

Hertfordshire County Council

Policy relating to Admission Agreement Delays

Background

This policy has been adopted by Hertfordshire County Council, in its capacity as administering authority of the Hertfordshire County Council Pension Fund (the "**Pension Fund**"). It applies where an admission agreement is not signed prior to the effective date on which employees transfer under an outsourcing agreement or contract for services (otherwise known as the TUPE transfer date).

A number of employers ("**New Employers**") enter into outsourcing arrangements or services contracts with Hertfordshire County Council (or with another entity participating in the Pension Fund) ("**Ceding Employers**") but do not execute the required admission agreement, in order to be included in the Pension Fund as an admission body, within normal timescales. This poses risks to all of the parties involved, in addition to placing those members of the Pension Fund whose employment has transferred from a Ceding Employer to a New Employer ("**Transferred Employees**") at a possible financial disadvantage; these risks include:

- a lack of certainty about the status of Transferred Employees (i.e. whether they should be treated as active or deferred members on and after the effective date of transfer of employment to the New Employer ("**Transfer Date**") and the impact on their entitlement to death in service benefits and enhanced retirement benefits on redundancy and ill health);
- the New Employer may not be able to fund a potentially significant lump sum in respect of the retrospective contributions;
- difficulty in seeking retrospective employee contributions from Transferred Employees;
- the New Employer may be in breach of its statutory obligation to pay contributions to an appropriate pension arrangement¹;
- no obvious mechanism for the Pension Fund to receive additional contributions from the New Employer to satisfy a Transferred Employees' entitlement to receive enhanced benefits from the Pension Fund before the admission agreement is signed (for example, on redundancy);
- the Pension Fund may not receive any outstanding contributions if a New Employer became insolvent prior to signing the admission agreement and no bond or guarantee will be in place in order to protect the financial exposure to the Pension Fund caused by such insolvency.

Application of Policy

This document details Hertfordshire County Council's policy, in its capacity as administering authority of the Pension Fund, in relation to the admission of New Employers to the Pension Fund.

¹ As set out in section 3(2) of the Pensions Act 2008.

This policy will be applied to:

- all New Employers where the Transfer Date is on or after the date that this policy is adopted; and
- those New Employers who currently employ Transferred Employees but have not yet signed an admission agreement on the date that this policy is adopted.

Policy Intention

The Pension Fund should be exposed to a minimum amount of increased risk because of the formalities and timing of entering into admission agreements. Any increased risk to the Pension Fund as a result of delays by New Employers entering into admission agreements should fall on the Ceding Employer and not the Pension Fund employers generally.

Admission Agreement Delays

Entering into the admission agreement at the same time as (or prior to) the outsourcing or services contract provides Hertfordshire County Council, as administering authority of the Pension Fund, with a clear obligation to admit the New Employer to the Pension Fund on and from the Transfer Date to the New Employer and, as such, the Transferred Employees would see no interruption in their pensionable service in the LGPS.

The Ceding Employer and the New Employer should ensure that the necessary admission formalities are completed before the Transfer Date; these include signing an admission agreement and putting in place any bond or guarantee Hertfordshire County Council may require in its capacity as administering authority of the Pension Fund.

However, Hertfordshire County Council recognises that it is not always possible for the admission formalities to be completed in advance of the Transfer Date and therefore has adopted the following policy regarding admission agreements, in order to minimise risk to the Pension Fund whilst being mindful of the Transferred Employees' interests with respect to pension provision.

- Where Hertfordshire County Council **is satisfied** that the New Employer has a **clear intention** to participate in the Pension Fund, Hertfordshire County Council will rely on the prospect of a retrospective admission agreement being signed (as allowed for in the Local Government Pension Scheme Regulations 2013² ("**LGPS Regulations**")) and will continue to treat Transferred Employees as active members of the LGPS after the Transfer Date. In order to be satisfied that the New Employer has a "clear intention" to participate in the Pension Fund, Hertfordshire County Council would be willing to accept confirmations, undertakings and warranties from the Ceding Employer and New Employer as set out in the Appendix, which include:
 - written confirmation from the Ceding Employer that the outsourcing or services contract obliges the New Employer to participate in the Pension Fund; and
 - written confirmation from the New Employer that it will make adequate arrangements for the deduction of employee contributions and for payment of employer and employee contributions to the Pension Fund from the Transfer Date; and

² Local Government Pension Scheme Regulations 2013, Schedule 2, Part 3, Paragraph 14.

- adequate written assurance that the Ceding Employer will accept liability for all Transferred Employees' benefits.
- Where Hertfordshire County Council **is not satisfied** that the New Employer has a **clear intention** to participate in the Pension Fund and/or it has not received the required confirmations and assurances as outlined above, Hertfordshire County Council will treat the Transferred Employees as deferred members from the point of transfer to the New Employer, unless and until the admission agreement is signed by the New Employer; the consequences of such treatment include the following:
 - Hertfordshire County Council will not accept any employer or employee contributions from the New Employer in respect of the Transferred Employees;
 - Hertfordshire County Council will issue the Transferred Employees with leaving service statements;
 - the New Employer may be in breach of its automatic enrolment obligations;
 - the effective date of any admission agreement which is subsequently signed by the New Employer will only be backdated (and the Transferred Employees be treated as having continuous pensionable service in the LGPS) if both the employee and employer contributions are paid by the New Employer to the Pension Fund from the effective date of transfer of the Transferred Employees to the New Employer.

Discretion

The Pensions Committee may disapply the application of this policy to a New Employer and Ceding Employer in exceptional circumstances and at its sole discretion providing that:

- a majority of the Pensions Committee approve of the exercise of the discretion; and
- the reasons for the exercise of the discretion are documented.

If this discretion is exercised more than three times from the date that this policy is adopted, the operation of discretion will be further considered by the Pensions Committee.

Review

This policy will be reviewed by the Pensions Committee at least annually.

Dated: July 2019

Review Date: July 2020

APPENDIX

CONFIRMATIONS AND ASSURANCES FROM THE NEW EMPLOYER AND THE CEDING EMPLOYER

The text set out below is to be populated by the New Employer and the Ceding Employer, duly signed for and on their behalf (respectively) and returned to Hertfordshire County Council in advance of the Transfer Date.

- 1 [NAME OF CEDING EMPLOYER] will be entering into an [[outsourcing contract][services contract]] (the "**Contract**") with the [NAME OF NEW EMPLOYER]. The Contract will result in the transfer of employees from [NAME OF CEDING EMPLOYER] to [NAME OF NEW EMPLOYER] as listed in the Schedule (the "**Transferred Employees**") with effect on and from [DATE] (the "**Transfer Date**").
- 2 In consideration of Hertfordshire County Council, in its capacity as administering authority of the Hertfordshire County Council Pension Fund, agreeing to treat the Transferred Employees as remaining in active service in the Hertfordshire County Council Pension Fund:
 - 2.1 [NAME OF CEDING EMPLOYER] confirms, undertakes and warrants to Hertfordshire County Council, in its capacity as administering authority of the Hertfordshire County Council Pension Fund, that:
 - (a) the Contract obliges [NAME OF NEW EMPLOYER] to participate in the Local Government Pension Fund as an admission body; and
 - (b) [NAME OF CEDING EMPLOYER] will be fully liable for all costs associated with the accrual and payment of the Transferred Employees' pension benefits in the Local Government Pension Fund up to the effective date on which the New Employer signs an admission agreement with Hertfordshire County Council.
 - 2.2 [NAME OF NEW EMPLOYER] confirms, undertakes and warrants to Hertfordshire County Council, in its capacity as administering authority of the Hertfordshire County Council Pension Fund, that [NAME OF NEW EMPLOYER] will make adequate arrangements for:
 - (a) the deduction of employee contributions from the Transferred Employees; and
 - (b) the payment of employer and employee contributions to the Hertfordshire County Council Pension Fund at such rate as Hertfordshire County Council, in its capacity as administering authority of the Hertfordshire County Council Pension Fund, may specify from time to time;

with effect on and from the Transfer Date.

Signed for and on behalf of [CEDING EMPLOYER]:

Dated:

Signed for and on behalf of [NEW EMPLOYER]:

Dated:

Signed for and on behalf of [HERTFORDSHIRE COUNTY COUNCIL]:

Dated:

