

Report to:	CABINET
Report of:	Strategic Director for People
Date of Decision:	14th February 2017
SUBJECT:	PENSION ARRANGEMENTS FOR STAFF TRANSFERRED OUT OF CITYSERVE FOLLOWING OUTSOURCING BY A CITY COUNCIL SCHOOL
Key Decision: Yes	Relevant Forward Plan Ref: 002982/2017
If not in the Forward Plan: (please "X" box)	Chief Executive approved <input type="checkbox"/> O&S Chairman approved <input type="checkbox"/>
Relevant Cabinet Member(s)	Councillor Brigid Jones – Children, Families and Schools Councillor Majid Mahmood – Value for Money & Efficiency
Relevant O&S Chairman:	Cllr Susan Barnett – Schools, Children and Families Cllr Mohammed Aikhlaq– Corporate Resources and Governance
Wards affected:	ALL
1. Purpose of report:	
1.1	This report outlines the current practice of the City Council in respect of pension arrangements of Council employees where a school which is currently purchasing cleaning and/or catering services from Cityserve and subsequently chooses to secure these services from another provider and staff TUPE over to the new provider. It highlights that at present there is no overall Council policy as to when the Council will enter into a Pension Admission Agreement where the new provider wishes to obtain Admitted Body Status (ABS) and thereby allow transferring staff to remain members of the Local Government Pension Scheme (LGPS). It makes recommendations in respect of future policy and practice.
2. Decision(s) recommended:	
That Cabinet:	
2.1	Agrees to honour the existing commitments for the Council to enter into Pension Admission Agreements and act as guarantor thereby enabling transferring employees to remain as members of the Local Government Pension Scheme in respect of the schools identified in Appendix A to this report.
2.2	Agrees that in future the policy will be that the Council will require new service providers to take out a bond to cover any actuarially assessed risk associated with continuing membership of the LGPS.
2.3	Notes that the Council will ensure that the new policy position is clearly communicated to all schools which use the services of Cityserve.
2.4	Delegates authority to the Executive Director for Education to enter into future Pension Admission Agreements in respect of Cityserve staff who transfer to private sector providers.
2.5	Notes that the Executive Director for Education shall provide an annual report to the relevant Cabinet Members in relation to all decisions made under recommendation 2.4.
2.6	Authorises the City Solicitor to negotiate, execute and complete all necessary documents to give effect to the above recommendations.
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3. Consultation

3.1 Internal

The Cabinet Member for Children, Families and Schools and the Cabinet Member for Value for Money & Efficiency have been consulted and agree that the proposals may go forward for an Executive decision.

There has been dialogue with the trade unions regarding the proposed change in policy and how the Council will fulfil their obligations in respect of TUPE and ensure that any affected employees understand the implications.

3.2 External

We have consulted with Schools that have received a commitment to act as a guarantor and welcome proposals to streamline the process and speed this up.

We will ensure that the change of policy and the potential implications are clearly understood and appreciated by all schools that may be affected in the future.

4. Compliance Issues:

4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?

Yes the proposals contained within this report support the ambition to improve the wellbeing of our children and young people.

4.2 Financial Implications (Will decisions be carried out within existing finance and Resources?)

This report considers the financial implications of any new transfer of staff to a new provider in terms of the future pension arrangements. The proposals in this report suggest that any additional costs would be borne by the new provider. There are separate arrangements for any costs associated with Equal pay that may fall on the Council. These will be assessed on a case by case basis

4.3 Legal Implications

The Fair Deal for Staff Pensions guidance issued by HM Treasury in 2013 requires that where staff who are members of a public sector pension scheme move from the public sector to an independent contractor by way of transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"), such staff should continue to be members of the public service pension scheme they were in immediately prior to the transfer. The guidance explicitly states that it applies to local authority maintained schools.

4.4 Public Sector Equality Duty (see separate guidance note)

The proposed policy will be applied consistently across the School community. No disparate impact has been identified.

5.	Relevant background/chronology of key events:
5.1	Recently we have seen a small number of schools who have decided to appoint a private sector provider to replace Cityserve which is the Council's in-house school meals and cleaning provider. Typically, an average of (5 FTE) staff are employed at each school. Historically, there has been an expectation that the City Council will enter into a pensions Admission Agreement at the request of the LGPS so that staff transferring to the new private sector provider (under TUPE Regulations 2006) can remain members of the Local Government Pension Scheme.
5.2	The obligations on the Council where their staff transfer to a new employer but where the services are not being provided to the Council but to its maintained schools, are set out at paragraph 4.3 above. Where the Council are amenable to the transferring staff remaining members of the pension fund, the LGPS require the Council to sign an Admission Agreement as it contains a clause whereby the Council agree to indemnify the LGPS if the new employer fails to make the requisite pension contributions in respect of the transferring staff. In this scenario it is possible to ask the new employer to take out a bank bond of the value of the actuarially assessed risk which would offer some protection in respect of the potential liabilities the Council has incurred by entering into the pensions Admissions Agreement.
5.3	There are a number of schools that have made the decision to change provider and the City Council has made a commitment or the school could argue that they made a reasonable assumption that it will act as a guarantor for the transferees in order to facilitate the TUPE transfer process. A list of the Schools in the process of managing the transfer in this situation can be found in Appendix A of this report. As a values based organisation and as good partners to our schools, it proposed that where we have made a clear commitment or the schools have reasonably assumed that we would take this approach, then this should continue to be honoured.
5.4	Whilst to date there have been no instances where the Council has actually had to make good its obligations in relation to an indemnity given in an Admission Agreement, it does not mean that such a scenario is not possible. Given the level of financial challenges facing the Council, it is suggested that to continue with the current practice is exposing the City Council unnecessarily to future risk. Therefore it is proposed to actively change policy; so that in all future instances save those listed in Appendix A the City Council <u>will not</u> enter into Admission Agreements to provide an indemnity unless the new employer takes out a bank bond to underwrite the potential liabilities identified by an actuarial assessment. It should be understood that the proposed approach ensures that schools remain free to choose their suppliers whilst ensuring that the Council follows common practice of mitigating potential longer term financial risks arising from the transfer.

6.	Evaluation of alternative option(s):
6.1	Consideration has been given to continuing with the current practice as this is the easiest way for a transferee to ensure that it is fulfilling its obligations in respect of pensions. However on balance the view is that this unnecessarily exposes the City Council to potential future risk and that in the current financial climate that is neither affordable nor practicable.

7. Reasons for Decision(s):
7.1 To ensure that the Council fulfils its obligations to schools whilst also minimising the level of risk for the Council where such transfer of services takes place.

Signatures	<u>Date</u>
Cabinet Member, Children Families and Schools Councillor Brigid Jones
Cabinet Member, Value for Money & Efficiency Councillor Majid Mahmood
Strategic Director for People Peter Hay

List of Background Documents used to compile this Report:
Fair Deal for Staff Pensions – non-statutory guidance – HM Treasury – October 2013
List of Appendices accompanying this Report (if any):
Appendix A – Schools with existing commitment to act as guarantor for Admitted Body Status for the LGPS

Report Version	<u>V10</u>	Dated	<u>20 /01/17</u>
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