



## LOCAL GOVERNMENT PENSION SCHEME: FAIR DEAL - STRENGTHENING PENSION PROTECTION

Issued 4 April 2019

ICAEW welcomes the opportunity to comment on *Local government pension scheme: Fair deal - strengthening pension protection* published by the Ministry of Housing, Communities and Local Government on 10 January 2019, a copy of which is available from this [link](#).

This ICAEW response of 4 April 2019 reflects consultation with the Pensions Sub-Committee of ICAEW's Business Law Committee.

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## MAJOR POINTS

We welcome the proposed changes, which we note are to a large degree a 'catch-up' for local authorities; New Fair Deal was introduced in 2013 and has applied to Central Government and NHS but not Local Authority schemes. The current consultation follows up from earlier proposals in 2016.

The aim of these proposals is commendable - protecting employees, making LGPS administration of employers easier and providing the opportunity to take pensions risk out of the negotiation of (often short term) contracts to create a more level and competitive market. It is, however, fraught with technical complexities and potential unintended consequences, and we therefore provide some more detailed comments below.

## ANSWERS TO SPECIFIC QUESTIONS

### Protected transferees

#### ***Question 1 – Do you agree with this definition?***

No comment.

### Fair Deal employers

#### ***Question 2 – Do you agree with this definition of a Fair Deal employer?***

No comment.

### Transitional arrangements

#### ***Question 3 – Do you agree with these transitional measures?***

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

Transitional arrangements will in time see the wind down of broadly comparable schemes. It is not clear how sponsors will be able to control and manage this wind down with the seemingly endless member option to transfer. The right to transfer on set terms could generate funding issues for sponsors depending on current funding level as compared with the CETV basis, and will need to be considered in setting future funding and investment plans (to include management of cashflows out). Bulk transfer should be explored. Transfer on the CETV basis could lead to immediate funding strains in the LGPS.

### Risk sharing

#### The 'deemed employer' approach

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

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

Fixed contribution rates point to 'DC-style' accounting for pension costs by the contractor. However, this is a point to be confirmed up front as it will impact on how the administering authority for the LGPS records cashflow and membership information (ie, potentially not recorded as separate employer). Paragraph 36 of the consultation notes pass-through may be currently accounted for on a DB-basis and the 'deemed employer' route may enable DC treatment, yet paragraph 37 goes on to discuss pass back of risks which are pension costs via the service contract. In the event that a contractor is reporting pension costs only in relation to contributions paid and the Fair Deal employer retains responsibility for the risk these are insufficient to meet the associated pension benefit costs over the long term, there may be a requirement for the Fair Deal

employer to record a contingent liability in their own accounts, in relation to any known or potential underfunding.

Regarding the 'deemed employer' proposal for shared responsibilities, any such shared responsibility for legal duties creates uncertainty as to who is responsible for which element - data, liabilities and funding strain (for example, with enhanced terms on early retirement and salary increases). Whilst there may be opportunity to capture these issues within the service contract, the drafting and quality of individual service contracts could vary substantially making actuarial, accounting and audit duties potentially very complex. It will also throw a light on different funding approaches, for example level of prudence in future service rate vs past service. Some standardisation would be welcome.

Regarding the proposed LGPS Scheme Advisory Board (SAB) guidance and advice, whilst this will be directed at administering authorities and not employers (local authorities or other), it may provide limited value in achieving the clarity and consistency needed within service contracts to enable the LGPS to operate the deemed employer solution effectively and efficiently, as intended. Standardisation of treatment by LGPS funds from the outset would be a welcome aim.

### 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?***

The consultation states that, unless service contracts explicitly provide otherwise, responsibility for certain decisions that may give rise to costs arising should be retained by the service provider, as well as the responsibility for meeting those costs. However, this needs to cover both benefit and administration costs. On benefits, this should include anything relating to discretions and 'gifts' that the employer will own (early access to benefits, uplift from promotion). Ill health could be debated (as it is a lottery as to whether it arises on their watch). Administration would cover any costs the fair deal employer incurs as a result of the service provider not meeting its own obligations (at the extreme, tPR fine; otherwise cost levied by the administering authority in line with the pension administration strategy set under the LGPS regulations).

### Existing arrangements

#### ***Question 8 – Is this the right approach?***

No comment.

### 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?***

We note that the flow of information to pension funds on contract changes is already problematic and this has the potential to exacerbate. It would therefore be very beneficial for some more formal communication/notice arrangements to be introduced through the supporting guidance.

### 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?***

No comment.

### Chapter 3 – Transferring pension assets and liabilities

***Question 11 – Is this the right approach?***

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

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

Any ongoing need to track individual employer (including service provider) liabilities and assets will limit some of the administrative benefits of pass through. The ‘follow the actives’ and automatic approach seemingly proposed in paragraph 52 of the consultation could create significant movement between LGPS funds with unintended funding and contribution implications. Whilst the ability to transfer easily may be welcome, the terms of transfer should be for the local administering authorities to agree. We also anticipate that actuaries will have views on any attempts to standardise terms.