



## PENSIONS COMMITTEE

**Subject Heading:**

The Admission of CleanTEC Services Limited and Aspens Services Limited into the Havering Pension Fund

**ELT Lead:**

Kathy Freeman  
Strategic Director of Resources

**Report Author and contact details:**

Caroline Guyon  
Pensions Projects and Contracts Manager  
01708 432185  
caroline.guyon@havering.gov.uk

**Policy context:**

Local Government Pension Scheme Regulations 2013. Schedule 2 part 3

**Financial summary:**

The employers will be admitted in line with new Funding Strategy Statement with a 25% employer contribution rate and a pass through agreement.

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

Communities making Havering  
Places making Havering  
Opportunities making Havering  
Connections making Havering

[x]  
[x]  
[x]  
[x]

**SUMMARY**

This report requests the London Borough of Havering Pension Committee agree to the proposed closed agreement admission of CleanTEC Services Limited (CleanTEC) and Aspens Services Limited (Aspens) 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 for the provision of cleaning and catering services for existing scheduled bodies. The protected staff employees of the letting authorities who were transferred to the contractor as part of the outsourcing.

**RECOMMENDATIONS**

- That the admission of CleanTEC Services Limited into the London Borough of Havering Pension Fund as an admitted body to enable 3 members, previously employed by Elm Park Primary School to continue membership of the LGPS be agreed, subject to all parties signing up to an Admission Agreement.
- That the admission of Aspens Services Limited into the London Borough of Havering Pension Fund as an admitted body to enable 24 members, previously employed by Havering, to provide services to the Empower Learning Academy Trust, to continue membership of the LGPS be agreed, subject to all parties signing up to an Admission Agreement.
- 

**REPORT DETAIL**

1. 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 for an existing scheme employer, as a result of the transfer of the service or assets by means of a contract or other arrangement.
2. 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.
3. Both CleanTEC and Aspens fall within the definition contained in Schedule 2, Part 3 of the LGPS Regulations 2013 and as such are 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

## Pensions Committee, 25 June 2024

employer undertakes to meet the relevant requirements of the regulations through an Admission Agreement.

4. The contracts of employment of the affected staff transferred when the catering services transferred CleanTEC Limited. 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. 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
5. CleanTEC Services Limited succeeded in winning the contract to provide cleaning services to Elm Park Primary School. The contract commenced 13 June 2024 and is due to expire on 12 June 2027.
6. The admission will protect the pension rights of 3 members of the Fund whose employment has transferred to CleanTEC.
7. Aspens Services Limited succeeded in winning the contract to provide catering services to the Empower Learning Academy Trust. The contract commenced 1 September 2023 and is due to expire on 31 August 2026.
8. The admission will protect the pension rights of 24 members of the Fund whose employment has transferred to Aspens.
9. The Authority will seek to sign appropriate pass through transferee Admission Agreements to allow CleanTEC and Aspens to be admitted to the Fund. When the Admission Agreement is formed both employers will be required to pay contribution rate as detailed within the Funding Strategy Statement, determined by the Fund Actuary, of 25% 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. The rate for both employers as per the Funding Strategy Statement is set at 25%.

CleanTEC and Aspens 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 letting

authority during the participation period. The academies are covered by the Department for Education guarantee so the Council and all other Havering scheme employers are protected should either academy fail as a going concern.

The letting authority 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 the Transferee Admitted Body 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.

Hymans Robertson carry out an annual assessment to review the level of risk a scheme employer poses to the Fund. However, the passthrough agreement in place provides surety that any deficit in funding at the end of the contract will be passed back to the relevant letting authority. Both TABs can therefore be categorised as low-risk.

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

**Legal implications and risks:**

Local Authority Schools and Academy Trusts 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 employees transferring to their new contractor, Fair Deal obligations can be achieved by means of an Admission Agreement, between the administering authority (Havering) and the letting authority (Elm Park Primary School and Empower Learning Academy Trust) and the employing/admitted body (CleanTEC and Aspens) allowing the transferring employees to remain a member of the Local Government Pension Scheme. The admission will be on a passthrough basis as detailed in the Funding Strategy Statement with a standard 25% contribution rate for the duration of the contract.

The admittance of CleanTEC and Aspens 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 pension fund members, who transferred to the new providers, continued eligibility of the LGPS.

**Equalities implications and risks:**

The proposed admission of CleanTEC and Aspens 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 employees who have been compulsorily transferred 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.

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

**Pensions Committee, 25 June 2024**

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.