



PENSIONS COMMITTEE

19 March 2017

Subject Heading:

The Admission of Harrison Catering Services Ltd to the London Borough of Havering Pension Fund

SLT Lead:

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Policy context:

Local Government Pension Scheme Regulations 2013. Schedule 2 part 3

Financial summary:

The pension fund actuary has assessed the level of Indemnity and Loxford Schools Trust – Abbs Cross Site will act as guarantors

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

Communities making Havering	[x]
Places making Havering	[x]
Opportunities making Havering	[x]
Connections making Havering	[x]

SUMMARY

The purpose of this report is to inform the London Borough of Havering Pension Fund committee of the proposed “closed agreement” admission of Harrison Catering Services Ltd into the London Borough of Havering Pension fund under the provisions of The Local Government Pension Scheme Regulations 2013, Schedule 2, Part 3 and follows New Fair Deal Guidance. This is due to the TUPE of Catering staff from Abbs Cross Academy to Harrison Catering Services Ltd for the provision of Catering services to the Academy.

RECOMMENDATIONS

That the admission of Harrison Catering Services Ltd into the London Borough of Havering Pension Fund as an admitted body to enable 4 members of staff who transferred from Abbs Cross Academy to continue membership of the Local Government Pension Scheme (LGPS) be noted, subject to:

- (a) All parties signing up to an Admission agreement, and
- (b) An Indemnity of £69,000 by way of Harrison Catering Services Ltd securing a guarantee in an approved form from the Loxford School Trust – Abbs Cross Site to protect the pension fund.

REPORT DETAIL

1. Harrison Catering Services Ltd succeeded in winning the contract to provide catering services to the Abbs Cross Academy. The contract is for a minimum of five years and will commence on 1 October 2017
2. When the Abbs Cross Academy catering services transfer from the Academy to Harrison Catering on 1 October 2017, the contracts of employment of 4 employees transfer from the Academy to Harrison Catering Services Ltd. The Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) Amendment Regulations 2014 (“TUPE”) protects the employment terms and conditions of the relevant employees except for pension rights which in this instance are covered under the New Fair Deal guidance 2013. All of the employees concerned are members of the LGPS at the date of transfer.
3. New Fair Deal Guidance 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. The guidance is needed to address Pension rights not covered by TUPE.
4. The Pension Regulations require the Local Government Pension Scheme (LGPS) Pension Funds to allow an admission to its scheme if the organisation is one that provides or which will provide a service or assets in connection with the exercise of a function of a scheme employer, as a result of the transfer of the service or assets by means of a contract or other arrangement.

5. Where a transferee admission body and the scheme employer undertake to meet the relevant requirements of Schedule 2, Part 3, an administering authority **must** admit to the LGPS the eligible employees of the transferee admission body, and where it does so, the terms on which it does are noted in the admission agreement for the purposes of these Regulations.

6. Harrison Catering Services Ltd falls within the definition contained in Schedule 2, Part 3 of the Local Government Pension Scheme Regulations 2013 and as such will be eligible to become a transferee admission body. Under Schedule 2, Part 3, the administering authority must admit to the scheme the eligible designated employees of the transferee admission body, provided the transferee admission body and the scheme employer undertakes to meet the relevant requirements of the regulations through an admission agreement. Legal engrossment of the admission agreement is subject to the service transfer taking place.

7. The London Borough of Havering will seek to sign appropriate transferee admission agreements to allow Harrison Catering Services Ltd to be admitted to the London Borough of Havering Pension Fund. When the admission agreement is formed Harrison Catering will be required to pay contribution rates as determined by the Fund Actuary. This has been set initially at 38.2% of pensionable pay.

IMPLICATIONS AND RISKS

Financial implications and risks:

Continued membership in the LGPS means there is no loss to contributions into the Fund. As noted in the report, employer contributions to be paid by admitted bodies are determined by the Fund's Actuary.

There are no immediate financial implications to the Fund arising from the Fair Deal arrangements.

The Fund's actuary has determined a bond or indemnity is required to cover the assessed level of risk arising in relation to premature termination of the provision of service or assets provided by Harrison Catering Services by reason of insolvency, winding up or liquidation and the level of bond set by the actuary is £69,000.

Harrison Catering Services has sought to opt for a guarantor and this will be provided by Loxford Schools Trust – Abbs Cross Site.

There are risks to the letting authority (Loxford Schools Trust – Abbs Cross Site) if the bond levels are not reviewed in line with employee and legislative changes. This risk will be managed by putting in place a timescale for bond reviews and

ensure this is included in the admission agreement. Bond renewals are to be carried out by the Fund's actuary.

The letting authority (Loxford Schools Trust – Abbs Cross Site) also faces risk if the admitted body is unable to meet any funding deficits at the end of a contract. This risk will be managed by putting in place regular reviews of Harrison Catering Service's employer rates. Any deficit not met by Harrison Catering Service at the end of the contract will be met by the letting authority (Abbs Cross Academy).

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

Legal implications and risks:

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

Academies are public sector bodies required to have regard to the Government's policy guidance "Fair Deal for staff pensions: staff transfer from central Government" (published with immediate effect on the 4 October 2013) when outsourcing services. Where staff are compulsorily transferred (TUPE) from the public sector (the Academy) to an independent provider of public services (Accent Catering services Limited) those staff will generally have a right of continued access to the relevant public service pension arrangements (Havering LGPS).

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

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

Human Resources implications and risks:

Admitted body status will allow transferring staff continued membership eligibility of the LGPS. Where the service transfer relates to employees of the London Borough of Havering full consultation is undertaken with affected staff and the recognised trade unions in line with TUPE requirements. In respect of other service transfers the current employing body is responsible for undertaking the equivalent consultation.

Equalities implications and risks:

The proposed admission of Harrison Catering Services Ltd into the London Borough of Havering Pension Fund will not only ensure that New Fair Deal guidance has been followed but will also enable the Abbs Cross Academy staff who will be compulsorily transferred to Harrison Catering Services to continue to enjoy pension protection when transferred to their new employer.

BACKGROUND PAPERS

None