

Investment, Governance and Engagement Committee

30th May 2018

Item 6 – Paper C

LGPS Employer owned companies

1. The secretariat via the LGA instructed counsel to give an opinion on the rights of and duties on LGPS scheme members and employers where a transfer of staff takes place to a company owned by an LGPS scheme employer.
2. Instructions are attached as ANNEX 1.
3. Although a written opinion has not yet been received and therefore the views given below which are based on discussions at the conference held in counsel's chamber on 30th April cannot be confirmed it would appear that the responses to the questions set out in instructions will be as follows

4.1. Does the transfer of functions described in the scenario fall under the provisions of "The Best Value Authorities Staff Transfers (Pensions) Direction 2007" issued on 27 June 2007, in relation to local authority employers or Fair Deal for staff pensions: staff transfer from central government October 2013 in relation to Academy schools?

Yes in both cases

4.2 Does the company meet the requirements of (5) or (6) of part 2 of Schedule 2 of the regulations necessary to offer LGPS membership?

Yes

4.3 Having regard to the answer to 4.1 and wider TUPE legislation what protections are available to the employees transferring under TUPE in relation to pensions in the scenario described?

Employees of scheme employers covered by the Direction or Fair Deal with existing rights to access the LGPS must have those rights protected

4.4 Having regard to the answer to 4.1 and 4.2 and wider Automatic Enrolment legislation what obligations are placed on the employer with regard to the provision of pensions based on the scenario described?

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To provide access to pensions for its employees of which the LGPS must be the default (but not the only) option offered to those employees covered by the answer in 4.3 above

4.5 Having regard to the answers to 4.3 and 4.4 and should the employer offer different pension schemes to different employer groups in what circumstances would an employee be able to make a claim against the employer under the regulations or automatic enrolment legislation?

An employee covered by 4.3 must continue to have access to the LGPS which will meet the employers obligations under automatic enrolment, other employees may be offered access to the LGPS or if not must be offered access to another 'qualifying' pension scheme. Employees would have cause to make a claim against the employer either via the Pensions Regulator and/or the Pensions Ombudsman if such access was not made available.

4.7 Generally on any other matters relevant to this issue.

Such companies would be 'associated' for the purposes of equal pay and therefore would be subject to potential claims as if these employees continued to be employed directly by them

- 4. Committee are asked to note the contents of this report and agree to recommend to the Board that the opinion when received be published on the Board website**