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Yvonne Rees
Chief Executive

Sent by email to LGPensions@communities.gov.uk

Date: 8 March 2019

This matter is being dealt with by Sean Collins
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Dear Sir/Madam

Local Government Pension Scheme – Fair Deal – Strengthening pension protection

Thank you for the opportunity to comment on the proposed new Fair Deal Regulations. This response is on behalf of the Oxfordshire Pension Fund Committee who discussed and agreed it at their meeting on 8 March 2019.

Overall, we are happy with the Regulations as drafted and believe they are consistent with the principles the Oxfordshire Pension Fund have encouraged our scheme employers to follow in recent years. We do though have concerns about the proposals in Chapter 3 regarding the transfer of pension assets and liabilities.

Taking the consultation questions in turn, we would comment as follows.

Q1 – Do you agree with the definition of protected transferees? We are broadly happy with the definition of protected transferee. We do not believe the terminology is suited to those employees who take on employment in delivering the service after the transfer, as clearly, they do not have protected status if it can be removed by either the Fair Deal Employer or the service provider, and use of the term could create a false impression. We agree the opportunity to provide LGPS membership should though be available.

Q2 - Do you agree with the definition of a Fair Deal employer? We accept the definition of a Fair Deal Employer. We have concerns that the exclusion of higher and further education corporations may promote future out-sourcings, leading to a reduction in their membership and long-term participation in the scheme, but understand the different approach being applied to non-public sector employers.

Q3 – Do you agree with the proposed transitional measures?

Q4 – Do you agree with the proposed approach to calculating inward transfer values?

We are happy with the proposed transitional measures and the calculation of inward transfer values.



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?

We believe that the proposed approach to introduce deemed employer status is sensible and workable. It would be helpful if the advice from the Scheme Advisory Board could set out a comprehensive statement of the various risks that the parties should consider and include in the service contract, and a comprehensive list of the full responsibilities to the Administering Authority of both parties under the new arrangements. The consultation document is unclear in what is intended under the proposal, with reference in section on responsibilities for employers covering the responsibility of the service provider to deduct and pay over employee contributions, but no reference to employer contributions. It is not clear whether this would also fall to the service provider (our preference) or would fall to the Fair Deal Employer and is covered by the requirement on the service provider to provide sufficient and timely information. To ensure there is no scope for confusion, or for any key responsibilities to fall between the two parties, we would wish to see either the Regulations stipulate the responsibility of the parties in respect of returns to the Administering Authority, or a requirement to comply with the guidance. The guidance must then either specify the full responsibilities of all parties or require that these are fully covered in the service contract or admission agreement.

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

Again, as the Administering Authority, we would want to avoid a situation where there is any confusion over where responsibility for decision making and subsequent costs falls. We would expect such issues to be determined between the parties and included in the service contract, but would be happy for the Regulations to provide a default position unless otherwise amended within the service contract. Alternatively, as above, the Regulations can require compliance with the guidance from the Scheme Advisory Board, and this in turn can set out what must be covered within the service contract by way of responsibility for decision making and costs.

Q8 – Is this the right approach to existing arrangements?

Whilst our preference would be for the deemed employer approach, we accept that employers should be given the option of retaining the existing approach through an admission agreement.

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?

We support the requirement to require the pension arrangements to be set out in the service contract, and would like the guidance from the Scheme Advisory Board which states that Fair Deal employers should set out their intended approach at the point they are inviting bids, to have statutory status. Whilst these approaches are a positive encouragement to support the timely consideration of pension issues, it would also be helpful to set out the negative consequences of failure, including the consequences of failing to protect the pension provision of out-sourced staff.

Q10 – Are you aware of any other equalities impacts or 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?

We have a real concern about the proposed approach where the two employers are not currently members of the same Fund. This concern is based on a recent merger between a college in the Oxfordshire Fund and one in the Berkshire Fund. The key question is where the past service deficit sits after the merger. If it is transferred to the successor body, it is now under-written by the scheme employers and therefore tax-payers of the new Fund. As in many cases, the merger will be triggered by the weakening financial covenant of the secondary employer, then the risk of default cannot be ignored. We do not see it as appropriate to require the successor Fund and its scheme employers/tax payers to take on the new financial risk in such cases, where they have no say in the merger.

However, if the transfer of assets and liabilities was made on a fully funded basis, this would crystallise the deficit in the old Fund, which would need to be met by the soon to be merged employer, or would fall to be met by the remaining scheme employers and tax payers in the old fund, without any further contribution from the successor body. Again we would argue that this is not an appropriate solution.

In our recent college merger case, we therefore sought Secretary of State agreement to have the Oxford College admitted to the Berkshire Fund in respect of the staff transferred from the Berkshire college. Whilst this did have an increased administrative burden on the Oxford college who are required to make separate pension deductions and returns for the two sets of staff affected, we believe it is fairer to the remaining scheme employers in both funds, and the tax payers of both areas.

We hope the above comments are helpful in finalising the guidance.

Yours faithfully,

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Sean Collins
Service Manager (Pensions)
On behalf of Oxfordshire County Council as Administering Authority of the Oxfordshire
County Council Pension Fund