



Report of: Corporate Director of Resources

Meeting of:	Date	Agenda item	Ward(s)
Local Pensions Board	25 March 2019		n/a

Delete as appropriate		Non-exempt
-----------------------	--	------------

SUBJECT: LGPS FAIR DEAL – STRENGTHENING PENSION PROTECTION

1. Synopsis

- 1.1 To consider the government's consultation policy document to amend the rules covering the following areas.
- (i) Amendments that would require service providers to offer LGPS membership to individuals who have been compulsorily transferred from an LGPS employer (and remove the option of a broadly comparable scheme) .
 - (ii) Proposals that would automatically transfer LGPS assets and liabilities when employers in the scheme are involved in a merger or takeover.

2. Recommendations

- 2.1 To note the consultation policy document attached as Appendix 1
- 2.2 Consider the proposals being consulted on as summarised in para 3.1.3
- 2.3 Consider Mercers brief overview on the proposal in para 3.2.1
- 2.4 To consider the questions in paragraph 3.1.4 and agree responses to be submitted to MHCLG by the deadline of 4th April 2019.

3. Background

- 3.1 The Ministry of Housing, Communities and Local Government (MHCLG) consulted in May 2016 on the introduction of greater pensions protection for employees of LGPS employers who are compulsorily transferred to service providers. The 2016 consultation proposed that, in line with the Government's Fair Deal guidance of October 2013, most LGPS members in this position should have continued access to the LGPS in their employment with the service provider. In

doing so, it was proposed that the option to provide transferring staff with access to a broadly comparable scheme should be removed.

3.1.1 On 19 April 2018, the Government response to the consultation confirmed commitment to strengthen Fair Deal but noted concerns raised and is now consulting on new proposals.

3.1.2 Chapter 2 of the policy document sets out the new policy and welcomes comments from respondents on questions and Chapter 3 covers change that would provide automatic transfer of assets and liabilities to a successor body when an existing LGPS employer is taken over in a merger.

3.1.3 A summary of the proposals is set out below:

- Provisions apply to England & Wales only
- Introduces the concept of a 'Fair Deal employer' (which is wider than the definition of a best value authority) and 'protected transferees' who as a consequence of being employed by a 'Fair Deal employer' will retain the right to participate in the LGPS for as long as they are wholly or mainly employed on the outsourced service (even through any subsequent transfers)
- Removes the option to transfer 'protected transferees' to a broadly comparable scheme
- In a change from the previous policy, employees of Police and Crime Commissioners will be classed as Fair Deal employers. So the Fair Deal requirements will apply to all LGPS employers except further and higher education bodies, colleges and admission bodies.
- Uses the current provision for 'deemed employers' as an option to the current requirement for a contractor to have an admission agreement. Under the 'deemed employer' route, the original outsourcing employer remains the employer for pension purposes (this is similar to the current scenario for LA maintained voluntary schools)
- Fair Deal employers in relation to these transfers must have regard to advice provided by the Scheme Advisory Board on matters to be considered including risk sharing
- Transfers back into the LGPS from a broadly comparable scheme will be treated as individual transfers into the LGPS using current GAD factors
- Introduces a new provision for the automatic transfer of assets and liabilities within and between funds where there are reorganisations or mergers, without triggering an exit valuation.

3.1.4 The questions as listed in chapter 2 and 3 are :

- Protected transferee -Question 1- Do you agree with the definition?
- Fair Deal Employers –Question 2 –Do you agree with this definition of a fair deal employer?
- Transitional arrangements- Question 3— Do you agree with these transitional measures?
- Question 4 – Do you agree with our proposals regarding the calculation of inward transfer values?
- Risk sharing and the deemed employer approach: Question 5 – Do you agree with our proposals on deemed employer status?
- Question 6 – What should advice from the scheme advisory board contain to ensure that deemed employer status works effectively?

- Responsibility for employers- Question 7 – Should the LGPS Regulations 2013 specify other costs and responsibilities for the service provider where deemed employer status is used?
- Existing arrangements- Question 8 – Is this the right approach?
- Timely consideration of pensions issues- 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?
- Public sector equality duty- 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?
- Transferring pension assets and liabilities- Question 11 – 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 regarding the terms of asset and liability transfers?

3.2 Mercer have prepared a brief overview of the New Fair Deal consultation which covers their high level views on each of the main changes as a helpful guide to informing your opinions:

3.2.1 Overall Proposal

Employees whose employment is outsourced from a “Fair Deal employer” will be guaranteed to be able to access the LGPS. The option of the new employer establishing a “broadly comparable” scheme as an alternative will effectively become redundant.

Mercer View	Comment on proposal
Overall, this seems to us a sensible proposal. Broadly comparable schemes are relatively rare in practice and we think this will achieve more consistency of approach with other public sector schemes.	Where a service provider currently has a broadly comparable scheme, that service provider and the outsourcing authority will need to prepare for a change of approach when the contract is next retendered. It is important that authorities review their historic contracts to consider if they are affected.
The draft regulations define a “protected transferee” as someone who has transferred from the Fair Deal employer at the outset, and also clarify that an employee who joins after the contract has started does not acquire protected status when the contract is retendered. We see the definition of Fair Deal employer as a general policy decision, but it does not seem unreasonable.	The scope is similar to existing provisions, albeit a little wider, which simplifies matters and provides greater clarity. It does mean that employers will need to be clear on its policy decisions and ensure the Fund is kept up to date on these.
Under draft regs 3B(1) and 3(B)11 it appears that employees working for a different Fair Deal employer from the one carrying out the outsourcing are not protected. This seems unlikely to be a policy decision so needs clarity for all parties.	The Regulations seem to us to introduce an anomaly in this area, best illustrated by an example. If, say, an academy school sources its cleaning service from the local authority in its area, but decides it wants to outsource that service then the academy is not the “Fair Deal employer” in relation to those employees, and our reading of the draft Regulations is that these employees’ pension rights are not protected. If, on the other hand, they had been working directly for the academy school then the academy would be their “Fair Deal employer” so

	<p>the employees would be protected. For consistency of treatment we would suggest that such employees should be protected by virtue of the fact that they are working for a Fair Deal employer, but either way we feel this should be a deliberate policy decision.</p>
<p>Admission agreements There is a specific provision for admission agreements to be able to include risk sharing arrangements although we can see no reason why this couldn't be done previously.</p>	
<p>This change should add more flexibility to the drafting of admission agreements</p>	<p>Traditionally our preference has been for admission agreements to be standardised and simply reflect the responsibilities of all parties on participation. Any risk sharing arrangements could be covered in the contractual agreements as they are a matter for the authority and the outsourced employer. This would still be our preference but by allowing for this explicitly it could help Funds with clarity on how the employer should be treated and what arrangements are in place. This is particularly important with the introduction of Exit Credits in 2018 as many Funds are not party to the agreements between the authority and outsourced employer, and this can result in unnecessary payment of monies out of the Fund when an employer exits with a surplus funding position.</p>
<p>The “deemed employer” route The consultation proposes an alternative route for achieving pension protection, by allowing the Fair Deal employer to be regarded as the relevant employer for pension purposes. It will be the Fair Deal employer’s choice, when initially putting the contract out to tender, whether the Admission Agreement or Deemed Employer approach will be used. This makes it imperative that each Fair Deal employer has a clear policy on the treatment of each type of employer.</p>	
<p>This is a simplified method of achieving pension protection for the employees, as it avoids the new employer having to consider and sign an admission agreement with the Fund. It could be used in conjunction with some limited risk sharing (i.e. where the contractor is only responsible for redundancy costs) between the Fair Deal employer and the new employer, but in our view any significant passing of the pensions risks to the new employer would be better served by the existing approach using an admission agreement with the Fund.</p>	<p>Main benefits:</p> <ul style="list-style-type: none"> • Simple to put in place as no admission agreement needed • Very convenient for contracts done on a pure “pass-through” or “fixed cost” basis • Can incorporate some limited risk sharing arrangements relatively easily, albeit probably only the more straightforward ones such as early retirement strains and awards of additional pension • It avoids the need to assess exit debt or credit for the Fund at the end of the contract. <p>Issues needing further consideration:</p> <ul style="list-style-type: none"> • The admission agreement approach works better than Deemed Employer where the outsourced employer takes on wider risks, as the admission agreement route provides for a better segregation of the assets and liabilities from the those of the Fair Deal employer

	<ul style="list-style-type: none"> • Clarity will be needed on whether the Fund deals for administrative purposes with the Fair Deal employer or the new employer (it could be a mixture of both, and Funds may still need to establish a separate employer code for the new employer e.g. for dealing with payroll queries) • Clarity will be needed on whether the new employer operates its own discretions policy or whether the Fair Deal employer's policies will apply • Clear communication will be needed and Funds/employers will need to update the relevant policies • The contribution rate in respect of the outsourced employees will need to be agreed and documented, as will the mechanism for making payments under any risk-sharing arrangements: given that there is no direct link between the Fund and the new employer, we would expect these would be matters between the Fair deal employer and the new employer and as such would need to be covered under the contractual arrangements. However, there would need to be a clear agreement on how costs (e.g. strain costs on redundancy etc) would be funded and by whom. Specific allocation of costs would mean that the deemed employer would still need to be monitored somehow unless it was a complete pass through of all costs
--	--

Transfer of benefits when existing contracts end
When an existing contract, operated with a broadly comparable scheme, comes to an end then the employees will have a right to transfer their benefits from that scheme to the LGPS.

<p>The employees concerned will be able to take a transfer from their existing scheme and use it to secure career average benefits within the LGPS, we suspect using the normal LGPS transfer in terms (although the intention here needs to be clarified). Under the proposals, the relevant LGPS or Fair Deal employer will <u>not be able</u> to refuse such a transfer. This will mean additional (and potentially large) risk and cost is taken on by the Fair Deal Employer.</p>	<p>The number of contracts operated on the basis of a broadly comparable scheme is relatively small, and the proposal will obviously apply only to those still in service at the end of the contract, so we suspect it will have only limited effect in practice. It does not provide the employees with full continuity of pension benefits. However, given that the transfer in terms offered by the LGPS are currently relatively generous compared to those normally offered in private sector schemes, on average we suspect members will not lose out if this proposal is implemented and may in fact gain in relative terms. Nevertheless, we would expect there to be a mixture of gainers and losers. If there are guaranteed transfer terms written into the original contract then these could be very generous and could produce windfall gains for members.</p>
--	--

Exiting employers – automatic onward transfer of assets and liabilities

Where an employer exits an LGPS Fund and transfers the employees to a successor employer, it is proposed that the pension liabilities will automatically transfer on to that successor employer, even if that successor participates in a different LGPS Fund.	
There has been concern amongst some Funds about the potential for employers to be dissolved without paying off any exit debt (whilst in some cases even transferring the active members to a successor employer). This amendment seeks to change that, by making any successor employer responsible for the original employer's LGPS assets and liabilities, even if the successor employer is in a different LGPS Fund.	In our view the aim of this policy is sensible, and on the whole it will work well when the intention is for the assets and liabilities to simply consolidate into one Fund. However, we have concerns about it not needing the consent of at least the receiving Fund as essentially it could increase risk to taxpayers if the employer could not support the combined liabilities in the long term – for example where an employer with a weak covenant consolidates a large pension deficit in one Fund. We would therefore prefer it to still require consent to provide some protection and perhaps a simplified version of the current process of applying to the Secretary of State for agreement to consolidation would be a better way of achieving this.

3.3 **Timeline**

- 3.3.1 The deadline for submissions is 4th April 2019. Members are asked to consider the questions and agree responses to be submitted to MHCLG by the deadline of 4th April 2019

4. **Implications**

4.1 **Financial implications**

None applicable to this report. Financial implications will be included in each report to the Pensions Sub-Committee as necessary.

4.2 **Legal Implications**

None applicable to this report.

4.3 **Environmental Implications**

None applicable to this report.

4.4 **Resident Impact Assessment:**

The Council must, in carrying out its functions, have due regard to the need to eliminate unlawful discrimination and harassment and to promote equality of opportunity in relation to disability, race and gender and the need to take steps to take account of disabilities, even where that involves treating the disabled more favourably than others (section 49A Disability Discrimination Act 1995; section 71 Race Relations Act 1976; section 76A Sex Discrimination Act 1975."

- 4.4.1 An equalities impact assessment has not been conducted because this report is seeking opinions on a government policy document and therefore no specific equality implications arising from this report.

5. Conclusion and reasons for recommendation

5.1 Members are asked to consider the questions and agree responses to be submitted to MHCLG by the deadline of 4th April 2019

5.2

Background papers:

None

Final report clearance:

Signed by:

	Corporate Director of Resources	Date
Received by:		

Report Author: Joana Marfoh
Tel: (020) 7527 2382
Email: Joana.marfoh@islington.gov.uk