

Avon Pension Fund

Local Government Pension Scheme

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Dear Sir

Consultation; Local Government Pension Scheme Regulations

With reference to the current consultation regarding amendments to the Local Government Pension Scheme [LGPS], this is the response from Bath and North East Somerset Council as the administering authority for Avon Pension Fund which represents over 100,000 members (actives, deferred beneficiaries and pensioners [incl. dependants]).

The comments regarding the Fair Deal proposals are covered in appendix 1 and there is also a table of amendments for the proposed regulation changes in appendix 2.

This consultation is a combination of regulatory changes that are required to correct inconsistencies in the current regulations or to give clarification as well as the intentions regarding LGPS and Fair Deal. As a result there have been delays in producing this document. It is essential that some of these matters are put into effect quickly so that there are no continuing complications. The aggregation regulations are particularly long overdue.

If any area is likely to cause a significant delay then it is imperative that legislation is not delayed and separate releases would be made.

This authority supports in principle most of the recommendations made by Mercers, the Avon Fund actuary, and also The Local Government Association. Both responses do indicate the complexities involved in achieving clear legislation that assists in the administration of the LGPS.

Yours sincerely

Alan South

Alan South
Technical and Compliance Manager
Avon Pension Fund

The Fair Deal Proposals

In the course of preparing the response to the Government's consultation paper on draft regulations which will replace the 2007 Pensions Direction and various Fair Deal provisions, can you please include the following:-

This consultation includes details of how the Fair Deal provisions set out by the Government for unfunded public sector pension schemes can be applied to the funded LGPS.

Whilst most of the provisions are covered satisfactorily, there are some areas where provisions do not transfer over comfortably to the LGPS especially in the funding considerations and also areas that are not included, in particular, on retendering where the initial outsourcing was to a contractor with a broadly comparable scheme and unlike Fair Deal there is a lack of protection on a subsequent tender for the contract.

Greater consideration should therefore be given to ensure that such anomalies are removed.

There are obviously other changes, apart from those affecting Fair Deal and pension protection on transfer to the private sector, on which we wish to comment. However, so far as this particular issue is concerned, it seemed to me that there are five main areas of concern which are as follows:-

1. An admission agreement may take effect on a date before it is executed

Para 14 proposes to amend Part 3 of Schedule 2 by adding this provision:-

Unless there is genuine doubt about whether an admission agreement can be backdated (and we don't believe there is), we would be strongly opposed to this amendment.

In the majority of cases, the only reason that a request for backdating arises is because the outsourcing employer is guilty of maladministration when letting the contract. Invariably the commercial agreement has been signed before the necessary steps to put in place an admission agreement have been taken.

The Avon Pension Fund has normally taken a firm line in such cases, either requiring the implementation of the commercial agreement to be deferred or making the outsourcing employer continue to employ the staff – and seconding them to the contractor – until the admission agreement has been executed.

To clarify, the process for letting a contract should be as follows:-

- (1) Outsourcing employer obtains risk assessment.
- (2) Outsourcing employer decides whether the pensions risk is going to be transferred to the contractor or not and, if so, whether a bond will be required and what the size of it should be.
- (3) Outsourcing employer releases tender documents, which will make clear where the pension risk lies and, if the pensions risk is transferred to the contractor, whether a bond is required and its size.

(4) Outsourcing employer receives completed tender documents and selects contractor.

(5) Commercial agreement and admission agreement should be drafted simultaneously and, having been drafted to the satisfaction of the interested parties, executed on the same date.

We have made representations before that paragraph 6 of Part 3 of Schedule 2 is defective because it requires the admission body to obtain the risk assessment. On that basis the risk assessment would be obtained after the tender process is complete (quite clearly not consistent with proper process).

The Avon Pension Fund attempts to convey the message that an outsourcing employer should liaise with the Fund prior to tenders being invited. If the first time we have contact from the outsourcing employer is after the contract has been let (as implied by paragraph 6), it means that commitments have been made by outsourcing employer to the contractor with regard to contract start date without proper allowance for an admission agreement to be put in place.

The point we are making here is that, unfortunately, paragraph 6 encourages bad practice and needs to be changed. However, I accept that amending paragraph 6 is not part of this consultation.

In the meantime, the last thing we should be doing is encouraging bad practice by making the backdating of admission agreements “respectable”.

2. Definition of higher and further education institutions as “private sector bodies”

These institutions still receive substantial amounts of public money and are scheduled bodies in the Local Government Pension Scheme. In this context it is unreasonable for the Government not to provide some sort of guidance to these institutions as to whether transferees to private sector contractors should have their pension rights protected or not. Even if this guidance is not included in Fair Deal advice intended for the public sector, it should certainly be something which the Government should clarify in its dealings with those institutions.

3. Paragraph 15 of the Consultation Paper

This paragraph is very confusing, something which Government itself almost acknowledges by specifically requesting feedback on it. It is not clear why “explicit statutory powers” would be required to compel a bidder to provide access to the LGPS. Nor is the stated reason for a formerly transferred member not being classified as a “protected transferee member” at all convincing.

When broadly comparable schemes were initially permitted as an alternative to admitted body status, the presumption was that members of a broadly comparable scheme would be treated in fundamentally the same way as members of the LGPS. It is easy to imagine accusations of “betrayal” being levied by those members affected. This dilemma has to be solved so that all employees formerly transferred to a private contractor are treated the same. In the worst case scenario, accrued rights could remain with the broadly comparable scheme.

However, it is inconceivable that the collective wisdom of actuaries and lawyers who specialise in local government pensions cannot deliver an equitable solution.

4. Protection for employees of admitted bodies transferred to the private sector

There is a certain amount of logic behind the Government's proposal and on balance we would favour it. However, it does sit rather oddly against the Government's apparent abandonment of the higher and further education sector.

5. The omission of the guarantee from outsourcing employers

This appears to be a drafting error since paragraphs 13 and 14 of the consultation paper suggest that the Government is not intending to amend the current guarantee arrangements.

From the perspective of both Funds and contractors, 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 recommend that all Funds should align their policies accordingly. Indeed, we would like to see best practice guidance issued such that policies are required to be developed / refreshed and that applications at local level are consistent.

Draft Reg.	LGPS Regulations 2013	Section	Intention with comments
3	2 Insert new para (1A)	Local Government Service and Fair Deal	Agree with principles
4	3		
5	New 3B		
6	10(5)(a)	Temporary Reduction in Contributions [50:50]	Clarification
7	11(4)	Contributions During absence from work	Removes paragraph (c) employer permission as it is unnecessary
8, 9	17 and new 17A	Additional Voluntary Contributions (AVC)	
10	21	Assumed Pensionable Pay [APP]	Removes anomalies in the calculation of APP where pay varies over time by adding employer discretion to use different pensionable pay figure that closely reflects the normal pay of the member over longer periods of time
11	New 21 5B 22(8)		Sets out the process for calculating APP for returning officers to avoid disproportionately large benefits accruing
12	30(7)(b)	Pension Accounts: Aggregation Retirement Benefits	Urgently required as causing administration problems Corrects unintended consequence where someone whose employment is terminated due to redundancy or business efficiency has to take any deferred benefits they have at the same time
13	33 Due to new 17A	Election for Lump Sum instead of pension	Required change made as a result of the amendments for AVCs to ensure any resulting lump sum payments are included when identifying limits for lump sums
14	39(1)(a) and (2)(a)	Survivor Benefits	Bases any survivor's benefits on pension before death as opposed to earnings before ill health retirement
15	64	Special Circumstances Where Revised Actuarial Valuations and Certificates Must Be Obtained	Allows for exit credits to be paid to employers with no active members in the Scheme. Not available under previous regulations

16	68(2)	Employer's Further Payments: reduction waived	Administering authority can require employer to make payments in addition to regular employer contributions. This amendment includes occasions where an employer waives any actuarial reduction Correction to cover all situations
17, 18	96	Rights to payments out of the pension fund, and inward transfers of pension rights	Amends the regulations to confirm that transfers are made in accordance with the Public Sector Transfer Club and the provisions of the Club Memorandum.
19	101	Effect of acceptance of a transfer value	Amends the regulations to confirm that transfers in are either calculated in accordance with Club Memorandum or actuarial guidance from DCLG
20	Schedule 1	Interpretation	Includes some new definitions as a result of these amendment regulations and amends two existing definitions
21	Paragraph 5 Part 2 Schedule 2 Part 3 Schedule 2	Scheme employers	Changes "local authority" to "body" when referring to "An entity connected with a...." As an addition here reference is made here that no action has been taken on the Technical Group meeting decision on 11 September 2015 item 7 [Consideration for amendment to Regulation Schedule 2 Part 2 paragraph 5 "Entity connected with a Local Authority" to ensure that funds are protected It was also agreed to request a change in the Regulations to require the connected Local Authority to act as guarantor.] This needs including and would now require reference to "body"
22	Part 2 Schedule 3,	Pension Funds	Confirms that admission agreements can have retrospective effect and that notification to DCLG of new admission bodies is no longer required as list now required in regulation 3 Amendment as result of Draft reg 21 on "entities connected with..."

Draft Reg.	LGPS Transitional Regulations 2014	Section	Intention with comments
24	3 add para (5A)	<p>Membership before 1st April 2014: employers consent 2008 regs</p> <p>Members under previous revoked regulations</p> <p>Certain deferred members NPA</p>	<p>Removes requirement for employer's consent on deferrals under the 2008 regs opting for early payment between 55 and 60. Member would have actuarial reduction applied</p> <p>This amendment is supported to provide equal treatment as long as cost neutral</p> <p><i>Comments required on how to apply the previous to leavers prior to 2008 regulations [this would include pre rule of 85 cases]</i></p> <p>See comment after table</p>
25	3	9	Amendment to correct unintended result from current regulations
26	10	Transfers Interfund Adjustments etc. Contributions	<p>To ensure member is not worse off where the underpin applies</p> <p>To ensure uniformity within regulations</p>
27	14(2)		Clarifies contributions to be included in any refund where additional contribution apply from earlier schemes and have been aggregated into active account
28	15	Additional Contributions	No comment
29	Schedule 2 (rule of 85) in paragraph 1(1)(c) inserted condition	Rule of 85	Where employers consent is no longer required for early retirement of deferrals before April 2014 this amendment gives the same conditions regarding Rule of 85 as the current scheme
30		Transitional Provisions Transitional Provisions	<p>This amendment is supported to provide equal treatment as long as cost neutral</p> <p>Existing Admission Agreements are to be covered by the PSPA2013</p> <p>Administering authorities must publish list of admission agreements within 12 months of amendments coming into force</p> <p>Reference in main regs? As drafted reference would have to be made to the amendment regulations rather than the main LGPS regulations</p>

Members under previous revoked regulations

Comments required on how to apply the previous to leavers prior to 2008 regulations [this would include pre rule of 85 cases]

The complexity of the administration of LGPS has increased substantially over the past 10 – 15 years especially within the last 5 years with the increasing demands from HMRC allowances, shorter timescales for benefit statements, an explosion of scheme employers coupled with the fact that everything is being scrutinised by the local pension boards and the Pension Regulator.

This therefore seems an ideal time to streamline the historical legislative parts of the LGPS and this would be just part of this update.

Is it right in this era of “Freedom and Choice” that someone under some previous set of regulations may not have any? Not all members want to receive their deferred benefits at age 60 but have to because there is no provision under the regulations in place when they contributed to the scheme.

Modification ended in 1980 and all actives in the scheme at 1 April 1998 had their deductions removed but it still applies to deferred members and pensioners who left prior to this date. Is it not time to get rid of this administrative burden? [i.e. someone whose service began on 31 March 1979 would have a reduction of £1.70 per year from their pension when they reach age 65.]

There are numerous death grant calculations for pensioners and deferred members these could be harmonised.

Simplification would allow the governance standards to be more easily achieved

It is therefore requested that full consideration is given to not only cover just the early receipt of pension but also to bring all parts of the LGPS up to date with what the Government is trying to achieve with Freedom and Choice and to rid itself of idiosyncrasies of years gone by.