

29 July 2010

Siobhan Prill  
Workforce, Pay and Pensions  
Communities and Local Government  
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Dear Siobhan

### **Informal consultation on Admitted Body Status guidance and related matters**

Thank you for sight of your paper dated 24 June 2010, in which you sought comments on issues relating to bodies admitted to the Local Government Pension Scheme. CIPFA is pleased to offer its comments on the paper.

#### **About CIPFA**

We are the leading professional accountancy body for the public services. CIPFA is responsible for the education and training of professional accountants and for their regulation through the setting and monitoring of professional standards. CIPFA is also the leading independent commentator on managing and accounting for public money. CIPFA members are well-represented across the accounting community in the public sector and the wider CIPFA group is active in supporting financial management improvement in government.

Areas of active interest for the Institute are the financial management and governance issues surrounding the Local Government Pension Scheme (LGPS). These interests are pursued through the CIPFA Pensions Panel: a panel of CIPFA members (supplemented by specialists) drawn from senior positions across the Local Government Pension Scheme, and including fund actuaries, auditors and regulators.

These comments have been prepared by CIPFA officers and have been reviewed by the CIPFA Pensions Panel. We are pleased to offer the following observations on the proposals for admitted bodies.

#### **Detailed comments**

#### **Would it be helpful to require all administering authorities to develop and publish an admission policy in relation to transferee admission bodies and, if implemented, should the parties agree that they have adhered to the relevant administering authority's admission policy?**

We feel that the extension of admission policies for transferee bodies to all LGPS administering authorities would be a positive step in assisting LGPS administrators to manage the relationship between the fund, letting authorities and contractors.



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An admissions policy could prove a useful tool to address many of the issues raised in this paper and in the Admitted Body Status (ABS) guidance issued by CLG in December 2009, particularly the manner in which all parties will address communication and consideration of pension issues early within the contracting-out process; the implications for the admitted body and any sponsor or guarantor of the funding objective; and the pensions options open to transferee bodies.

**Do we need to revise Schedule 3 of the LGPS (Administration) Regulations 2008, to include the specific roles and responsibilities of the main parties, ie letting authority, administering authority, contractor? Would making a regulatory provision add clarity to the process even though the revised guidance on admitted body status in the LGPS clearly sets out the roles?**

**Would it be desirable to specify the standards of communication needed between the parties and what notice periods are required should circumstances change?**

**Should there be a provision to permit complex, or particular local issues, to be dealt with outside the admission agreement and put on a contractual basis with a reference that this has happened in the admission agreement?**

**What other terms should be set out in the Schedule eg when an agreement would end and what action is needed beforehand?**

There are distinct advantages to continuing to use the admitted body guidance to set out the roles and responsibilities of the parties involved in managing admitted body status rather than defining these in regulation. The use of the best practice guidance allows administering authorities to exercise some flexibility in managing LGPS admissions in a way that best meet local needs. The introduction of regulation in this area runs the risk of imposing requirements that may not be required or conversely restricting the capability of funds to act to respond to local circumstances.

However funds may find it helpful to have permissive powers under Schedule 3 to include within the Admission Agreement any matters they think may usefully be set out for the mutual benefit of all parties, such as cessation arrangements and the management thereof.

You also mention Schedule 3 being amended to include powers to permit "complex, or particular local issues, to be dealt with outside the admission agreement". We feel that Schedule 3 should be sufficiently widely drawn to allow all relevant matters to be brought within the compass of the Admission Agreement thus negating the need for side-agreements.

**Should there be penalties imposed to act as a deterrent or stringent terms included in the admission agreement so that the organisation is in no doubt about its obligations in this respect?**

Given the timescales over which out-sourcing arrangements are scoped, tendered, negotiated and let, there can be few good reasons why the administering authority should not be given sufficient notice of a staff transfer. The formulation of an admission policy which sets out the necessary pre-contract consideration of pensions matters

should assist in avoiding situations where service changes are not notified to the administering authority in good time. However the authority should have the powers to defer scheme entry for new employers until the admissions process has been completed to the satisfaction of all parties. This could be set out in the admissions policy but may require regulatory powers to enforce in practice.

**Should a regulatory provision be included to prevent agreements covering more than one contract?**

**Would a best practice statement be something that would be welcomed by practitioners and how could this work in practice?**

As you recognise in your paper, there may be valid practical reasons why an administering authority might wish to manage the relationship with a single contractor, with several contracts, under one admission agreement. To that end, a regulatory provision that precluded such an arrangement would present a barrier to administering authorities exercising their own judgement as to how best manage these matters at a local level.

The alternative, a best practice statement setting out that the default position should be "one contract, one agreement" but that administration authorities might vary from the norm should the circumstances demand it, could be worked into the existing admitted body guidance. However it should be made clear that such discretion would lie solely in the hands of the administering authority, as they would accept and manage any risks that might present themselves from contract cessation within a multi-contract agreement.

**Is it necessary to prescribe regular reviews of admission agreements, especially for community admission bodies where machinery of government changes could, potentially, crystallise pension liabilities?**

**Is it necessary to provide for regular assessments of the level of risk when entering into an admission agreement with a transferee admission body so that adequate steps are taken to indemnify the authority against risk of contractor failure?**

The requirement to undertake regular reviews of admission agreements would be welcome. Some admission agreements go back to a time in the LGPS when there was less emphasis on risk management and consequently do not allow for a review process or renegotiation of terms.

However in order to make such reviews effective, it should also include the power for administering authorities to terminate admission agreements in circumstances where the admitted body is unwilling engage in the review process or to accept the outcome of any review.

**Would provision to undertake such reviews on other timeframes, say annually where necessary, on the basis of the different status of transferee bodies, address these concerns?**

We can see no reason why the fund actuary should not be able to undertake annual reviews of the contribution rates for admitted bodies, provided that the costs do not fall upon the administering authority.

**Should the cessation payment regime for transferee admission bodies be extended and tailored to community admission bodies and scheme employers?**

Based on conversations with a variety of admitted bodies, the “cliff-edge” nature of cessation events are a major concern.

Many community admission bodies are facing significant increases in employer contributions and rising scheme deficits at a time when they, like public sector bodies, are also faced with dealing with effects of the economic downturn, particularly those that are largely reliant on public sector income streams. They would like to review their pension arrangements but find themselves in a position where they are faced with large cessation payments if they cease accrual within the LGPS.

From the administering authority’s point of view, they are also faced with balancing the need to protect the fund from default with the possibility causing such a default by driving an employer to insolvency in pursuing a cessation payment.

Confirmation within the LGPS regulations that ensures administering authorities may still call for payment of any outstanding pension liabilities beyond the point where an employer has no further active members would certainly assist both parties to manage a situation where an employer is seeking to cease active membership of the fund.

**Is there merit in following the DOE NI approach?**

**Are other provisions needed to enable administering authorities to deal adequately with these employers when they leave the Scheme and have the assurance that any pension liabilities arising at the time or subsequently, can be satisfactorily met?**

In light of the South Tyneside judgement, we believe that there is considerable merit in bringing forward regulations to allow an administering authority to request a monetary amount in respect of pension liabilities that arise in the future from an employer with no active contributing members in the fund, similar to the suggestion made for admitted bodies. This should also cover the circumstances that may arise where an employer ceases to exist. The Northern Ireland approach is one way of addressing this issue.

**Regulation 38 of the Administration Regulations – when revised actuarial valuations and certificates must be obtained**

Given the different admission, funding and statutory bases of the variety of employers within the LGPS, there is merit in amending Regulation 28 to reflect these differing circumstances. This may include introducing the flexibility to undertake valuations and issue new rates and adjustment certificates between triennial valuation period in response to contract changes, funding issues etc.

## **Ability of Third Sector Bodies to remain in or be attracted to join the LGPS and parent guarantors**

There are clearly significant issues emerging from the decline in the ability of non-taxpayer backed bodies to continue to offer LGPS membership to their employees on the grounds of affordability. Outside of the public sector there has been a move away from employer-sponsored defined benefit pension schemes largely on the grounds of costs, and unsurprisingly, these issues are now being addressed in the third sector.

If the sought after plurality of public service provision and the "Big Society vision, in which the third sector is expected to play a large part, are to materialise, then the issues raised by pensions provision must be addressed. However this should not be at the expense of the security of LGPS funds or to the cost, real or potential, of other employers (unless it is with their agreement, such as where an employer agrees to act as guarantor to an admitted body).

New admissions into the fund should be able to demonstrate their on-going ability to meet the costs of membership to the satisfaction of administering authorities. If this cannot be achieved through the strength of the body's business model, it may be achieved in a number of other ways such as through a parent company or other guarantor (such as a taxed-backed sponsor); assets or income streams offered as security; or security bonds.

Ultimately it is for the administering authority to manage the risk of potential employer default and therefore the decision on whether any or all of the above measures are necessary should rest with the administering authority.

## **Change of appropriate fund**

The proposal to introduce provisions which would avoid the crystallisation of pension liabilities in cases of changes in location, mergers or machinery of government changes are to be welcomed. The intention, that all assets and liabilities, in respect of active and non active members of the merging or relocating body, transfer to the new administering authority would need to be linked to a specific trigger event; would need to have the agreement of all parties; and need to be based upon an agreed valuation methodology.

I hope that you find these comments a useful contribution to the development of your policy on Admitted Bodies. If you have any questions regarding any of the above comments, please contact the secretary to the CIPFA Pensions Panel, Nigel Keogh, at [nigel.keogh@cipfa.org](mailto:nigel.keogh@cipfa.org).

Yours sincerely

A handwritten signature in purple ink that reads "Una Foy". Below the signature is a horizontal purple line.

**Una Foy**  
**Assistant Director, Professional Standards and Central Government**

