

CIPFA Pensions Network

Update on Legal Issues

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Introduction

- Public Service Pensions Act 2013
- 2014/15 Reform of LGPS
- 2015 Reform of other schemes
- Review of Fair Deal
- Auto enrolment
- New case law

Public Service Pensions Act 2013

- Recommendation of Lord Hutton
- New legal framework for public service schemes
- £65B savings over 50 years
- Closure of current schemes
- Creation of new schemes
- New CARE benefits
- New governance arrangements
- Opening schemes to private sector

New LGPS for 2014/15

- August 2012 - Approved by employers and unions
- E&W Regulations under consultation!
- Implementation – 1 April 2014 (Scotland 2015)
- New CARE benefit structure
- Transitional protections for older members
- Continued access for private contractors
- LGPS Scotland – separate consultation process

Reform of Other Schemes

- NHS*, Teachers* and Civil Service
- Separate Heads of Agreement
- Implementation – 1 April 2015
- New CARE benefit structure
- Transitional protections for older members
- New access for private contractors!

* - Separate Scottish schemes

Review of Fair Deal

- March 2011 - Consultation
- November 2012 – Response and draft Guidance issued
- Changes to Fair Deal policy
- Links with changes to the new schemes
- Final guidance awaited (imminent)
- Fundamental change on outsourcings
- Impact on Best Value Direction and Scottish Statutory Guidance?

Review of Fair Deal

– Changing landscape for outsourcing

- New delivery models
 - Cross public sector
 - Third Sector provision
 - Mutualisation of public services – MyCSP
- Shift from traditional 'vanilla' models
- Greater invention and complexity
- Better value – challenging accepted practice

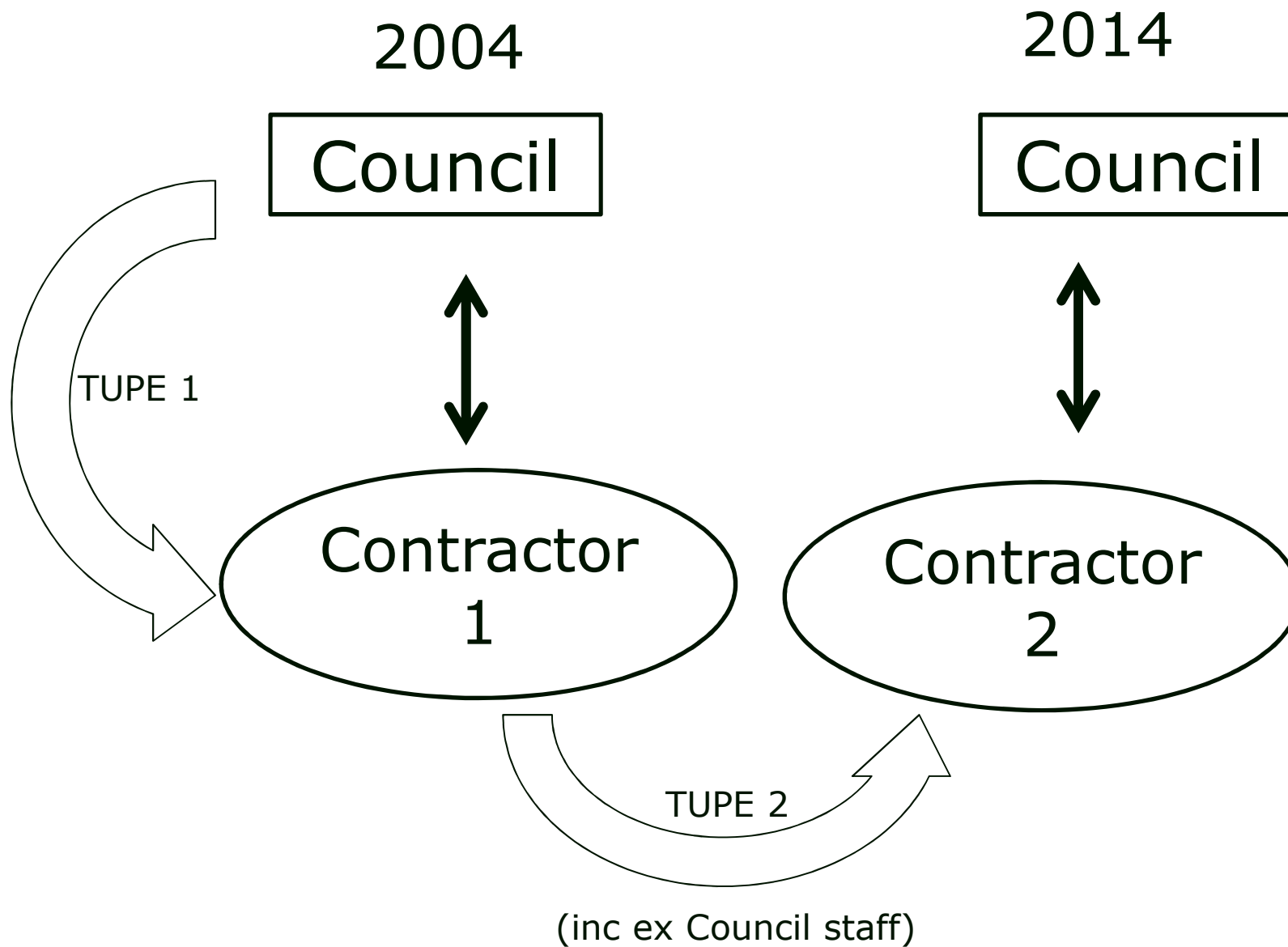
New Fair Deal

- New Contracts

- Delivered by continued access on new contracts
 - like admission agreements!
- No choice for bidder
- Terms of access to be decided by each scheme
- Protection to cease if:
 - stop working on contract
 - voluntarily agree to new T&Cs
- Impact on local authorities and Scotland?

New Fair Deal - Retenders





New Fair Deal

- Retenders

- Option to:
 - Access 'appropriate' public service scheme; or
 - Continue broadly comparable scheme
- Bidder choice – but must apply to all staff
- What is the appropriate scheme?

New Fair Deal - Retenders

- If access public service scheme must be:
 - option for bulk transfer from current broadly comparable on day for day credit basis; and
 - shortfall underwritten by authority – potential significant financial risk!
 - role of bidder in bulk transfer process?
- Will this be mandated??

New Fair Deal - Retenders

- If choose BCS:
 - Benefits comparable to current public service pension scheme (e.g. CARE after 2015)
 - Must provide same transitional protection

New Fair Deal - Retenders

- Much more complicated!
- New Fair Deal policy adds extra complexity
- Timing of new policy?
- Financial risk for Council to fund transfer shortfall
- How will it apply to local authorities/Scotland?

Auto enrolment

- New employer duty
- Auto enrol employees into pension scheme
- Staggered 'staging dates'
- Significant new legal duty
- Complex interaction of 'auto enrolment' and LGPS rules
- Impacts on local authorities and outsourced employees
- Ongoing obligations to re-enrol

Recent Case Law

- Pensions Ombudsman
 - Dolan
- Data protection



Pensions Ombudsman

- Dolan

- Ill health application for two separate employments terminated at same time
- Requirement for separate certifications from IRMPs
- One relied on OH physician's advice without own decision
- Other 'rubber stamped' decision
- Decisions remitted to two employers
- Separate awards for distress and inconvenience

Data Protection - reminder

- Care needed if using external firms to process data
- As 'data controller' need to ensure compliance with DPA requirements and also for processors
- Need contractual agreement

Data Protection



- LGPS fund outsourced digitalisation of member records
- Member records found by member of public on overflowing recycling bank
- Over 800 files deposited
- Contained personal and financial data

Data Protection

- Fund failed to chose contractor providing sufficient DPA guarantees
- No regular monitoring to ensure compliance
- No contract between Fund and contractor
- Serious breach - fined **£250,000!**



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