

Local Government Pension Scheme (LGPS) - Scheme Member Pension Protections

This guidance has been issued to assist Local Government Pension Scheme (LGPS) Employers in determining the pensions protections which may apply where employees are impacted by a compulsory change in employer - for example, where a business function is outsourced or there is a change in service contractor.

The guidance is designed to provide a broad overview of the protections when they apply and the differences between them. It should, however, not be read as a definitive guide to the range of issues which need to be considered in dealing with these situations and, accordingly, where there is uncertainty, employers are strongly advised to seek their own specialist legal advice.

The table below summarises the pension protection regulations and how they apply to employers within the Staffordshire Pension Fund

Type of Organisation - Letting Authority	Applicable Government Legislation	Description
<ul style="list-style-type: none"> Unitary Authorities Town and Parish Councils Police Authorities Fire and Rescue Authorities 	<u>The Best Value Transfer (Pensions) Direction 2007</u>	Following outsourcing must offer either continued LGPS access or actuarially assessed broadly comparable scheme
Academies Following reclassification FE Colleges may now also be included however further Government clarification is still required	<u>New Fair Deal Guidance</u>	Continued LGPS access must be offered



Type of Organisation - Letting Authority	Applicable Government Legislation	Description
Others (not included in the above)	Not applicable, but relevant statutory guidance should be followed, Standard TUPE principles apply	Under the LGPS Regulations, the successful bidder can be admitted to the LGPS subject to agreement from Staffordshire Pension Fund

Important - before starting your Tender process.

If you are considering letting a contract to an external provider, **you must contact the Pension Fund** who will advise on the contractor's possible admission basis, potential employer contribution rate including the requirement for Bonds and guarantees if applicable.

This will allow potential bidders to fully understand what all the pension costs are before applying, to factor into their cost models. Ensuring that pension protection is in place can be a lengthy process, therefore, it is important that as soon as your organisation is thinking of outsourcing a service, the pension implications are considered. If not, it may delay the date the new contract is able to commence.

Employers who have a legal requirement to protect an LGPS members' pension entitlements, are summarised in the table above and further details on these protections are given below.

Best Value Authority Protections

The requirement is that transferring employees are provided with rights to pension benefits that are the same as, broadly comparable to, or better than those they had before the transfer. This requires that the contractor provides either continued access to the LGPS or to a "LGPS broadly comparable" pension scheme.

In the case of a Broadly Comparable Scheme the new scheme must receive a "broad comparability certificate" following an assessment by the Government Actuary's Department (GAD). The certificate must be provided to the outsourcing employer and to Staffordshire Pension Fund.



Continued membership of the LGPS is achieved by the contractor becoming an Admitted Body of the Staffordshire Pension Fund by entering into an admission agreement.

New Fair Deal Guidance Protections

In accordance with New Fair Deal Guidance any contractor must offer transferring employees access to the LGPS via an Admission Agreement. These requirements are set out in the Governments' New Fair Deal Guidance. New Fair Deal is a non-statutory policy setting out how pension issues are to be dealt with when staff are compulsorily transferred from the public sector to independent providers delivering public services. New Fair Deal compliance would be expected by transferring employees and any organisation wishing to offer any alternative would need to make a strong case to go against the principles set out in the guidance.

Continued membership of the LGPS is achieved by the contractor becoming an Admitted Body of the Staffordshire Pension Fund by entering into an admission agreement.

Re-letting an existing contract.

The same pension protections must be provided if employees transfer to another employer because of re-letting a contract. The re-let service with the new contractor or existing contractor must provide that the new arrangement secures continued membership of the LGPS for each transferring original employee. The LGPS "Scheme Employer" who re-lets the contract retains responsibility for employees impacted by subsequent transfers having continued access to the LGPS.

Becoming an Admitted Body

Admission body status (ABS) enables contractors who undertake services or functions for an LGPS "Scheme Employer" to offer continued access to the LGPS during the period of the contract. As a result, the employees in scope will remain in the LGPS and continue to accrue benefits, for so long as they remain employed in connection with the delivery of the outsourced service on unchanged employment terms and conditions.



Admission Agreements must contain certain provisions for the Admission Body as set out in the Local Government Pension Scheme Regulations 2013.

Where a Contractor is providing services under several different contractual arrangements in the Fund it will be required to enter **separate** Admission Agreements in respect of each contract.

An Admission Agreement can be an 'open agreement' or a 'closed agreement'. In an open agreement, new joiners, as well as transferring staff working on the contract or services, can be offered membership of the LGPS under the Admission Agreement.

A closed agreement will restrict LGPS membership to the transferring employees only (i.e., any employees hired by the contractor after the transfer date will not be eligible to join the LGPS)

Admitted Body Status - "Pass-Through Funded" arrangement.

Pass through is an arrangement whereby the letting employer retains all the pensions funding risk for the transferring staff. This arrangement typically has a fixed contribution rate for the duration of the contract and can be attractive for contractors as it introduces certainty for pension costs which should then be reflected with the eventual service cost. Set up costs are much lower for this type of arrangement and risk of the arrangement becoming overfunded (with an exit payment becoming due to the contractor) or underfunded with a deficit payment being due from the contractor or letting organisation are eliminated.

Where a new contractor has 10 members or fewer, and a contract period of 5 years or less, the Fund's default approach is for the employer to participate in the Fund on a Pass-Through basis.

The Fund has prepared separate guidance on the "Small Employer" Pass Through process that can be found in Appendix F in [the Funding Strategy Statement \(FSS\)](#)

Pass-through funding can only be provided for outsourcings from Academies where the Academy can confirm that approval to act as guarantor has been sought from, and approved by the Education and Skills Funding Agency (ESFA)



Admitted Body Status - “Stand Alone Funded” arrangement.

Before an Admission Body is admitted to the Fund, an assessment must be undertaken, taking account of actuarial advice, including the level of risk arising on premature termination of the provision of service (or assets) by reason of insolvency, winding up, or liquidation of the Admission Body.

The assessment will be produced by the Fund Actuary setting out employer contributions rates and if applicable a risk assessment.

The actuarial fees for the risk assessment will be payable by the Letting Authority.

The Fund’s preference is to offer a pass-through arrangement with a fixed contribution rate which is typically the primary rate of the letting authority. Rather than a ‘stand alone funded arrangement.

Full details of the Fund’s pass - through policy is detailed in [Appendix F of Funding Strategy Statement](#).

Actuarial and legal costs – borne by the Letting Authority and the new employer (contractor)

The Fund is mindful that the legal or actuarial costs are borne by the letting employer or new employer (contractor) and therefore explored ways to reduce and cap the legal costs. Following this review and with the approval of the Pension Committee standard legal or actuarial charges were introduced.

TUPE transfer of less than 10 employees - “Pass-Through Funded” (small employer)

A small employer or contractor being admitted to the Fund is deemed to be one that has less than 10 active members and a contract length of less than 5 years.

Legal costs

- Non-negotiable standard admission agreement - **£1,500 + VAT**
- Complex or negotiated admission agreement - **£2,250 + VAT.**



In these circumstances, this type of admission will be treated as a 'pass through' arrangement, whereby the assets and liabilities remain with the letting employer at the end of the contract period. This will be the default option for small employers unless we are advised that a 'standalone' admission arrangement is preferred, in which case the costs will be in line with those outlined under TUPE transfer of 10 or more employees.

TUPE transfer of 10 or more employees - “Stand Alone Funded” arrangement.

Legal costs

- Complex or negotiated admission agreement - **£2,250 + VAT.**

Initial actuarial costs

- Pension information memorandum (employer pension contribution rate and risk assessment) - **£2,300 + VAT**

Outsourcing – Contract letting organisations’ LGPS checklist.

- Be aware of the timescales for completing Pensions Admission Agreements
- Liaise with the Fund to obtain pension costs to include in the tender contract information pack.
- Ensure that those bidding for your contract are made fully aware of their responsibilities and on-going costs in respect of pensions, including the need to apply for 'admission body' status to enable continued access to the LGPS for transferring staff.
- Liaise with your legal adviser to ensure that pensions information (including costs) is included in the tender and contract.
- Consult with, as required, and keep the transferring staff informed about the impact of the transfer on their pension rights.
- Acknowledge and understand that ultimate responsibility for pension matters relating to the transferring staff, and any unpaid liabilities to the Fund, remains with your organisation.

