East Riding Pension Fund

# Local Government Pension Scheme

# Pension Obligations for Outsourcing and Employee Transfers

## Introduction

Many scheme employers find themselves considering the option of outsourcing a function of their organisation to a contractor. When this occurs it is imperative that consideration is given at an early stage to the pension obligations and that the scheme employer understands its responsibilities, both to affected employees who are members of the Local Government Pension Scheme (LGPS) and to the Fund.

**Please note that new LGPS regulations are expected imminently on Fair Deal guidance so it is important to contact the ERPF at the earliest opportunity to ensure that the latest regulations are being applied.**

All queries in respect of pension obligations for outsourcing and employee transfers should be directed to:

Graham Ferry, Pensions Manager, graham.ferry@eastriding.gov.uk, or
Liz Vollans, Assistant Pensions Manager, liz.vollans@eastriding.gov.uk

## Admitted Body Status

Admitted body status provisions were introduced into the LGPS in 1999 to allow contractors, who take on local authority services or functions, to offer transferring employees continued eligibility for the LGPS during the contract.

Local authorities as best value contracting authorities (including police and fire) are required to comply with The Best Value Authorities Staff Transfers (Pensions) Direction 2007. This means that a best value authority **must** secure pension protection for each TUPE transferring best value authority employee which must be the same as, broadly comparable to, or better than, those they had a right to acquire prior to the transfer.

The Fair Deal guidance published by HM Treasury applies to all other employers (including academies) and sets out how pension issues should be dealt with when employees who are members of the LGPS are compulsorily transferred to an independent contractor by way of a transfer to which TUPE applies. It is the existing employer's responsibility to ensure that affected employees are provided with access to the LGPS in their new employment while they continue to be employed on the transferred service or function.

Existing scheme employers who plan to award a contract which will involve a compulsory transfer of employees should make the Fair Deal guidance clear at an early stage to potential contractors. It is good practice for the outsourcing scheme employer to obtain an indicative employer contribution rate and bond amount from the actuary to include in the tender documentation before commencing a procurement exercise.

An employee affected by outsourcing whose employment is transferred to the successful contractor cannot continue to be a member of the LGPS until an admission agreement is in place. In many cases the application to become an admitted body can take several months and where applications are not submitted early enough this can result in employees losing their right to be a member of the LGPS for that period of time. It is strongly recommended that no employees are transferred until an agreement is in place.

## Existing scheme employer's responsibilities

As the outsourcing employer you have a number of responsibilities throughout the process:

- Seek legal advice on pension protection for transferring employees;
- Contact the East Riding Pension Fund (ERPF) at the earliest opportunity to make us aware of the potential outsourcing arrangement;
- Procure a mini valuation and obtain an indicative employer contribution rate from the ERPF's actuary, Hymans Robertson, to be included in the tender document, and an actual contribution rate once a contract has been agreed;
- Consider any guarantee or bond needed to cover the liabilities of the contractor should they be unable to meet their obligation for any reason;
- Consider whether the successful contractor will seek admission to the ERPF or a broadly comparable scheme. If they will be seeking admission to the ERPF establish whether;
    - I. this will be on a fully funded basis or will the contractor have a share of the deficit. Fully funded is where the letting authority retains the deficit at the date of transfer but any future changes to the past service deficit will be the responsibility of the new employer. Share of deficit is where the new employer takes on part of the past service deficit prior to the date of transfer;
    - II. the admission agreement is to be based on an open or closed agreement. A closed agreement is where only the TUPE transferred employees are eligible to remain in the LGPS. An open agreement allows new employees to join the LGPS provided they are working on the outsourced contract.
- Act as a guarantor and a party to the admission agreement, if the contractor seeks admission in the ERPF;
- Notify the pension fund of employees affected by the transfer.

## Potential Costs

The actuarial fees for an initial valuation to obtain an employer contribution rate and bond calculation will be approximately £2500 to £3000.

At the end of the contract there are cessation fees to be met by either the outsourcing employer or the contractor, in the region of £5000.

These fees quoted will apply even if the successful contractor is already an admitted scheme employer with the ERPF. This is because each admission agreement is treated as a new agreement.

Please be aware that there may also be charges under the Fund's Service Level Agreement to recover the cost of any work carried out by the Fund in the arrangement of the admission agreement. The Fund will always advise in advance if there are likely to be any charges.

## Action Steps

The flowchart below illustrates the process that needs to be followed for any outsourcing which will affect employees who are existing LGPS members. It is impossible to determine how long it will take for an organisation to achieve admission body status to the ERPF as it varies. The stages are described briefly below and further information can be provided upon request.

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Outsourcing employer notifies the ERPF of potential outsourcing at the tender stage

Outsourcing employer to procure a mini valuation from the actuary and obtain an indicative employer contribution rate to be included in the tender document

Outsourcing employer to determine contractual arrangements for pension liabilities and any guarantee or bond needed

Outsourcing employer notifies ERPF of the award of any contract including the name of the successful organisation, contract details and details of any transferring employees.

A formal application for Admitted Body Status is made by the successful contractor. Once the ERPF receives the formal application it will prepare a decision record for consideration by the Director of Corporate Resources of East Riding of Yorkshire Council, in consultation with the Chairman of the Pensions Committee. The ERPF will notify the successful contractor on the decision reached.

The ERPF will need to ensure the data of the staff transferring is correct and carry out any data cleansing. Details of the contract awarded and transferring staff will be re-submitted to the actuary for an actuarial report including the actual employer contribution rate to be issued.

The ERPF will instruct legal representatives to draw up and issue a draft admission agreement to the contractor and outsourcing employer.

Using the actuarial report, the outsourcing employer and the contractor are then required to carry out a risk assessment to the satisfaction of the East Riding Pension Fund.

Upon written confirmation on the above issues, and provided it is acceptable from the ERPF's perspective, the necessary admission documentation can be signed by all concerned parties. The contractor will then be set up as a new employer with the ERPF.