

Local Government Pension Scheme: Fair Deal – Strengthening pension protection

Response from Hampshire County Council as Administering Authority for the Hampshire LGPS Fund

We welcome the opportunity to respond to this consultation as the Administering Authority for the Hampshire LGPS fund. Although we support the aims of the proposals, we do not think that as drafted, the regulations can deliver the practical outcomes required by Scheme Employers and Administering Authorities in the LGPS.

We feel it is important that the view of the Administering Authorities on the practical implementation of the proposals is taken into account. Our response has therefore focussed on the implications for administering the proposed changes, leaving the professional advisers to the LGPS to respond on the technical details posed in the consultation.

Question 1: Protected Transferees – do you agree with this definition?

To the extent that the Administering Authority can give an opinion on the value of extending LGPS eligibility to employees, we agree that allowing Scheme Employers the flexibility to include employees not previously eligible for the LGPS could be a valuable workforce strategy.

However as drafted, we do not believe that the regulations will achieve this aim as the protected status can be removed at any time by either party – which will not provide certainty or assurance to the employee.

Just as now, responsibility for ensuring employees continue to retain eligibility for the LGPS needs to rest with the employer and not with the Administering Authority.

Question 2: Do you agree with this definition of a Fair Deal employer?

We welcome the inclusion of the Police and Crime Commissioner in the definition and agree that admission bodies should be able to follow these principles should they wish to do so.

However as above, employers covered by the definition will need to ensure that they follow the requirements, with the Administering Authority's role limited to providing guidance and information.

Question 3: Do you agree with these transitional measures?

We agree that the transitional measures are fair to employees previously outsourced under the 2007 or 2012 Direction.

Question 4: Do you agree with our proposals regarding the calculation of inward transfer values?

We agree with the principle of having a neutral mechanism for the calculation of inward transfers and for members to be allowed to make their own decision as to whether to bring benefits accrued in a broadly comparable scheme back into the LGPS. However, we believe that few members should choose to do so as they be moving from a final salary to a CARE scheme with no mechanism for their

transfer to buy service. Members may transfer back to the LGPS in the belief that it is a better scheme than their current broadly comparable scheme without understanding the loss of final salary benefits.

Question 5: Do you agree with our proposals on deemed employer status?

We do not think that the proposals for deemed employer status are practical and instead will introduce an administrative burden on Scheme Employers and Administering Authorities greater than the issues that they are attempting to resolve. We think it would be better to continue with the current use of the admitted body route.

One of the objectives of the proposals is to prevent the period of limbo for transferring employees caused by a delay in signing the admission agreement. Although we agree that this can be an issue, the proposals as drafted do not require employers to agree the route they will take prior to the start of the tender process so there will still be timing issues as these negotiations take place.

The proposals appear to be seeking an easier route for small Scheme Employers to outsource services without contractors overpricing contracts for pension risks. However, the only example of Deemed Employers working in practice is given as local authorities with regard to voluntary schools (where there is an overriding existing relationship). We are concerned that smaller employers will not understand their continued responsibilities under the Deemed Employer route.

In our experience, larger employers are already operating pass through arrangements with contractors to negate the risk share issue so the Deemed Employer route for them is unnecessary.

The proposed approach seeks to slow the rate of increase of LGPS employers and so reduce administrative issues. However although the number of new Scheme Employers would slow through use of the Deemed Employer route, the Administering Authority would still have to deal with the contractors as if they were Scheme Employers (collection of contributions, provision of payroll information, discretions policies etc). The Deemed Employer route would therefore have the effect of hiding the increase in employers rather than removing it, and so underplaying the complexity of LGPS administration.

We believe that the Deemed Employer route will increase the administrative burdens both on Administering Authorities and Scheme Employers, as well as introduce confusion for scheme members. The Administering Authority will still be reliant on the contractor providing necessary and timely information but without the direct relationship which is currently in place (and therefore without any of the authority for requiring the employer to do anything). This is already an issue for employers with 3rd party payroll providers, but at least in this situation, it is clear that a single employer retains all LGPS responsibilities.

We are concerned about the requirement for academies to have to follow guidance from the Department of Education before being able to use the Deemed Employer route. Who will enforce this requirement – and if the academy is subsequently found not to have followed the guidance, what will happen to the employees who have been outsourced? We cannot be in a position where pension risk falls onto the other employers in the Fund.

Question 6: What should advice from the scheme advisory board contain to ensure that Deemed Employer status works effectively?

We are not sure that the Scheme Advisory Board has the necessary remit to advise Scheme Employers directly. We would ensure that the advice was shared but could not effectively monitor an employer's response to it so question the value of this route over statutory legislation.

Question 7: Should the LGPS Regulations 2013 specify other costs and responsibilities for the service provider where deemed employer status is used?

As a minimum, the Regulations should specify that the outsourced employer is responsible for deducting and paying over employee and employer contributions to the Administering Authority. If this is not included in the Regulations, we do not feel that we will be able to get the support of the Pensions Regulator in the event of any breach by the employer.

Question 8: Is retaining the admission body option the right approach?

We agree this is the right approach because we do not think that the Deemed Employer route is practical to implement. However we would not want to see the Administering Authority involved in risk share issues as this is for the employer and contractor to sort out between themselves.

Question 9: What further steps can be taken to encourage pensions issues to be given full and timely consideration by Fair Deal employers when services or functions are outsourced?

Pension issues need to be considered by all employers when services / functions are outsourced. However it is difficult to conceive of a legislative route by which this objective could be achieved.

Question 10: - Are you aware of any other equalities impacts or of any particular groups with protected characteristics who would be disadvantaged by our Fair Deal proposals?

We are not aware of any groups who would be disadvantaged by the proposals.

Question 11: Automatic transfer of assets and liabilities – is this the right approach?

Question 12: Do the draft regulations effectively achieve our aims?

Question 13: What should guidance issued by the Secretary of State state regarding the terms of asset and liability transfers?

We agree with the intention of the proposal but are concerned that the regulations as drafted are insufficient.

- If a stronger company was taken over by a weaker company (or a shell company) then the exit debt may not be paid (and would fall on the other employers in the Fund)
- The Fund Actuary could not target the exit payment by amending the contribution rate for the new body

We have been able to address concerns about unintended triggering of exit debts or taking on of liabilities following a merger via separate legal agreements and feel this approach allows us greater flexibility and certainty than the draft proposals.