

Pension Fund Investment Board 21 May 2012

Directions Order

Recommendation

That the Board note that support-staff at academies are not protected with regard to LGPS membership if their service is outsourced to a private contractor.

1.0 Background

- 1.1 The Directions Order issued under Section 101 of the Local Government Act 2003 applies to Best Value authorities in England. It applies to such bodies when letting/re-letting contracts on or after 1 October 2003.
- 1.2 Examples of Best Value authorities in the context of the WCC Pension Fund are:
 - An English local authority
 - A Police Authority
 - A Fire and Rescue Authority

2.0 The Directions Order

- 2.1 Where the Directions Order applies, the transferred staff should be provided with continued access to the LGPS (via an admissions agreement) or access to a broadly comparable pension scheme.
- 2.2 A broadly comparable pension scheme is usually determined by the Government Actuary's Department or by the Fund's Actuary and will offer transferred LGPS members with a pension scheme with benefits broadly comparable to those in the LGPS.

3.0 Academies

- 3.1 Academies are not Best Value authorities and therefore, are not covered by the Directions Order.
- 3.2 Where TUPE applies to a service contract with an academy (or other non-best value authority), the staff transferring will not be covered by the provisions of the Directions Order and will not be afforded the protection of an admission agreement to the LGPS with the WCC Pension Fund, or a broadly comparable pension scheme.

4.0 WCC staff currently working on a service contract with an academy

- 4.1 Current WCC employees who are members of the LGPS may be employed on a service (catering/cleaning) contract with an academy.
- 4.2 If the academy tenders for this contract and it is awarded to a private sector contractor, the WCC staff will not be protected by the Directions Order.
- 4.3 Alternatively, if the contract is awarded in-house to the academy or to WCC, the staff will be employed by either the academy or WCC and have continued access to the LGPS.
- 4.4 The private sector contractor may apply for membership of the LGPS with the WCC Pension Fund and the Board may consider exercising its discretion to accept an application to protect current members' pension rights. However, it is the view of officers that such an agreement may be ultra vires as the academy as the letting agent cannot be party to the admission agreement and neither can the academy act as ultimate guarantor if there was to be any unfunded liability on the premature closure or cessation of the contract.

5.0 Pensions cover for transferring staff of an academy or non-best value authority

- 5.1 It is understood that the contractor should offer an occupational pension of either of the following:
- a money purchase scheme with the employer matching employee contributions up to 6% of basic pay; or
 - a non-money purchase scheme (generally a final salary or cash balance scheme) providing either:
 - a final salary scheme that meets the "reference scheme test" for contracting out of the state second pension (generally providing a pension of 1/80 of contracted-out earnings for each year plus provisions for spouses); or
 - a scheme that matches employee contributions up to 6% of basic pay; or
 - a scheme that entitles members to benefits worth at least six per cent of pensionable pay (defined in the schemes rules as the pay that is used to determine the amount of contributions and benefits) per annum, plus the value of the employees' own contributions (and, in this case, employees cannot be required to contribute in excess of 6% of pensionable pay per annum).
 - a Stakeholder Pension Scheme that matches employee contributions up to 6% of basic pay.

- 5.2 It is not known how automatic enrolment and NEST will impact on the above although it is assumed NEST will be a minimum requirement once an employer has passed their staging date.
- 5.3 Although members of the LGPS affected by a transfer to a private sector contractor, who is not providing (or is not permitted to apply for) an admission agreement, has the opportunity to transfer their accrued LGPS pension rights to their new employer's pension scheme, in practice members elect to retain a preserved benefit with the LGPS.

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