LGPS: CONSULTATION

BRIEFING NOTE ON PROPOSED CHANGES TO THE 2013 REGULATIONS

The draft 'Local Government Pension Scheme (Amendment) Regulations 2016' introduce the 'Fair Deal for Staff Pensions' for staff in the LGPS who are compulsorily transferred to another service provider.

Currently, such staff can retain membership of the LGPS through a tripartite admission agreement between the transferring scheme employer, the new service provider and RBWM as the administering authority to the Royal County of Berkshire Pension Fund (RCBPF) although the new service provider can, as an alternative, offer membership of a broadly comparable pension scheme to the transferring staff.

In Local Government, the 'Best Value Staff Transfers (Pensions Direction) 2007' currently sets out the level of pension protection afforded to employees of English best value authorities where the provision of services are 'outsourced'. It is intended that this Direction will be revoked.

As currently drafted, the amendment regulations will align with Schedule 1 of the Public Service Pensions Act 2013, and will provide pension protection for all employees who are eligible for membership of the LGPS and who are compulsorily transferred from local authorities or other scheme employers listed in the 2013 Regulations. This includes those employees who are designated as eligible employees of other bodies that participate in the Scheme through an admission agreement.

New terms will be introduced into the pension regulations:

- Protected transferee: an employee of a current Scheme employer who is compulsorily transferred to an independent service provider who does not offer a public service pension scheme. A protected transferee remains such a member for so long as they remain wholly or mainly employed on the delivery of the service or function transferred.

- Protected transferee employer: an employer who is obliged to participate in the LGPS for those protected transferees they received as part of a compulsory transfer. These can be profit-making or non-profit making employers. It is envisaged that such an employer could transfer staff into another protected transferee employer.

Independent service providers will be obliged to enter into an admission agreement so that the protected transferee can retain their eligibility for the LGPS. The costs of providing a local government pension to transferring staff should be clearly set out in tender documentation. All bidding organisations would be under the same pension obligations.

Protected transferee employers will be required to have a bond, indemnity or guarantee in place in order to mitigate against any risk of the employer falling into insolvency or failing to meet their pension obligations both during their participation in the Pension Fund and at the point that their participation ceases.

The 'New Fair Deal' rules will not apply to admission bodies that currently participate in the Scheme having been admitted under the 'Best Value Directive'. Such Scheme employers, and indeed new service providers, at the point of retender of those services already 'outsourced', will continue to have the right to seek admitted body status but it is not proposed that they will be required to do so.

This is because the staff were previously transferred under the 'Best Value Directive' and no longer employees of a Scheme employer.

Conclusion

In conclusion it would seem that 'Fair Deal' forces an independent service provider to become a 'protected transferee employer' of the Scheme thereby protecting the pension rights of staff who are compulsorily transferred by a Scheme employer. Independent service providers who do not offer a public service pension scheme must protect membership of the LGPS for those staff that they receive from a Scheme employer and will no longer be able to offer a broadly comparable pension scheme as an alternative.

This does have the effect of streamlining the whole process of admitting employers to the Pension Fund. However, experience shows that when services are 'outsourced' by local authorities (best value authorities) the independent service provider seeks admitted body status to the Fund as they cannot provide a broadly equivalent pension scheme as an alternative. The biggest impact of these changes to the regulations will, therefore, be felt by those Scheme employers who are not deemed to be best value authorities.

Under 'Fair Deal' the independent service provider must become a 'protected transferee employer', as opposed to having the choice of becoming an 'admitted body'. However, the employer will still be required to have a bond, indemnity or guarantee in place as part of an 'admission agreement' and so in practice there would appear to be very little, if any, difference in the way that these scheme employer admissions will be handled as a result of these changes in regulation.

What is clear is that Scheme employers who are considering 'outsourcing' services must ensure that they include details of the pension implications at the point of issuing tender documentation.

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