

Date:	14th March 2019
Classification:	General Release
Title:	Request The Approval of Accent Catering Services LTD as an Admission Body in the Westminster City Council Pension Fund
Report of:	Director of People Services
Financial Summary:	Negligible risk
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1. Executive Summary

- 1.1 On the 1st of August 2015 one of the pension fund's scheduled bodies Ark Academy Trust as proprietor of King Solomon Academy outsourced its catering function to a company called JPL Catering. The fund agreed a closed admission agreement for the eight staff TUPE transferred, four of whom were in the LGPS. Ark Academy trust re-let the catering contract from the 1st of January 2019 to a new company Accent Catering Services Ltd. Two of the original staff have been transferred to the Accent Catering Services Ltd and remain in LGPS.
- 1.2 This report requests that the committee give approval for Accent Catering Services Ltd to be given admitted body status on a closed admission agreement basis.
- 1.3 The LGPS 2013 Regulations contain clauses that would allow the administering authority to seek full recovery from ARK Academy Trust in the event that full recovery is not possible from Accent Catering Services Ltd. In addition the Admission agreement has been drafted to include authority for the Administering Authority to recover any outstanding sums from ARK Academy Trust.

2. Recommendation

- 2.1 That the committee approve the closed admission agreement for Accent Catering Services Limited.

3. Background

- 3.1 ARK Academy Trust is a scheduled body within the WCC Pension Fund, Employees of Scheduled bodies are automatically entitled to membership of the LGPS fund in the geographical area in which they are based if they are not entitled to membership of another public sector fund like the Teachers Pension Scheme.
- 3.2 It has been the case for many years that staff outsourced by public sector bodies to private companies carrying out the function will retain the entitlement to their former pension provision or a broadly comparable alternative.
- 3.3 Academies under the New Fair Deal 2013 Guidance should include provisions in their outsourcing contracts that transferring staff retain entitled to remain an active member of (or remain eligible to join if they have not yet joined) their public sector pension scheme that they were in before they are TUPE transferred. In essence contractors with access to a broadly comparable scheme are limited due to the difficulty in setting up an arrangement as complex as the LGPS for small groups of staff and also due to academies now being under an obligation to comply with New Fair Deal 2013 which only allows broadly comparable scheme to be used in exceptional cases. Therefore the majority of scheduled bodies outsourcing will require their contractors to engage in an admission agreement with the relevant authority.

4. Accent Catering Services

- 4.1 Accent Catering Services Limited (company number 04298350) was incorporated on the 3rd of October 2001. They have a number of school clients in addition to King Solomon Academy including Somerhill and Hallfield School.
- 4.2 There is no known financial impediment as to why this specific contractor should not be allowed to become an admitted body in the WCC Fund.

5 ARK Academy Trust and King Solomon Academy.

- 5.1 ARK as a group were first formed in 2002 and have Educational interests around the world. They are a large academy trust working in the United Kingdom with 38 separate academies registered in the UK. King Solomon was formed in September 2007 and was rated outstanding by Ofsted in 2013.
- 5.2 ARK trading as King Solomon has let the catering contract to Accent from 1st of January 2019. The legal entity for the admission agreement however is ARK Academy Trust as the proprietor of an academy as covered under para 20, Part 1 of Schedule 2 of the LGPS Regulations 2013.

5.3 Two staff were TUPE transferred from JPL Catering employment to Accent Catering Services Ltd.

6 Options

6.1 Knowing the committee has raised concerns in the past about extending the number of admitted bodies within our fund. Officers have sought out legal advice on the circumstances in which a refusal to allow a new admitted body would have legal substance. Paragraph 13, Part 3 of schedule 2 of the regulations detailed above states that where an admission body undertakes to meet the requirements of the Regulations, the appropriate administering authority must admit the admission body to the Fund.

6.2 As attached the Pension Fund's legal advisors Eversheds have prepared a draft admission agreement between the Fund, ARK academy Trust and Accent Catering Services Ltd. It is proposed that the admission agreement is closed as our standard practice so that only those staff TUPE transferred originally from Ark to JPL Catering and then to Accent Catering Services Ltd. will retain access to the fund whilst they are employed directly on this contract. If an employee leaves employment with Accent Catering Services Ltd. or moves onto another contract with Accent Catering Services Ltd they will lose their entitlement at that time to further accrual.

6.3 The fund could require a bond from Accent Catering Services Ltd. to cover the risk of any deficit in the event that Accent Catering Services Ltd. were unable to meet any liabilities to the fund. The problem with bonds however is that they need to be constantly monitored to ensure that they remain concurrent in that whether or not the bond has expired and that the fund can call on the bond in the event of an issue. The emphasis will fall to the Fund to ensure compliance if this route is preferred. If an admission body were unable to attain a new bond part way through a contract the administering authority would be able to give notice to the admission body.

6.4 Alternatively, WCC as a contracting body has in effect guaranteed the Fund on other admission agreements that it will cover any deficit in the event of an issue arising where monies could not be covered by an admitted body. ARK Academy Trust has been asked to provide the same guarantee on headed paper. The advantage of asking the contracting scheduled body to provide the guarantee at the start of the admission process is that the emphasis is on the contractor to monitor the financial status of it's admission body and the risk of default and not the Fund.

6.5 Even without a written guarantee from ARK Academy Trust the fund has an entitlement under the regulation 64 para 8 to recover any liability not recoverable from Accent as ARK academy Trust would be a related employer by virtue of entering into the admission agreement. The responsibility is again covered within our admission agreement see Section 9.2.

- 6.6 It is recommended that the Pensions Fund Committee approve the proposed admission agreement for Accent Catering Services Ltd. on a closed basis and without the requirement of a bond. If a bond were requested the cost of the bond would be passed onto ARK by Accent Catering Services Ltd. and they would be paying for something that may never be needed. There is sufficient assurance within the regulations that in the event of an issue with Accent Catering Services Ltd. that the Fund could recover sums from ARK and this is further endorsed in the admission agreement itself. Of the staff transferring and actually in the pension scheme none are close to 55 where redundancy could cause additional liability and all are relatively low paid staff with a few years service accrued.

Financial Implications

- 7.1 If a bond were requested the actuary estimated that the bond would be £15,000 per annum for the first three years. The bond would then need to be reviewed though, as we are talking about a few relatively low paid catering staff the bond is likely to remain of a similar level but will be impacted

8. Legal Implications

- 8.1 If the committee were to refuse admitted body status then the administering authority would be in breach of the regulations as per 6.1 above.

If you have any questions about this report, or wish to inspect one of the background papers, please contact:

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