



Havering
LONDON BOROUGH

PENSIONS COMMITTEE

Subject Heading:

The admission of May Harris Multi Services in to the London Borough of Havering Pension Fund for the provision of cleaning services to Whybridge Junior School

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 May Harris Multi Services will secure a bond or guarantee. The employer contribution rate has been set at 21.1%.

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 agreement admission of May Harris Multi Services into the London Borough of Havering Pension Fund under the provisions of The Local Government Pension Scheme (LGPS) Regulations 2013, Schedule 2, Part 3 and follows New Fair Deal Guidance. This is due to the TUPE of cleaning staff from Whybridge Junior School to May Harris Multi Services for the provision of cleaning services

RECOMMENDATIONS

That the admission of May Harris Multi Services into the London Borough of Havering Pension Fund as an admitted body to enable 2 members of staff who transferred from Whybridge Junior School to continue membership of the LGPS be agreed, subject to:

- (a) All parties signing up to an Admission Agreement, and
- (b) May Harris Multi Services securing a bond or guarantee in an approved form to protect the pension fund.

REPORT DETAIL

1. May Harris Multi Services succeeded in winning the contract to provide cleaning services to Whybridge Junior School. The contract with May Harris Multi Services is for a minimum of three years and commenced on 17 October 2022.
2. The contracts of employment of the affected staff transferred when the cleaning services transferred from Whybridge Junior School to May Harris Multi Services on 17 October 2022. 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. 2 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 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 DLUHC, where a transferee admission body ("TAB") 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 TAB. 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 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 TAB, provided the TAB 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 May Harris Multi Services to be admitted to the London Borough of Havering Pension Fund. When the Admission Agreement is formed May Harris Multi Services will be required to pay contribution rates as determined by the Fund Actuary. This has been set initially at 21.1% 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. May Harris Multi Services' employer contribution rate has been set at 21.1%. May Harris Multi Services 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 May Harris Multi Services by reason of insolvency, winding up or liquidation and the level of bond set by the actuary is £7,000. May Harris Multi Services will seek to secure a bond or guarantee in an approved form.

There are risks to the letting authority (Whybridge Junior School) if the indemnity levels are not reviewed in line with employee and legislative changes. This risk will be managed by putting in place a timescale for reviews and ensure this is included in the Admission Agreement. Indemnity reviews are to be carried out by the Fund's actuary.

The letting authority (Whybridge Junior School) 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 May Harris Multi Services' employer rates. Any deficit not met by May Harris Multi Services at the end of the contract will be met by the letting authority.

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

May Harris Multi Services are an existing transferee admitted body within the Havering and other Local Government Pension Funds, so have experience of the implications of being a Scheme Employer.

Hymans Robertson have carried out an assessment which shows (at 31 January 2023) May Harris Multi Services are a "medium risk" employer for the Pension Fund. However it should be noted the scale of the employer's assets and liabilities is extremely small and therefore the monetary risk is low. This will be reviewed on an annual basis.

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 (May Harris Multi Services) 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 Whybridge Junior School 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 (Whybridge Junior School) and the employing/admission body (May Harris Multi Services) allowing the transferring employees to remain a member of the Local Government Pension Scheme. The school 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 indemnity level.

The admittance of May Harris Multi Services into the Havering Pension Fund will ensure 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 Authority or its workforce.

Admitted body status will allow the former Whybridge Junior School employees (who transferred to the new provider on 17 October 2022) continued membership eligibility of the LGPS.

Equalities implications and risks:

The proposed admission of May Harris Multi Services 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 Whybridge Junior School employee who has been compulsorily transferred to May Harris Multi Services to continue to enjoy pension protection when transferred to the new employer

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Authority, 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.