



## PENSIONS COMMITTEE

**Subject Heading:**

The admission of Caterlink Limited to the London Borough of Havering Pension Fund for the provision of catering Services to St Edwards Church of England Academy

**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 set the employer contribution rate at 24.8% and the admission will be on a pass through basis.

**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 Caterlink Limited into the London Borough of Havering Pension Fund (“the 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 staff to Caterlink Limited for the provision of catering services. The protected staff were originally employees of St Edwards Church of England Academy, TUPE transferred to another contractor as part of the original outsourcing of the contract, now transferred to Caterlink Limited as part of the re-tender of the contract.

## **RECOMMENDATIONS**

That the admission of Caterlink Limited into the London Borough of Havering Pension Fund as an admitted body to enable 5 members, previously employed by the Academy, to continue membership of the LGPS be agreed, subject to all parties signing up to an Admission Agreement.

## **REPORT DETAIL**

1. Caterlink Limited succeeded in winning the contract to provide catering services to St Edwards Academy. The contract commenced 11 February 2023 and is due to expire on 23 October 2025.
2. This is a second generation transfer where the pension rights of ex academy staff who were part of the original outsourcing of the catering services and TUPE transferred to the previous contractor are entitled to continued protection as part of the re-tender of that contract.
3. The contracts of employment of the affected staff transferred when the catering services transferred from the previous contractor to Caterlink Limited on 11 February 2023. 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 were a member of the LGPS on the transfer date.
4. 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.

5. 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.
6. Following guidance from 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.
7. Caterlink Limited falls within the definition contained in Schedule 2, Part 3 of the LGPS Regulations 2013 and as such is eligible to become a TAB. 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.
8. The Authority will seek to sign appropriate transferee Admission Agreement to allow Caterlink Limited to be admitted to the Fund. When the Admission Agreement is formed Caterlink Limited will be required to pay contribution rates as determined by the Fund Actuary. This has been set initially at 24.8% 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. Caterlink’s rate has been set at 24.8%.

Caterlink will be admitted on a pass through basis and therefore they are not required to obtain an indemnity bond. The notional value of the assets and liabilities relating to the contractors staff remain the responsibility of the St Edwards Academy during the participation period. The Academy is covered by the Department for Education guarantee so the Council and all other Havering scheme employers are protected should the academy fail as a going concern.

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St Edwards Academy retains responsibility for variations in funding level, for instance due to investment performance, changes in market conditions, longevity, and salary experience under its pass-through arrangement.

Any strain costs that become due to the Fund following the termination of the employment of a Tupe'd employee on the grounds of ill health, redundancy or flexible retirement are payable by Caterlink Limited and this will be specified in the admission agreement.

At the end of the contract (or when there are no longer any active members participating in the fund), the Admission Agreement will cease and no further payment will be required from the contractor (or the letting authority) to the fund, save for any outstanding regular contributions and/or invoices relating to the cost of early retirement strains, augmentations and/or salary experience. Likewise, no "exit credit" payment will be required from the Fund to the contractor (or 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.

Caterlink Limited have previously been an admitted body to the Fund, providing catering services for other scheme employers, so have experience of the implications of being a Scheme Employer.

Hymans Robertson carry out an annual assessment to review the level of risk a scheme employer poses to the Fund. The passthrough agreement in place provides surety that any deficit in funding at the end of the contract, not met by Caterlink Limited, will be met by St Edwards Academy.

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

### **Legal implications and risks:**

Local Authorities 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 admitted bodies, subject to the completion of an Admission Agreement.

Local Authorities 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 those staff will generally have a right of continued access to the relevant public service pension arrangements (Havering LGPS).

In the case of the ex academy employees transferring to their new catering contractor, Fair Deal obligations can be achieved by means of an Admission Agreement, between the administering authority (Havering) and the letting authority (St Edwards Church of England Academy) and the employing/admitted body (Caterlink Limited) allowing the transferring employees to remain a member of the Local Government Pension Scheme. The admission will be on a closed basis and actuarial assessments have been undertaken on that basis in order to assess contribution rate.

The admittance of Caterlink Limited 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 academy employees (who transferred to the new provider on 11 February 2023) continued membership eligibility of the LGPS.

**Equalities implications and risks:**

The proposed admission of Caterlink Limited 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 ex academy employees who have been compulsorily transferred to Caterlink Limited 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 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.

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The Authority 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 Authority 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.