Hackney

REPORT OF THE GROUP DIRECTOR, FINANCE & CORPORATE RESOURCES		
Pension Fund Admissions Policy – Admitted Bodies (2019) **Pension Board** **20th March 2019**	**Classification** **Public** **Ward(s) affected** **ALL**	**Enclosures** **1** **AGENDA ITEM NO.**

1. INTRODUCTION

1.1 This report introduces an update to the Pension Fund Admissions Policy. The Policy is concerned with the admission of new employers to the Fund when external contractors take on staff who are members, or eligible to be members, of the LGPS under a TUPE arrangement.

2. RECOMMENDATION

2.1 The Pension Board is recommended to:

- Review the Admissions Policy, Employer Admissions to the Fund (2019) prior to approval by the Pensions Committee

3. RELATED DECISIONS

- Pensions Committee 21 September 2015 – Admitted Bodies and Bulk Transfers Policy
- Pension Committee 29 September 2014 – Administering Authority Discretions Policies
- Pension Sub-Committee 26 June 2012 – Administering Authority Discretions Policies
- Pension Sub-Committee 26 June 2012 – Admitted Bodies and Bulk Transfers

4. COMMENTS OF THE GROUP DIRECTOR, FINANCE AND CORPORATE RESOURCES

4.1 Admitting a new employer to the Pension Scheme can expose the Pension Fund to financial and reputational risk. Whilst an admissions policy is not required under the regulations, it is a discretion, it ensures prudent financial management to have clear policy on admissions in place in order to protect both the Scheme's assets and reputation.

4.2 Prior to admission, an actuarial assessment is undertaken to determine the level of contributions required by the employer and whether there is a requirement for a guarantor or bond. Regular monthly monitoring is undertaken by the pension administrators to ensure that contributions are accurate and received on time.

4.3 On termination, a calculation is undertaken to determine any outstanding liabilities in order to recover from the ceasing employer. The LGPS (Amendment) Regulations, in force from 14 May 2018, now provide for the payment of an Exit Credit by the administering authority, to a ceasing employer of the Fund, and as such the Admission Policy has been updated to incorporate the change in regulation and to clarify the Funds criteria in regard to this.

4.4 The use of a sound admissions and termination policy will help protect the Fund from financial loss. To date the Fund has not suffered major financial loss due to the failure of scheme employers, however, given the current financial climate and the increase in admitted bodies in recent years, it is increasingly important to have a sound policy put in place.

5 COMMENTS OF THE DIRECTOR OF LEGAL AND GOVERNANCE

5.1 The Local Government Pension Scheme (LGPS) Regulations 2013, Schedule 2 Part 3 sets out the type of bodies with whom an administering authority may make an admission agreement. The decision to introduce a policy around admissions is at the discretion of the administering authority. Setting out a policy on admissions helps to improve the Fund's governance arrangements and is consistent with best practice.

5.2 The role of the Pension Board is prescribed by Section 106 of the LGPS Regulations 2013 and includes the following:

- Securing compliance with the Local Government Pension Scheme Regulations 2013 and any other legislation relating to the governance and administration of the Scheme and any connected scheme
- Securing compliance with any requirements imposed by the Pensions Regulator in relation to the Scheme and any connected scheme
- Ensuring the effective and efficient governance and administration of the Scheme and any connected scheme

5.3 Further details of the suggested functions of local pension boards are provided by statutory guidance ((Local Government Pension Scheme (LGPS) Guidance on the creation and operation of Local Pension Boards in England and Wales). The guidance considers the review of documents recording policy about the administration of the scheme as appropriate for the remit of local pension boards.

5.4 Taking into account the role of the Pension Board as set out in the Regulations and statutory guidance, the consideration of the Pension Fund admissions policy would appear to properly fall within the Board's remit

6. OVERVIEW OF CHANGES

6.1 Admission bodies are a specific type of employer under the Regulations that govern the LGPS and usually arise as a result of services being outsourced. The Fund currently has a mixture of Scheme employers, such as the Council and admission bodies both community of interest and transfer of service (contractors) bodies, and it is prudent to have an up to date policy in place which sets out the Fund's approach to admission bodies and helps to clarify the roles and responsibilities, not just of the Fund, but also for contractors and awarding authorities.

6.2 Following amendment in May 2018, the LGPS Regulations 2013 now provide for the payment of an Exit Credit by the administering authority to a ceasing employer of the Fund. Where a ceasing employer's liabilities are fully funded and there is surplus of assets in the Fund relating to that employer, an exit credit must be paid by the administering authority to an exiting employer. This has significant implications for both the Fund and employers, particularly where risk-sharing arrangements are in place. It is understood, however, that these provisions are currently subject to scrutiny by Government and may be liable to change in future.

6.3 Officers of the Council have been working with the Fund's Legal advisers and actuary to update the Admissions Policy, incorporating the updates made to the regulations where risk sharing arrangements are in place. If, following the review period, the regulatory provisions regarding exit credits remain in force, further revisions to the policy may be considered to reduce the wider risks around exit credits. However, given the current uncertainty over the issue, it seems prudent to focus at this time on mitigating the risks to the Fund currently associated with risk sharing arrangements already in place. Further details regarding the changes around exit credits are provided in section 7 of this report.

6.4 The Policy has also been updated to incorporate detailed arrangements in respect of the approval process for admitting contractors to the Fund. The report clarifies the delegated permissions of the Responsible Officers of the Fund in determining whether to admit or refuse entry to the Fund, having regard to the admission criteria as set out in Section 10 of the Policy.

6.9 Under the Academies Act 2010, former maintained schools can apply for academy status, allowing them to operate independently from Local Authority control, and assume responsibility for managing their own finances. Academies may exist as separate legal entities or be grouped together as multi-academy trusts (MATs). Free schools can also be set up outside of direct local authority control, acting in much the same way as academies and as such, are not required to be covered by the Admission Policy.

6.10 On approval, a copy of the Policy will be placed on the Pension Fund website and will be made available to prospective admission bodies. This will assist Officers when dealing with prospective contractors and letting authorities to make clear their roles and responsibilities.

7. EXIT CREDITS

7.1 The Local Government Pension Scheme (Amendment) Regulations 2018 (Statutory Instrument 2018 No. 493) was published in May 2018, introducing the following provision:

64. (2) When a person becomes an exiting employer, the appropriate administering authority must obtain-

(a) an actuarial valuation as at the exit date of the liabilities of the fund in respect of benefits in respect of the exiting employer's current and former employees; and

(b) a revised rates and adjustments certificate showing the exit payment due from the exiting employer or exit credit payable to the exiting employer in respect of those benefits.

(2ZA) If an exit credit is payable to an exiting employer, the appropriate administering authority must pay the amount payable to that employer within three months of the date on which that employer ceases to be a Scheme employer, or such longer time as the administering authority and the exiting employer may agree.

(2ZB) When an administering authority has paid an exit credit to an exiting employer, no further payments are due from that administering authority in respect of any surplus assets relating to the benefits in respect of any current or former employees of that employer as a result of these Regulations.

7.2 Therefore where a ceasing employer's liabilities are fully funded and there is surplus of assets in the Fund relating to that employer, an exit credit must be paid by the administering authority to an exiting employer within 3 months of the date on which the employer ceases to be a scheme employer, or such a longer time as agreed between the administering authority and the exiting employer. Once paid, no further payments are due from the administering authority in respect of any surplus assets relating to the benefits of any current or former employees of the exiting employer.

7.3 The Regulations are silent, however, in regard to employers in the Fund who already have, or will have, a "pass-through", "cap & collar" or other "risk sharing" arrangement stipulated in their contract with the letting authority. In these circumstances, it is unreasonable for ceasing employers to receive an exit credit if associated costs of being in the Fund have been 'passed through' to the letting authority, or have been 'capped' with the letting authority picking up any extra costs whilst their contractor is in the Fund.

7.4 The Fund's Policy in relation to new contracts, states that those employers with any form of "risk sharing" arrangements, such as pass-through or cap & collar, in place when they enter the Fund will not be entitled to receive an exit credit upon ceasing, nor will the letting authority.

7.5 For existing employers in the Fund prior to the regulation change in May 2018, and contracts are extended or renewed, they will need to agree with the Fund via a 'side-agreement' that:-

- If there is a surplus at the end date of the original contract, then the provider will be offered an extension on the basis that any future exit credit will not exceed the surplus at the end of the original contract.

- If there is a deficit at the end date of the first contract period, then this will continue and any deficit as at the end of the subsequent contract period will be sought from the provider.

7.6 If, as set out in Section 6, the current exit credit provisions remain in force, further amendments to the Admissions Policy may be considered. These could include the introduction of mandatory pass-through for small, short-term admission bodies. This would limit employer liability for deficits, but also limit the Fund's liability for exit credits. Given that this would represent a significant change from current policy, such an amendment will not be considered until confirmation is received that the provisions regarding exit credits will remain in force for the foreseeable future.

List of Appendices
Appendix 1 - London Borough of Hackney Pension Fund, Admissions Policy, Employer Admissions to the Fund (2019)

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