

**Name of meeting: Personnel Committee**

**Date: 23<sup>rd</sup> June 2014**

**Title of report:** Report seeking the designation of support staff at Honley High School in order that they can continue in or join the Local Government Pension Scheme when they transfer to the employment of the Governing Body when the school changes category from Community School to Foundation School and acquires the Foundation - 'The Honley Co-operative Learning Trust' on or around 1<sup>st</sup> September 2014.

Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	not applicable
Is it in the <a href="#">Council's Forward Plan?</a>	Yes
Is it eligible for call in by <a href="#">Scrutiny?</a>	Yes
Date signed off by <u>Director</u> & name	Alison O'Sullivan
Is it signed off by the Director of Resources?	Yes - David Smith 12 <sup>th</sup> June 2014
Is it signed off by the Assistant Director – Legal, Governance and Monitoring?	Yes – Karl Larrad 12 <sup>th</sup> June 2014
Cabinet member <a href="#">portfolio</a>	Children's Services Councillor Cath Harris Councillor Shabir Pandor Councillor Jean Calvert

Electoral [wards](#) affected: Holme Valley North

Ward councillors consulted: Holme Valley North (as part of the Governing Body consultation)

Public or private: Public

## 1. Purpose of report

When Honley High School changes category from Community School to become a Foundation School and acquire a Foundation - 'The Honley Co-operative Learning Trust' all staff will be transferred through TUPE. The Terms and Conditions of staff would be maintained and teachers can remain members of the Teacher's Pension Scheme. However, Council agreement is needed to allow current and future non-teaching staff to remain or to become members of the Local Government Pension Scheme.

This report sets out the background and the regulations which govern the pension arrangements for staff. The report recommends that Personnel Committee approve

that if the change of category is implemented then support staff would remain members of the Local Government Pension Scheme.

## **2. Key points**

### **2.1 Background and rationale**

The Governing Body of Honley High School has proposed and taken a decision to change the category of the school from a Community school to a Foundation school and simultaneously to acquire the charitable trust 'The Honley Co-operative Learning Trust.' The proposed date of implementation is on or around 1 September 2014.

The school, supported by the Trust, would work to improve the standards of attainment and services for pupils and their families in the local community. The Trust's particular focus is

- Working inclusively with representation of partners from education and training, employment and regeneration.
- Open and honest relationships with partners, helping each other reach common goals.
- Raising aspiration through embedding a 'life long learning' ethos in the extended community.
- A global perspective rooted in the co-operative values of self-help, self-responsibility, democracy, equality, equity and solidarity.
- Provision of the ethical values of honesty, openness, social-responsibility and caring for others.
- Provision of learning and earning opportunities through regeneration programmes to help build active citizenship.
- Membership open to parents/carers, members of the community, partners, learners, their extended families, and staff.

The proposed Trust members are:

- Honley High School
- One17 Designs
- Heads Together Productions
- Kirklees Council
- The Co-operative Movement

### **2.2 The statutory process**

School organisation decisions have to follow a process set out by law and there is a 5-stage statutory process.

The five stages are:

- Consultation
- Publication
- Representation
- Decision
- Implementation

The proposal for the school to change category to a Foundation School and acquire a Trust have been subject to a statutory period of consultation undertaken by Governors in which the views of parents, staff, ward Councillors, students, the community and other key stakeholders has been sought. Statutory proposals were published and after a four week period of representation the Governing Body took a final decision about the proposals on 12<sup>th</sup> February 2014 with a view to implementing the proposal on or around 1<sup>st</sup> September 2014 and as a result there are Human Resource (HR) implications for the school and the LA.

## **2.3 The role of the council**

The council has a duty to fulfil its obligations as part of the implementation of the proposals in relation to staff currently being employed at Honley High School that will transfer to the Governing Body of the school.

## **3. Implications for the Council**

### **3.1 Human Resources implications**

There are staffing and pension implications of implementing the proposal to change the category of Honley High School from a Community School to a Foundation School.

The Council would cease to be the employer of staff at the schools from the proposed implementation date (1 September 2014) and the staff would TUPE transfer to the Governing Body of the school (the transfer of staff occurs under Education law and TUPE Regulations 2006). The staff would transfer to the new Trust school and be employed by the Governing Body (not 'The Honley Co-operative Learning Trust'). Terms and conditions of service would remain the same for both teaching and non-teaching staff.

The existing rights of teachers would be fully protected. The Governing Body of the Trust School would remain bound by the School Teachers' Pay and Conditions Document. Teaching staff would be able to remain members of the Teacher's Pension Scheme. However, in order for current and future non-teaching staff to remain or become members of the LGPS, the governing body needs to consent (which they have see Appendix 1) and the Council needs to agree to designate current and future staff to remain in or join the LGPS, under Regulation 8 of the Local Government Pension Scheme (Administration) Regulations 2008 (as amended). If the Council agrees to this the Council will remain as deemed employer of non-teaching support staff for pension purposes only. As Local Authority Maintained schools, the school would continue to bear the cost of the employer's pension contributions through their DSG allocations.

- Designation by the Council under regulation 3(1)(b) of LGPS regs 2013 is the relevant route to enable non-teaching staff to remain in or join the LGPS.
- WYPF have confirmed that they will not allow the School Governing Body to apply for admission in to the LGPS in its own right.
- For valuation purposes, foundation schools are grouped with the Council and the schools future employer contribution rate will be the same as the Council's contribution rate. This reflects the schools' share of any notional deficit which may exist.

- The Council as “deemed” employer for pension purposes is legally responsible for payment of pension contributions to WYPF and remains liable for any deficit.
- The Governing Body of the School is required to enter into a legal agreement with the Council to govern the administration and payment of pensions. This is shown at Appendix 1. This provides, amongst other things, that:-
  - the school’s employer discretions must “mirror” those agreed by the Council ensuring it cannot adopt more generous ill health or early retirement provisions.
  - employee and employer contributions will be paid to WYPF (who will monitor this happens).
  - the school will be responsible for payment of employer contributions set by WYPF actuary.
  - the school will indemnify (ie reimburse) the Council any costs arising out of default by the school in paying to the Council or WYPF sums payable (or payable by a different payroll provider) on the school’s behalf in respect of school support staff.

The need for a legal agreement is appropriate because although the Council under Regulation 3 (1)(b) of LGPS regs 2013 is the deemed employer for pension purposes and therefore retains some residual risk, it is not the actual employer for other purposes. The Agreement is intended to mitigate financial risks to the Council so far as practicable.

#### **4. Consultees and their opinions**

The statutory proposal by the Governing Body of the school to change category from Community School to Foundation School and to acquire a Foundation - ‘The Honley Co-operative Learning Trust’ has been the subject of a statutory consultation process and a period of representation in which the views of parents, staff, Ward Councillors, students, the community, Trade Unions, the LA and other key stakeholders have been sought and taken into consideration.

#### **5. Next steps**

Officers in HR and Legal have been working with the Governing Body at Honley High School to support the TUPE transfer of staff for the implementation date of on or around 1<sup>st</sup> September 2014.

Subject to the decision of the Personnel Committee and the signing of the legal agreement (Appendix 1), officers will work with the Governing Body of the school to facilitate the making of appropriate arrangements in respect of current non-teaching staff and future non-teaching staff at the school so that they can remain or become members of the LGPS as detailed in 3.1 above.

#### **6. Officer recommendations and reasons**

Officers request that Members:

- 6.1 Note the statutory proposals of the Governing Body at Honley High School to change category from Community School to Foundation School and acquire a Foundation - 'The Honley Co-operative Learning Trust'.
- 6.2 Note that the role of the council in the implementation of the proposal is enacting the transfer of the employment of staff from the Council to the Governing Body of the Trust School.
- 6.3 Note at Appendix 1 the legal agreement that is signed by the Governing Body of Honley High School to the pension arrangements for non-teaching staff to remain as part of the Local Government Pension Scheme.
- 6.4 Subject to 6.3, the transferee employer entering into a legal agreement in the form set out at Appendix 1 to this report, approve that under Regulation 3(1)(b) of LGPS Regs 2013 Kirklees Local Education Authority, having received consent by Honley High School, designates all existing non-teaching staff of Honley High School and future non-teaching staff of the school as being eligible for membership of the Local Government Pension Scheme.

## **7. Cabinet portfolio holder's recommendations**

Not applicable

## **8. Contact officer and relevant papers**

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## **9. Assistant director responsible**

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Assistant Director for Learning and Skills  
Directorate for Children and Adults