

<b>Essex Pension Fund Strategy Board</b>	<b>PSB 07</b>
<b>Date: 6 March 2019</b>	

## **New Fair Deal Consultation**

Report by the Technical Hub Manager

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### **1. Purpose of the Report**

- 1.1 To share with the Board's a consultation launched by the Ministry of Housing, Communities and Local Government (MHCLG) concerning the proposed introduction of the Government's New Fair Deal principles into the Local Government Pension Scheme (LGPS).

### **2. Recommendations**

- 2.1 It is recommended that:

- The Board note the consultation, and the Fund's draft response included at Appendices A and B and make any comments or observations as appropriate.
- The Board agree, subject to any required amendments, the draft response included at Appendix B to this report and note that officers are still in discussions with advisers which may mean further minor amendments are made before the Fund's final response is submitted.

### **3. Background**

- 3.1 The Government's Fair Deal policy provisions originate with the Cabinet Office's Statement of Practice (COSOP) in January 2000 which required outsourced public servants to be provided with a pension scheme that was broadly comparable to their public service pension scheme.
- 3.2 COSOP did not apply directly to local government although the Local Government Association (LGA) supported its principles and in March 2003 the Code of Practice on Workforce Matters in Local Authority Service Contracts was issued. It stated that Best Value authorities (Councils, Police & Fire authorities etc) would apply the COSOP principles and this was usually achieved in the LGPS by access to the LGPS via an admission agreement.
- 3.3 This was given statutory force in 2007 when the Best Value Authorities Staff Transfers (Pensions) Direction was issued by the Secretary of State, meaning that Best Value employers transferring staff to another employer because of a service contract must ensure pension protection of either continued LGPS access via an admission agreement or access to a 'broadly comparable' pension scheme.
- 3.4 New Fair Deal guidance was introduced in October 2013 by HM Treasury which removed the option of a 'broadly comparable' scheme; it is non-statutory guidance and applies to central government departments, agencies and the NHS and was also extended to cover Academies. But it does not apply to Best Value authorities which remain covered by the Direction and, therefore, the 'broadly comparable' route remains an option although it is rarely used.
- 3.5 In 2016, CLG undertook a consultation on bringing the provisions of New Fair Deal into the LGPS but it contained some widely criticised proposals such as the provisions applying to all LGPS employers including admission bodies and did not proceed.

### **4. New Fair Deal Consultation**

- 4.1 On 10 January 2019, MHCLG launched another consultation on the proposed introduction of the Government's New Fair Deal principles into the Local Government Pension Scheme (LGPS) – see Appendix A.
- 4.2 In summary, the proposals:
  - Introduce the concepts of 'Fair Deal employer' and 'Protected transferee';

- Fair Deal Employer includes all LGPS employers except admission bodies and FE/VI Form college/HE Corporations (which will have the option to require continued LGPS access, as they do now, but no obligation):
  - Fair Deal Employers must ensure transferring staff have ongoing access to the LGPS;
  - Introduces the 'Deemed Employer' route (similar to a LA voluntary school) as an option for the Fair Deal Employer - staff would remain employed by the Fair Deal Employer for LGPS purposes;
  - SAB guidance will be issued to help Fair Deal Employers put in place service contracts which give them flexibility and protect them from the potential risks;
  - An Academy can only use the Deemed Employer route if it has followed DfE guidance re provisions to include in the service contract;
  - The admission agreement route remains an option if the Fair Deal Employer does not want to be the Deemed Employer but the option of using a 'Broadly Comparable' scheme has been removed;
  - Fair Deal Employers should confirm the approach they intend to adopt (i.e. Deemed Employer or admission body) at the point they are inviting bids from potential service providers; and
  - The service contract must state whether continued access to the LGPS will be via the Deemed Employer route or via the admission body route.
- Protected transferee status for individuals compulsorily transferred by a Fair Deal employer under a contract, they will have a right to stay in the LGPS:
  - Will remain a Protected transferee for so long as they remain 'wholly or mainly' employed on delivery of the service of function transferred;
  - If an individual is transferred to an employer offering another public service pension scheme, they will not be eligible for LGPS;
    - But they will still be a Protected transferee, so they have protection if subsequently transferred to an employer which does not offer another public service pension scheme.
- When existing contracts are re-tendered:

- the staff will become Protected transferees and gain a right to membership of the LGPS; and
  - transfers from a broadly comparable scheme to the LGPS will be treated as a normal individual transfer-in.
- 4.3 The consultation also contains proposals that would automatically transfer LGPS assets and liabilities when employers in the scheme are involved in a merger or takeover.
- 4.4 The deadline for responses is 4 April 2019.

## **5. Response to consultation**

- 5.1 A draft fund response can be found at Appendix B and the Board are asked to make any comments or observations as appropriate.
- 5.2 The draft response has been shared with Fund employers for their information when considering their own responses to the consultation.
- 5.3 Officers are still in discussions with advisers and may make further amendments, subject to agreement by the Chair, before submitting the Fund's final response by the 4 April 2019 deadline.