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**Admission Agreements**

 **Employer Guide and Checklist**



**If you require this information in an alternative language or another format such aslarge type, audio cassette or Braille, please contact the Pensions Help & Information Line on 01609 536335**

**Introduction**

The requirement placed upon public bodies to ensure that the services they provide offer best value, both in terms of cost effectiveness and quality of service, can lead to services being outsourced to third parties. Consequently, contracts may be awarded to organisations outside of the public sector.

This means that staff that were at one time employed by a public sector body would transfer to a private sector employer. Those staff would, in the absence of any other arrangement, lose their right to participate in the Local Government Pension Scheme (the "LGPS") as a result of the transfer. The ability to participate in the LGPS is commonly perceived by staff to be a key benefit of public sector employment. Therefore, to protect those staff from losing their right to participate in the LGPS as a result of such transfers, statutory guidance exists regarding the pensions entitlements of persons historically employed by the public sector. In respect of local authorities, the relevant guidance is the ‘Best Value Authorities Staff Transfers (Pensions) Direction 2007’, whereas the applicable guidance for academies is ‘Fair Deal for staff pensions: staff transfer from central government’. This guidance is referred to generically as the "Fair Deal" guidance.

**Why you need to think about pensions at the start of the tender process**

Under the Fair Deal guidance, employers who are outsourcing a service and transferring employees to the private sector should ensure that the pensions entitlements of those employees are protected in the manner set out in the Fair Deal guidance. You should read the applicable guidance and take independent legal advice where necessary.

In broad terms, the Fair Deal guidance requires the public sector body to ensure that the contract with the private sector contractor contains provisions which obliges that contractor to offer the impacted employees the chance to:

* remain members of the LGPS through the contractor obtaining admitted body status; or
* transfer to a scheme that offers "broadly comparable" benefits to the LGPS.

As the LGPS is substantially more generous than most private sector pension schemes, offering access to a "broadly comparable" scheme is often not practically achievable (or at least not without prohibitive cost). Therefore, in the vast majority of cases, the contractor obtaining admitted body status is the preferred route.

It is vital that the pensions issue is seen as an integral part of the outsourcing process. **Once a decision has been made to outsource a service you should contact the North Yorkshire Pension Fund (NYPF) with details of the outsourcing and the main contacts involved.** The tender documentation should include an indication of the contribution rate that the successful contractor will need to pay if they become an admission body (as this is likely to be a higher percentage of pay than would be the case in a private sector scheme, and the bidders will therefore need to take this into account).

**What is an admission body?**

The relevant rules governing the LGPS are called the Local Government Pension Scheme Regulations 2013 (the ‘Regulations’). The Regulations state that where a scheme employer (e.g. a local authority or academy) enters into a service agreement with a third party contractor, the parties can enter into an "admission agreement" which allows the contractor's relevant staff to participate in the LGPS. The contractor would then be an "admission body" to the Scheme.

**What is an admission agreement and why is it important?**

To become an admission body in the NYPF a contractor must enter into an admission agreement. The relevant scheme employer (i.e. the employer that let the contract to the contractor) must also be a party to that agreement. Both the scheme employer and the contractor need to obtain legal advice before entering into an admission agreement.

An admission agreement is a separate legal document to the commercial services contract. The admission agreement will be agreed by the scheme employer, the contractor, and the NYPF. NYPF’S legal advisors will provide the admission agreement document.

**Unless an admission agreement is in place at the date the staff transfer to the contractor, the transferred staff will lose their right to participate in the LGPS.**

**What is the process for obtaining admission body status in the NYPF?**

In basic terms, there is a three stage process to gain admitted body status:

1. **Establishing qualification**: To qualify for consideration as an admission body, a qualifying contract for the provision of services needs to exist. Therefore, the NYPF will need to be satisfied that such a contract has been (or will imminently be) entered into between the scheme employer and the contractor;
2. **Providing information**: The scheme employer and/or the contractor will provide details of the services contract and the relevant transferring employees to the NYPF to enable an admission agreement to be drafted and preparations to be made;
3. **Entering the agreement**: The scheme employer and the contractor must enter into an admission agreement with North Yorkshire Council in its capacity as administering authority of the NYPF.



Until all three steps above have been completed, the staff who transfer to the contractor are not eligible to participate in the LGPS. Therefore, to ensure continuity of their LGPS membership you should ensure that these steps are completed before the relevant staff transfer to the contractor.

**Consequences of late notification**

The Regulations do not require the NYPF to offer admission body status on a backdated basis. Therefore, as a default, admissions to the Scheme will take effect from the date the admission agreement is executed at the earliest. This means that where an admission agreement cannot be executed in advance of the staff transfer, either because the NYPF has not received sufficient advance notice of the transfer, or where the other parties to that transfer delay in signing an admission agreement, the transferring employees will have a period of service in which they will not be eligible to participate in the LGPS, and therefore will not accrue LGPS benefits.

This would mean that, in respect of that interim period, either the scheme employer or the contractor would need to make alternative pension arrangements for the transferring employees. A pension scheme broadly comparable to the LGPS would likely be both very expensive and administratively difficult to establish, even for an interim period.

Scheme employers should therefore bear this in mind at the start of their procurement process and determine when the legal arrangements, including pension provision, are sufficiently advanced to actually enter a service contract and transfer staff.

**Terms of the admission agreement**

The NYPF treats all admission bodies equally and will not consent to offer admission to the Fund on anything other than its standard terms, which are reflective of the Regulations and designed to provide the appropriate protection for the Fund against the default of the admission body. This is intended to ensure, as far as possible, that all participating bodies in the NYPF are protected from liabilities arising as a result of the actions or defaults of other participating bodies.

In particular, if the scheme employer has offered non-standard commercial terms to the contractor as part of the letting process, the NYPF will not alter its standard terms of admission to reflect that commercial arrangement. Such commercial arrangements are a matter to be dealt with between the scheme employer and the contractor. It is not appropriate for the Fund to be involved in agreeing or administering the terms of that separate commercial arrangement. The Fund will in all instances administer the proposed admission according to principles captured in the standard admission agreement. Any additional steps, agreements or indemnities that may be necessary to implement the agreed commercial solution between the scheme employer and the contractor should be captured in a separate agreement between those parties. It is up to the scheme employer and the contractor to satisfy themselves that the terms of such a separate agreement are sufficient to capture their agreed commercial principles and, as may be necessary, over-ride or mitigate any contrary provision of the admission agreement as between themselves. The NYPF will not be involved in that process and fully reserves its right to enforce the terms of the admission agreement as drafted.

In order to promote transparency, and reflecting the fact that the statutory function of administering the NYPF is carried out entirely separately from the other functions of North Yorkshire Council, the above principles will apply regardless of the identity of the scheme employer (i.e. even where the scheme employer is itself a division of North Yorkshire Council or a body controlled by North Yorkshire Council).

**Exit Debt & Exit Credit**

The LGPS has for a long time operated on a framework that an exiting employer will be called to account for any funding shortfall in respect of the service of the relevant staff upon exiting the Fund. With effect from May 2018, the underlying statutory regime has been altered to also provide that if the Fund is in surplus in respect of an employer at the point of exit, then the Fund may repay the applicable sum to the exiting employer, although any such payment would be discretionary and depend on the wider circumstances. Further details are given in the Fund’s Admissions and Terminations Funding policy.

The Fund is aware that many scheme employers enter side agreements with contractors which contain non-standard commercial terms which serves to limit or reduce that contractor's liability to the Fund both in terms of ongoing contributions and upon exit. In that event, it would seem appropriate that any such side agreement also addresses what would happen in the event that a surplus existed at the point the admission body exits the Fund.

The scheme employer might not consider it equitable that the contractor's contribution rates have been, for example, capped by a side agreement or reduced by the existence of a subsumption guarantee and then for that contractor to be entitled to retain an exit credit. Scheme employers should be aware that the admission agreement will not seek to alter the default position under the Regulations; that the admission body is liable to pay any exit debt and to receive any exit credit. It will be a matter for commercial negotiation and agreement in any side agreement between the scheme employer and contractor if the parties wish to alter this.

**Guarantee and/or Bond**

It is usually required in admission agreements that the scheme employer enters into a guarantee in respect of any contractor it wishes to be admitted to the Fund. This will take the form of a full indemnity and guarantee in favour of the administering authority against the proper performance of the admission agreement by the contractor, and against the liabilities of the contractor under the admission agreement. This is intended to protect the NYPF (and other participating employers) against the default of the contractor selected by the scheme employer.

The NYPF would consider removing the guarantee obligation if the contractor were willing and able to put in place a finance bond (e.g. from a bank) over the term of the admission in a sum determined by the NYPF's actuary to cover the actuarial risk of the admission (the same being reviewed regularly). However, this is rare in practice as there is perceived to be a prohibitive cost implication to establishing such a bond, and this cost is often ultimately passed back to the scheme employer through increased service charges. The perception of many scheme employers is therefore that imposing a requirement for a bond on the contractor is undesirable as it has the effect of turning a contingent cost (of a guarantee) into a real cost (of increased service charges). A bond will also have cost implications in that it will increase the fees incurred by the NYPF's actuary and legal advisers, which are ultimately passed back to the scheme employer and/or contractor.

**Subsumption commitment**

A subsumption commitment is built into NYPF’s standard admission agreement. By giving this commitment, the scheme employer is agreeing that after the admission body has stopped participating in the scheme (and where applicable, paid any debts arising on exit), they will agree to "subsume" the liabilities associated with the employment of the relevant employees during the period they were employed by the admission body into their own liabilities to the NYPF. The subsumption clause therefore relates to any changes in the funding position of the relevant employees after the contractor's admission has ended.

The existence of the subsumption commitment enables the scheme actuary (who sets contribution rates and decides on exit valuations) to adopt a less conservative valuation basis in relation to the admission body, which will generally lead to lower contributions becoming due.

**How will the current employees be affected?**

Employees participating in the NYPF will receive the same benefit entitlements irrespective of whether their employer is a scheme employer or an admission body. Their contribution rate will continue to be in line with the banding which relates to their rate of pay.

The employees’ benefits should therefore be unaffected, provided the admission agreement is in place at the time of the transfer

**What happens when the contract finishes and is awarded to a different contractor?**

In the event of a second generation / subsequent transfer, the protection given to employees on initial outsourcing should apply to any subsequent transfers under the Fair Deal guidance. The scheme employer should therefore ensure that the wording of the contract at the time of the first outsourcing protects the pension benefits of transferring employees in the event of subsequent transfers. It is imperative that the original outsourcing contract is referred to, in order to see if there are provisions safeguarding the benefits of the transferring public sector employees that will apply to the new contract.

**Checklist**

In the event that you are outsourcing services and wish the appointed contractor to seek admission body status to the NYPF, please complete one checklist for each outsourced contract (see following pages). Missing information will cause delays in the execution of the admission agreement. **The checklist, staff list and authorised signatory list should be emailed to one of the following contacts at least 8 weeks before the staff transfer date.**

Jo Foster-Wade - Pension Employer Relationship Manager

Email: Jo.Foster-Wade@northyorks.gov.uk

Amanda Jones - Pension Employer Relationship Officer

Email: Amanda.jones@northyorks.gov.uk

Ashley Scutt - Pension Employer Relationship Officer

Ashley.scutt@northyorks.gov.uk

Team phone number: 01609 533440

**Please see the flowchart on the following pages for a quick overview of the admission agreement process**

**Admission Agreement Process**

**Admission Agreement Checklist**

**Remember to complete one checklist for each contract and return it at least 8 weeks before the staff transfer date. The checklist should be completed by the transferring employer and not the contractor.**

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| **Information about the scheme employer** |
| Name and registered address of the scheme employer  |  |
| If the scheme employer is a local authority please provide the name and address of the school where the service is being provided |  |
| If the scheme employer is an academy/multi academy trust (MAT) please provide the registered name and address of the school where the service is being provided |  |
| If the scheme employer is an academy/MAT please provide the company number |  |
| If the scheme employer is an academy/MAT please provide the name of the Director[[1]](#footnote-1) who will sign the admission agreement on behalf of the academy/MAT  |  |

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| **Information about the contractor** |
| Name and registered address of the contractor |  |
| Company number |  |
| Name of the Director\* who will sign the admission agreement on behalf of the contractor |  |

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| **Information about the contract** |
| Brief details of the service being provided |  |
| Effective date of transfer of staff |  |
| Open or closed agreementAn **‘open’** agreement potentially allows any employee of the contractor involved in the provision of the outsourced services to become a member of the LGPSA **‘closed’** agreement only allows the employees who are transferring to the contractor to remain a member of the LGPS throughout the admission agreement. | **Closed** **Open**  |
| Please provide a copy of the signed commercial contract (commercially sensitive information can be redacted). If the commercial contract cannot be provided at the same time as the checklist please provide the date the contract is expected to be signed | Contract provided **Yes No**If **no**, date the contract is expected to be signed |
| Has a side agreement containing pension clauses been entered into? | **Yes No** If **yes,** please provide a copy (commercially sensitive information can be redacted).  |
| Term of contract  |  |
| Contract end date |  |
| Is the contractor being admitted to the NYPF on a fully funded or partially funded basis? **Fully funded** - means that the contractor will only pay for future service. Past service liabilities are covered by the scheme employer**Partially funded** – means that any deficit in relation to past service is passed on to the contractor | **Fully funded** **Partially funded**  |

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| **Subsumption commitment by the scheme employer** |
| In order to access lower contribution rates for the admission body (as above), the scheme employer will need to sign up to a subsumption commitment as part of the admission agreement (see the paragraph called ‘subsumption commitment’ for further details).  |
| Person agreeing to the subsumption commitment on behalf of the scheme employer |  |
| Date |  |

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| **Basis of actuarial calculations** |
| The actuary will calculate the employer contributions payable from the commencement date of the contractor.These will consist of the future service rate (FSR) or primary contribution rate for the contractor, and additional (secondary) contributions required to remove any funding shortfall. Where the contractor is commencing based on a fully funded transfer (i.e. the level of notional assets for the contractor is set to be equal to the full value of the transferring liabilities using the appropriate funding target described below) then the initial contribution rate will be equal to the FSR. This would generally be the case in an outsourcing of a service or function from a scheme employer.The FSR is net of employee contributions but includes an allowance for the lump sum death benefit payable on death in service and administration costs. The actuary will also calculate the funding position of the contractor at the commencement date. This shows the notional assets attributable to the contractor, along with the value of liabilities using the appropriate funding target. Note that this is needed even when the contractor starts fully funded since any accounting figures or calculations at future triennial valuations will use the assets and liabilities at commencement as their starting point. In some cases the asset transfer may need to be re-calculated if the commencement date or data on transferring members is different to that used by the actuary in their initial calculations. If the transferring employer is providing a subsumption commitment, the subsumption funding target will be used by the actuary when calculating the FSR and the value of liabilities. The low risk funding target can be used where explicitly requested by the transferring employer. The appropriate funding target to be adopted depends on what will happen to the liabilities of the admission body once the contract ends or it has otherwise exited the Fund (e.g. when the last active member has left).  |
| **Scheduled and Subsumption Body Funding Target** This approach can be used where the contractor has a 'subsumption commitment' from the transferring employer, where that employer is valued on the scheduled and subsumption body funding target. This means that the transferring employer agrees that they will take on responsibility for the future funding of the liabilities of the contractor once the contractor has exited the Fund and the contractor has paid any exit payment (or received any exit credit). The scheduled and subsumption body funding target is described in the glossary to the [2022 valuation report](https://www.nypf.org.uk/Documents/Actuarial%20valuation%20report%202022_29.3.2023.pdf). It would be used to calculate the initial assets allocated to the contractor and its contributions as well as for the exit valuation of the contractor (updated to allow for financial market conditions at the exit date).The assumptions used under the scheduled and subsumption body funding target assume investment in assets that are the same as the long term investment strategy of the Fund as a whole. Therefore the potential outperformance over low risk investment in government bonds (gilts) is factored in, giving a lower contribution rate but also there is exposure to the volatility of equity based investments and the risk of the expected outperformance not being achieved and the impact on the contributions. This funding target gives a lower contribution rate but less certainty that the liabilities are being fully covered and can therefore lead to volatility in the FSR over the life of the admission agreement and increases the risk of a shortfall or surplus emerging over the period of participation of the contractor in the Fund. This approach results in the same assumptions being used to set contributions for the contractor as apply to the scheme employer letting the contract (although the assumptions are updated to allow for financial market conditions at the calculation date, whether that is the date of commencement or exit). | **This is the default funding target that will be used by the actuary unless the transferring employer specifically requests that the Low Risk Funding Target is used.**  |
| **Low Risk Funding Target (matched approach)**This approach can be used where the parties wish to reduce the risk of an uncertain and potentially large shortfall being due to the Fund at the exit of the contractor.The low risk approach assumes a notional investment in government bonds for the contractor. The Fund's current policy is a notional investment strategy of 85% index linked gilts and 15% fixed interest gilts, although this may be reviewed from time to time. Under this approach the investment risk is substantially reduced and it is expected that the assets and liabilities of the contractor would move broadly in line with each other. It does not eliminate investment risk but gives more certainty that the employer rate is providing funding to ‘match’ the liabilities. However it gives a substantially higher contribution rate as no allowance for any expected outperformance of the Fund's assets over the low risk funding target is factored in. Under this approach the exit valuation would also be carried out on the low risk funding target to ensure consistency with the approach adopted throughout the contract. This would be the case even if a scheme employer has agreed to subsume the liabilities after the exit of the contractor.  | **Please only tick this box if you do not want the Subsumption Funding Target to be used. You should provide a brief explanation if you chose to use the Low Risk Funding Target** |

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| **Guarantee by the scheme employer** |
| As above, it is usually a requirement that the scheme employer gives a guarantee of the contractor's liabilities under the admission agreement, although in some circumstances a finance bond is instead provided. What is the scheme employer and/or contractor's preference in this case?  **Guarantee Bond If a Bond is required please provide the following:**Name of party providing the bond Registered addressCompany number |

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| **Staff List for LGPS members who will transfer to the contractor** |
| Please provide a spreadsheet with a list of current LGPS members and a separate list of employees who are eligible to be in the LGPS but who have previously opted out (as they retain the right to opt back into the LGPS at any time). **A template spreadsheet of the information that is needed is attached, you should not provide your staff list in any other format. Missing or incorrect information will be rejected.**The NYPF may identify queries on your staff list and these will be sent to you as soon as possible. It is important that responses are provided quickly to avoid delays in executing the admission agreement.  |

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| **Contractor’s Payroll & HR Contacts** |
| Please provide details of the **contractor’s** day to day contacts who will submit monthly data (via i-Connect) to the NYPF, complete pension administration forms and who will deal with pension queries and issues. Please provide this information before the admission agreement is completed so that the necessary procedures and schedules can be set up to ensure monthly data and pension contributions are received on time. |
| Name and job title |  |
| Email address |  | i-Connect user: Yes / No |
| Telephone number |  |
| Name and job title |  |
| Email address |  | i-Connect user: Yes / No |
| Telephone number |  |
| Name and job title |  |
| Email address |  | i-Connect user: Yes / No |
| Telephone number |  |
|  |
| **Payment of monthly contributions** |
| Please provide details of who will complete the monthly contributions return and make payment to the NYPF. The person must be on your authorised signatory list. |
| Name and job title |  |
| Email address |  |
| Telephone number |  |

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| **Fees**  |
| The Fund’s legal adviser currently charges approximately £1,000 plus VAT for drafting and advising on each **admission agreement**. Please advise who will pay the fee.**Scheme employer** **Contractor****If a bond is required,** the Fund’s legal adviser currently charges approximately £1,000 plus VAT for drafting the guarantee bond. Please advise who will pay the fee.**Scheme employer**  **Contractor** |
| The Fund’s actuary charges for calculating the future service rate for the contractor. The current fees for this are shown below. Please advise who will pay the fee.* £800 plus VAT per contract - calculation based on **one** funding target (subsumption **or** low risk)
* £1,430 plus VAT per contract - calculation for **both** funding targets (subsumption **and** low risk)

**Scheme employer** **Contractor**  |
| Person agreeing to the payment of the above fees: | Name:  Job title: |

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| **Invoices** |
| Please provide details of where to send invoices (**this must be a named person**) |
| Name & job title |  |
| Address (please provide the postal address) |  |

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| **Completed Admission Agreement** |
| Please provide details of where to send the completed admission agreement  |
|  | **Scheme employer** | **Admission body** |
| Name & job title |  |  |
| Address (please provide the postal address) |  |  |

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| **Authorised signatory list – to be completed by the contractor** |
| It is an audit requirement that the NYPF holds specimen signatures for staff that are authorised to sign any NYPF pension administration forms including the monthly contribution return and where applicable, submit i-Connect monthly data. This usually includes HR and payroll staff (whether in-house or outsourced) and staff who are involved in decisions regarding pensions. **The authorised signatory list on the following page will need to be completed by the contractor either before the admission agreement is completed or at the very latest the week following completion.** |

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| **Details checked and authorised** |
| Please provide details of who has checked and authorised this document **(this should be the scheme employer and not the contractor)** |
| Name  |  |
| Job Title |  |
| Email address |  |
| Direct telephone number |  |

**Remember:** **The checklist, staff list and authorised signatory list should be returned at least 8 weeks before the staff transfer date.**

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**Authorised signatories for:**

The staff shown below are authorised to sign any NYPF pension administration forms including the monthly contribution return. I have also shown which staff are/will be authorised to submit monthly data using i-Connect. Third party payroll officers have been added if they submit data or monthly returns on our behalf.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Contact name** | **Job Title** | **Work Address** | **Telephone number** | **Email** | **Signature** | **i-Connect user Yes/No**  |
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**A Senior Officer should sign the form below, this cannot be one of your authorised signatories**. The Senior Officer would not normally be involved in day-to-day pensions administration but by signing this form is confirming that the signatories shown above are authorised to submit any pensions information to the NYPF. Your form will be returned if it has not been signed by a Senior Officer.

**Signature of Senior Officer: Date:**

**Print Name: Job title:**

1. The Director must be a statutory director – i.e. a director whose appointment is formally registered at Companies House, not merely a senior employee whose title includes the term "director". [↑](#footnote-ref-1)