

CIPFA Pensions Network Workshops

Outsourcing & Shared Service Implications for Scheme Administration

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Topics to be covered

- Changes to outsourcing policy
- Changes to delivery of public services
- Shared Services - Issues to look out for
- Academies
- Case Study
- Latest LGPS Consultation

Changes to outsourcing policy

- What is Fair Deal?
- Future of Fair Deal?
- Best Value Direction Wales
- Two Tier Code

What is Fair Deal?



- Introduced in 1999
- Addresses 'TUPE gap' for public sector employees
- Facilitates outsourcing of public services
- Appended to Cabinet Office Statement of Practice in 2000 – Staff Transfers in the Public Sector
- Introduced pension protection on outsourcing

Fair Deal protection

- Continued access to “good quality occupational schemes”:
 - broadly comparable scheme, or
 - continued membership of LGPS via admission body status (ABS)
- Protection for accrued benefits left in LGPS:
 - Bulk transfer to broadly comparable scheme
 - Automatic protection under ABS option through aggregation of membership

Also Best Value Direction 2007!

- Applies to “Best Value Authorities” including English local authorities
- 1 October 2007
- Legally binding on local authorities!
- Covers new and re-let service contracts
- Covers public-public contracts
- But only requires future service ‘pension protection’

Future of Fair Deal?

The Consultation

- Hutton Interim Report – critical of Fair Deal
- March 2011 HM Treasury consultation
- Consultation closed on 15 June 2011
- Decision announced 20 December 2011
- Linked to heads of terms on main schemes

Future of Fair Deal?

The Decision

- Agreement to retain Fair Deal
- Extend access for transferring staff in NHS
- On basis new CARE pensions more affordable
- Subject to agreement on Heads of Terms?
- Assume Best Value Direction also to remain?

Fair Deal

Grey Areas

- Number of grey areas
 - Removal of broadly comparable scheme requirement?
 - Removal of bulk transfers?
 - NHS only?
- HM Treasury to publish formal response
- Await further clarification and guidance
- Timing – 2015?
- In meantime – current Fair Deal and Best Value Direction remain in force

Welsh Authorities Staff Transfers (Pensions) Direction



- November 2011 - Consultation by Welsh Government
- Apply new Direction in Wales:
 - Local authorities, Welsh National Park Authorities & fire and rescue authorities (police authorities already covered)
- Consultation closed 22 December 2011
- Implementation – “as soon as possible”

Revocation of 2 Tier Code

- Revoked March 2011 for local authorities
- New contracts – not apply
- But new Cabinet Office Statement on principles of Good Employment Practice
- No minimum level of pension for new recruits
- Consider auto-enrolment requirements!

Revocation of 2 Tier Code

Existing contracts?

- Existing contract subject to 2 Tier Code:
 - Re-let – Not apply to new contract
 - Re-negotiation – May be removed for new entrants
 - Extension – Code continues unless both parties agree otherwise
- Significant savings but generally for non-pension benefits

Changes to outsourcing policy - Summary

- Pension protection for staff to remain
- Fair Deal and Best Value Direction need to be followed
- Onus on contracting authority
- Not override – must be provided for in contract
- Needs early involvement of LGPS Fund
- No protection for new recruits under Two Tier Code

Changes to public services

- New delivery models
- Increased cross public sector working
 - Shared services
 - Working across sectors eg with NHS
 - Third Sector provision
 - Mutualisation of public services – MyCSP
- Continued use of outsourcing to private sector
- Shift from traditional models – PFI, BSF etc

Shared Services – Issues to look out for

- How are the services being delivered?
- Is there a TUPE transfer?
 - Are staff remaining with current employer
 - Secondment
- If TUPE – need to understand
- Does Best Value Direction/Fair Deal apply?
- Cross sector – change of pension scheme?
- Is new scheme broadly comparable to the old (as per Best Value Direction)?
- Can employees remain in old scheme - how?

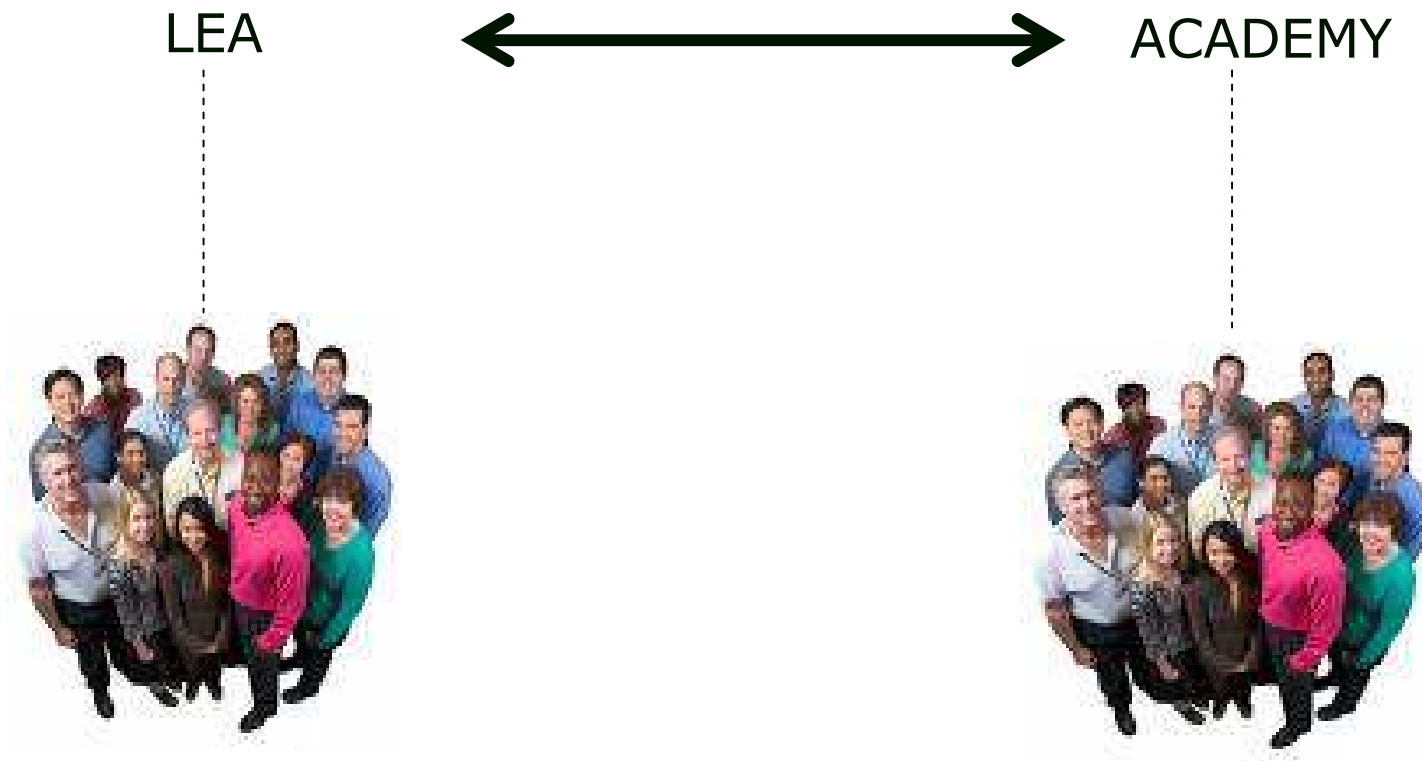
Shared Services – Issues to look out for

- Transfers within LGPS
- Basis of new employer's admission – Scheme employer or admission body?
- Within same LGPS Fund or different Fund?
- Transfer of share of deficit or fully funded
- Often contentious issue – see Case Study!
- Impact on old and new employers' rates
- Issues on termination of shared services?

Academies

- Excellent example in practice
- TUPE transfer of staff from LEA to new Academy

Basics of an academy transfer



Academies

- Academy = Scheme Employer in LGPS
- Teachers also qualify for TPS
- DfE policy is to transfer share of LEA's deficit
- Included in Transfer Agreement
- Academy then individually assessed by Fund
- Resulted in increased contribution rates and/or reduced recovery periods (often 7 years)
- Issues of termination of arrangement

Academies – DCLG/DfE Note

- Joint note issued in December 2011
- Aim for consistency of approach across Funds
- Applies to all existing and new Academies
- Overall employer costs should not increase
- No less favourable treatment to maintained school
- Strongly recommend Fund considers request for 'pooling' with LEA
- Possible regulatory changes if non-compliance

Case Study

Daventry DC v Daventry & District Housing

- Real case – Court of Appeal
- Highlights complex issues and financial risks
- Involves TUPE transfer
- Local authority to housing association
- Protection for staff pensions
- New admission agreement

Case Study

Daventry DC v Daventry & District Housing

- Issue over £2.4M deficit in NCC Fund
- DCC's solicitors and chief negotiator consented!
- Lengthy and complex negotiations - new clause inserted into Transfer Agreement:
 - *"The Council shall make a payment of £2.4M within 5 business days of the Completion Date"*
- DCC believed they never agreed to payment but DCC's solicitors and chief negotiator were aware of insertion of clause – just misunderstood it

Case Study

Original Decision

- Issue came to light over post completion meal!
- DCC application to High Court to rectify mistake
- Rejected by Court:
 - No common mistake – DDH not agree
 - No unilateral mistake by DDC which DDH failed to alert
 - DDH owed no duty of care to DDC
- Application for rectification failed
- DDC obliged to pay £2.4M



Case Study

On Appeal

- Rectification allowed!
- Grounds of common mistake
- Need to look judge objectively
 - Objectively prior agreement
 - Party subjectively changed mind
 - Objectively did not bring to attention of other party
- Focus on 'unconscionable behaviour' of DDH negotiator
- Wrongly allowed parties to be misled
- DCC entitled to rectification of contract

Case Study

Lessons Learned

- Case study of pitfalls of TUPE/outsourcing
- Transfer of deficit can have significant financial consequences
- Pensions complex and often misunderstood
- Importance of getting the contract right.....and checking it
- Focus on individuals' behaviour
- Some hope to re-visit mistakes
- Expensive lesson for all concerned

Latest LGPS Consultation

Changes to Regulations

- DCLG consultation on changes to LGPS Regulations
- Proposed changes to admission agreements
- Mandatory for bond, indemnity or other security
 - parent company guarantee
- Applies to transferee and community bodies
- Risk exposure arising on insolvency of body
- Also new charging powers for scheme employers
- Consultation closed 27 February 2012



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