**Transfers of staff between Worcestershire Pension Fund employers including academy conversions** dated 13 08 2020

This document covers the following two types of employer:

- Admission bodies - do not automatically qualify for participation in the Fund but are allowed to join if they satisfy the relevant criteria set out in the Regulations. Required to have an "admission agreement" with the Fund which sets out the conditions of participation of the admission body including which employees (or categories of employees) are eligible to be members of the Fund.
- Academies formed from the conversion of a maintained school- have the statutory right to participate in the Fund and would not need to designate eligibility. No admission agreement would be required and their staff can become members of the LGPS at any time.

Outsourcings or academy conversions require us to move a group of employees from one of our employers to another of our employers. In order to protect the LGPS rights of the employees affected by their employer outsourcing their roles to a contractor / their school converting to an academy, the contractor / academy will be:

- Another LGPS employer
- An employer who will become a new LGPS employer within the Fund after being awarded the outsourcing contract / conversion to academy status

In such cases a follow-on transfer may occur on:

- Retendering to another outsourcing contractor
- The unwinding of outsourcing / insourcing i.e. when employees are transferred back to the original outsourcing employer
- Academy restructuring

Transfers between employers are AKA TUPE transfers, Transfer of Undertakings (Protection of Employment) Regulations 2006. TUPE regulations protect employees' terms and conditions on transfer to a new employer. Employment rights covered by TUPE include pay and holidays, but not pensions. However, there are additional Government measures that ensure LGPS pensions are protected.

Our process for moving members between employers can only start following a formal request from the outsourcing / letting employer or the school converting to academy status to move the employees in question to another LGPS employer. Notification of such information is a statutory duty and responsibility on the outsourcing / letting employer or school under the LGPS Regulations.

If such a request is not made before the employees switch employer, their LGPS membership will be associated with the wrong employer, making it difficult for us to collect contributions or to retire an employee or to deal with a death in service.

The formal request from the outsourcing employer or school will trigger the start of our process that will incur costs for the outsourcing employer or school in the form of actuarial costs that we will pass on. This can be expected to cost some £000s and to take 4-6 weeks. The actuary's calculations will produce the initial estimated funding position (at date of transfer) for the employees in question and confirm the initial employer contribution requirements (including deficit recovery payments where required), taking account of:

- The pay / age / pensionable service / hours profile of the employees being transferred

- The share of assets and the liabilities that will be transferred from the outsourcing employer or local education authority in respect of the LGPS benefits the transferring employees have already accrued in the LGPS up to the point of transfer
- The investment pot the outsourcing / letting employer or school and the contractor or academy are allocated to

At the discretion of the Fund, where an admission is in respect of 10 or less LGPS posts a contractor may be admitted to the Fund on a 'Pass Through' basis. In this scenario, initial calculations would not be required by the actuary and the contribution requirements would be agreed between the outsourcing or letting employer and the contractor. However, for the avoidance of doubt, this approach does not negate the requirement for the outsourcing or letting employer to notify the Fund of the outsourcing and the employees involved in the transfer.

The contractor and letting employer may incur further costs if it is not already an LGPS employer in the form of legal costs (in checking the proposed admission agreement / bond or indemnity arrangements proposed by us if applicable).

We will need the following from the outsourcing / letting employer or the school to process the request:

- Full, up to date pay and pensionable service details for the employees being transferred. We will perform a full data cleanse on the employees being transferred at the point of outsourcing
- The basis on which the outsourcing is being arranged, so that we can be protected whatever the commercial arrangements

Any risk sharing (or other such apportionment arrangements) are usually documented in the commercial agreement between the two employers i.e. they usually fall outside the admission agreement and would then be dealt with outside the Fund, directly between the contractor and the letting authority. For example:

Commercial agreements may require the transferee to bear all pensions risk i.e. to:

- Pay employer contributions assessed at the outset by our actuary which may be revised upwards or downwards when reviewed at future actuarial valuations during the contract term
- Be responsible for experience relating to financial, demographic, regulatory and governance risks, as detailed in the Funding Strategy Statement
- Make good any deficit on exit due to employer experience such as investment performance, membership profile changes or contributions paid. A deficit may also be caused by the change in basis on termination due to the lack of guarantor in the Fund
- Bear the cost of applying any discretions exercisable under the LGPS regulations, such as granting additional pension to an employee
- Secure a bond or indemnity to cover the risk of its insolvency, if we deem it necessary following a risk assessment

Commercial agreements can alternatively apportion pension liabilities. For example:

- The outsourcing employer may agree to pay all deficit recovery payments, with the receiving employer paying only employer future service contributions
- The outsourcing employer may agree to retain liability for any deficit that has accrued prior to the transfer date by making a notional award of assets equal to the transferring liabilities to the receiving employer. The transferee is then responsible for any deficit accruing during the contract term including in respect of past service liabilities

- The outsourcing employer may agree to retain the risk of an increase in the employer's contribution rate for the life of the contract, by guaranteeing a fixed employer's contribution rate for the duration of the contract

Two specific mechanisms for fixing an employer's contribution rate are:

- Cap and collar arrangements where the outsourcing employer agrees to meet any variation in the employer's contribution rate between a minimum and maximum figure
- Pass-through where a fixed contribution rate is set for the life of the outsourcing contract, with the outsourcing employer retaining the responsibility for any shortfall in contributions

As noted above, we would expect such contractual arrangements to be managed outside of the Fund with the required contributions, as calculated by our actuary at commencement (and at each subsequent actuarial valuations), to be paid to the Fund.

PROCESS OVERVIEW

Outsourcing employer or school identifies staff affected

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School or outsourcing employer informs Worcestershire Pension Fund of the potential outsourcing, of the staff affected and, for outsourcing contracts, of the preferred commercial arrangements and the potential bidders

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Worcestershire Pension Fund supplies a **template admission agreement** and the **transfers data** Excel spreadsheet to the outsourcing employer (this is not needed for schools)

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Outsourcing employer or school / its payroll provider supplies completed **transfers data** Excel spreadsheet to Worcestershire Pension Fund

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Worcestershire Pension Fund contacts the actuary for an initial estimated funding assessment, employer contribution rate assessment and, if applicable, the initial bond value from the risk exposure arising from the premature termination of the contract

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School confirms the conversion date or outsourcing employer advises Worcestershire Pension Fund of the successful bidder and the intended contract start date

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Admission agreement is signed and in place before the contract start date

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Affected members are transferred to new employer and advised that is the case

FURTHER INFORMATION:

**Standard information required by the actuary:**

Name of employer to be admitted / school converting: .........................................................

Registered company number (admission body only): .........................................................

Please tick the appropriate box for the actuarial work required and complete the appropriate section(s):

(1) Contribution rate calculations only ❑ [complete Section A **only**]

OR

(2) Contribution rate and potential early retirement cost calculations (admission body only) ❑ [complete Section A **only**]

OR

(3) Full Risk Assessment report, including contribution rate (admission body only) ❑ [complete **both** Sections A and B]

**SECTION A**

**A.1 General Information**

New employer / academy: .........................................................................................

Employer Number (if already allocated): ....................................................................

Is (please refer to **Schedule 2** of the LGPS regulations 2013) the employer a:

Transferee Admission Body ❑

Community Admission Body ❑

Scheduled Body ❑

Is the academy joining a Multi-Academy Trust (academy conversion only): YES / NO

Name of the Multi-Academy Trust (academy conversion only): …………………………………

Does the admission relate to a free school: YES / NO

Effective date of admission / conversion: ....................................................................

Calculation date to be used if effective date of admission / conversion is not known: .............

Length of contract / admission period (admission body only): ..............................................

If the employer is not a transferee admission body, does the employer have a guarantor in the Fund? Yes / No

Name of guarantor (if answered 'yes' above): ..................................................................

Will new employees be allowed to join the Fund (i.e. Admission is 'Open') or not (i.e. Admission is 'Closed') (admission body only) (see note 1): OPEN / CLOSED / NOT YET DETERMINED

Is transferred service to be treated as fully or partially funded (admission body only) (See note 2):
FULLY / PARTIALLY / NOT YET DETERMINED

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Is a fee quote required before the actuary commences this work? Yes / No

**Notes:**

1. If it is not known at the initial stage whether new employees working in the contract will join the Fund, the rate will be calculated on both bases unless advised otherwise.

2. Normally, on the transfer of services to external providers, admissions proceed on the basis that liabilities at the outset are fully funded. It is possible that other scenarios (e.g. partially funded) could be explored depending on whether Worcestershire Pension Fund is happy to facilitate such an alternative treatment. If the employer wishes to consider a partially funded scenario, then this should be agreed with the Fund and indicated here. If the partially funded scenario is to be considered, the actuary will assess this on the basis of an updated position for the employer. The actuary will also consider both options if required.

### A.2 Membership Data Required

A completed row for each employee in the **transfers data** Excel spreadsheet:

**Notes:**

1. Normally individuals indicated as non LGPS members will be excluded from calculations, unless otherwise instructed.

2. If there are multiple contracts, data must be shown separately for each contract.

## SECTION B - Further information required to complete Full Risk Assessment (admission body only)

Details regarding the contractor and its commercial arrangements are required to assist the actuary to advise on an appropriate level of bond.

In the following questions, if the matter is not yet decided or unknown, please indicate accordingly.

### B.1 Details of contracted arrangement between the Scheme Employer and Contractor

- Approximate size of contract sum paid to contractor (£ p.a.) ……………………………..

- What are the contractual arrangements between the contractor and the Scheme employer with respect to payment of pension costs (including the cost of any bond), e.g. is the Scheme employer responsible for these costs or variations in these costs in the future?..........................................................................................

- Any special arrangement in respect of the calculation of contribution rate to be paid to the Fund. For example, is the contractor responsible for only liabilities accruing after the contract commencement date, through pass through or cap and collar arrangements?...............................................................................................

- Has the Scheme employer already identified the risks / costs that any bond would cover? If so, can we have details………………………………………………………………………………

## B.2 Details relating to the Fund

- Are there any other contracts with the contractor within the Fund in respect of services provided on behalf of the Scheme employer?.................................................................

- The investment strategy to be applied to the contractor within the Fund i.e. the growth, medium or cautious pot, e.g. if the contractor wishes to take a lower level of investment risk or pre-fund for termination?..............................................................................................................

  On termination, where there is a shortfall in the assets, the default position will be for any contributions due to first be reclaimed from the contractor. If the contractor defaults on the payment, the bond (if a bond is in place) would then be called on. Any outstanding monies due would then fall back on the Scheme employer. If on termination contributions due fall back on the Scheme employer e.g. if the assets and liabilities were intended to be subsumed, how will the Fund seek recovery from the Scheme employer?.............................................................................................................

  Will a shortfall need to be funded by a one-off payment or could it be rolled forward into the Scheme employer's rate over a period of time?..........................................................................................

  <u>Note:</u> where there are surplus assets on termination the default position for the Fund is that no exit credit will be paid to the contractor, and all assets and liabilities are subsumed by the original Scheme employer, unless representation to the satisfaction of the Fund is made.

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