

REPORT TO:	Pension Committee 3 December 2021
SUBJECT:	Pension Fund Governance: the Admission Policy, the Bulk Transfer Policy and the Policy for Employers Leaving the Fund
LEAD OFFICER:	Nigel Cook Head of Pensions and Treasury

1. RECOMMENDATION

The Committee are asked to:

- 1.1 Consider and agree the “Admissions Policy”, “Bulk Transfer Policy” and the “Policy for Employers Leaving the Fund” as attached as appendices A, B and C respectively.

2. EXECUTIVE SUMMARY

- 2.1 This Report explains the rationale for the Committee to agree an “Admissions Policy”, “Bulk Transfer Policy” and a “Policy for Employers Leaving the Fund” in its role as administering authority and recommends these documents to the Committee for approval accordingly.

3 DETAIL

- 3.1 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 two types of employer – “Scheme Employers” and “Admission Bodies.”
- 3.2 “Scheme Employers,” such as the Council and academy trusts, must provide automatic admission into the Scheme for all their eligible employees.
- 3.3 “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.
- 3.4 New employers can choose not to seek membership of the Scheme but they need to offer employees transferred from the Scheme, membership of a certified “broadly comparable” pension scheme.
- 3.5 The review of the Fund’s Governance arrangements recommended that the Committee:
 - Consider whether to introduce admission and bulk transfer policies, to provide greater detail and expand on some of the areas in the Funding Strategy Statement (FSS); and
 - Update the “Policy for employer leaving the Fund” in line with exit credit

legislation.

3.6 A bulk transfer is the transfer of a group of members from one pension scheme (the transferring scheme) to another (the receiving scheme). The transferring scheme will make a transfer payment to the receiving scheme, covering all of the transferring members. The transferring members will cease to be entitled to benefits in the transferring scheme and will become entitled to benefits under the receiving scheme.

3.7 Appendix A sets out the recommended Admission Policy.

The purpose of this policy is to ensure that 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. This will enable consistency of requirement across all employers.

While it is possible for a prospective new employer to request alternatives, any deviation from the stated default position would have to ensure no risk to other scheme employers and will be at the discretion of the Fund to agree.

When an administering authority is considering permitting a body to become an admission body, the LGPS Regulations include some discretions relating to the creation and management of admission agreements. The Fund's discretions are detailed within the policy. The discretionary areas are:

- Part 3 of Schedule 2 (para 1) – Whether or not to proceed with admission agreements
- Part 3 of Schedule 2 (para 9(d)) – Whether to terminate the admission agreement
- Regulation 54(1) – If the Fund will set up separate pension funds in respect of admission agreements

There is also an overriding objective to ensure that the LGPS Regulations and any supplementary guidance (in particular the Best Value Authorities Staff Transfer (Pensions) Direction 2007 and Fair Deal guidance) as they pertain to admission agreements are adhered to.

Appendix A sets out the recommended basis for Admission Bodies to be granted access to the Scheme subject to conditions including:

- Accepting the standard admission agreement;
- Making contributions to the Fund as certified by the Scheme Actuary;
- Complying with any bond or guarantee requirements; and
- Meeting appropriate actuarial and other professional costs as required.

Previously the Fund has not had an Admissions Policy. This has made it difficult to achieve consistency in admission requirements across all scheme employers. Contractual agreements between the Council as letting authority and the employer have been made around fixed rate contributions and underwriting of liabilities without consideration of how the Fund is reimbursed. This impacts on staff time in lengthy negotiations and increased legal costs associated with the admission process. It causes delays in

finalising admissions which has implications for the employees involved. Additionally it impacts on the funding position as any unpaid liabilities are dealt with by increasing employer contributions for the remaining scheme employers.

3.8 Appendix B sets out the recommended Bulk transfers Policy

The purpose of this policy is to set out the Administering Authority's approach to dealing with the bulk transfer of scheme member pension rights into and out of the Fund in prescribed circumstances.

The Fund's objectives related to this policy are as follows:

- transfers out of the Fund do not allow a deficit to remain behind unless a scheme employer is committed to repairing this; and
- bulk transfers received must be sufficient to pay for the added benefits being awarded to the members, again with the scheme employer making good any shortfall where necessary

When considering any circumstances where bulk transfer provisions might apply, however, the Administering Authority will always ensure adherence to any overriding requirements set out in the Local Government Pension Scheme Regulations and/or any supplementary or statutory guidance (e.g. the Best Value Staff Transfers (Pensions) Direction 2007) and non-statutory New Fair Deal requirements.

The Local Government Pension Scheme Regulations 2013 (as amended) contain relevant provisions regarding transfers (including bulk transfers) to and from the scheme, and include the following:

- Regulation 98 – applies on transfer out to non-LGPS schemes. It allows for the payment of a bulk transfer value where at least two active members of the LGPS cease scheme membership and join another approved pension arrangement;
- Regulation 99 - gives the LGPS actuary discretion as to the choice of method of calculation used to calculate the bulk transfer value;
- Regulation 100 – allows an individual who holds relevant pension rights under a previous employer to request to be admitted for past service into the LGPS. Members wishing to transfer in accrued rights from a Club scheme (that is schemes with benefits broadly similar to those of the LGPS), who request to do so within 12 months of joining their new LGPS employment must be granted their request. For members with non-Club accrued rights the LGPS Fund does not have to grant the request. Any request must be received in writing from the individual within 12 months of active employment commencing or longer at the discretion of the employer and the administering authority.
- Regulation 103 - states that any transfer between one LGPS fund and another LGPS fund (in England and Wales) where 10 or more members elect to transfer will trigger bulk transfer negotiations between Fund actuaries.

Appendix B is the recommended basis for the bulk transfer of staff into and out of the Scheme subject to various different circumstances including:

- Transfers between schemes with actuarially equivalent benefits (Club schemes);
- Transfers between broadly comparable schemes; and
- Inter fund transfers (transfers between Local Government Pension Schemes).

Previously the Fund has not had a Bulk Transfers Policy. The new Policy will ensure consistency of practice across all bulk transfer cases, ensuring compliance with regulatory requirements detailed in this report. This will provide protection for both members' benefits and the financial position of the Fund.

- 3.9 An admission agreement terminates if the employer ceases to be an admission body or the last active members leave employment or opt out of the Fund.

Appendix C is a recommended updated "Policy for Employers Leaving the Fund" in which the main features of the financial arrangements are described in detail. The existing policy was created in 2014. Since then the Funding Strategy Statement has been updated to take account of exit credit amendments and this needs to be reflected in the Cessation Policy.

This policy details the methodology for calculation and payment of any deficit or refund of surplus on leaving the Fund, which supplements the Funding Strategy Statement ("FSS"). It applies independently from any risk-sharing which has been agreed between a Scheme Employer and an Admission Body.

When considering any circumstances where cessation occurs, the Administering Authority will always ensure adherence to any overriding requirements set out in the Local Government Pension Scheme Regulations and/or any supplementary or statutory guidance (e.g. the Best Value Staff Transfers (Pensions) Direction 2007) and non-statutory New Fair Deal requirements.

The Local Government Pension Scheme Regulations 2013 as amended ("the 2013 Regulations") outline the general framework for employees and employers participating in the Local Government Pension Scheme in England and Wales. The regulations that are relevant to employers leaving the Fund are as follows;

- Regulation 64 (1) – this regulation states that, where an employing authority ceases to be a Scheme Employer, the Administering Authority is required to obtain an actuarial valuation of the liabilities of current and former employees as at the termination date. Further, it requires the Rates and Adjustments Certificate to be amended to show the revised contributions due from the Exiting Employer
- Regulation 64 (2) – where an employing authority ceases to be a Scheme Employer, the Administering Authority is required to obtain an actuarial valuation of the liabilities of current and former employees as at the Exit Date. Further, it requires the Rates and Adjustments Certificate to be amended to

show the Exit Payment due from the Exiting Employer or, the excess of assets over the liabilities in the fund.

- Regulation 64 (2ZAB) – the Administering Authority must determine the amount of an Exit Credit, which may be zero, taking into account the factors specified in paragraph (2ZC) and must:
 - a) Notify its intention to make a determination to-
 - (i) The Exiting Employer and any other body that has provided a guarantee to the Exiting Employer
 - (ii) The Scheme Employer, where the Exiting Employer is a body that participated in the Scheme as a result of an admission agreement
 - b) Pay the amount determined to that Exiting Employer within six months of the Exit Date, or such longer time as the Administering Authority and the Exiting Employer agree.
- Regulation (2ZC) – In exercising its discretion to determine the amount of any Exit Credit, the Administering Authority must have regard to the following factors-
 - a) The extent to which there is an excess of assets in the fund relating to that employer in paragraph (2)(a)
 - b) The proportion of this excess of assets which has arisen because of the value of the employer's contributions
 - c) Any representations to the Administering Authority made by the Exiting Employer and, where that employer participates in the scheme by virtue of an admission agreement, any body listed in paragraphs (8)(a) to (d)(iii) of Part 3 to Schedule 2 of the Regulations: and
 - d) Any other relevant factors
- Regulation 64 (2A) & (2B)– the Administering Authority, at its discretion, may issue a suspension notice to suspend payment of an exit amount for up to three years, where it reasonably believes the Exiting Employer is to have one or more active members contributing to the Fund within the period specified in the suspension notice.
- Regulation 64 (3) – in instances where it is not possible to obtain additional contributions from the employer leaving the Fund or from the bond/indemnity or guarantor, the contribution rate(s) for the appropriate Scheme Employer or remaining Fund employers may be amended.
- Regulation 64 (4) – where it is believed a Scheme Employer may cease at some point in the future, the Administering Authority may obtain a certificate from the Fund actuary revising the contributions for that employer, with a view to ensuring that the assets are expected to be broadly equivalent to the Exit Payment that will be due.
- Regulation 64 (5) – following the payment of an Exit Payment to the Fund, no further payments are due to the Fund from the Exiting Employer.
- Regulation 64 (7A-7G) – the Administering Authority may enter into a written Deferred Debt Agreement, allowing the employer to have Deferred Employer status and to delay crystallisation of debt despite having no active members.

- Regulation 64B (1) – the Administering Authority may set out a policy on spreading Exit Payments.

In addition to the 2013 Regulations summarised above, the Regulation 25A of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (“the Transitional Regulations”) give 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. This policy document describes how the Fund expects to deal with any such cases.

These regulations relate to all employers in the Fund including the Council in its role as employer.

The Policy has been prepared on the basis of the following key principles:

- it is the Fund’s policy that the determination of any surplus or deficit on termination should aim to minimise, as far as is practicable, the risk that the remaining, unconnected employers in the Fund have to make contributions in future to towards meeting the past service liabilities of current and former employees of employers leaving the Fund;
- the Fund’s preferred approach is to request the full payment of any Exit Debt (Exit Payment), which is calculated by the Actuary on the basis set out in the Funding Strategy Statement (“FSS”). This would extinguish any liability to the Fund by the Exiting Employer;
- the Fund’s key objective is to protect the interests of the Fund, which is aligned to protecting the interests of the remaining employers. A secondary objective is to consider the circumstances of the Exiting Employer in determining arrangements for the recovery of the Exit Debt.
- The Fund’s default position is that pass-through provision will not be enabled although specific circumstances concerning Multi-Academy Trusts are detailed within the Policy.
- If, in exceptional circumstances, a ceasing employer wishes to enter into discussions around pass-through provision, staff time involved on the Fund side will be charged at the rate defined within the Administration Strategy Statement. Additionally any agreement on this will be at the discretion of the administering authority and will need to be authorised by the relevant person as laid down in the scheme of delegation detailed in the governance and compliance statement as required under regulation 55.

Previously issues with pass-through arrangements have caused delays in finalising cessations. It has been difficult at times to establish which entity has liability for debts on cessation resulting in risk to the financial position of the Fund. In this updated policy the Fund’s position is to carry out a cessation valuation for all admitted bodies ceasing participation in the Fund, in line with the ‘Contractor Exit Basis’ from the most recent Formal Valuation of the Fund (updated for market conditions at the Exit Date).

The exiting contractor will be liable for paying over any deficit to the Fund directly. The

contractor will have to seek recovery of any sums covered under the separate contractual agreements between themselves and the letting authority outside of the cessation process. This will protect the Fund's financial position.

These policies have been drawn up in conjunction with Hymans as the independent pensions advisors with regard to regulatory requirements on behalf of the pension fund and in compliance with the relevant regulations and it is on that basis that they are being recommended to members for approval.

These policies provide a framework to protect members' benefits and the financial well-being of the Fund, as well as separating the role of the Council as employer or letting authority from its role as administering authority.

3.10 In line with its fiduciary responsibility to the Fund, the Committee are recommended to agree:

- (i) The Admissions Policy (Appendix A);
- (ii) the Bulk Transfer Policy (Appendix B)
- (iii) the Policy for Employers Leaving the Fund (Appendix C)

4. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

4.1 There are no financial considerations arising from this report.

Approved by: Richard Ennis, Interim Corporate Director of Resources (Section 151) and Deputy Chief Executive

5 CONSULTATION

5.1 Officers have fully consulted with the Pension Fund's advisers in preparing this report.

6. LEGAL CONSIDERATIONS

6.1 The Head of Litigation and Corporate Law comments on behalf of the Director of Law and Governance and Deputy Monitoring Officer 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 leaving the pension fund.

6.2 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 with covers these areas and regard ought also to be had to such non-statutory guidance.

6.3 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.

- 6.4 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.
- 6.5 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. 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.
- 6.6 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.
- 6.7 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 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, including how this pertains to pensions.
- 6.8 Further legal consideration will be required by the Fund on the implementation of the recommendations in the report.

Approved by: Sandra Herbert, Head of Litigation and Corporate Law and

Deputy Monitoring Officer on behalf of the Interim Director of Law and Governance.

7. HUMAN RESOURCES IMPACT

- 7.1 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

Approved by: Dean Shoesmith, Interim Chief People Officer

8. EQUALITIES IMPACT

- 8.1 There are no equalities impacts arising from this report.

8. ENVIRONMENTAL IMPACT

- 9.1 There are no environmental impacts arising from this report.

9. CRIME AND DISORDER REDUCTION IMPACT

- 9.1 There are no crime and disorder impacts arising from this report.

10. DATA PROTECTION IMPLICATIONS

- 10.1 **WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?**

NO

Has a data protection impact assessment (DPIA) been completed?

NO

Approved by: Nigel Cook, Head of Pensions and Treasury

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APPENDICES:

Appendix A – Admissions Policy
Appendix B – Bulk Transfer Policy
Appendix C – Policy for Employers Leaving the Fund

BACKGROUND DOCUMENTS:

None.