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Our Ref: LGPS (Amendment) Regulations 2016
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Vincent Kiddell
Workforce Pay & Pensions
Department of Communities and Local Government
SE Quarter Fry Building
2 Marsham Street
London
SW1P 4DF

15 August 2016

Dear Vincent,

RE: Consultation on the Local Government Pension Scheme (Amendment) Regulations 2016

Surrey County Council (Surrey) welcomes the opportunity to respond to the Government's consultation on the Local Government Pension Scheme (LGPS (Amendment)) Regulations 2016, including the 'Fair Deal' proposals.

Surrey is the Administering Authority for the Surrey Pension Fund (the Fund) as part of the Local Government Pension Scheme (LGPS). The Fund has assets of over £3billion and includes more than 200 employers.

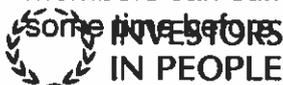
Special circumstances where revised actuarial valuations and certificates must be obtained

We are supportive of the proposed amendment to the LGPS 2013 Regulations (Regulation) 64, to allow for exit credits to be paid to employers that no longer have active members in a pension fund.

The current situation is inequitable as it allows for deficit repayment to be charged to, but, no corresponding surplus to be credited to exiting employers. We do however believe that a deadline of one month, by which the administering authority should make any exit credit due, is too short a time period and does not allow for administrative, actuarial or disinvest delays. ***We propose that any relevant surplus should be paid in a maximum of three months.***

Scheme employers – Draft Regulation 21

We welcome the proposal to allow administering authorities to progress with admission body applications without a finalised admission agreement being in place. Scheme members can suffer unnecessary distress, if they have transferred their employment some time before an admission agreement is finalised.



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It is nonetheless not desirable for the completion of admission agreements to be delayed for a significant period of time, not least due to the risk it can pose to the administering authority, transferring scheme employer and admission body. ***It is proposed that an undertaking be signed between all parties to abide by the regulations while the admission agreement is being finalised.***

Early payment of pension for members aged 55 and older – Draft Regulation 24

We support the proposed change that would allow members who left the LGPS with a deferred benefit under the 2007 Benefits Regulations to elect to receive an actuarially reduced pension between the ages of 55 and 59 without requiring their employer's consent.

We also support extending this to all other deferred members of the LGPS, incorporating the 1995 and 1997 Regulations. ***We believe this will provide for consistent treatment of all deferred LGPS members.***

Fair Deal in Local Government (Draft Regulations 3 – 5)

We broadly support the Government's proposals on how to deal with pension issues when staff are compulsorily transferred from bodies providing services connected to local government to replace the existing Best Value Staff Transfers (Pensions Direction) 2007 and compliment Fair Deal for staff employed in public sector pension schemes. However, we do have some queries, seek some further clarification and also see the proposals as an opportunity lost in its current form.

Protected transferee employers

Although we welcome the introduction of the new "protected transferee" category of employer in the Regulations we do have some comments and seek clarification on a number of areas:

1. In the Draft Regulations, 4, (2), b, the definition of eligibility for membership of the LGPS as part of a protected transferee admission body is;

"...for so long as that person remains wholly or mainly employed on the delivery of the service or function transferred".

This significantly expands the scope of Fair Deal and the current Best Value Direction and would appear to automatically include all sub-contracting by new employers (whereas this would not necessary be the case under the existing legislation).

Under current regulations community admission bodies that designated membership of the LGPS through an admission body, would not necessarily be required to ensure continued protection of that eligibility in a contracting out scenario.

However, under the proposed amendment regulations it appears that these bodies could find themselves having to guarantee continued access to the LGPS for staff, even if the service has no connection to a public service contract.

Is this the intention of the government and has account been taken of the potential knock on effect it could have in contract pricing and value for money to tax payers?

2. We seek further guidance or regulation on a standard definition of what constitutes *“wholly or mainly employed on the delivery of the service or function”*.

This definition appears to go beyond the existing definition, under the Regulations 20, Schedule 2, Part 3, 12 (a), of being;

“...employed in connection with the provision of the service or assets...”

The application of this definition is currently exercised by an administering authority discretion, but, we would welcome further guidance on the new definition of eligibility for the LGPS as a ‘protected transferee’ employer.

3. We welcome the inclusion of the requirement, under the proposed amendment regulations, to allow a mitigation of risk posed by the new ‘protected transferee’ employer through the extension of the provision of a bond, indemnity or guarantee, should the risk be considered to require it. This mirrors current practice for Schedule 2, Part 3, 1 (d) employers, as contained in the Regulations, Schedule 2, Part 3, 6-8.

We are, however, concerned that there is no corresponding protection for the Fund through a guarantee from the connected scheme employer, if for any reason it is not possible to obtain all or part of the exit payment due from a ‘protected transferee’ employer, as exists in the Regulations 64, (3), (a) in relation to Part 3, Schedule 2, 1 (d) employers.

We hope this is an oversight, in the draft amendment regulations, which will be amended before the statutory instrument is laid. If this is not the case it will severely impact the covenant strength of ‘protected transferee’ employers.

A proposed alternative approach to adopting the reformed Fair Deal in Local Government

The consultation asks for a recommendation of alternative approaches to adopting a reformed Fair Deal in local government. It is our contention that Fair Deal for local government should provide the best possible value for taxpayers and that this can be better achieved by more closely aligning it with how Fair Deal operates for other unfunded public sector schemes.

Fair Deal for unfunded public sector schemes does not encounter the issue of uncertainty of pension liabilities for contractors. Employer contributions are set by the national scheme and do not have a deficit repayment element.

The proposed Fair Deal for local government continues the current practice of leaving transferring scheme employers and contractor employers to negotiate pension risk at a local level.

Experience shows that, where contractor employers have unquantifiable pension liabilities included as part of the initial tender negotiations and potential material pension liabilities on their balance sheet during the contract term, any estimated or actual cost is invariably passed back to the transferring scheme employer (normally a local authority), sometimes at an inflated premium.

We do not believe this offers the best value for money for local taxpayers.

Our alternative solution would be for contractor employers to pay a fixed regular contribution rate and for all pension risk to be retained by the contracting employer; this is sometimes known as a pass-through arrangement.

It is acknowledged that this would require an assessment of the financial pension risk that the contracting authority was to retain and for this to be reflected in the contract pricing.

However, we believe that allowing this financial analysis to be part of the procurement process offers the opportunity to make the tender process more transparent and allows contractors to price contracts more competitively, with the clear benefit this offers to taxpayers.

Surrey is largely supportive of the proposed amendments to the LGPS Regulations and many aspects of the Fair Deal proposals. However, we do contend that a failure to remove pension risk from the tender process would be a wasted opportunity.

Yours sincerely



Sheila Little
Director of Finance