

DELEGATED RESPONSIBILITIES

	Delegation to Officer(s)	Delegated Officer(s)	Communication and Monitoring of Use of Delegation
1.13	Agreeing the Administering Authority responses where the consultation timescale does not provide sufficient time for a draft response to be approved by PFC.	PFM and either the CFM or COPR, subject to agreement with Chairman and Deputy Chairman (or either, if only one available in timescale).	PFC advised of consultation via e-mail (if not already raised previously at PFC) to provide opportunity for other views to be fed in. Copy of consultation response provided at following PFC for noting.
<p>Action Taken</p> <p>LGPS (Amendment) Regulations 2016 [Fair Deal for staff pensions in LGPS who are compulsorily transferred to another service provider] – the DCLG issued a consultation on proposed changes to the LGPS Regulations 2013 (SI/2356), and the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 (SI/525). The response to this consultation was not shared with Committee due to time constraints. The response is included overleaf.</p>			

Flintshire County Council Response to Consultation Administering Authority of the Clwyd Pension Fund

High level comments

We understand from our advisors that New Fair Deal has been reasonably successful in its aim of achieving a more effective and attractive marketplace for those contractors providing services to central government and other bodies who participate in the unfunded public service schemes.

Participating in the LGPS via admitted body status is, of course, already available to contractors who wish to choose that route, although the terms offered are generally very different from those under New Fair Deal by the unfunded public service schemes.

Making it compulsory for contractors to participate in the LGPS, *without addressing the financial risks of admission*, may have a negative impact on the competitiveness of the market for local government services.

We take the opportunity to describe some of the significant financial risks and other factors which can deter contractors from bidding. These are factors which can also create inefficiencies in the pricing of local authority contracts. The proposed method of implementing Fair Deal reform for the LGPS will not address these issues. Specifically:

- **There is no reduction in pensions risk for a contractor** on becoming an admitted body, as the contractor retains financial risk while participating in the LGPS – quite different to the terms contractors are familiar with when dealing with the unfunded public service schemes where, for example, there are limited deficit risks attached to participation. Whilst these financial risks can sometimes be mitigated (e.g. via risk sharing arrangements or “pass through” approaches to determining the pension costs), this often takes separate negotiation in each case and has to be achieved via the commercial contract rather than the admission agreement.
- **Requirement for a bond, indemnity or guarantee:** The financial security of each contractor will be assessed prior to admission; and Funds have varying criteria for that assessment. This can mean that the circumstances in which a bond, indemnity or guarantee must be provided can vary widely across Funds, as can the amount required. For contractors, there is also the risk that the amount of bond required increases during the term of the contract.
- **Exit Debts.** Contractors are rightly wary of the amount of exit debt that can accrue over the life of a contract.

From our perspective as a Fund, clarity of policy practice and operation will be critical for success. At a practical level (and ultimately to achieve greater efficiency of public services for taxpayers) once the regulations have been finalised we support a requirement that all Funds should align their policies accordingly. We would like to see best practice guidance issued, from the appropriate source, such that those policies are developed / refreshed and that applications are consistent.

Detailed Comments on the Chapter 2 Proposals

1. **Retenders:** Under paragraph 15 in the consultation, where the incumbent contractor provides a broadly comparable scheme, we note it is intended that bidders for an existing contract will not be required to provide previously compulsorily transferred local authority staff with access to the LGPS. We have concerns about this. Requiring access to the scheme would be simpler, fairer and consistent. All bidders would be submitting tender responses on a consistent basis, and outsourced employees would be treated equally; such a policy would be consistent with New Fair Deal for central government staff.
2. **Welsh Direction:** Paragraph 3 says that the Best Value Direction will be repealed in due course. The Consultation document indicates that the proposed changes to the LGPS regulations will have effect in Wales also. It would be useful to have confirmation in the government response that it is their expectation that the Welsh Ministers will also revoke the Welsh Authorities Staff Transfers (Pensions) Direction 2012 in due course.
3. **Protection for current members of Broadly Comparable schemes:** After the Best Value Direction is repealed (Paragraph 3), we presume that a mechanism will be put in place that obliges contractors with broadly comparable pension schemes to continue to provide this scheme for employees who were originally compulsorily transferred from local government and who continue to work on local government services or functions. Once the Directions are removed, if these employees are not protected transferee members, how will these employees receive pension protection? **Is it the policy intention that an employee transferred to a contractor who provides a broadly comparable scheme be afforded pension protection on subsequent transfers?** If not, this would appear at odds with Fair Deal principles. In addition, it contrasts oddly with the alternative situation, where compulsorily transferred individuals will retain protection if the incumbent contractor is an admitted body.
4. **Accrued Benefits (Paragraph 16):** We recognise that bulk transfers on the re-tender of central government contracts under New Fair Deal have hampered some deals, and left some members' pension arrangements in limbo. Given this experience, we agree that there should be no requirement for bulk transfers of accrued rights on second generation contracts.
5. **Widening the scope of Pension Protection.** We note the much wider scope of the protected transferee definition compared to the existing Best Value Directions definition of who must be offered protection. For example, it appears that the eligible staff of almost all admission bodies will be treated as protected transferees on a compulsory transfer, even where the employee is not working on a function or service that was originally transferred from local government. **We request clarity on the policy intention here.** Our interpretation is that the proposals would extend these provisions to all those working for admitted bodies and alternative delivery models (including new recruits who may never have previously had direct public sector employment). This would be a major policy change, requiring private sector bodies like charities and transport companies, who participate in LGPS for historical reasons, to protect local government pension provision if services are outsourced.
 - i. If this is the policy intention, then in the interests of efficiency, given the construction of the proposals, we would request that the responsibility for tracking Protected Employees should rest with the Protected Transferee Employer. In such circumstances that the member no longer satisfies the wholly or mainly employed criteria, the Protected Transferee Employer must inform the Administering Authority accordingly.

- ii. It would also be useful to have clarification of what “wholly or mainly employed on the delivery of the service or function transferred” in draft regulation 4 in proposed Regulation 3(1C) of the Local Government Regulations 2013 means in practice. For example, there is a clear understanding that “wholly and mainly engaged” means 50% of the employee’s time in the context of both the Principal Civil Service Pension Scheme and NHS Pension Scheme. A standardised definition for the LGPS would be welcome here, as our understanding is that practice varies across the Funds.
6. **Role of Administering Authorities.** The proposals place a much greater onus on the Administering Authorities when facilitating transfers than is currently the case. At times of significant change in the LGPS we request that these additional requirements are revisited and scaled back. An example includes the necessity for the Fund to pass a “determination” to allow an independent service provider to enter an admission agreement, and the associated publication of the list of admission agreements entered into (under draft regulation 30), and also note our comments under 5(i) above.
7. **Lender of last resort coverage.** We believe there is a drafting oversight where the extant Regulation 64(3)(a) has not been updated to extend the “lender of last resort” coverage to protected transferee employers (in addition to the current admission bodies).

Other Comments on the Chapter 3 – Changes to 2013 Regulations

Repayment of Surplus

The consultation proposes that any surplus owed to the contractor on exit is to be paid back to that contractor by the LGPS Fund within a month of exit (or a later date if agreed with the contractor):

- This has been perceived by contractors as a longstanding anomaly and is therefore welcome, as it will address their concerns regarding surplus contributions becoming inaccessible, and encourage greater willingness to pay contributions to Funds to address deficits. One month seems a short period to allow however, and we would suggest a longer period of three months is permitted for payment.
- The individual funding basis and termination policy for each Fund will have a direct impact on how this operates. Therefore all LGPS Funds should be required to set transparent policies, perhaps within the existing Funding Strategy Statement, that prescribe the appropriate termination bases for calculating the exit surplus or deficit. More certainty for contractors should result in more efficient pricing.
- From the Funds' perspective there should be a mechanism to disapply the payment of an exit credit where the circumstances warrant it. For example, in cases where the exiting body would not have been liable for any deficit then the Fund should not be expected to pay an exit credit (e.g. if the commercial contract had been drawn up so that pension contributions are determined on a "pass through" basis).
- From our Fund perspective and contracting authorities, we would not expect an exit credit normally to be payable in relation to an admission agreement entered into before the new Regulations take effect. In such cases the commercial arrangements will have been drawn up on the basis of the existing regulatory provisions, and Funds and contracting authorities would not expect the new regulations to disturb existing contractual commercial terms.

Transfers

1. Paragraph 16 & 17

We would make the additional point that the inclusion of a bulk transfer-in power, on terms to be agreed by the respective schemes' actuaries, would be helpful from an operational perspective. This is certainly the case in light of the New Fair Deal proposals, and the existence of many broadly comparable arrangements.

2. Paragraph 18

Individual transfers in respect of prior service to the contractor's section can lead to funding shortfalls. These can be potentially material relative to the basis on which the scheme is funded. This is a risk over which a contractor has no control. We suggest that the ability for members to transfer in benefits from the schemes of previous employers is subject to employer consent (or the benefits awarded in respect of the transfer are calculated by reference to the current funding basis). We note that transfer transfer-in facilities are now very rare in the private sector.

Admission Agreements

Sometimes LGPS participation documentation is not always completed in time for the commencement of the contract; where this happens, we welcome the proposed changes that will clarify that administering authorities can agree that an admission agreement has retrospective effect.

Membership before 1 April 2014 – (Paragraph 23)

Actuarial neutrality is not necessarily achieved simply by the reduction of benefits due to early payment as this requires benefits to be divided into tranches and reduced differently (for example, due to differing retirement ages and local funding actuarial assumptions). Provided a clear consideration of the actuarial neutrality has been carried out by GAD, we would be supportive of the proposals to remove consent for the category of member described in accordance with the government policy “Freedom and Choice in Pensions”. However, it may restrict sponsors’ ability to effectively manage retirement if they have less control. Any such implementation should be in a manner that does not increase cost or require additional funding from sponsors. Therefore the amendment to Regulation 3 of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 should explicitly require that the reduction factors are