

LONDON BOROUGH OF CROYDON

REPORT:	Pension Committee	
DATE OF DECISION	12 December 2023	
REPORT TITLE:	Pension Fund Governance: Review of the Admission Policy, Academies Policy and Funding Strategy Statement	
CORPORATE DIRECTOR	Jane West, Corporate Director of Resources (Section 151 Officer)	
LEAD OFFICER:	Matthew Hallett, Acting Head of Pensions & Treasury	
CONTAINS EXEMPT INFORMATION?	No	Public

1 SUMMARY OF REPORT

- 1.1 This report presents proposed revisions to the Admissions Policy, Academies Policy and the Funding Strategy Statement as marked up on the appendices to this report.
- 1.2 When considering the proposed revisions the Committee needs to be aware of the two substantial changes to the Fund’s approach, these being:
1. To make passthrough the default option when admitting a new contractor to the Fund detailed in sections 3.6 to 3.8.
 2. To allow passthrough to any contracts let by academies which satisfy certain conditions as detailed in sections 3.9 and 3.10.

2 RECOMMENDATIONS

The Committee is recommended:

- 1.3 To agree the revisions to the Admissions Policy, Academies Policy and the Funding Strategy Statement attached as appendices A, B and C.

3 BACKGROUND AND DETAILS

- 1.4 In accordance with Schedule 2 of the Local Government Pension Scheme Regulations 2013 (as amended) membership of the Scheme as administered by the Council is allowed for three types of employer – “Designated Bodies”, “Scheme Employers” and “Admission Bodies”.

- 1.5** “Designated Bodies”. These employers are listed under Part 2 of Schedule 2 and include bodies under the control of scheduled bodies, or employers such as Transport for London. Employers may designate which employees may participate in the LGPS and those employees must automatically join the LGPS upon appointment (unless the employment contract is under 3 months), although an employee may then opt out.
- 1.6** “Scheme Employers,” such as the Council and academy trusts, must provide automatic admission into the Scheme for all their eligible employees.
- 1.7** “Admission Bodies” which, subject to strict conditions, provide services or assets to a Scheme employer, can provide access to the Scheme through an admission agreement.
- 1.8** New employers can choose not to seek membership of the Scheme (and not become an Admission Body), but further to the Best Value Authorities Staff Transfers (Pensions) Direction 2007 and New Fair Deal (applicable to Academies) they need to offer employees transferred from local government, membership of a certified “broadly comparable” pension scheme. Currently there are no such registered schemes.
- 1.9** In December 2021 the Fund adopted an ‘Admission Policy’ for new employers, the purpose of the policy being to ensure only appropriate bodies are admitted to the Fund and that the financial risk to the Fund and to other employers in the Fund is identified, minimised, and managed accordingly. The policy also sets out the Fund’s default position in relation to the admission of new employers to enable consistency of requirement across all employers.
- 1.10** There are two options in terms of the way a contractor can be admitted to the Fund.
- a) The employer is allocated an individual contribution rate. All responsibility passes to the admission body and they will be liable for any deficit on cessation. A valuation will be required at admission and cessation which will be charged to the admission body. Either a guarantee or a bond will be required.
 - b) The employer is admitted on a passthrough basis. This means that all liabilities on exit will pass back to the Letting Authority. Usually, the admission body will use the same employer contribution rate as the Letting Authority. This means that a valuation will not be required at admission and no bond will be required. At the end of the admission, the cessation valuation will record nil assets and liabilities for the ceasing employer and therefore no exit credit or cessation debt is payable to or from the Fund.
- 1.11** As a result of recent outsourcing exercises, it has become apparent that there are many benefits to making passthrough our default required admission basis, these are:
- It allows more certainty around employer contribution rates, so making it easier for the Letting Authority to tender contracts
 - It saves the costs of valuations to the contractors

- It means that the contractor does not have to obtain a bond; this can be costly and lengthy.
- It is less time consuming to administer
- It provides protection for the Fund as all liabilities are guaranteed by the Letting Authority.

1.12 It is proposed that the Admissions Policy be revised, so that passthrough is the default option when admitting a new contractor to the Fund.

1.13 As a result of recent updates to the Education and Skills Funding Agency Policy (17 May 2023), the DFE has extended their Academies Funding Guarantee to any contracts let by academies which satisfy the following conditions:

1. Staff currently working for an academy transfer to an outsourced contractor under TUPE.
2. Staff who transfer to an outsourced contractor under TUPE before the academy converted (ie when it was still a maintained school) and the outsourcing contract passes to the academy following conversion.
3. Staff who currently work for the local authority which is providing services to the academy under a contract, but the contract is then awarded to another third-party contractor and the staff transfer to the contractor under TUPE.

1.14 It is proposed that where admissions satisfy the conditions in 3.9, then they be made on a passthrough basis. If the contract let by the academy does not satisfy these conditions then admission will be on basis 1 under 3.6 above.

1.15 The revised Admission policy now highlights the requirement for contracts to contain the right to membership of the LGPS and the right to enforce this on TUPE transfer to an admission body. This responsibility rests with the Letting Authority further to the Best Value Authority Staff Transfers (Pensions) Direction 2007 (primarily in the case of best value authorities) and New Fair Deal (primarily in the case of Academies).

1.16 The Academies Policy has been updated to reflect the conditions in 3.9 above. It also states that the Fund's default position is not to allow pooling for Multi Academy Trusts (MAT).

1.17 Pooling is an arrangement where all schools with the MAT pay the same employer contribution rate and are effectively treated as a single employer. However, this can cause problems when schools join or leave MATS in terms of transferring liabilities. It has been the Fund's preference to value academies in MATS individually but the policy now reinforces this by making it the Fund's default position.

- 1.18 The FSS has been updated to reflect the revisions to the admission policy and the academies policy.

4 CONSULTATION

- 2.1 Officers consulted with the Fund's Actuary, Hymans Robertson when revising these policies.

5 IMPLICATIONS

2.2 FINANCIAL IMPLICATIONS

- 2.2.1 There are no significant direct financial implications arising from this report.

Approved by: Allister Bannin, on behalf of Jane West, Corporate Director of Resources (Section 151 Officer) (Date 29/11/2023)

2.3 LEGAL IMPLICATIONS

- 2.3.1 Burges Salmon LLP (a legal advisor to the Fund) comments that the Local Government Pension Scheme Regulations 2013/2356 ("the Regulations") govern such matters as admission to the Local Government Pension Scheme (LGPS), transfers and the circumstances where an employer leaves an LGPS fund.
- 2.3.2 In seeking to establish policies governing the above referenced areas, the Council must ensure that it complies with the relevant provisions within the Regulations and shall have regard to statutory guidance. Non-statutory guidance has also been published which covers these areas and regard ought also to be had to such non-statutory guidance.
- 2.3.3 Regulations 3 to 8 of the Regulations set out the rules for eligibility for membership and the different categories of member. Part 2 of the Regulations sets out provisions relating to the administration of the Scheme. Regulations 96 to 103 set out provisions relating to transfers between funds. Schedule 2 to the Regulations sets out who can be Scheme employers and makes provision relating to admission agreements between employers who are not listed within the Schedule and administering authorities and Schedule 3 to the Regulations sets out who must maintain a fund for the Scheme, and is thus an administering authority and contains provision identifying who is the appropriate administering authority for the employees of any particular Scheme employer.
- 2.3.4 Regulation 64 makes provision in relation to requirements on employers who leave the LGPS and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014/525, under regulation 25A gives the Fund the ability to levy a cessation debt on employers who have ceased participation in the Fund (under the previous regulations) but for whom a cessation valuation was not carried out at the time.

- 2.3.5 Under provisions in the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) [SI 2006/246], the pay, and terms and conditions of employment for transferred employees are protected, preventing these entitlements from being changed without agreement. However, TUPE does not generally protect pension entitlements under an occupational pension scheme such as the LGPS. The Transfer of Employment (Pension Protection) Regulations 2005 [SI 2005/649] covers the pension and contribution arrangements for employees to which a TUPE transfer applies but does not provide for full protection for transferring employees who are members of the LGPS.
- 2.3.6 Section 101 and 102 of the Local Government Act 2003 makes provision for staff transfer matters generally and in relation to pensions in particular (section 102) and provides that Directions may be made by the Secretary of State in this regard with which the Council needs to comply. Best Value Authorities Staff Transfer (Pensions) Direction 2007 has been made by the Secretary of State under this authority and provides that a Best Value authority must secure pension protection for each TUPE transferring employee, which must be the same as, broadly comparable to, or better than, those they had a right to acquire prior to the transfer.
- 2.3.7 Where relevant, regard should also be had to the non-statutory New Fair Deal guidance issued by the Government Actuaries Department in October 2013 which applies to central government departments, agencies, the NHS, certain maintained schools (including academies) and any other parts of the public sector under the control of government ministers, where staff are eligible to be members of a public service pension scheme. The new policy applies when such staff move from the public sector to an independent contractor by way of a transfer to which TUPE applies or when such staff move by way of a non voluntary transfer to a public service mutual or to other new models of public service delivery. The reformed policy generally does not apply to staff transfers from local authorities and other best value authorities (as listed in section 1 of the Local Government Act 1999). The New Fair Deal sets out how pensions' issues are to be dealt with when staff are compulsorily transferred from the public sector to independent providers delivering public services.

2.4 EQUALITIES IMPLICATIONS

- 2.4.1 The Council has a statutory duty to comply with the provisions set out in Sec 149 of the Equality Act 2010. The Council must therefore have due regard to:
- 2.4.1.1 eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act.
 - 2.4.1.2 advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
 - 2.4.1.3 foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

2.4.2 There are no equality implications arising from this report.

Approved by: Naseer Ahmad on behalf of the Equalities Manager. (Date 27/11/2023)

2.5 HUMAN RESOURCES IMPLICATIONS

2.5.1 Human Resources advisors, alongside pensions and legal teams, will need to ensure the new policy is applied correctly when such staff move from the council to an independent contractor by way of a transfer to which TUPE applies, or when such staff move by way of a non-voluntary transfer to a public service mutual, or other models of public service delivery.

As set out in section 3.4 above, under current TUPE transfer arrangements the new “transferee” employer can choose not to seek membership of the LGPS scheme, but they need to offer employees transferred from the LGPS, membership of a certified “broadly comparable” pension scheme. Currently there are no such registered schemes. The proposal to revise the Pensions Admissions Policy so that passthrough is the default option when admitting a new contractor to the Fund is likely to provide staff (and their trade union representatives) with more clarity and certainty about their pension position.

Approved by: Dean Shoesmith, Chief People Officer. (Date 24/11/2023)

3 APPENDICES

6.1 A: Admissions Policy

B: Academies Policy

C: Funding Strategy Statement

4 BACKGROUND DOCUMENTS

7.1 None
