is one that has to be exercised by the Contractor.

The outsourcing Letting Authority Tender Document

The Letting Authority should indicate in the Tender Document if there is a requirement to ensure pensions protection for the staff who will TUPE transfer to the successful contractor and what form this could take. Such a requirement will be satisfied by the contractor either entering into an Admission Agreement to become an Admission Body so as to facilitate continuing Membership of the LGPS, or by the contractor offering a pension scheme which is GAD-certified as being Broadly Comparable to the LGPS.

From the results of the Risk Assessment, the Employer must decide if it will retain the risk or if not, to what extent this risk is to be transferred to the contractor. This means that, if continuing Membership of the LGPS is to be offered, the Employer must decide if it wishes to retain any funding deficit which may emerge or transfer that liability to the Admission Body. The Employer will also need to decide if it requires a Bond or indemnity to protect all other Fund employers in the event that the contractor becoming insolvent with a pension liability it cannot meet.

Where there is a requirement to ensure pension protection, the Tender Document should also include the following information regarding the Contractor potentially becoming an Admission Body:

- A copy of the Draft Admission Agreement;
- The new Employer Contribution Rate; and
- The amount of any Bond required.

Notifying Havering Pensions Fund – Once the outsourcing contract has been awarded

The Lead Officer should notify the oneSource Pension Administration Team of the outcome, providing details of the successful tenderer and whether they will ensure pension protection (<u>if applicable</u>) by either:

- Seeking to enter into an Admission Agreement to become an Admission Body in the Fund; or

- By providing access to a GAD-certified Broadly Comparable Pension Scheme, in which case a copy of the GAD Certificate should be forwarded to the Pensions Administration Team.

Staff being TUPE transferred to a contractor of the respect of their pension rights

The Letting Authority Lead Officer must inform each transferring LGPS Member of decisions made in respect of their LGPS pension rights. The way in which the Employer must inform the Member is prescribed in statute;

- Notification of the decision must be made to the member in writing i.e. the ‘First Instance Decision Letter’;
- It should be done as soon as reasonably practicable; and
- It must contain a conspicuous statement giving the address from which further information about the decision may be obtained it must refer to the member’s right to appeal against the decision under the Internal Dispute Resolution Procedure (IDRP), including time limits within which to appeal and the job title and address of the Employer’s appeals officer

The First Instance Decision letter sent to a member being TUPE transferred to a Contractor should:

- Explain the change to their pensionable employment;
- State if their LGPS membership will cease on their last date of employment with the Letting Authority;
- Outline the way in which any obligations to ensure pension protection will be met by the Contractor (e.g. access to the Contractor’s GAD-certified broadly comparable scheme, or continuing membership of the LGPS by the Contractor becoming an Admission Body of the Fund);
- Outline the arrangements in the outsourcing contract to transfer their pension rights to the Contractor’s pension scheme (i.e. their option to participate in a bulk transfer to the Contractor’s GAD-certified broadly comparable scheme); and
- Explain their right to appeal against these decisions under IDRP

The Letting Authority must forward a copy of each First Instance Decision letter to the Fund.

8. Broadly Comparable scheme / Admitted Body route

Section 8 covers	• What happens if the Broadly Comparable route is chosen? (option for Best Value authority outsourcing) • Broadly Comparable – practicalities of transferring pension rights • Bulk Transfer notes • Admitted Body route – staff remaining in the LGPS • Admitted Body route – procedure notes

If the successful contactor decides to offer its own broadly comparable pension scheme to the TUPE transferred staff (most applicable for Best Value authority outsourcing) then the Letting Authority should send form LGPS 15 'Leaving the Pension Scheme' to the Fund in respect of each individual stating the reason for leaving as TUPE transfer to "name of contractor" along with a copy of the GAD Certificate (The certificate provided by GAD that a scheme fulfils the requirements to be a broadly comparable pension scheme).

GAD certifies broad comparability in two ways:

- Passport - A GAD Passport indicates that the pension benefits the contactor offers TUPE transferring staff have been analysed and considered to be broadly comparable for a wide range of staff that may potentially transfer from the public sector. The Passport may be used to bid on other public contracts to show compliance with one strand of Fair Deal.
- Individual Certification - An individual certification is similar to a Passport but the analysis only takes place in respect of the single transfer of the TUPE'd staff. It can be a simpler way to achieve broad comparability than a Passport as the analysis is restricted to a small group. If the analysis determines that the pension scheme is broadly comparable to the LGPS then a Certificate of Broad Comparability is valid only for the staff concerned.

The Letting Authority should note that it can take some considerable time to achieve GAD certification of broad comparability. Broad comparability also has to be agreed against the LGPS as it applies at the date of transfer taking account of any regulatory changes that may be relevant.

This option has been removed for new Fair Deal employers such as Academies and is only available to them in **exceptional circumstances**.

Transfer of pensions rights from Havering Pension Fund to the Contractors pension Scheme

For those outsourcing Letting authorities who come under Fair Deal obligations to ensure pension protection for employees TUPE transferring to a new employer, this guidance contains provisions relating to the transfer of pension rights from the Letting Authorities pension scheme to a Contractor's pension scheme. **The transfer must be initiated by the**

Letting Authority. Where a bulk transfer calculation is required from the Fund Actuary, the Lead Officer must send a letter of authority to the Pensions Administration Team for the Fund Actuary to disclose personal data about the transferring staff to the Actuary of the Contractor's pension scheme.

Bulk Transfer from the LGPS to the Contractor's Broadly Comparable Pension Scheme

Ordinarily, when an individual leaves an LGPS employment they become entitled to deferred benefits in the scheme. They do, however, have the option to transfer their accrued LGPS rights to their new employer's pension scheme if they wish. Special arrangements, known as bulk transfers, can apply where any transfer of employer is as a result of TUPE or TUPE is deemed to have applied.

In this circumstance, where pension protection is provided via a GAD-certified broadly comparable pension scheme, the LGPS Regulations do provide the option for bulk transfer terms to be agreed with the receiving scheme. It would be expected that any bulk transfer terms to the broadly comparable scheme would provide pension benefits on a on a day-for-day basis (or the actuarial equivalent) so that individuals suffer no loss as a result of the transfer. In any circumstance bulk transfer terms must not provide terms that would result in a transfer credit in the broadly comparable scheme that is less than would be achieved under the standard cash equivalent transfer route.

This is achieved by making an arrangement in the outsourced service contract for a bulk transfer from the LGPS to the broadly comparable scheme. This is an agreed transfer calculation between the relevant actuaries and is quite different from a normal transfer of pension rights.

Where bulk transfer terms cannot be agreed, however, individuals still retain the right to consider an individual cash equivalent transfer value (CETV) into their new scheme.

In order that individuals can make the right choices regarding any accrued LGPS pension rights it is important that there is clear communication with them, either confirming the bulk transfer arrangements that have been agreed, or confirming where agreement could not be reached.

Outsourced staff staying in the Havering Pension Fund

The successful Contractor can become an admission body of the LGPS (option available to **all** Letting authorities outsourcing) by entering into an Admission Agreement with the Council (the Administering Authority of the Fund of the LGPS) and the outsourcing Letting Authority (if different).

The Admission Agreement is a legal document which allows the Contractor to provide membership of the LGPS to employees TUPE transferring to their organisation. Letting Authorities should note that an Admission Agreement cannot be backdated unless in exceptional circumstances. Where an Employer has an obligation to ensure pension protection for TUPE transferring staff, LGPS membership must be continuous therefore an outsourcing contract should not come into effect before the Admission Agreement.

The Fund's solicitor will send the Lead Officer two documents for forwarding to the successful Contractor:

- 'Application to Become an Admission Body' form. When the Contractor has completed and returned this to the Lead Officer it should be forwarded to the Fund's Pensions Administration Team to provide us with details of the legal entity seeking Admission Body status.

- 'Draft Admission Agreement'. The draft Admission Agreement contains a number of provisions prescribed under the LGPS Regulations. The Lead Officer should forward a copy to the Contractor, if this was not done at the Tender Stage.

If the Contractor's lawyers wish the provisions of the Draft Admission Agreement to be amended they should advise the Lead Officer of their proposed amendments. The Lead Officer should forward details of the Contractor's proposed amendments to their own lawyer and the Fund's Pensions Administration Team. The Pensions Administration Team will inform the Lead Officer whether the Fund's Solicitor agrees with the proposed amendments, or proposes further amendments.

If the lawyers of all parties are in agreement with the wording, the Admission Agreement should be finalised by the Letting Authorities lawyer who should liaise with the Contractor's lawyer and the Fund's Solicitor to arrange signing.

The Admission Agreement will include a Schedule of LGPS Members TUPE transferring to the new Admission Body. If it subsequently transpires that the employees who have actually been TUPE transferred differs from those listed in the Schedule then a formal amendment will have to be made to the Admission Agreement and signed by the lawyers of all parties.

How long it takes the Fund's Solicitor to seal the Admission Agreement (and Bond Agreement if required) will depend on the extent to which variations to the standard draft Admission Agreement are requested by the Letting Authority and Contractor. As a ballpark figure, the Lead Officer should factor at least 4-12 weeks for the Admission Agreement stage, and longer if a Bond Agreement is also required, when project managing their outsourcing exercise.

The Letting Authorities Lead Officer should ensure that their Contractor fully understands the statutory and contractual obligations they will have as an LGPS Scheme Employer. This is most important because:

- Breaches of pension's legislation can incur penalties which, if not met by the Contractor, may fall on the Letting Authority as ultimate guarantor.

- If the Admission Body fails to rectify the breach within the reasonable period, the Fund will decide whether or not to terminate the Admission Agreement.

Where an Admission Body fails to fulfil its obligations to the Fund, the Fund will write to the Contractor (cc'd to the Letting Authority) outlining the breach and giving a reasonable period in which to rectify the breach under the terms of the Admission Agreement.

While the Admission Agreement is being drawn up, the Lead Officer should proactively ensure that the Contractor understands their LGPS responsibilities, including, but not limited to:

- Making First Instance Decisions;
- Notification of First Instance Decisions;
- Dealing with starters, leavers and changes of circumstances that affect pension entitlements;
- Recording multiple part-time posts separately on HR/payroll systems;
- Understanding the pensionable pay elements related to the CARE scheme;
- Making payments to the Fund;
- Drafting and publishing policies on Employer discretions; and
- Internal Dispute Resolution procedure – Stage 1

The Lead Officer must advise the Pensions Administration Team of the contact details of their Contractor's HR, Payroll and Finance officers. The Pensions Administration Team will then contact the Contractor's HR, Payroll and Finance officers, advise them of the procedure for sending payments and returns to the Fund.

The Lead Officer should instruct the current payroll provider of the transferring LGPS Members to prepare a payroll report ensuring that it is compliant with the current CARE LGPS pension scheme and (if applicable) the pre 2014 final salary LGPS scheme. This information must be given to the Contractor so that they retain pension salary information which is pertinent to their new employee.

Where a Contractor is becoming an Admission Body of the Fund, it is still necessary for the outsourcing Scheme Employer to send LGPS 'Leaving the Pension Scheme' forms to the Fund.

The Fund Actuary will set an Employer Contribution Rate (ECR) which will apply from the commencement date of the Admission Agreement. Every three years the Actuary will calculate the assets and liabilities for each Employer (the Triennial Valuation) so that their on-going ECR can be established.

9. What happens when an Outsourcing Contract comes to an end?

What section 9 covers	• End of the contract – Staff return or retender? • Best practice tip – pension funding implication • Second generation outsourcing – pension protection issues

When an outsourcing contract comes to an end, the Letting Authority may take back the staff who were TUPE transferred to work on the service contract. The Letting Authority may also wish to re-tender the contract to another service provider and, where the Letting Authority is under an obligation to ensure pension protection, the Fund Actuary will again need to calculate a new bond level and ECR if admitted body route is chosen. It is important to note that the pension protection that applied to the staff originally transferred continues to be applicable at the second stage re-tender. However, if the original contract was 'open' for new joiners from the original contractor, those employees are **not statutorily protected** for pensions.

In order to remove any potential pension continuity issues, the Lead Officer should ensure that the Fund is notified in good time for potential pension costs to be included in the tender document. Where the current contractor is an Admission Body, the Fund Actuary will carry out an assessment of pension assets and liabilities when the outsourcing contract comes to an end.

From this assessment, the Actuary will produce a 'Final Certificate' detailing any funding surplus or deficit which may exist. The funding aim over the course of an outsourcing contract is that there should be neither a surplus nor a deficit at the end of the contract.

The costs of the Fund Actuary's assessment will be passed onto the Contractor of Letting Authority (where appropriate). Please see **section 11** for further information.

Best practice tip!

Where the pensions risk is borne by the Contractor, it is advisable that the Letting Authorities Lead Officer give the Pensions Administration Team **18 months'** notice that the contract is coming to an end. The Actuary will then assess the funding position and increase or decrease the Admission Body's ECR over the remaining 18 month period, as appropriate, so that the surplus or deficit at the end of the contract is minimised.

Second Generation Outsourcing (Retenders) and TUPE

These fall into the following categories:

- **Re-tenders of Outsourcing Contracts**. Any obligations which exist to ensure pension's protection will continue when contracts come to an end and are re-tendered. As detailed throughout this guide, ensure that your organisation refers to the appropriate Government guidance.

- **Old 'pre-pensions protection' Outsourcings**. LGPS Scheme Employers which are Best Value Authorities may have outsourced services at a time when there was no requirement to ensure pensions protection. If these contracts are subsequently re-tendered they will then come under the Staff Transfers (Pensions) Direction and must include provision for pension's protection equal to the pension scheme that they were eligible to join immediately prior to the contract re-let.

The procurement process itself, will be no different from the first generation outsourcing and TUPE process, as set out in sections 6, 7 and 8.

You must consult with the oneSource Pension Administration Team at the outset of the contract process, which means the bids will correctly include the estimated employer contribution rate applicable and provision for the estimated bond rate. Your Lead Officer should ensure all data required has been received preventing any impact on the issuing of Annual Benefits Statements. Furthermore, the contract process must be established at the outset to see if the bidders are able or willing to meet the Admission Body status requirements or offer a broadly comparable scheme.

The new Fair Deal guidance confirms that when contracts are retendered, staff covered by the earlier Fair Deal and Best Value Direction policies should now be offered access to the appropriate public service pension scheme for future accrual. The employees will retain access to the current LGPS benefits as they are on the date of retender (they do not retain returned *access* to 'older' LGPS benefit structures i.e. Final salary 80th/60th). Employees will have the option to transfer accrued rights into the public service scheme via a bulk transfer, where terms are agreed. Special arrangements apply where exceptional circumstances, such as requirements under procurement law, would prevent the application of the new Fair Deal policy. As such, the Letting Authority has a role to play in protecting the pensions and pension access of the transferring employees.

10. Insourcing

Insourcing issues

‘Insourcing’ can occur for a number of reasons, which are summarised below. In all cases it is important to liaise closely with oneSource as early as possible in any ‘insourcing’ situation, to ensure the correct action is taken.

There may be circumstances that require a function contracted out to a private sector contractor or voluntary sector body to be brought back into the public sector following the termination of the contract or arrangement. In this situation all staff that transfer will (in almost all Scheme Employer scenarios) gain immediate access to the LGPS by virtue of becoming eligible employees of the Scheme Employer. It is also important to note that if the ‘insourcing’ is from staff transferred to a broadly comparable scheme, it is possible that there could be bulk transfer arrangements for those original employees transferred out of the public sector, with a standard CETV option to all others transferring across to the Scheme Employer.

A further example of ‘insourcing’ would be the ending of a shared service arrangement, where staff could be transferred either back into, or out of, the Fund. Staff would retain entitlement to membership of the LGPS in such cases (as they would continue to be employed by a Scheme employer). Consideration would also need to be given to the transfer of accrued LGPS entitlements into or out of the Fund, where appropriate.

A transfer of staff from the NHS to a Local Authority could result in a Participation Agreement with the NHS Pension Scheme, allowing the transferred NHS staff to remain in the NHS Pension Scheme. If the transfer occurs in the opposite direction, then the admission body route within the LGPS may be available for the NHS organisation involved, allowing the transferred local government staff to remain in the LGPS. Within any of these scenarios the appropriate Pension legislative guidance notes should be used by the involved parties.

In regards to ‘Insourcing’, due to the somewhat complex nature of the movement, applicable organisations should contact oneSource pension administration team to discuss the appropriate administrative steps as early in the process as possible.

11. Costs

Where a contractor offers a **broadly comparable pension** scheme as its means of providing pension protection, all costs (including employer contributions) and risks associated with setting up and running that scheme will fall to that contractor. It is assumed these costs would be reflected in any bid price. In addition, any actuarial costs associated with negotiating the transfer of staff to the broadly comparable scheme will be recharged to the Letting Authority (who may pass these costs on to the contractor) which may add to the overall costs of the outsourcing.

Where access to the LGPS via an **admission body status** is the preferred option for ensuring pension protection various actuarial costs associated with this will be passed back to the Letting Authority or contractor. The oneSource Pension team will advise you up front what the actuarial costs will be for appropriate work.

The pensions costs will be calculated by the Fund Actuary who will carry out a Risk Assessment and calculate the new Employer Contribution Rate which would be payable if the contractor were to offer continuing membership of the LGPS as an Admission Body of the Fund. The Employer Contribution Rate is the charge made to a Scheme Employer of underpinning costs of providing the occupational pension scheme benefits provided by the LGPS not met by Member contributions and returns on Fund investments.

Actuarial costs that may be passed onto the Letting Authority or Contractor may include the costs for:

- a Pensions Information Memorandum;
- renewing or reviewing risk assessments;
- certain individual calculations associated with scheme membership;
- accounting valuations under FRS102, US GAAP or IAS19; and
- cessation or exit valuations; and
- any other ad hoc advice regarding the Contractor’s participation in the Fund.

APPENDIX A

CONTACTS AND USEFUL LINKS

Contacts

Pension Team
Email: Pensions@havering.gov.uk
Telephone: 01708 433 333
Address: Pensions Team, Central Library, St. Edwards Way, Essex, RM1 3AR

Transactional Services

Email: Payroll@havering.gov.uk & people.establishment@onesource.co.uk
Telephone: 01708 433 333
Address: Transactional Services, Central Library, St. Edwards Way, Essex, RM1 3AR

Useful Links

Havering Pension website
https://www.yourpension.org.uk/handr/Home.aspx

London Borough of Havering website
https://www.havering.gov.uk/

LGPS website
http://www.lgps.org.uk

Timeline website
http://www.lgpsregs.org/timelineregs

APPENDIX B

LGPS REGULATIONS

PART 3 (of Schedule 2)

1. The following bodies are admission bodies with whom an administering authority may make an admission agreement—

(a) a body which provides a public service in the United Kingdom which operates otherwise than for the purposes of gain and has sufficient links with a Scheme employer for the body and the Scheme employer to be regarded as having a community of interest (whether because the operations of the body are dependent on the operations of the Scheme employer or otherwise);

(b) a body, to the funds of which a Scheme employer contributes;

(c) a body representative of—

(i) any Scheme employers, or

(ii) local authorities or officers of local authorities;

(d) a body that is providing or will provide a service or assets in connection with the exercise of a function of a Scheme employer as a result of—

(i) the transfer of the service or assets by means of a contract or other arrangement,

(ii) a direction made under section 15 of the Local Government Act 1999 **(a)** (Secretary of State's powers),

(iii) directions made under section 497A of the Education Act 1996 **(b)** ;

(e) a body which provides a public service in the United Kingdom and is approved in writing by the Secretary of State for the purpose of admission to the Scheme.

2. An approval under paragraph 1(e) may be subject to such conditions as the Secretary of State thinks fit and the Secretary of State may withdraw an approval at any time if such conditions are not met.

3. The Scheme employer, if it is not also the administering authority, must be a party to the admission agreement with a body falling within the description in paragraph 1(d).

4. In the case of an admission body falling within the description in paragraph 1(b), where at the date of the admission agreement the contributions paid to the body by one or more Scheme employers equal in total 50% or less of the total amount it receives from all sources, the Scheme employer paying contributions (or, if more than one pays contributions, all of them) must guarantee the liability of the body to pay all amounts due from it under these Regulations.

5. If the admission body is exercising the functions of the Scheme employer in connection with more than one contract or other arrangement under paragraph 1(d)(i), the administering authority and the admission body shall enter into a separate admission agreement in respect of each contract or arrangement.

6. An admission agreement must require the admission body to carry out, to the satisfaction of the administering authority, and to the satisfaction of the Scheme employer in the case of a body falling within paragraph 1(d)(i), an assessment, taking account of actuarial advice, of the level of risk arising on premature termination of the provision of service or assets by reason of insolvency, winding up, or liquidation of the admission body.

7. Notwithstanding paragraph 6, and subject to paragraph 8, the admission agreement must further provide that where the level of risk identified by the assessment is such as to require it, the admission body shall enter into an indemnity or bond in a form approved by the administering authority with—

(a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 **(c)** to accept deposits or to effect and carry out contracts of general insurance;

(b) a firm in an EEA state of the kind mentioned in paragraph 5(b) and (d) of Schedule 3 to that Act **(d)** , which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) **(e)** to accept deposits or to effect and carry out contracts of general insurance; or

(c) a person who does not require permission under that Act to accept deposits, by way of business, in the United Kingdom.

8. Where, for any reason, it is not desirable for an admission body to enter into an indemnity or bond, the admission agreement must provide that the admission body secures a guarantee in a form satisfactory to the administering authority from—

(a) a person who funds the admission body in whole or in part;

(b) in the case of an admission body falling within the description in paragraph 1(d), the Scheme employer referred to in that paragraph;

(c) a person who—

(i) owns, or

(ii) controls the exercise of the functions of, the admission body; or

(d) the Secretary of State in the case of an admission body—

(i) which is established by or under any enactment, and

(ii) where that enactment enables the Secretary of State to make financial provision for that admission body, or

(iii) which is a provider of probation services under section 3 of the Offender Management Act 2007 (power to make arrangements for the provision of probation services) or a person with whom such a provider has made arrangements under subsection (3)(c) of that section.

9. An admission agreement must include—

(a) provision for it to terminate if the admission body ceases to be such a body;

(b) a requirement that the admission body notify the administering authority of any matter which may affect its participation in the Scheme;

(c) a requirement that the admission body notify the administering authority of any actual or proposed change in its status, including a take-over, reconstruction or amalgamation, insolvency, winding up, receivership or liquidation and a material change to the body's business or constitution;

(d) a right for the administering authority to terminate the agreement in the event of—

(i) the insolvency, winding up or liquidation of the admission body,

(ii) a material breach by the admission body of any of its obligations under the admission agreement or these Regulations which has not been remedied within a reasonable time,

(iii) a failure by the admission body to pay any sums due to the fund within a reasonable period after receipt of a notice from the administering authority requiring it to do so.

10. An admission agreement must include a requirement that the admission body will not do anything to prejudice the status of the Scheme as a registered scheme.

11. When an administering authority makes an admission agreement it must make a copy of the agreement available for public inspection at its offices and must promptly inform the Secretary of State of—

(a) the date the agreement takes effect;

(b) the admission body's name; and

(c) the name of any Scheme employer that is party to the agreement.

12. Where an admission body is such a body by virtue of paragraph 1(d), an admission agreement must include—

(a) a requirement that only employees of the body who are employed in connection with the provision of the service or assets referred to in that sub-paragraph may be members of the Scheme;

(b) details of the contract, other arrangement or direction by which the body met the requirements of that sub-paragraph;

(c) a provision whereby the Scheme employer referred to in that sub-paragraph may set off against any payments due to the body, an amount equal to any overdue employer and employee contributions and other payments (including interest) due from the body under these Regulations;

(d) a provision requiring the admission body to keep under assessment, to the satisfaction of the bodies mentioned in paragraph 6, the level of risk arising as a result of the matters mentioned in that paragraph;

(e) a provision requiring copies of notifications due to the administering authority under paragraph 9(b) or (c) to be given to the Scheme employer referred to in that subparagraph; and

(f) a provision requiring the Scheme employer referred to in that sub-paragraph to make a copy of the admission agreement available for public inspection at its offices.

13. Where an admission body of the description in paragraph 1(d) undertakes to meet the requirements of these Regulations, the appropriate administering authority must admit to the Scheme the eligible employees of that body

Special circumstances where revised actuarial valuations and certificates must be obtained

64. —(1) If a person—

(a) ceases to be a Scheme employer (including ceasing to be an admission body participating in the Scheme), or

(b) was a Scheme employer, but no longer has an active member contributing to a fund, that person becomes "an exiting employer" for the purposes of this regulation and is liable to pay an exit payment.

(2) When a person becomes an exiting employer, the appropriate administering authority must obtain—

(a) an actuarial valuation as at the exit date of the liabilities of the fund in respect of benefits in respect of the exiting employer’s current and former employees; and

(b) a revised rates and adjustments certificate showing the exit payment due from the exiting employer in respect of those benefits.

(3) Where for any reason it is not possible to obtain all or part of the exit payment due from the exiting employer, or from an insurer, or any person providing an indemnity, bond or guarantee on behalf of the exiting employer, the administering authority must obtain a further revision of any rates and adjustments certificate for the fund showing—

(a) in the case where a body is an admission body falling within paragraph 1(d) of Part 3 of Schedule 2 to these Regulations (Scheme employers: bodies providing services as a result of transfer of a service), the revised contribution due from the body which is the related employer in relation to that admission body; and

(b) in any other case, the revised contributions due from each Scheme employer which contributes to the fund, with a view to providing that assets equivalent to the exit payment due from the exiting employer are provided to the fund over such period of time as the administering authority considers reasonable.

(4) Where in the opinion of an administering authority there are circumstances which make it likely that a Scheme employer (including an admission body) will become an exiting employer, the administering authority may obtain from an actuary a certificate specifying the percentage or amount by which, in the actuary’s opinion—

(a) the contribution at the primary rate should be adjusted; or

(b) any prior secondary rate adjustment should be increased or reduced, with a view to providing that assets equivalent to the exit payment that will be due from the Scheme employer are provided to the fund by the likely exit date or, where the Scheme employer is unable to meet that liability by that date, over such period of time thereafter as the administering authority considers reasonable.

(5) When an exiting employer has paid an exit payment into the appropriate fund, no further payments are due from that employer in respect of any liabilities relating to the benefits in respect of any current or former employees of that employer as a result of these Regulations.

(6) Paragraph (7) applies where—

(a) a Scheme employer agrees to pay increased contributions to meet the cost of an award of additional pension under regulation 31 (award of additional pension); or (b) it appears likely to an administering authority that the amount of the liabilities arising or likely to arise in respect of members in employment with a Scheme employer exceeds the amount specified, or likely as a result of the assumptions stated, for that authority, in a rates and adjustments certificate by virtue of regulation 62(8) (actuarial valuations of pension funds: assumptions).

(7) The administering authority must obtain a revision of the rates and adjustments certificate concerned, showing the resulting changes as respects that Scheme employer.

(8) For the purposes of this regulation—

"exiting employer “means an employer of any of the descriptions specified in paragraph (1);

"exit payment “means the assets required to be paid by the exiting employer over such period of time as the administering authority considers reasonable, to meet the liabilities specified in paragraph (2);

"exit date “means the date on which the employer becomes an exiting employer; and "related employer" means any Scheme employer or other such contracting body which is a party to the admission agreement (other than an administering authority in its role as an administering authority) .

(8A) Paragraph (8B) applies where the exiting employer is the Merseyside Integrated Transport Authority (“the ITA”) and the liabilities of the fund in respect of benefits due to the ITA’s current and former employees (or those of any predecessor authority) have been or are to be transferred to the Halton, Knowsley, Liverpool, St Helens, Sefton and Wirral Combined Authority as a result of the establishment of the combined authority by article 3(1) of the Halton, Knowsley, Liverpool, St Helens, Sefton and Wirral Combined Authority Order 2014.

(8B) Where this paragraph applies, no exit payment is due under paragraph (1) and paragraph (2) does not apply.

Editor’s Note: paragraphs (8A) and (8B) above are treated as having effect purely for the purposes of The Halton, Knowsley, Liverpool, St Helens, Sefton and Wirral Combined Authority Order 2014 [SI2014/865].

(8A) Paragraph (8B) applies where the exiting employer is the South Yorkshire Integrated Transport Authority (“the ITA”) and the liabilities of the fund in respect of benefits due to the

ITA's current and former employees (or those of any predecessor authority) have been or are to be transferred to the Barnsley, Doncaster, Rotherham and Sheffield Combined Authority as a result of the establishment of the combined authority by article 3(1) of the Barnsley, Doncaster, Rotherham and Sheffield Combined Authority Order 2014.

(8B) Where this paragraph applies, no exit payment is due under paragraph (1) and paragraph (2) does not apply.

Editor's Note: paragraphs (8A) and (8B) above are treated as having effect purely for the purposes of The Barnsley, Doncaster, Rotherham and Sheffield Combined Authority Order 2014 [SI2014/863].

(8A) Paragraph (8B) applies where the exiting employer is the Tyne and Wear Integrated Transport Authority ("the ITA") and the liabilities of the fund in respect ofbenefits due to the ITA's current and former employees (or those of any predecess or authority) have been or are to be transferred to the Durham, Gateshead, Newcastle Upon Tyne, North Tyneside, Northumberland, South Tyneside and Sunderland Combined Authority as a result of the establishment of the combined authority by article 3(1) of the Durham, Gateshead, Newcastle Upon Tyne, North Tyneside, Northumberland, South Tyneside and Sunderland Combined Authority Order 2014.

(8B) Where this paragraph applies, no exit payment is due under paragraph (1) and paragraph (2) does not apply.

Editor's Note: paragraphs (8A) and (8B) above are treated as having effect purely for the purposes of The Durham, Gateshead, Newcastle Upon Tyne, North Tyneside, Northumberland, South Tyneside and Sunderland Combined Authority Order 2014 [SI2014/1012].

(9) Paragraph (10) applies—

(a) where the exiting employer is a probation trust established under section 5 of the Offender Management Act 2007 and the liabilities of the fund in respect of benefits due to or in respect of the probation trust's current and former employees (or those of its predecessor local probation boards or probation committees) have been or are to be transferred to another person as a result of arrangements made for the provision of probation services under section 3 of that Act (power to make arrangements for the provision of probation services); or

(b) in any other case where the exiting employer is engaged in the provision of probation services, but only to the extent provided for under the relevant admission agreement, in relation to any liabilities of the fund in respect of benefits due to or in respect of the current and former employees of the exiting employer which have been or are to be, with effect from the day following the exit date, transferred to one or more other Scheme employers as a result of arrangements made for the provision of probation services under section 3 of that Act.

(10) Where this paragraph applies, no exit payment is due under paragraph (1) and paragraph (2) does not apply.

Payment by Scheme employers to administering authorities

69. —(1) Every Scheme employer must pay to the appropriate administering authority on or before such dates falling at intervals of not more than 12 months as the appropriate administering authority may determine—

(a) all amounts received from time to time from employees under regulations 9 to 14 and

16 (contributions);

(b) any charge payable under regulation 68 (employer's further payments) of which it has been notified by the administering authority during the interval;

(c) a contribution towards the cost of the administration of the fund; and

(d) any amount specified in a notice given in accordance with regulation 70 (additional costs arising from Scheme employer's level of performance).

(2) But—

(a) (a) a Scheme employer must pay the amounts mentioned in paragraph (1)(a) within the prescribed period referred to in section 49(8) of the Pensions Act 1995 **(a)** ; and

(b) (b) paragraph (1)(c) does not apply where the cost of the administration of the fund is paid out of the fund under regulation 4(5) of the Local Government Pensions Scheme (Management and Investment of Funds) Regulations 2009 (management of pension fund) **(b)** .

(3) Every payment under paragraph (1)(a) must be accompanied by a statement showing—

(a) the total pensionable pay received by members during the period covered by the statement whilst regulations 9 (contributions) applied (including the assumed pensionable pay members were treated as receiving during that period),

(b) The total employee contributions deducted from the pensionable pay referred to in subparagraph (a),

(c) the total pensionable pay received by members during the period covered by the statement whilst regulation 10 applied (including the assumed pensionable pay members were treated as receiving during that period),

(d) The total employee contributions deducted from pensionable pay referred to in subparagraph (c),

(e) The total employer contributions in respect of the pensionable pay referred to in subparagraphs (a) and (c),

(f) the total additional pension contributions paid by members under regulation 16 (additional pension contributions) during the period covered by the statement, and

(g) the total additional pension contributions paid by the employer under regulation 16 (additional pension contributions) during the period covered by the statement.

(4) An administering authority may direct that the information mentioned in paragraph (3) shall be given to the authority in such form, and at such intervals (not exceeding 12 months) as it specifies in the direction.

(5) If an amount payable under paragraph (1)(c) or (d) cannot be settled by agreement, it must be determined by the Secretary of State.

APPENDIX C

CHECKLISTS

BEFORE THE INVITATION TO TENDER IS ISSUED

Action Required	✓
Identify details of staff affected and the specifications for protecting pension rights	
Inform LB Havering Pensions Team of potential outsourcing and discuss pension implications for transferring staff	
Establish communication channels and regular contact with LB Havering Pensions Team, outsourcing team and potential bidders	
Establish and include in the tender documents the specifications for protection of pension rights. A preference for an admission agreement may be expressed but not enforced. Explain that the offer of a broadly comparable pension scheme will need to be assessed by the LB Havering Pension Fund actuary.	
Request LB Havering Pensions Team to obtain from the Havering Pension Fund actuary an indicative employer contribution rate for an open and a closed Admission Agreement	
Request LB Havering Pensions Team to obtain from the Havering Pension Fund actuary the bond value from the risk exposure arising from the premature termination of the contract	
Obtain a template Admission Agreement and prepare for discussions for the finalisation of the Admission Agreement on cost implications with the contractor that may feed into the final contract	
Request LB Havering Pensions Team to obtain from the Havering Pension Fund actuary the details of the bulk transfer terms that are proposed to be used in the calculation of the bulk transfer	

WHEN THE TENDERS HAVE BEEN RECEIVED AND THE CONTRACT AWARDED

And the pension protection is going to be provided by			
Admission Agreement		**Broadly Comparable Scheme**	
Action required	✓	**Action Required**	✓
Inform LB Havering Pensions Team that protection of pension rights will be via an Admission Agreement		Inform LB Havering Pensions Team that protection of pension rights will be a broadly comparable pension scheme	
Confirm intended contract start date with LB Havering Pensions Team and any contractual agreements affecting pension costs		Confirm intended contract start date with LB Havering Pensions Team	
Obtain details of 'final' employer contribution rate		Ensure any certificate of broadly comparable status is still valid	
Inform transferring employees that protection of pension rights will be via an Admission Agreement		Inform transferring employees that protection of pension rights will be via a broadly comparable scheme	
Ensure that the Admission Agreement is in place before the contract start date		Prepare for any discussions around bulk transfer terms	

Disclaimer

The document ‘Pensions – Employer Outsourcing guide: An overview of pension implications and procedures for LGPS Scheme Employers’ is issued to Scheme Employers participating in the Havering Pension Fund for background information purposes only; the guide does not constitute advice; the guide is not an authoritative statement of the law and does not confer any statutory or contractual rights; Scheme Employers are advised to take legal advice on their pensions obligations regarding TUPE; Havering Pension Fund and oneSource/Havering Council do not accept any liability for loss or damage, consequential or otherwise, in reliance on the guide; nothing in the guide can override the provisions of the Local Government Pension Scheme Regulations, other legislation, or government guidance