TUPE Transfers and Outsourcing - New Employers Rate and Bond Required

Please note that it is essential that the Hillingdon Pension Fund is informed at the earliest possible opportunity (at least 4 months in advance) of any potential transfers of staff (TUPE or otherwise), well before any commercial agreement affecting employee transfers is made between the scheme employer and the provider. Failure to consult with the Hillingdon Pension Fund at an early stage will create problems and delays and may even stall this if the external provider is not aware of their responsibilities in relation to the pension provision for transferring staff.

You should ensure that pension price (new employer's rate) is calculated at the start of the tendering process and dealt with at an early stage. This is important because the terms of the pension costings\arrangements need to be factored into the tendering and procurement processes as the company\provider will not be in a position to make an informed bid to provide a service. This avoids substantial problems and commercial disputes arising later and it also protects the interests of the staff concerned.

All actuarial costs of around £3000.00 for this work are payable by either the ceding employer or new provider. The actuary will assess the amount of risk that should be protected by a bond or indemnity if the service provider goes insolvent and is unable to meet its liabilities to the fund. The employer contribution rate that will be payable is calculated by the fund actuary following our instruction. The amount that a New Admission Body will pay by way of employer pension contributions is determined by an actuarial assessment prior to the start of the service contract but calculated as at the contract start date. The new provider will then have to pay the new employer's contribution rate for the duration of the contract. This rate will be subject to a change when the LB Hillingdon Pension Fund has it's Triennial Valuation.

Where a level of risk is identified, the Contractor will be required to obtain an indemnity or bond or guarantor to meet the level of risk identified. Any bond must be in a form acceptable to the Fund. The Fund will normally require a bond to be put in place by the contractor, which will be covered by a separate bond agreement in addition to the Admission Agreement. The requirement to have a bond in place protects the scheme employer and all other scheme employers in the Fund from any liability in the event of commercial failure of the admission body and should cover some, or all, of the following:

- The strain cost of any redundancy early retirements resulting from the premature termination of the employer’s contract.
- Salary increases over the contract period higher than had been anticipated.
- Any unpaid contributions
- Allowance for the risk of asset under performance; and
- Allowance for the risk of a fall in real gilt yields.

The new provider agrees to become an admitted body in the LGPS whereby the admitted body, ceding employer and administering authority sign a legally binding Admission Agreement, this should be ideally agreed and completed at the date of transfer. The legal cost of drafting and sealing and Admission Agreement is approximately £1,800. Under the LGPS Regulations, the ceding employer is required to guarantee the pension liabilities that the admitted body will hold.

If a contractor who wins a contract or a new company becomes an admitted body, all liabilities for the staff being transferred under TUPE will be transferred to its new sub-fund. An equal amount of assets will be transferred, so there is no deficit on commencement, and it is often considered that there is no liability taken on. Whilst this is true that no NET liability is taken on, it is important that the risks are understood.

Contract / Admission Agreement Termination and Exit Valuations

It is a requirement of ‘the Regulations’ for the New Admission Body to carry out an assessment, to the satisfaction of the Transferor Scheme Employer and Hillingdon Council having taken account of actuarial advice, of the level of risk arising on the premature termination of the provision of the contract services by reason of insolvency, winding up or liquidation of the New Admission Body.

Under LGPS Regulations a termination valuation MUST be carried out when the last active member leaves the sub-fund of an employer; this includes the sub-funds of admission bodies. The termination valuation assesses whether, at the point of termination, there is a deficit within that sub-fund and if there is the employer will be asked to pay this amount. Once any deficit amount has been paid, the employer no longer has any liability to the Hillingdon Pension Fund. All actuary costs £3000 approximately for this calculation, will have to be paid either by the employer.

A termination event can occur for a number of reasons – the last active member leaving as a result of ‘natural’ events, the contract being moved elsewhere and the staff transferring to the new contractor or following financial failure. In the first two instances the admission body will be responsible for making the payment to the Fund, but in the event of financial failure causing the termination event the guarantor (if there is one) will pay the deficit amount or the bond will pay out the insured amount. It is, therefore, vital that organisations contact the Fund at the earliest instance once they become aware that termination of an employer’s participation may be a possibility.

In most cases the date on which a service contract and the associated admission agreement is expected to end is known. So long as the agreement is kept under review and notification of any pending termination is given to the Hillingdon Pension Fund within a reasonable period in advance of the termination date, the cessation valuation required under the Regulations will be carried out by the Pension Fund.

Where a shortfall exists at the termination date the Pension Fund will pursue the Scheme employer, any insurer providing a bond or any guarantor as appropriate but ultimately, if unsuccessful, the Transferor Scheme Employer will become liable for any outstanding costs in accordance with Regulation 64(3)(a) of ‘the Regulations’. The Hillingdon Fund’s policy is for any deficit upon termination to be recovered through a one-off payment to the Fund, where possible. It is therefore very important that a Transferor Scheme Employer is clear about their potential risk exposure from the outset and put in place whatever mechanisms they deem appropriate to protect themselves against those potential risks.

When an outsourcing contract comes to an end, the Letting employer may take back the staff who were TUPE transferred to work on the service contract. The Letting employer may also wish to re-tender the contract to another service provider and, where the Letting employer is under an obligation to ensure pension protection, the Fund Actuary will again need to calculate a new bond level and employers' rate if admitted body route is chosen. It is important to note that the pension protection that applied to the staff originally transferred continues to be applicable at the second stage re-tender.

Admission Agreement and Bond Agreements - Signed and Sealed

The Admission Agreement and letter of guarantee or Bond (as applicable) should be agreed, signed and sealed by all parties in advance of the commencement of the service contract.

The Admission Agreement will take effect on the first day that the winning bidder begins to provide services. If this is not the case, then LB Hillingdon fund will be returning any contributions(employee and employer) for these TUPE employees. The members will be treated as Leavers in the scheme from the start date of the TUPE contract and the school as an employer will be held responsible for any pensions related costs such as Death in service or ill health after that date.

LGPS membership data

In order to calculate a new employer contribution rate and bond value, you must provide our pension administrator's Hampshire Pension Services with details of the employees in the LGPS who will potentially be transferred. Hampshire will be contacting you to request membership data as soon as they are made aware of a TUPE.

Average Costs for Outsourcing

Admission Agreement	Actuarial Costs	Termination Valuation
£1,800 + VAT	£3,000 + VAT	£3,000 + VAT