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Please ask for: Yvonne Caddock

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c/o **LGPensions@communities.gsi.gov.uk**

Dear Sirs

Local Government Pension Scheme Fair Deal - Strengthening Pension Protection

I refer to the above mentioned consultation document and I am responding to the invitation for comments on behalf of Wirral Council in its capacity as the Administering Authority for Merseyside Pension Fund (MPF).

The Fund is part of the Local Government Pension Scheme (LGPS) and the 4th largest of the 88 funds, with assets in excess of £8.5bn. MPF undertakes the LGPS pension administration and investments on behalf of the five Merseyside district authorities, over 180 other employers on Merseyside and elsewhere throughout the UK. The Fund has over 130,000 active, deferred and pensioner members.

Our Response

Principally MPF concurs with the overall policy intent of the regulations and the statutory requirement for employees who are compulsorily transferred from a "Fair Deal employer" to be granted guaranteed access to the LGPS.

The removal of the 'broadly comparable' option along with the use of the current admitted body framework will avoid any ambiguity for staff in regard their future pension provision. It should also assist in simplifying the tender documentation for Scheme Employers when outsourcing contracts.

Furthermore 'broadly comparable' schemes are, in practice, relatively rare and their removal from the legislative process will achieve a consistency of approach with other public sector schemes.

In considering the individual questions posed, we provide the following comments:

Q1 - Do you agree with the definition of protected transferees?

MPF agrees with the stated definition of a protected transferee and that a member who has transferred from a Fair Deal employer should retain eligibility to participate in the LGPS.

We note the continuation of current practice where contractors enter into an 'open' admission agreement in order to permit access to the LGPS for staff employed on the service delivery post-transfer. We recognise these staff would be treated as protected

transferees under the regulations if the Fair Deal employer and service provider both agree under the contractual arrangements.

The draft regulations include provisions for either the Fair Deal employer or the service provider to determine whether staff employed post-transfer are no longer protected transferees, and as these staff will not acquire protected status when the contract is retendered it appears disingenuous to attach protected transferee status in these circumstances.

Although in the main MPF's experience is that the majority of admission applications are "closed" to new members and as such the incidences of employers and service providers reversing an employees protected pension status is likely to be minimal.

Q2 - Do you agree with the definition of a Fair Deal employer?

The definition of a Fair Deal employer does not seem unreasonable as the scope is similar to existing provisions, although a little wider which simplifies administration and provides greater clarity for staff, employers and service providers.

MPF is of the opinion that excluding higher and further education corporations may increase future out-sourcing in this sector, leading to a reduction in membership and long-term participation of the LGPS - although we are cognisant of the different approach being undertaken due to their status as private sector employers.

It appears that draft regulation 3B(1) and 3B(11) suggest that employees working for a different Fair Deal employer from the one carrying out the outsourcing are not protected; for example, in circumstances where an academy school sources services from a local authority, and then subsequently outsources the service. As the staff are employees of the local authority, then the academy is not the "Fair Deal employer" and our interpretation of the draft Regulations is that these employees' pension rights are not protected.

However, if they had been working directly for the academy school then the academy would be their "Fair Deal employer" so the employees would be protected. This anomaly requires clarification for all parties along with a policy decision to remove any ambiguity in dealing with future contracts or inequitable treatment of staff.

Q3 - Do you agree with these transitional measures?

Q4 - Do you agree with our proposals regarding the calculation of inward transfer values?

As it is the intent for new Fair Deal to supersede the Best Value Direction it is fit and proper that those previously covered under the direction become protected transferees under the LGPS Amendment Regulations 2019.

When an existing contract comes to an end, which operated with a broadly comparable scheme, it is reasonable to allow staff to transfer benefits accrued upon their re-joining the LGPS – thus securing career average benefits using normal LGPS transfer-in terms.

As broadly comparable schemes connected to outsourced contracts are rare and with the proposals only applying to those in service at the end of the contract, it is likely that the transfer route will have limited effect.

It is noteworthy that inward transfer values would not provide the employees with full continuity of pension benefits. However, as the transfers terms in operation by the LGPS are relatively generous compared to those in the private sector, it is likely members will not suffer any detriment to their pension savings.

The former Fair Deal guidance promoted the use of Bulk transfers to facilitate the seamless movement of pension rights for outsourced contracts. In our experience bulk exercises are usually lengthy processes involving actuaries on both sides, and individual transfers would be quicker to resolve with no actuary fees incurred.

Q5 - Do you agree with the proposal on deemed employer status?

Q6 - What advice should the Scheme Advisory Board provide to ensure the deemed employer status works effectively?

MPF believes that the proposed approach to introduce deemed employer status is practical and is a simplified method of achieving pension protection, as it avoids the new employer having to consider and enter into an admission agreement.

Deemed employer status will be less onerous where contracts are constructed on a pure “pass through” basis and avoids the need to assess exit debts or credits at the end of the contract. This approach could be used in conjunction with limited risk sharing arrangements between the Fair Deal employer and the new service provider, for example, where early retirement strains are picked up by the contractor. Although in the event of the full pension risks passing to the service provider the existing admission agreement approach is appropriate.

It is imperative that the Scheme Advisory Board (SAB) provide a comprehensive statement of the various pension risks for consideration along with a comprehensive list of the full responsibilities that each party has to the administering authority in their respective roles.

Specifically, it will be necessary for the Scheme Advisory Board to provide direction for administrative purposes as to whether:

- Funds should deal with the Fair Deal employer or the new employer;
- Funds need to establish a separate employer code for the new employer e.g. for dealing with reconciliation of contributions and payroll queries;
- The new employer operates its own discretions policy or whether the Fair Deal employer’s policies will apply;
- The employer contribution rate in respect of the outsourced employees is remitted to the Fund from the service provider or the deemed employer along with the mechanism for making payment under any risk sharing arrangements.

In addition, engagement between schools and local authorities must improve to ensure that all are aware of potential outsourcing exercises. Schools need to recognise the importance of pensions when outsourcing services and the requirement to proactively liaise with the local authority in determining the appropriate route to provide pension protection.

Q7 - Should the LGPS Regulations 2013 specify other costs and responsibilities for the service provider where deemed employer status is used?

As there is no direct link between the Fund and the new employer we would expect there to be clear statutory direction as to how pension costs are to be funded between the parties under cover of the contractual arrangements or for the regulations to provide a default position.

Furthermore, specific allocation of costs would mean that deemed employers would still need to be monitored, unless there was a complete pass through of all costs to the Fair Deal entity.

Q8 - Is this the right approach to existing arrangements.

The admission agreement approach works better than Deemed Employer where the outsourced employer takes on wider risks, as the admission agreement route provides for better segregation of the assets and liabilities from those of the Fair Deal employer.

The provision to include risk sharing arrangements within admission agreements should add more flexibility to the drafting of admission agreements. To date MPF has used standard admission agreements and any risk sharing arrangements are covered in the contractual agreements as they are a matter for the authority and the outsourced employer.

MPF is mindful that the inclusion of risk sharing clauses will provide Funds with clarity on how the employer should be treated at termination of the admission agreement. 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 the outsourced employer and this can result in unnecessary payment of monies out of the Fund when an employer exits with a surplus funding position.

Q9 - 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?

Full statutory guidance should be cascaded to employers within the LGPS, to ensure that they comply with guidelines and understand the full implications of their responsibilities.

Fair Deal employers should be required to declare the approach they are taking at the tender initiation stage to avoid ambiguity amongst all parties and to facilitate administering authorities and employers to plan appropriate resources and support the timely consideration of pension issues.

Q10 – 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?

No

Q11 – Is the proposed approach to transferring pension assets and liabilities the right approach?

Q12 – Do the draft regulations effectively achieve our aims?

Q13 – What should guidance issued by the Secretary of State regarding the terms of asset and liability transfers?

There has been concern across the LGPS about the potential for employers to be dissolved without paying off any exit debt. 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.

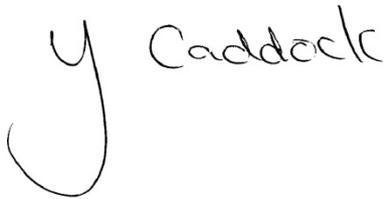
MPF believe the aim of this policy is sensible, and on the whole it will work well when the intention is for the assets and liabilities to simply consolidate into one Fund.

Although, we have concerns about it not needing the consent of the receiving Fund, as it could increase risk to taxpayers if the employer could not support the combined liabilities in the long term. We therefore think it appropriate that consent should be required from the receiving Fund in order to seek relevant protections. Furthermore, a simplified version of the Secretary of State Direction regime to gain agreement for consolidation would be preferred.

In conclusion, MPF supports the majority of the proposals for strengthening pension protection, on the assumption that there is clear Statutory Guidance issued by SAB.

Principally the consultation raises issues which need to be considered in detail by employers, and it is critical that each employer engaged in outsourcing forms its own view and policies on the issues raised. Whilst there will be an impact on Funds, this will be in terms of putting in the correct administrative processes so that decisions reached by employers can be implemented in an efficient and effective manner.

Yours faithfully

A handwritten signature in black ink, consisting of a large, stylized 'Y' followed by the name 'Caddock' in a cursive script.

Yvonne Caddock

Head of Pensions Administration