



PENSIONS COMMITTEE

Subject Heading:

The admission of May Harris Multi Services Ltd in to the London Borough of Havering Pension Fund for the provision of services to Royal Liberty School and Sanders School (part of the Success for All Educational Trust (SFAET))

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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 Success for All Educational Trust will act as guarantors. The employer contribution rates have been set at 25.26% in respect of staff transferred from Royal Liberty School and 24.36% in respect of staff transferred from Sanders School.

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 request that the Pensions Committee agree to the proposed closed scheme admission agreement of May Harris Multi Services Ltd into the London Borough of Havering Pension Fund (“The Fund”) under the provisions of The Local Government Pension Scheme Regulations (LGPS) 2013, Schedule 2, Part 3 and follows New Fair Deal Guidance. This is due to the TUPE of cleaning staff from Royal Liberty School and Sanders School to May Harris Multi Services Ltd for the provision of cleaning services. Both Schools form part of the Success for All Educational Trust (SFAET)

RECOMMENDATIONS

That the admission of May Harris Multi Services Ltd into the Fund as an admitted body to enable 7 members of staff who transferred from the schools to continue membership of the LGPS be agreed, subject to:

- (a) An Admission agreement for each academy being in place with all relevant parties signing up to respective Admission Agreements, and
- (b) May Harris Multi Services Ltd securing a Guarantee in an approved form from SFAET to protect the Fund in respect of each academy.

REPORT DETAIL

1. May Harris Multi Services Ltd succeeded in winning the contract to provide cleaning services to Royal Liberty and Sanders Schools. The contract is for a minimum of three years and commenced on 01 January 2020 (Royal Liberty) and 13 January 2020 (Sanders).
2. The contracts of employment of affected staff were transferred when the cleaning services transferred from Royal Liberty and Sanders Schools to May Harris Multi Services Ltd on in January 2020. 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. 5 employees of Royal Liberty School and 2 employees of Sanders School were members of the LGPS on the transfer dates.
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 LGPS 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. Following guidance from MHCLG, where a transferee admission body and the scheme employer undertake to meet the relevant requirements of Schedule 2, Part 3, an administering authority cannot decline to admit to the LGPS the eligible employees of the transferee admission body. The terms on which the admission is permitted are noted in the Admission Agreement for the purposes of these Regulations.
6. May Harris Multi Services Ltd falls within the definition contained in Schedule 2, Part 3 of the LGPS Regulations 2013 and as such is 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. There has been a delay in processing the admission of May Harris Multi Services Ltd due to a series of negotiations between SFAET and May Harris Multi Services Ltd to agree terms of a pass-through agreement in respect of each academy. The terms of a pass through arrangement have been agreed and legal documentation is being finalised. The Fund will continue the process of obtaining an admission agreement so that contributions from the transferred staff can be collected by the administrative authority.
8. The London Borough of Havering will seek to sign appropriate transferee Admission Agreements to allow May Harris Multi Services Ltd to be admitted to the London Borough of Havering Pension Fund. When the Admission Agreements are formed May Harris Multi Services Ltd will be required to pay contribution rates as determined by the Fund Actuary. This has been set at 25.26% (Royal Liberty) and 24.36% (Sanders) 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

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bodies are determined by the Fund's Actuary. May Harris Multi Services Ltd's employer contribution rate has been set at 25.26% (Royal Liberty) and 24.36% (Sanders). May Harris Multi Services Ltd have been allocated a share of assets to ensure the closed scheme is fully funded at the transfer date.

The Fund's actuary has assessed the level of risk arising in relation to premature termination of the provision of service or assets provided by May Harris Multi Services Limited by reason of insolvency, winding up or liquidation and May Harris Multi Services Ltd has sought to opt for a guarantor which will be provided by SFAET

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

The LPP have carried out a risk assessment for May Harris Multi Services Ltd which highlighted no concerns. Annual risk profiling checks will be carried out by the Fund's actuary.

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

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 (non teaching), 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) to an independent provider of public services (May Harris Multi Services Ltd) those staff will generally have a right of continued access to the relevant public service pension arrangements (Havering LGPS) where they are classified as non-teaching staff

In the case of the Royal Liberty and Sanders Schools employees transferring to their new cleaning contractor, Fair Deal obligations can be achieved by means of an admission body agreement, between the administering authority (Havering) and the letting authority (Royal Liberty and Sanders Schools) and the employing/admission body (May Harris Multi Services Ltd) allowing the transferring employees to remain a member of the Local Government Pension Scheme. The Academies and the contractor have applied for admission on a closed basis and

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actuarial assessments have been undertaken on that basis in order to assess contributions and the bond value.

The admittance of May Harris Multi Services Ltd into the Havering Pension Fund will ensure that the current employees enjoy their current pension protection when transferring to their new employer and negate against any complaints to the Pension Regulator and Pensions Ombudsman resulting from a failure to ensure Fair Deal pension protection for its employee on transfer.

The recommendations in this report are in keeping with the constitutional delegation.

Human Resources implications and risks:

The recommendations in this report do not give rise to any identifiable HR risks or implications that would affect either the Council or its workforce.

Admitted body status will allow the former Royal Liberty and Sanders Schools staff (who transferred to the new provider in January 2020) continued membership eligibility of the LGPS.

Equalities implications and risks:

The proposed admission of May Harris Multi 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 Royal Liberty and Sanders Schools staff who will be compulsorily transferred to May Harris Multi Services Ltd to continue to enjoy pension protection when transferred to their new employer

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

- (i) the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) the need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are: age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants. We will ensure that disabled people with sensory impairments are able to access the strategy.