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# Information for employers on pension implications when outsourcing

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July 2012

## What happens to LGPS pension rights when jobs are transferred?

This guide is for employers in the Harrow Pension Fund who are looking to outsource a service to a private contractor through a contract or other arrangement.

This guide sets out your responsibilities and the pension related issues you will need to consider when outsourcing a service and the impact that your choices will have on the transferring staff.

This guide does not specifically cover instances where an employer ceases to provide a non- statutory function that it has been performing, or where jobs are transferred to another public sector employer via a machinery of Government initiative. Many of the principles in relation to pension protection of the staff involved set out in this guide may, however, still apply. In such cases it is important to contact the Pensions Office to discuss further.

Employment rights for pay, holidays etc, are protected by a law under the Transfer of Undertakings and Protection of Employment Regulations 2006 (or TUPE for short). However, although pensions are excluded from TUPE, they are covered by other Government measures.

The Government measures on pensions sit alongside TUPE and are designed to ensure that pension rights are protected when jobs are transferred to another public sector employer or private contractor.

You should read this guide carefully. If you have any questions after reading it you should contact the Pensions Office using the contact information on the back page.

*“The consequences of ignoring pensions when outsourcing services can be frustrating and costly. This guide is intended to inform employers in the Harrow pension fund of what needs to be considered in the outsourcing process”*

## What are your responsibilities?

Your responsibility depends on what type of employer you are in the Harrow Pension Fund.

### 1. You are a **service department within the Council**

The new employer is required by law to either:

- Continue to offer transferring employees access to the LGPS via an “**admission agreement**”; or
- Give access to a “**broadly comparable scheme**” with similar benefits to the LGPS.

Employers have been **legally required** to offer you these options since 2007 and this right is enforceable by the transferring employees. Transferring employees continue to be entitled to similar options if their job is transferred or outsourced again in the future.

### 2. You are **another LGPS employer (e.g further education college, an academy, a community admission body)**

The new employer will not legally be required to continue to give the transferring employees access to the LGPS via an admission agreement or to provide them with access to a broadly comparable pension scheme.

Guidance from the Government, known as ‘Fair Deal’, encourages the LGPS employer to require the new employer to offer one of these options, but they are not required to do so.

Where pension protection is being achieved via a broadly comparable pension scheme Fair Deal requires the LGPS employer and the new employer to consider offering the transferring employees the option to transfer their accrued pension rights in the LGPS under preferential terms (known as a “bulk transfer”).

### The options explained

**Admission agreements** allow transferring employees whose jobs are transferred to an external provider to remain in the LGPS as long as they are employed in connection with delivering the service that has been outsourced.

**A broadly comparable scheme** is one that should offer a similar level of benefits to the LGPS. A qualified actuary will look at the scheme to ensure that employees will not suffer a fall in benefits if they move into this scheme.

Government guidance also says that the pension rights built up in the LGPS will be protected if employees transfer them to the new employer's pension scheme. This is not covered by legislation, but is again covered under Fair Deal guidance.

### What is the legal requirement?

A statutory "Direction Order" was issued in October 2007 requiring a Best Value authority to provide for security of pension provision for each transferring employee and that pension protection is enforceable by the transferring employee.

### What is Fair Deal guidance?

Fair Deal is a statement of practice issued by Government that sets out the framework the Government expects all public sector organisations to work with.

Whilst there is a statutory obligation on local authorities for ensuring protection of pension benefits, Fair Deal guidance applies to all employers and says transferring employees should be given:

- the right to transfer their pension rights to the new scheme on a day for day (or equivalent basis); and
- if the job is transferred or outsourced again at the end of each contract, the right to again transfer benefits on an equivalent basis.

Where pension protection is being achieved via a broadly comparable pension scheme Fair Deal requires the LGPS employer and the new employer to consider offering the transferring employees the option to transfer their accrued pension rights in the LGPS under preferential terms (known as a "bulk transfer").

## How do I get started?

It is vitally important that officers who have responsibility for or have involvement in best value procurement or other forms of potential outsourcing **involve and discuss at the earliest opportunity** with the Shared Services Pensions Office the pensions implications of outsourcing employees and keep them informed right through the process. Failure to involve or consult with the Pensions Office at the outset can lead to delays which can be frustrating and costly.

## Who else is involved?

The LGPS regulations place great emphasis on the involvement of the Pension Fund actuary and this will involve additional (probably not insignificant) expenditure that will be recharged to the service area or employer initiating the staff transfer. **The Pensions Office will require a cost centre at the outset** to charge this expenditure to.

## Admission Agreement or a Broadly Comparable Scheme?

**This is the choice for the contractor.** It cannot be a condition of the Invitation to Tender.

However once the contractor has indicated their choice, that employer then has certain responsibilities as explained below.

### Admission Agreement –

Where the contractor chooses to go down the admission agreement route, the conditions for all parties (the contractor, the transferring employer and the Pension Fund responsibilities are all laid out in law.

The provisions are contained within the Local Government Pension Scheme (Administration) Regulations 2008, which outline the conditions that must be met and what must, as a minimum, be contained in the admission agreement.

A contractor signing up to the admission agreement is known as a Transferee Admission Body or 'TAB'.

An admission agreement can be an '**open agreement**' or a '**closed agreement**'.

In an open agreement transferring staff as well as new joiners of the contractor may be offered membership of the LGPS under the agreement. A closed agreement will restrict LGPS membership to the transferring employees only. It is important to advise the Pension Office what arrangement the contractor is choosing as it will impact on the actuary's assessment of the amount of contribution the contractor will have to pay.

As mentioned above, the Fund actuary will need to assess and set an **employer contribution rate** to apply from the date the contract starts based on the details of the employees transferred to ensure the proper funding for the scheme benefits that will accrue over the contract period. It is important to pass on the staff details to the Pensions Office at an early stage.

Bidders should be made aware of the **solvency** regime that exists within the LGPS and the management of **past, present and future liabilities**. These will be an integral part of the admission agreement but will need highlighting at the pre tendering and throughout contract discussions.

A very important **responsibility for the employer** is to carry out an assessment, taking account of actuarial advice, of the level of risk arising from the premature termination of the contract or arrangement by reason of insolvency, winding up or liquidation of the contractor. This assessment must be carried out to the satisfaction of Harrow Pension Fund. Where a level of risk is identified, the transferring employer/service department may require an **indemnity or bond** to be obtained by the contractor to meet that level of risk. This protects that employer/service department from any liability in the event of commercial failure but **in the event the bond does not meet all the liabilities then Harrow Pension Fund will require the transferring employer/service department to meet those liabilities**.

At the **end of the contract** or arrangement (for whatever reason) Harrow Pension Fund will obtain a cessation valuation of the outstanding liabilities attributable to the outgoing contractor. Any deficit will need to be recovered from the outgoing contractor and if this is unsuccessful it will be required from the transferring employer/service department.

### **Broadly Comparable Scheme**

As an alternative to retain membership of the LGPS via an admission agreement the pension rights of transferring employees may be protected by the contractor providing a broadly comparable pension scheme instead. Under this option pension benefits earned in the contractor's scheme must be of a comparable value to those that would have built up in the LGPS had they not compulsorily transferred to the employment of the contractor. This requirement applies to all transferring employees, including those that are not in the LGPS at the date of transfer.

A broadly comparable scheme does not need to offer identical benefits but it must offer the same range of benefits, with the same (or greater) overall value.

The contract bidders who intend to offer the broadly comparable solution should advise the LGPS employer of this early in the bidding process and provide full details of the scheme they will use to provide broad comparability. Broad comparability will then be assessed by an actuary under guidance issued by the Government Actuary's Department. While the bidder may provide a certificate of broad comparability from The Government Actuary this should not be taken at face value as being adequate. The LGPS has undergone many changes over the years and the certificate should be checked to ensure it is still valid and certifies comparability to the LGPS at the date the contract is to be let.


Where the transferring staff join the broadly comparable scheme they may also, if they choose to do so, transfer their LGPS pension to the new broadly comparable scheme under preferential **bulk transfer** terms. These terms require the broadly comparable scheme to provide credits in that scheme on a day by day or equivalent basis. The basis of the bulk transfer value will be agreed between the respective actuaries. It is vitally important that the Harrow Pension Fund's actuary is involved very early in the procurement process. The transferor will be required to bear the cost of the **actuarial fees**.

## Public Sector Pension Reform

Following a consultation process an announcement was made by the Government of its intention that the current Fair Deal arrangements will be revised, allowing transferring public sector employees the choice to retain membership of their current pension schemes. This approach has also been confirmed as part of the review of the LGPS, where it appears to be the only option to be made available to transferring employees. If this turns out to be the case it will create **a reducing window of opportunity** for a broadly comparable scheme to be available. Employers should be aware of this when determining contract start dates and the information provided in invitations to tender.

## Your checklists.....

# BEFORE THE INVITATION TO TENDER IS ISSUED

Action required	
Identify details of staff affected and the specifications for protecting pension rights	
Inform Harrow's Pension Manager of potential outsourcing and discuss pension implications for transferring staff	
Establish communication channels and regular contact with Pension Manager, outsourcing team and potential bidders	
Establish and include in the tender documents the specifications for protection of pension rights. A preference for an admission agreement may be expressed but not enforced. Explain that the offer of a broadly comparable pension scheme will need to be assessed by the Harrow Pension Fund actuary.	
Request Pension Manager to obtain from the Harrow Pension Fund actuary an indicative employer contribution rate for an open and a closed admission agreement	
Request Pension Manager to obtain from the Harrow Pension Fund actuary the bond value arising from the risk exposure arising from the premature termination of the contract	
Obtain a template admission agreement and prepare for discussions for the finalisation of the admission agreement on cost implications with the contractor that may feed into the final contract	
Request Pension Manager to obtain from the Harrow Pension Fund actuary the details of the bulk transfer terms that are proposed to be used in the calculation of the bulk transfer	

# WHEN THE TENDERS HAVE BEEN RECEIVED AND CONTRACT AWARDED

And the protection is going to be provided by			
Admission Agreement		Broadly Comparable Scheme	
Action required	✓	Action required	✓
Inform Pension Manager that protection of pension rights will be via an admission agreement		Inform Pension Manager that protection of pension rights will be a broadly comparable pension scheme	
Confirm intended contract start date with Pension Manager and any contractual agreements affecting pension costs		Confirm intended contract start date with Pension Manager	
Obtain details of 'final' employer contribution rate		Ensure any certificate of broadly comparable status is still valid	
Inform staff that protection of pension rights will be via an admission agreement		Inform staff that protection of pension rights will be via a broadly comparable scheme	
Ensure that the admission agreement is in place before the contract start date		Prepare for any discussions around bulk transfer terms	



### Where can I get **more information**?

If you need more information after reading this guide, you can contact the Pensions Office:

**By email**                      [linda.d'souza@harrow.gov.uk](mailto:linda.d'souza@harrow.gov.uk)

**By telephone**                020 8424 1426

**By writing to**                Pensions Office, Harrow Council, Civic Centre  
PO Box 57, Station Road, Harrow, HA1 2XF