

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

2nd April 2019

Dear Sirs,

Local Government Pension Scheme; Fair Deal - Strengthening pension protection Policy Consultation

The reply is from the East Sussex Pension Fund.

Question 1 – Do you agree with this *[protected transferee]* definition?

Generally we are happy with the broad definition of protected transferee, as drafted.

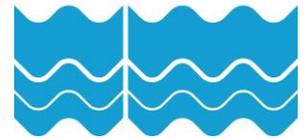
We agree LGPS employers must ensure protected transferees are given access to membership of the LGPS for so long as they remain transferee and have entitlement to membership of the scheme.

We do have a concern which we believe requires further consideration, which we have set out below;

- What is meant by “wholly or mainly employed” in draft Regulation 3B(5)? Regulation should clarify what “wholly or mainly employed” on a contract means, particularly for the more complicated scenarios, e.g. a provider may be running a number of services for different outsourcings in different LGPS Funds under a Framework Agreement. An employee may be 100% engaged on one contract at the commencement of the contract but later work across four contracts and split their time equally. If those contracts are aligned to four different outsourcing bodies in different LGPS Funds the employee risks losing their rights to LGPS membership.

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

Whilst we would like to offer security of the LGPS to a wider audience, including those employers excluding from Fair Deal, we believe that the definition of a Fair Deal employer as detailed in the consultation is reasonable.



Question 3 – Do you agree with these transitional measures?

We generally agree with the proposals, but care will be needed to address the issue of current service providers sub-contracting part or all of the service to another service provider, which does not appear to be addressed in the regulations.

Question 4 - Do you agree with the calculation of inward transfer values?

We believe the proposed calculation of inward transfers seem reasonable. However, we do have concerns on any unintended consequences of the compulsory requirement to leave a broadly comparable scheme where the incumbent service provider is successful in any retender and join the LGPS. Understanding our concern we assume that any cash equivalents into the LGPS would be converted using non-Club transfer factors. We also assume that the trustees of the broadly comparable scheme would be able to reduce the value of any such transfer amount, reflecting its current funding position. The approach as set out in the consultation does seem to raise some concerns in this regard, which we are of an opinion, requires some further thought.

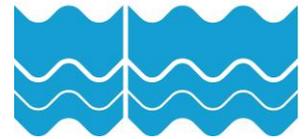
Question 5 – Do you agree with our proposals on deemed employer status?

In principle we agree with the proposal on deemed employer status but believe there are a number of administrative issues that should be resolved before this option can be considered. Please see comments below;

- The consultation document suggests the introduction of deemed employer status, and the requirement for Fair Deal employers and bidders to make a formal decision on whether to use an admission agreement or deemed employer route, will ensure pension issues are considered in a timely manner. We are of the opinion that this alone will not deliver to the expectation. In our experience delays in arranging admission agreements can be as the result of either;
 - The scheme employer overlooking pension protection matters when outsourcing, with the Fund officers only becoming aware of an outsourcing after the event; or
 - Scheme employers and contractors misunderstanding the guarantee/bond requirements, leading to delays in funding admission agreements.

Regardless of the requirements introduced in 3B(13) and (14) they place a greater onus on Fair Deal employers to deal with service providers and ensure they deliver. Our concern would be that the Fair Deal employers are not adequately resourced or educated to be able to monitor their contractors and demand that they meet their regulatory requirements. Similarly regulatory requirements and guidance alone will not immediately result in deemed employers being able to manage any better with complex matters such as exercise of discretions, Ill health, APC's etc.

In terms of the above, the Fair Deal employer must still manage these areas within the contact, apart



from those already covered in Regulation 68.

As advised above we believe there are still a number of practical issues to resolve to the deemed employer option. We are of the view that SAB guidance becomes essential in this area and that strong emphasis is given in that the success of deemed employers falls onto the contractual arrangement between the Fair Deal employer and the contractor. Administering Authorities must not be responsible for the contractual arrangements.

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

Our view is that unless there is a specific reason to do otherwise, a deemed employer should be treated like any other scheme employer.

We believe that guidance should focus only on those specific elements of the unique relationship between the Fair Deal employer, the deemed employer and the administering authority.

As regards scheme advisory board and any guidance our concern would be that in order to have the greatest effect that this should be statutory and as a result be issued by the Secretary of State and not the scheme advisory board.

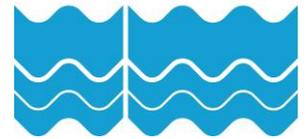
Question 7 – Should the LGPS Regulations 2013 specify other costs and responsibilities for the service provider where deemed employer status is used?

We are of the view that by having pension decisions made via the Fair Deal employer and with a sufficiently robust contract in place between the two parties no other costs and responsibilities need to be specified.

Administering Authorities will need to ensure processes are adequate to manage areas like monthly contributions and year-end information. Administering Authorities may also choose to have an SLA in place with the service provider and deemed employer in these cases. Further information from SAB on how the administration of the scheme in relation to the LGPS deemed employer should work in practice is essential.

Question 8 – Is this the right approach?

Please see our earlier comments regarding the deemed employer approach. We recognise this is an opportunity to offer more options in pension protections via the LGPS. However, we believe that employers will likely decide on the admission body route. This additional option could potentially add extra complexity on Administering Authorities as it adds another route that needs to be available.



We believe the Fund's Funding Strategy Statement is the correct place for determining risk share arrangements and legal admission agreements will reflect this.

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

We support the need to engage with all parties early in the process, but recognise that pension considerations are still often an after-thought in the outsourcing process, or where addressed as part of a procurement process.

Government could consider internal education for Fair Deal employers. It should be a requirement that any department that outsources work should have a base level of understanding of pension matters noting that procurement exercises can often be led by the department responsible for the service, which means little or no pensions experience builds up within the authority. It could also be considered to make it a requirement for Fair Deal employers to obtain a Pensions Information Memorandum, for dissemination to bidders.

We are of the opinion also, that automatic fines should be applied by the Fund to the Fair Deal employer if all pension issues and all legal documents are not complete before the staff transfer to the contractor. Additionally, failing cases should be recorded as material breaches and reported to the tPR from each Fund.

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 the information provided above we can think of no other equalities impacts or particular groups who may be disadvantaged as a result of these proposals.

Question 11 – Is this the right approach?

In principle we agree with the approach as proposed.

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

We are of the opinion that the draft regulations broadly achieved the aims. However, we believe the proposals are too simplistic and that there are issues to be addressed, which may require other changes to the regulations.



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

We believe actuarial input is required here to answer this question in detail. We do recognise that some key areas will focus on who has to agree the approach, whether there should be a time limit for payment and how advisory costs are to be dealt with.

Yours faithfully

Wendy Neller

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