

Essex Pension Fund

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LGF Reform and Pensions Team
Benefits Consultation
Ministry of Housing, Communities and Local Government
2nd Floor, Fry Building
2 Marsham Street
London, SW1P 4DF

Your Ref:
Date:

Dear Sirs,

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

The Essex Pension Fund welcomes the opportunity to comment on the proposed amendments to the rules of the Local Government Pension Scheme (LGPS). We are responding in our capacity as an Administering Authority within the scheme.

Our response commences with some specific comments and concerns and follows with responses to the individual questions raised in the consultation document.

SPECIFIC COMMENTS AND CONCERNS

We generally welcome the proposals to strengthen the protection for employees compulsorily transferred from relevant LGPS employers and to potentially simplify the arrangements for doing so. However, we note the proposals would make that protection statutory for local government employees which differs from the protection offered to the rest of the public sector by New Fair Deal. Whilst this will be welcomed by employees, it may not be welcomed by all Fair Deal employers.

The concept of the proposed 'Deemed Employer' provisions is potentially a positive move and could reduce funding risk for administering authorities. However, it is unlikely to make administration any easier because the administering authority is still going to deal with another additional employer to obtain contributions and the required information to be able to administer the pensions for the transferred employees (and could in fact make administration more complicated if there is a lack of clarity about where responsibilities lie between the Fair Deal employer and the service provider). It could lead to better value for local authorities as it allows the potential for smaller companies and providers to bid for contracts they cannot currently bid for due to the uncertainty of pension costs and risk; this would increase competition and could, therefore, lower prices. We welcome the promise of advice for Fair Deal employers from the LGPS Scheme Advisory Board although much will depend on the content and quality of that advice.

We believe the wording of the proposed definition of “service provider”, inserted by Regulation 5(4) of the draft amendment regulations, could be tightened up to make it clearer that it also applies to a sub-contractor where the service is immediately sub-contracted out by the main contractor.

We have concerns regarding the proposed automatic transfer of pension assets and liabilities when an LGPS scheme employer is merged into or taken over by another organisation and is in deficit at the time. We believe there needs to be some further amendments to protect Funds from a weakened funding position;

- the assets and liabilities should only be transferred to the successor body if the administering authority (of the successor body) is satisfied with its covenant, which may require the provision of a bond or other security depending on the nature of the successor body. If the administering authority is not satisfied with the successor body's covenant, the exiting employer provisions of Regulation 64 should apply to the original employer;
- also, if assets and liabilities are transferred to the successor body which is in the same Fund as the original employer, -then ~~the successor body~~ should be required to make the deficit payments the original employer would have been required to make from the date of the merger or takeover until the next valuation in order to maintain the funding position.

QUESTIONS

Fair Deal

Protected transferees

Question 1 – Do you agree with this definition?

Yes, we agree with the definition.

Fair Deal employers

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

Yes, we agree with the definition.

Transitional arrangements

Question 3 - Do you agree with these transitional measures?

Yes, we agree with the transitional measures.

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

Yes, we agree with the proposals.

The ‘deemed employer’ approach

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

The concept of the proposed 'Deemed Employer' provisions is potentially a positive move and has the potential to reduce funding risk for administering authorities. However, it is unlikely to make administration any easier because the administering authority is still going to be dealing with an additional employer to obtain contributions and the required information to be able to administer the pensions for the affected employees. (and could in fact make administration more complicated if there is a lack of clarity about where responsibilities lie between the Fair Deal employer and the service provider – see our answer to Question 7 below). It could lead to better value for local authorities as it allows the potential for smaller companies and providers to bid for contracts they cannot currently bid for due to the uncertainty of pension costs and risk; this could lead to a more competitive market.

We welcome the promise of advice for Fair Deal employers from the LGPS Scheme Advisory Board although much will depend on the content and quality of that advice.

Question 6 – What should advice from the scheme advisory board contain to ensure that deemed employer status works effectively?

As a minimum, the advice should cover:

- the advantages of risk sharing/pass through arrangements;
- the setting out of responsibilities between the two employers;
- how the Fair Deal employer will be protected against decisions of the service provider that affect pension costs (e.g. above inflation pay awards).

The advice should also cover the respective advantages/disadvantages of the Deemed Employer and admission body routes so that Fair Deal employers give this sufficient consideration at the outset.

Responsibilities for employers

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

Yes, we believe the respective responsibilities of the service provider and the Fair Deal employer need to be clear and should be specified in the LGPS Regulations 2013.

Existing arrangements

Question 8 – Is this the right approach?

Yes, we believe this is the right approach. As in our answer to question 6 above, we believe the advice should also cover the respective advantages/disadvantages of the Deemed Employer and admission body routes so that Fair Deal employers give this sufficient consideration at the outset.

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?

Commented [CP1]: Question 6 of the consultation asks what the SAB advice should contain to ensure that deemed employer status works effectively. This question is not addressed in the response -I'm not sure if this is deliberate or has simply been overlooked. If it has been overlooked, some examples that you may wish to include in your response to this question include the advantages of risk sharing/pass through arrangements; the setting out of responsibilities between the two employers; how the Fair Deal employer will be protected against decisions of the service provider that affect pension costs (e.g. above inflation pay awards).

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Commented [CP2]: The draft regulations as currently written put the decision whether to use deemed employer or admission agreement with the Fair Deal employer. You may wish to suggest that a provision is added that the Fair Deal employer must consult with the service provider/Administering Authority before making its decision about which is the best approach.

In our experience there are varying degrees of engagement by local authorities in the pensions aspects of outsourcing. We strongly believe, to effect any real change, there needs to be a default regulatory position which can only be changed if the Fair Deal employer specifies in the tender documents, so it is clear to all bidders from the outset. The default position should require the Deemed Employer route to be used and all pension costs to be retained by the Fair Deal employer except those arising from decisions made by the service provider, i.e. decisions where costs may be payable under regulation 68 of the LGPS Regulations 2013 and salary increases more than the assumptions made by the fund's actuary. The default position would generally be the one most likely to lead to better value in outsourcing contracts because it means that bidders have a degree of certainty around pension costs and do not have to build in a margin to allow for unknown pension costs which can significantly impact on the value for money achieved.

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?

As mentioned above, we note that the proposals would make that protection statutory for local government employees which differs from the protection offered to the rest of the public sector by New Fair Deal.

Transferring pension assets and liabilities

Question 11 – Is this the right approach?

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

We believe this is the right general approach and that the draft regulations do achieve the stated aims. However, we do have some concerns and feel there needs to be some further amendments to protect Funds from a weakened funding position where there is a merger or takeover;

- the assets and liabilities should only be transferred to the successor body if the administering authority (of the successor body) is satisfied with its covenant, which may require the provision of a bond or other security depending on the nature of the successor body. If the administering authority is not satisfied with the successor body's covenant, the exiting employer provisions of Regulation 64 should apply to the original employer.
- if assets and liabilities are transferred to the successor body which is in the same Fund as the original employer, then ~~the~~ the successor body should be required to make the deficit payments the merged or taken over employer would have been required to make from the date of the merger or takeover until the next valuation in order to maintain the funding position.

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

Commented [CP3]: Your response does not cover Q 13 of the consultation, about what SoS guidance about the transfer of assets and liabilities should cover. It's not clear if this is deliberate or has been overlooked. If it has been overlooked, some examples that you may wish to include in your response to this question include clarity about how the transfer value to be paid will be arrived at, particularly in cases where fewer than 10 members are involved (as the bulk transfer requirements of Reg 103 only apply where more than 10 members are involved); and whether the transfer of pensions in payment will be automatic or not.

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The guidance should make clear a requirement for the successor body to satisfy the relevant administering authority in relation to its covenant and to provide a bond or other security where deemed necessary. The guidance should also provide clarity around how the amount to be transferred will be arrived at.

Yours sincerely

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