



## PENSIONS COMMITTEE

**Subject Heading:**

The admission of Olive Dining Ltd to the London Borough of Havering Pension Fund for the provision of services to Drapers Academy (part of the Drapers Multi Academy Trust)

**SLT Lead:**

Jane West

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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 required as £102,000 and the employer contribution rate has been set at 41.0%.

**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 the London Borough of Havering Pension Committee agree to the proposed closed scheme agreement for admission of Olive Dining 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 Drapers Academy to Olive Dining Ltd for the provision of catering services.

**RECOMMENDATIONS**

That the admission of Olive Dining Ltd into the London Borough of Havering Pension Fund as an admitted body to enable 6 members of staff who transferred from Drapers Academy to continue membership of the Local Government Pension Scheme (LGPS) be agreed, subject to:

- (a) All parties signing up to an Admission Agreement, and
- (b) Olive Dining Ltd securing a bond of £102,000 to protect the pension fund.

**REPORT DETAIL**

1. Olive Dining Ltd succeeded in winning the contract to provide catering services to Drapers Academy. The contract with Drapers Academy is for a minimum of three years and commenced on 01 November 2020.
2. The contracts of employment of affected staff transferred when the catering services transferred from Drapers Academy to Olive Dining Ltd on 1 November 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. 6 employees were a member of the LGPS on the transfer date.
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. 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. Olive Dining Ltd falls within the definition contained in Schedule 2, Part 3 of the Local Government Pension Scheme 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. The London Borough of Havering will seek to sign appropriate transferee Admission Agreements to allow Olive Dining Ltd to be admitted to the London Borough of Havering Pension Fund. When the Admission Agreement is formed Olive Dining Ltd will be required to pay contribution rates as determined by the Fund Actuary. This has been set initially at 41.0% 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. Olive Dining Ltd's employer contribution rate has been set at 41.0%. Olive Dining Ltd are allocated a share of assets to ensure they are fully funded at the transfer date.

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 Olive Dining Ltd by reason of insolvency, winding up or liquidation and the level of bond set by the actuary is £102,000. There are risks to the letting authority (Drapers Academy) 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.

## **Pensions Committee, 16 March 2021**

The letting authority (Drapers Academy) 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 Olive Dining Ltd's employer rates.

The risk of non-payment of contributions, which would have a cash flow impact, is actively managed by the Havering pension team 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 covenant check for Olive Dining Ltd which highlighted no concerns. Annual employer risk profiling will be carried out in future 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, 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 (Olive Dining 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 Drapers 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 (Drapers Academy) and the employing/admission body (Olive Dining Ltd) allowing the transferring employee to remain a member 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.

The admittance of Olive Dining 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 Drapers Academy staff (who transferred to the new provider on 1 November 2020) continued membership eligibility of the LGPS.

**Equalities implications and risks:**

The proposed admission of Olive Dining 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 Drapers Academy staff who will be compulsorily transferred to Olive Dining 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.