

Consultation response - Local Government Pension Scheme in England and Wales: Scheme improvements (access and protections)

Hymans Robertson LLP is pleased to submit our response to the [LGPS Access and Protections](#) 2025 consultation. Hymans Robertson LLP has a significant legacy in the Local Government Pension Scheme (LGPS), providing independent actuarial, investment, benefits and risk consulting services, as well as data and technology solutions to our clients.

The responses below have been submitted the UK Government via its response form.

Normal Minimum Pension Age (NMPA)

Q1. Do you agree with keeping the NMPA at below 57 for members with a PPA?

We agree. It is important that those saving for retirement have consistency and do not experience late changes to retirement rules.

Q2. Do you agree with increasing the NMPA to 57 for members without a PPA?

This is a function of the Finance Act 2022, so our understanding is that it would not be possible to do otherwise.

Q3. Do you have any views on the design of the regulations to incorporate this change?

There are a number of areas which are not addressed in the consultation which will need to be incorporated into the regulations. It is unclear whether a PPA can ever be lost and how it will interact when periods of LGPS membership are aggregated.

Our understanding is that once a member has a PPA in the LGPS it applies to all periods of LGPS service whether or not they are aggregated with the record in which the individual was a member immediately before 4 November 2021. This would be the administratively more straightforward route as fund administrators could establish through the LGPS NI database whether a member qualifies for a PPA when they join their fund. Members would not be required to make complex decisions over whether they should or shouldn't combine different periods of service based on the impact on their PPA.

There should be clarity in the regulations about whether a period of service that includes membership immediately before 4 November 2021 but results in a return of contributions confers a PPA.

Access for councillors and mayors

Q4. Do you agree with the proposal to give mayors access to the scheme?

Yes

Q5. Do you agree with the proposal to give councillors access to the scheme?

Yes

Q6. Do you agree with the two principles of how the government plans to develop regulations?

Yes

Q7. Do you have any specific comments on the draft regulations?

Our main comment is around the timescale for implementing the change. Although benefits are similar to the existing main scheme 'officer' benefits, there are key differences which will need to be reflected in the administration software. Given that software providers will likely want to see final regulations before starting work, the timescale to be ready by 1 April seems unduly ambitious. There is also the fact that many authorities will have elections on 7 May. This means that councillors who lose their seats will be brought into the scheme on 1 April only to be ejected just over a month later. With this in mind, we believe a start date after the 2026 local elections would be more appropriate and allow more time for implementation.

Academies**Q8. Do you agree with the proposal to establish the criteria above in legislation?**

Yes.

Q9. Do you have any views on how contribution rate shopping can be discouraged?

In our view, there are several ways this can be discouraged:

- Education – the current rate in payment is a poor indicator of risk and an unreliable predictor of future contribution rates. An LGPS fund may have a lower rate due to difference in pace of funding – a lower rate in the short term may lead to a higher rate in the long term (and vice versa). Administering Authorities can play a key role in educating MATs.
- Encourage MATs to consider a range of factors when carrying out due diligence on potential consolidator funds, such as a view on the fund's funding and investment policies, the fund's approach to employer engagement, and the administration practices of the fund.
- The value-for-money assessment encourages contribution rate shopping, as the savings required to meet the costs of transfer will come from a lower post-transfer contribution rate. If 'administration efficiencies' are to be the key criteria within the value-for-money assessment, a comparison of the contributions payable towards scheme administration (as a percentage of payroll) should be a key part of this assessment, and this may reduce the need for the MAT to select the lowest contribution rate as part of this assessment.
- The ability of Administering Authorities to refer an application to the SoS is an important mechanism for flagging cases where decisions have been made solely based on 'contribution rate shopping'. When such cases are referred to the SoS we would expect these cases to be declined, which would help to discourage such activity.

Q10. Are there any other criteria that should be included?

As well as agreeing to the change, authorities should be asked to agree to a timescale for the transfer to allow for activities to be coordinated.

Q11. Do you have any other comments or considerations relating to establishing the criteria in legislation?

No.

Q12. Do you agree to the removal of the requirement to seek Secretary of State consent for standard direction order applications?

Yes, we broadly agree. Removing the requirement will save time and administration costs for all parties.

However, for this to work in practice, clear guidance should be provided on the process that MATs (or other consolidating employers) need to follow, along with the information expected, to ensure they are able to meet the criteria.

Q13. What would be the most helpful information to include in guidance?

Details and guidelines of what information each MAT (or consolidating employer) should include in the value-for-money assessment and who would decide whether those (and other) criteria had been met.

The roles and responsibilities of each party.

Details of the process that a MAT (or consolidating employer) must follow to apply for a direction order, including what evidence it must provide to MHCLG to demonstrate that all criteria has been met.

Q14. Do you have any other comments or consideration on the removal of the requirement to seek SoS consent for standard order applications?

We feel there are additional points not included in the consultation, that the guidance should address, including the following questions:

- Would MATs or employers have the opportunity to informally challenge an Administering Authority's decision not to support a transfer, or would the next step be a formal application for a direction?
- Will the transfer mechanism automatically apply to any new academies joining the MAT, or will a fresh assessment be required each time a new academy is added? The latter could introduce significant additional costs and administrative burdens for MATs.
- Is it the intention that contractors be automatically included in the transfer process during outsourcing arrangements?

In addition, as the changes proposed will mean a formal direction is no longer issued, we feel it is good practice that these decisions are formally documented by the MAT and the receiving and ceding Funds, and this should be considered at a local level. If there is a statutory requirement to report to MHCLG, it would be useful for guidance to be provided.

Q15. Do you agree that non-standard applications will continue to require Secretary of State approval?

Yes. MATs and employers wishing to consolidate should have a formal route to follow if a decision cannot be made locally.

Q16. What would be the most helpful information to include in the guidance in relation to nonstandard applications that will require Secretary of State approval?

A definition of non-standard applications.

An outline of the process to submit an application, next steps and an indication of timescales.

Q17. Do you have any further comments regarding the proposal?

No

Fair Deal

Q18. Do you agree that the option to offer broadly comparable schemes should be removed, except in exceptional circumstances, to align with the 2013 Fair Deal guidance?

Yes. Whilst this is ultimately a matter for government policy, we support the principle of outsourced public sector workers having a continued right to membership of the LGPS after being transferred from their employer.

Q19. Are you aware of any other broadly comparable schemes that are currently in operation and have active members covered by the 2007 and/or 2012/2022 Directions? If so, please provide details of these.

In addition to those mentioned in the consultation, we are also aware of the Capita Pension and Life Assurance Scheme and the Prudential Platinum Scheme.

Q20. Do you agree with the proposals on deemed employer status and the removal of admission body option for service providers who deliver local government contracts?

No. We recognise that compulsory use of deemed employer status has certain advantages, described in the consultation. For example, that members have automatic continuity in their membership of the LGPS and that the system automatically means contractors have predictable contribution rates and there are no exit payment/ credit issues at cessation. However, we believe it also adds significant new complexity in multiple areas and it will be a major implementation challenge at a time of significant change in the LGPS.

Our views on the potential issues with deemed employer status are set out below.

Funding and risk

The deemed employer proposal would operate in a very similar way to how pass-through currently works across the LGPS – with many pass-through employers paying a rate equal to the Primary Rate of the outsourcing body. For most outsourcings, the proposals would have a negligible impact on funding risk, which is effectively underwritten by the letting authority.

Whilst many contractors are currently admitted on a pass-through basis, a risk-based approach is typically applied when considering the admission basis for large outsourcings, and it is still common for larger contractors to be admitted to a fund under a more ‘traditional’ admission agreement basis. If all large contractors participated under the ‘deemed employer’ basis going forward, this would restrict the ability of a letting authority to manage the funding risk to which it is exposed.

Typically, pass-through employers pay a rate equal to the letting authority’s Primary Rate, which adjusts with each valuation. This floating rate reflects changes in future service costs and is generally preferred by letting authorities and contractors. LGPS Regulations require a stable Primary Rate, and so in practice this floating rate does not vary in a significant way between valuations. The rationale for offering fixed or floating rates is unclear, and we would expect all parties to favour the floating rate approach as standard.

Administration and governance

Our view is that there are likely to be significant implementation challenges in a compulsory deemed employer system. As set out in the draft regulations and in table 2 of the consultation, the practical working arrangements of the new approach are highly complex and the practicalities of which party must undertake which responsibilities are nuanced. If we were in a world where employers and contractors were more engaged with their pension responsibilities, the benefits of deemed employer may be more attainable, but engagement is already a problematic area for LGPS funds and is likely to remain so in the future. Significant work will need to be undertaken

in the transition to the new rules, to train employees and contractors and to help ensure working arrangements are given full consideration before contracts are let.

Other potential governance and administration impacts include

- Lack of sight of specific working arrangements between the Fair Deal employer and the relevant contractor, meaning it may be harder to resolve queries or check if things are being done correctly.
- Duplication and increased complexity in employer engagement, by having two employer contacts that will each be applicable for different situations.
- The need for the outsourced staff to be held separately on pensions administration systems for monitoring purposes.
- The need to have separate procedures and checks in place to ensure that where decisions are being taken for outsourced staff, these are being taken by the 'right' employer.
- The need to update and amend the pensions administration strategy to reflect deemed employer working arrangements.

The current admission agreement approach results in a legal document, signed by all parties which contains a schedule of transferred members. This can be invaluable when, as often happens, there are historic queries over membership or responsibilities. In the absence of such an agreement, future queries will be harder to resolve. Nationally, whilst the government may see that a reduction in employer numbers over time is a positive of the proposals, we believe this is likely to be more of a 'paper' benefit than a 'real' benefit as the same underlying complexity would remain and, in some senses, would increase.

In our view, some of the advantages of compulsory deemed employer status could be achieved in alternative ways, that would be simpler to implement. For example:

- **Mandation of pass-through admission agreements** - Under this approach, admission agreements with contractors would remain. However, the LGPS regulations would be amended to require that pass-through is included in admission agreements. This approach would achieve the government's aim of pensions risk being taken out of outsourcing contracts but retain many of the features of the existing system meaning implementation would be easier.
- **Automatic admission with no admission agreement** - Under this approach, the requirement for contractors to sign an admission agreement with the fund would be removed. Instead, automatic admission terms would be contained in a Schedule of the scheme regulations and require a pass-through approach. These terms would automatically apply to contractors from day one of a contract, and contractors would become full employers in the scheme automatically. Whilst this approach would see more significant changes to the system than the other alternative, it is closer to the government's deemed employer proposal and would achieve more of the government's aims – for example, continuity from day 1 for LGPS members as well as consistency across the scheme.

Our [briefing note](#) on the Access and Protections consultation includes more detail on the alternative proposals described above, including a table comparing these against the deemed employer proposals on a number of key criteria.

Q21. Do you agree with the proposed definition of a Fair Deal employer?

Yes, although we believe it is worth considering further whether Part 2 of Schedule 2 employers (designating bodies) should be Fair Deal employers given that the LGPS is effectively optional for these bodies. Even if they are Fair Deal employers (as is proposed), it may be possible for these bodies to avoid the requirements by 'undesignating' members as eligible for the LGPS before undertaking an outsourcing.

Q22. Do you agree with the proposed definition of a protected transferee?

Yes.

Q23. Do you agree with the proposal to allow the Fair Deal employer to provide protected transferee status for all staff working on a contract outsourced by a Fair Deal employer, which would enable Fair Deal employers and relevant contractors to avoid creating a two-tier workforce on outsourced contracts?

Yes.

Q24. Do you agree with the overall approach on responsibilities for relevant contractors and Fair Deal employers? If you do not, with which proposals do you disagree?

The proposed split of responsibilities in Table 2 appears generally reasonable, although we note the significant complexity of the arrangements overall. Most of the responsibilities are shared between the Fair Deal employer and the relevant contractor in some way. As outsourcing is an area where engagement with employers and contractors is often difficult, this may lead to a variety of challenges, including difficulties ensuring all parties understand their responsibilities and take steps to implement them. Day-to-day there may be practical difficulties in ensuring information is provided by the right party at the right time and that the administering authority has sufficient oversight of the working relationships between the Fair Deal employer and the relevant contractor.

In relation to the proposal that the Fair Deal employer takes decisions on the contribution bandings to be applied to members by default, we believe that this will be over-complex in practice and that it may be preferable for the relevant contractor to have this responsibility by default (with the ability for the Fair Deal employer to take it on by agreement).

Q25. Do you agree that Option 1 should be applied to how agreements between protected transferees and relevant contractors should be treated in the case of subsequent outsourcings? Please give the reasons for your answer.

We believe that it is important that the member does not miss out on commitments their employer has made when their employment is outsourced and therefore would not be supportive of Option 2.

In our view, either Option 1 or Option 3 would be reasonable. However, as the relevant contractor will be the organisation that is the actual employer of the person involved, and will therefore be running payroll and deducting contributions, Option 1 may be the more practical approach of the two.

Q26. Do you agree with the approach to allow broadly comparable schemes to continue only in exceptional circumstances?

Yes. Whilst flexibility may be valuable to avoid genuine situations where there are exceptional circumstances meaning a broadly comparable scheme should continue to be used, we agree with the government's strong preference for staff to be transferred back to the LGPS wherever possible.

Q27. Do you have any views on what the exceptional circumstances, where broadly comparable schemes may need to continue, could be?

It is possible that the bulk transfer terms may not be attractive to the transferring broadly comparable scheme if this leads to the emergence of a deficit. It may be reasonable to allow broadly comparable schemes to continue in such a situation.

If the government do identify specific situations where they believe this would be appropriate, we agree this should be set out in statutory guidance.

Q28. Do you agree with the proposed approach to inward transfers from broadly comparable schemes?

Yes. Allowing members to transfer their final salary rights from broadly comparable schemes into the LGPS on a final salary basis will ensure that the value of members' rights are retained, and reflect the fact that they did not choose to leave the LGPS when their employment was outsourced.

Q29. Do you agree with the approach of including a mechanism in the draft regulations that allows for staff to become protected transferees where there is an early re-negotiation of a service contract using the new Fair Deal regulations?

Yes.

Q30. Do you agree with the proposal that all staff (including those joining a contract after first outsourcing) would be eligible for protected transferee status, providing all relevant parties agree?

Yes. Although we note that this approach is available now and rarely used.

Q31. Do you agree with the proposal for the draft regulations to come into force on the date the relevant SI is laid, with a 6-month transitional period during which there is the possibility to decide to not apply the new provisions?

Yes.

Q32. If you are an individual who is currently outsourced from a local authority and part of a final salary scheme, do you agree with the proposed updating of the 2007 and 2022 Directions to deem the LGPS as broadly comparable to or better than final salary schemes? Please give the reasons for your answer.

N/A

Q33. Do you agree with the proposal to develop and publish statutory guidance and Scheme Advisory Board guidance to support with the implementation of the updated Fair Deal proposals?

Yes, guidance will be crucial to support the regulations and will help in ensuring some consistency in how the changes are implemented. We believe a range of views and perspectives should be considered in developing this statutory guidance to ensure that the eventual guidance is workable and supports implementation practically.

Q34. Are there any additional topics that you would like to be covered?

In addition to the list set out in the consultation, we believe a key issue for inclusion in guidance is how to ensure there is local agreement on certain key matters in the absence of an admission agreement. Areas where certainty between all parties will be required include:

- The list of members involved, and whether new employees can enter the LGPS or not.
- The details of the pass-through arrangements agreed upon by the Fair Deal employer and the relevant employer (for example, whether this is fixed or floating).
- The agreements reached on who will undertake various employer responsibilities, including where the regulations allow for flexibility.

We believe a template legal or non-legal document listing all the matters that should be agreed upon and discussed locally would be a helpful addition.

Q35. What impact do you think these proposals would have on members?

The core policy – to give members continued access to the LGPS after their employment is transferred out – is positive for members. We also believe that the consultation proposals are positive for members in the sense they automatically give members continued access to the LGPS from day one of their outsourcing. This addresses a significant issue with the current system where, if an admission agreement is not signed at the outset of a contract, members are left in limbo under the LGPS regulations. This can sometimes run on for months and could understandably lead to worry, at a time in which the transfer of their employment may already be a cause for anxiety.

We have some concerns however that, while a contract is ongoing, the use of deemed employer status may complicate things from a member perspective. Their LGPS employer, the Fair Deal employer, will have some pensions responsibilities, and their actual employer, the relevant contractor, will have others and it may not be clear to members who they should contact. Guidance may be needed to help ensure member engagement consistency across the scheme under the new system.

Q36. Do you support the proposal to bring all eligible individuals back into the LGPS, including those in broadly comparable final salary schemes? Please explain your reasons.

Yes. This will ensure that the policy is consistently applied across workers and will make the day-to-day administration of outsourcing simpler than retaining an approach where newly outsourced employees have a right to continued membership of the LGPS but employees who were previously outsourced could be in the LGPS or a broadly comparable scheme.

Q37. On balance, do you agree with the proposals in this chapter?

We are supportive of the principle of implementing Fair Deal in the LGPS, particularly given it has been a longstanding issue for the scheme. However, at a time of significant change in the LGPS given the government's expansive reform agenda, we believe that the compulsory use of deemed employer status is very complicated and there may be simpler ways to achieve the same basic policy outcome – giving members the right to continued membership of the LGPS after being outsourced. We have set out two examples for alternative approaches to this in our [briefing note](#).

Public Sector Equality Duty (PSED)

Q38. Do you consider that there are any particular groups with protected characteristics who would either benefit or be disadvantaged by any of the proposals? If so, please provide relevant data or evidence.

Whilst we have not undertaken any analysis on the proposals in relation to the potential impacts on members with differing protected characteristics, below are some general comments on this issue as it relates to the NMPA.

On the proposal for certain members to have a PPA, it appears likely that, over time, LGPS members who are younger will, on average, have a higher NMPA than LGPS members who are older. This is because members had to have been in the LGPS before 4 November 2021 to qualify for a PPA. Over time, the cohort of members joining the LGPS after this date are likely to be younger than the cohort of members who were in the LGPS beforehand. There may also be similar effects in relation to race, if more recent employees are more likely to be of different backgrounds to those in the scheme before 4 November 2021.

We expect the government will have considered this issue and the potential legal risk of any indirect difference in treatment between groups.

Q39. Do you agree to being contacted regarding your response if further engagement is needed?

Yes.