

27th March 2019

Private and Confidential

LGF Reform and Pension Team
Ministry for Housing, Communities and
Local Government
2nd Floor, Fry Building
2 Marsham Street
London, SW1P 4DF

Dear Sir/Madam,

Local Government Pension Scheme: Fair Deal – Strengthening pension protection – Policy Consultation

Thank you for inviting West Sussex County Council, as both Administering Authority and a participating employer under the LGPS to respond to the Department's consultation paper on the above.

The County Council agrees with the consultation response provided by Hymans Robertson, who acts as our Fund Actuary, and also that provided by the Local Government Association and the Local Government Pension Scheme Technical Group.

Protected Transferees

Question 1 – Do you agree with this definition?

The County Council is happy in principal with the definition of a protected transferee.

The County Council agrees points 16 and 17, with the exception that:

- The County Council's preference would be to define "wholly or mainly" employed as being more than 50% of their time in the management or delivery of such services as are set out in the contract. This is proposed to ensure a consistent approach and not allowing for Authorities to interpret this differently.
- The County Council would welcome clarity over point 17 and how this would be managed and tracked by a Fair Deal employer, particularly where a contract could be in place for a number of years, and who the responsibility to track this should fall to.

The County Council do not believe that under point 18, an option to extend the protections should be included in the Regulations. This is due to the fact that this adds an additional layer of complexity to the procurement process; it makes monitoring who is protected more complex; it potentially creates conflict with the guidance 'Fair deal for staff pensions: staff transfer from central government' for academies and other central government bodies that participate in the LGPS.

Fair Deal Employers

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

The County Council is in agreement with the definition of a Fair Deal employer as detailed in the consultation.

Transitional Arrangements

Question 3 – Do you agree with these transitional measures?

The County Council agree the transitional measures set out in points 24-25.

The County Council is concerned that there may be unintended disadvantages created to certain employees where under point 26 by removing access to broadly comparable Schemes in a future re-tender they could:

- Be required to leave a broadly comparable scheme this is actually better than the LGPS
- Lose a final salary link to their pension rights accrued in any broadly comparable scheme.

The County Council appreciates the wider policy intention of not allowing new broadly comparable arrangements being agreed when outsourcing new services, however consideration should be taken as to whether in a re-tender situation an option to retain a broadly comparable scheme, when this advantages an employee, should be given.

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

The County Council agrees that the proposed calculation of inward transfers seems reasonable.

However, the County Council is concerned by the compulsory nature of the removal of a broadly comparable scheme and the lack of any specific protection for those accrued rights where they are being transferred in to the LGPS. An employee cannot transfer final salary benefits in a broadly comparable scheme in return for similar benefits within the LGPS.

Deemed Employer Approach

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

The County Council is supportive to the introduction of a 'deemed employer' status within the LGPS. There are concerns however that the introduction of a deemed employer status may simply introduce a different set of issues for all parties to resolve.

Under points 32 and 37 the County Council feels Funds can still have a legal agreement if they chose but the main contract between the outsourcing Fair Deal employer and service provider must detail how the two parties deal with pensions and risk sharing.

The County Council would stress that the Fair Deal employer must have full regard to its liabilities and financial requirements in terms of any outsourcing should be

strengthened, as must have 'full regard' is not strong enough and needs to be set out in the regulations.

The County Council would also stress strongly that the success of deemed employers falls onto the contractual arrangements between the Fair Deal employer and the contractor. Administering Authorities must not be responsible for the contractual relationship.

Question 6 – What should advice from the Scheme Advisory Board contain to ensure that deemed employer status works effectively?

The County Council would agree that guidance would become critical in this area; however it is believed that this should be statutory guidance issued by the Secretary of State and not the Scheme Advisory Board. This is to ensure it has the greatest effect.

Any guidance provided would need to focus on the specific elements of the relationship between the Fair Deal employer, the service provider with a 'deemed employer' and the Administering Authority.

The guidance should include:

- signposting to provisions that are already covered within the regulations;
- details of accounting requirements;
- basis for setting contributions for 'deemed employers';
- Exercising employer discretions;
- Day to day roles and responsibilities e.g. contributions
- Exiting obligations at the end of the contract.

Responsibilities of employers

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

The County Council believes that if a robust contract is in place, and all parties are fully aware of their obligations, there is no further need to set out legislation any additional costs or responsibilities.

Administering Authorities will need to ensure their processes are flexible enough to manage monthly contributions and year-end information coming from two separate sources (if this is the route taken) for member records held under one employer.

Existing arrangements

Question 8 – Is this the right approach?

The County Council is supportive of the deemed employer approach. However being mindful that Funds can still choose to use admission agreements in certain circumstances, which is reasonable.

It is felt that a Funds Funding Strategy Statement is the appropriate place to set out risk sharing arrangement options.

Timely consideration of pensions issues

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

The County Council is aware that there are sometimes gaps in the admissions process. It is however in full support that all parties need to engage with administrators early in the process.

We would support that the Regulations state that the deemed employer route is the Administering Authorities default option but that employers can adopt different approaches where it is appropriate.

The County Council, identifying that pensions are quite often a last thought in a procurement process, it would support a requirement for any procurement exercises to be signed off by the S.151 officer (or equivalent) before they can proceed, to ensure that consideration to all necessary pension related matters have taken place.

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?

Other than those that have already been identified within our response the County Council is in agreement with your assessment, and have nothing further to add.

Transferring Pension assets and liabilities

Question 11 – is this the right approach?

The County Council is in principal in agreement with the approach proposed.

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

The County Council is in agreement that the draft regulations broadly achieved the aims.

We are in agreement with the suggested amendments that are proposed by our Fund Actuary, Hymans Robertson, in their consultation response.

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

The County Council is in support of the recommendations set out by our Fund Actuary, Hymans Robertson, in their consultation response, as it is felt that actuarial input is needed to answer this question in detail.

Yours sincerely