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Local Government Pension Scheme : Fair Deal - Strengthening pension protection

This letter sets out the London Borough of Bromley's formal response to the consultation issued on the "New" Fair Deal:

New Fair Deal – Draft Regulations

The London Borough of Bromley remains concerned with regard to pension protection arrangements for employees transferring to independent providers under TUPE Regulations. We previously expressed the view that retaining access to the LGPS, and no longer permitting the use of a broadly comparable scheme, would continue to impact on our ability to outsource work to external providers.

As identified previously, although outside the specific scope of this consultation response, Bromley remains concerned about the cost to employers of the new LGPS 2014. Details were provided in the "LGPS 2014 Proposals – Employer Consultation Form" and the response concluded that there was a missed opportunity to provide a more affordable and sustainable solution. The proposals on "Fair Deal" potentially widens the scope even further. Continuing pension protection on transfer with the scope widened will have a greater detrimental impact on the Council's ability to outsource work to external providers who may be unwilling or unable to take on the financial implications of staff retaining the right to remain in the LGPS. Indeed, we are already seeing this with some of our outsourcing proposals. Action to more effectively address both of these matters would have ultimately reduced the strain on pension funds with resultant reductions in costs for Council tax payers whilst supporting the required transformation agenda. These are key matters that we would want to be addressed to enable a more sustainable solution to be found.

Our response to individual questions is provided below:

Protected transferees

Q1. Do you agree with this definition? (points 15 – 18)

We agree with the definition as this broadly in line with the current position. We however do not agree with Regulation 3B (7) extending this definition to allow Fair Deal Employers and service providers to treat non-transferring employees protected status.

Fair Deal Employers

Q2. Do you agree with this definition of a Fair Deal Employer? (points 19 to 23)

We agree with the definition of a Fair Deal Employer.

Transitional arrangements

Q3. Do you agree with these transitional measures? (points 24 to 26)

We agree with the transitional protections offered to protected transferees which are broadly in line with current regulation but eliminate broadly comparable schemes being considered.

Q4. Do you agree with our proposals regarding the calculation of inward transfer values? (point 26)

We agree with the calculation of inward transfers for members transferring back in from broadly comparable schemes.

The 'deemed employer' approach

Q5. Do you agree with our proposals on deemed employer status? (points 27 to 39)

We agree with the deemed employer status as this removes some of the administrative complexities and costs of setting up an Admission Body in the fund.

We do however feel that further clarity is required in certain incidents of outsourcing. An example is where the Council is currently the deemed employer (i.e. School staff), who would become a deemed employer where a service is outsourced? Would this now be the School or would it continue to be the Council?

We also feel that a pass-through arrangement should be a default position with the deemed employer retaining the pension risk as passing a pension risk to an outsourcing employer would again require a risk assessment and a Bond/guarantor to be in place. It would then be up to the deemed employer and the outsourcing employer to agree their own arrangements in their services contract.

For administrative ease, all pension cost (ill-health, redundancy, early retirement strain costs etc) should be the responsibility of the deemed employer and how the deemed employer recovers these should be in the services contract between the deemed employer and the outsourcing employer.

Q6. What should advice from the scheme advisory board contain to ensure that deemed employer status works effectively? (points 27 to 39)

The SAB needs to provide clear guidance for both deemed employers and outsourcing employers on how this model would work in practice including highlighting responsibilities of both. The guidance needs to clearly set out the employer responsibilities to the Adminstrating Authority and include guidance on how the pass-through arrangements could be structured.

Responsibilities for employers

Q7. Should the LGPS Regulations 2013 specify other costs and responsibilities for service provider where employer status deemed is used? (points 40 to 41)

Regulations should specify costs that would be covered by the deemed employer and should include specific reference to all pension costs (except contributions) are to be paid to the Adminstrating Authority by the deemed employer.

The deemed employer and the outsourcing employer should agree any pass-through arrangements in their services contract.

Existing arrangements

Q8. Is this the right approach? (points 42 to 43)

We agree on the principle of the approach but do not agree with the decision process. We feel the decision on admitting on a deemed employer or Admitted Body basis should be the Administering Authorities rather than an employer decision.

Timely consideration of pension issues

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? (points 44 to 46)

Current TUPE Regulations should ensure that pensions is an early consideration with the option for Adminstrating Authorities to fine failures to meet all administrative requirements set by the SAB guidance/Administrating Authority.

Q10. 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?

We are not aware of any impact of on equalities by these proposals.

Transferring pension assets and liabilities

Q11. Is this the right approach? (points 48 to 53)

We feel this is the right approach and covers what is currently done through legal agreements.

However, where there is a transfer of assets and liabilities between funds, this should be by agreement of the receiving fund as it would be the receiving fund that would be taking on risks associated with receiving large transfers.

Q12. Do the draft regulations effectively achieve our aims?

We feel that regulation should be clearer on the decision making process of transfer of assets and liabilities between funds with both involved in the decision making and the receiving fund making the final decision whether to accept or reject a transfer after considering the addition risk they take on due to a transfer.

Q13. What should guidance issued by the Secretary of State state regarding the terms of asset and liability transfers?

Guidance needs to be clear for transfers between funds and there should be no undue pressure for a fund to accept a transfer in, where there is a risk associated with it.

Actuarial guidance should also be standardised on the actuarial factors used to calculate the value of the asset and liability transfers between funds.

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