



Review of admitted body status provisions in the Local Government Pension Scheme



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Summary

1. This consultation document relates only to Admitted Body Status (ABS) provisions for private and third sector contractors – transferee admission bodies within the funded Local Government Pension Scheme (LGPS) in England and Wales. It does not affect community admission bodies within the LGPS, including for example, registered social landlords; nor does it have any read-across to other public service pension schemes, most of which are unfunded and do not have admission body arrangements as found in the LGPS. Very different and distinct considerations continue to apply to them.
2. The arrangements applying to broadly comparable (BC) pension schemes¹, which must be offered in a contracting-out exercise to staff transferring from other public service pension schemes, or from the LGPS where the contractor does not choose to offer ABS, are unaffected. Equally, none of these deliberations has any bearing on staff transfers taking place in contexts other than outsourcings to private and third sector contractors.
3. A review of ABS provisions for transferee admission bodies began in 2006. Communities and Local Government circulated an informal discussion paper on ABS arrangements on 20 July 2006 to a limited number of representative interests in the LGPS. The paper set out reported problems with the existing arrangements and their effects and it invited comments as a basis for further consideration and possible development. A summary of responses is included at annex A for information.
4. Over the last year, Communities and Local Government has been working closely with key stakeholders to further develop the approaches now included in this latest **informal** consultation document.
5. This consultation exercise seeks views on the operation and potential future arrangements for transferee admission bodies in the LGPS, in the context of outsourcing of local authority services. The document develops some of the themes of the earlier discussion paper², considers the appropriate next steps in the light of the responses received, and seeks comments from a national range of interested parties.

¹ From October 2007 contracting authorities will have to comply with the requirements of Directions made under s 101 of the Local Government Act 2003 as regards the pension provision for their transferring staff, require pension rights to be the same as, broadly comparable to, or better than they had, or had the right to enquire, as an employee of the authority.

² The paper and a summary of responses received can be accessed from the Department's website via the link, or directly on www.xoq83.dial.pipex.com

6. It should be noted that this consultation document does not express a preference or provide commitment to further developing any of the approaches outlined. In addition to providing views about the three approaches set out in this consultation document, respondents are invited to suggest any other approaches that should be considered, so others may be proposed. Final decisions, however, will rest with Ministers.
7. The results of the consultation exercise will be analysed and will help to inform the future development of LGPS ABS provisions and Ministers' decisions.
8. This review aims to ensure that ABS provisions meet the needs of the providers and recipients of local services covering local authorities, contractors, employees and taxpayers. Ministers remain committed to three fundamental principles in any possible future reform or development of the current arrangements for admitted bodies:
 - delivery of Government policy on 'Best Value' outsourcing and transfer of undertakings,
 - compliance with Government policy on proper safeguards for employees as regards pension arrangements as initially set out in the Fair Deal for Staff and in the direction which came into effect from 1 October 2007³, and
 - ensuring proposals to achieve these are affordable, sustainable and continue to have no adverse impact on taxpayers.
9. Please send your comments on the approaches contained within this document, and any other approaches you think should be considered, using the questionnaire which accompanies this document. Responses should be sent by post to Darren Kristiansen, Communities and Local Government, Local Government and Firefighters pension schemes, Area 2F7, Ashdown House, 123 Victoria Street, London SW1E 6DE. Alternatively you can email your comments to Darren.kristiansen@communities.gsi.gov.uk. Responses must be received by Thursday 10 April 2008.

³ From October 2007, contracting authorities have to comply with the requirements of Directions made under s 101 of the Local Government Act 2003 as regards the pension provision for their transferring staff, which require pension rights to be the same as, broadly comparable to, or better than they had, or had the right to acquire as an employee of the authority.

Introduction

10. The intention of ABS provisions⁴ is to allow contractors who take on local authority contracts to provide ongoing access to the LGPS in that arrangement, allowing the members to continue to accumulate benefits under the one scheme whilst their employment is transferred to a contractor, and possibly between different contractors.
11. The existing ABS provisions in this context in the LGPS in England and Wales, first introduced in 1999, were drawn up following discussion with the key stakeholders and intended to provide a seamless transfer of employees in an outsourcing contract context involving the transfer of an undertaking and protection of employment regulations (TUPE) without any change in their pension provision and as a more straightforward method of meeting the Broad Comparability test.
12. The provisions allow contractors to tender more confidently for local authority contracts where they could otherwise find setting up a BC scheme disproportionately expensive and where they know that LGPS membership would be welcomed.
13. There is no statutory requirement in the LGPS, or indeed anywhere else, to adopt ABS – the Fair Deal requirement is for at least a BC. The decision whether to offer ABS or a BC scheme when submitting a tender under an outsourcing exercise is a matter of contractor choice, although the contracting authority may take the pension arrangement offered into account when assessing otherwise equal bids.

The Current Provisions

14. The admission body arrangements – which in their current form date from 2003 – distinguish between community admission bodies (those traditionally allowed to participate in the LGPS), and transferee admission bodies (contractors) whose participation in the LGPS is what is being addressed throughout this consultation document. The employees of Admission Bodies are treated as if they were employed by a scheme employer⁵, although their employer's participation in the LGPS is contractual, not statutory.

⁴ The regulatory provisions which first came into force in 2000, are primarily set out in regulations 5A and 5B and Schedule 2A to the LGPS Regulations 1997, with some other regulations (e.g. 75, 78) impinging on them

⁵ Regulation 5B(8) makes clear that employment with an admission body in which the employee is an active member is treated in the same way as if the admission body were a scheme employer

15. Admission Bodies are subject to the standard scheme employer requirements in relation to their employees in the LGPS and to certain additional provisions intended to deal with particular issues likely to arise from their different status. Among these are the normal liability to pay employers' contributions based on actuarial valuations, the specific requirement for a terminal valuation with the potential to have to pay an exit charge to meet any capitalised deficit, and the important statutory requirement for a risk assessment which can require a bond or guarantee to be given to protect the fund, and so taxpayers, in the event of commercial failure during the course of the contract.

ABS provisions – the current perspective

16. It is a widely held view that ABS is an attractive and useful mechanism for dealing with pensions in the local government contracting-out process. Communities and Local Government believes that there is nothing in the fundamental concept which needs to be changed. It is a well established element of government policy for outsourcing and local delivery.
17. ABS provisions provide pension stability throughout the contracting-out process when contracts and the workforce may over time pass to successive generations of different contractors. ABS should provide authorities with value for money, contractors with certainty, and employees with pension security. Equally important, ABS should not expose taxpayers to unforeseen or unaccounted for risks.
18. ABS can promote good employee relations because pension benefits continue to accrue seamlessly in one scheme. Contractors do not have to make alternative arrangements for a BC scheme and deal with transferring rights, and subsequent generation contracts are simpler to effect with no transfer of liability between contractors' schemes. Contractors' liabilities cease on crystallisation when the contract ends, and contractors are not liable for payments to the Pension Protection Fund in respect of those members.
19. Inevitably, over time, fresh challenges on provisions like ABS emerge due to changes in regulations and the way in which they are interpreted as well as business experience, sector changes and changes in service delivery. It is not surprising, therefore, that concerns are being raised about the current interface experience between ABS provisions and their business environment.

ABS Provisions – Some concerns about implementation

20. Concerns have been expressed that the detailed arrangements in practice do not always seem to be implemented as the provisions currently require. Perceived problems identified primarily relate to the cost implications of providing access to the LGPS but also include:
21. **Volatility and the lack of control by contractors over pension risk** which can lead to contractors paying large termination payments or being required to pay higher pension contributions than originally expected when the contracts were first let.
 - The concerns of both private and third sector groups principally centre on the transfer of risk accompanied by lack of control over pension

liabilities and volatile costs, in particular, unexpected contribution hikes and significant exit charges on termination. It is claimed that these go far beyond the small variations originally envisaged when the arrangements were first set up and how the original guidance expected them to apply.

- These cost implications may be exacerbated by the short-term nature of many contracts which prevents a spread recovery period where pension liabilities increasing during the contract exceed assets. It is said to be further exacerbated where annual valuations are not carried out.
- Private sector contractors argue that their experience of this type of volatility and lack of control can skew the future competitive bidding process because of differing assumptions about pensions costs, with risks to service delivery and profitability where assumptions prove wrong.
- In the long run, contractors' perceptions of risk may become exaggerated, leading to over-cautious hedging against pension risk and result in artificially inflated bids, with authorities consequently paying more than the true pensions cost and so passing higher costs on to the taxpayer.
- For the third sector, particularly those providing outsourced services, there are also alleged problems of affordability where funding streams can be insecure and unpredictable, and there is no profit element.
- An investment policy which relied less on equities would reduce volatility but result in higher costs; while this would give contractors more certainty and stability it would inevitably lead to increased costs to the taxpayer.

22. Contractors have complained of a backdoor **compulsion to offer ABS** where local authorities are stipulating ABS as a requirement for obtaining contracts for services being outsourced. Bids offering a BC scheme are said to have been excluded from the running.

- In a survey conducted in 2006 by Lane, Clark and Peacock, fewer than 10% of respondents considered they were offered a genuine choice between ABS and a BC scheme when applying for local authority contracts and 65% reported that they were generally expected to follow the ABS route.

- A more recent informal survey of selected participant contractors by the Business Services Association found that:
 - in first generation contracts, there is a very strong trend towards making ABS a condition of contract with bidders not offering ABS marked down and probably not chosen, even if other aspects of their bids are favourable;
 - on the other hand, in subsequent generation contracts, local authorities showed little desire to bring new recruits or even former LGPS members back into the LGPS;
 - contrary to the original guidance, bidders were being increasingly required to offer open admission agreements, while contractors wanted the right to offer closed agreements and put new recruits on appropriate terms and conditions consistent with contracting out guidelines;
 - contractors report mounting pressure to adopt the contracting authority's published discretions.
23. As workforce matters are now a legitimate consideration in letting a contract, an authority may be able to consider pensions provision as part of the assessment process, but the Legal Procurement Policy Framework expressly makes clear that local authorities should not specify ABS-only bids. Tenderers should be permitted the opportunity to propose alternative value for money solutions.
24. While it is the responsibility of individual local authorities to take their own decisions, based on legal advice, they must give due regard to the EU Directive based principles of non-discrimination, equal treatment and transparency.

Possible approaches for addressing key concerns raised about ABS provisions

25. The Government remains committed to best value principles and welcomes the important role private sector contractors and the third sector have to play in partnership with local authorities. It also remains committed to the principles of a fair deal for staff and elimination of a two-tier workforce, with pension protection afforded either by a BC pension scheme or by continued access to the LGPS through ABS. And with regard to the latter, the objective remains to ensure its operational sustainability, efficiency and effectiveness from the point of view of stakeholders and taxpayers.
26. It is clearly established Government policy that at least a BC scheme must be available under the Fair Deal. It is not intended to move from the current position where for local authority outsourcing either ABS or a BC scheme are available options, with BC being determined as it is under the current arrangements. While Communities and Local Government's aim continues to be to make ABS sufficiently attractive for it to be the arrangement of contractor choice in most cases, because of the advantages to all parties described above, the Department acknowledges that there will always be cases where BC is, for good reasons, the preferred option. Contractor representatives have cited the example of second or third generation contracts where employees have already moved or been recruited direct to a BC scheme under a previous outsourcing contract, where the letting authority may have little interest in making the LGPS available. There may be instances where an alternative scheme is a better option than the LGPS.
27. In considering the future of ABS, transparency is essential; full and accurate information on pension costs must be made available at the outset of the tendering process so that contractors can take account of them in their bid and compete on a level playing field. There should be no need for significant changes, on the part of either the contractor or the local authority, later on in the bidding process. There should be no surprises either during, or at the end of, the contract.

28. The treatment of pension and pension-influencing risks within the Best Value context and in relation to ABS in particular is discussed later. It is an important facet to be taken into account in the current review. The risk assessment by local authorities in the ABS context is increasingly distinct – so it would appear – from those taken by some contractors. Longer and bigger contracts appear to influence the scale and outcome of the risk assessment which in turn impact on contract economics. Because local authorities, whose prime focus must always be to protect the interests of taxpayers, are dealing with pension liabilities, these are inevitably in a longer timeframe than many single contracts. This mismatch can become a dominant contract feature unless it is managed properly.
29. It is clear from responses to the earlier consultation and from views expressed by stakeholders during the review that no single approach would command universal support. However, it is recognised that the first aim should be to achieve greater certainty, consistency and transparency in the procurement process, with comprehensive and accurate information available from the outset for the benefit of all stakeholders. Better mutual levels of understanding are important, as is the timely provision of key data. An agreed approach to risk assessment seems also to be worth developing, without commitment at this stage. A range of possible ways forward might usefully be explored with interested parties.
30. The following three approaches might therefore be considered. There may well, however, be other options or possible arrangements which consultees will wish to suggest in their responses to this consultation exercise.

Approach one – Provide revised guidance re-emphasising the original intentions

31. When ABS was introduced, the intention inherent in the regulatory pension fund framework was that contractors should pay contributions based on the future service cost and would not inherit past service liabilities. The actuarial implications for all the key stages set out in the supporting Communities and Local Government guidance, as revised in 2003, were as follows:
- Contractors' pension contributions would be assessed in the light of details of the employees transferred to ensure that the benefits accruing to them were properly funded over the period of the contract; they could be varied within that period.
 - Only exceptionally would they be asked to fund a portion of an accrued deficiency, and this would be made clear at the outset of the tendering process.
 - Whether or not the actuarial gains and losses in the contract period, including effects on past service, would fall to the contractor.
 - The cost arising from the exercise of employer discretions would be charged to the contractor.
 - Strain on the fund costs from redundancies would be charged to the contractor.
 - At the end of the contract, if the contract and admission agreement were renewed, any accumulated surplus would be resolved by the fund actuary with the contractor.
32. Arguments in favour of retaining the current arrangements are that the original intentions, which were drawn up by agreement between the stakeholders, are generally regarded as prudent, sound and genuinely protective of taxpayers' interests. Contractors, on the other hand, state that their concerns are that the arrangements are not always being implemented as originally envisaged. This needs to be addressed and certainty restored to the outsourcing process for the benefit of all interests.

33. There is also a view that the transfer of risk is inherent in the ethos of contracting-out, and pensions risk should not be exempt. Not to transfer this risk could easily lead to local authorities inadvertently failing to identify in full all the pension risks involved in a contract. This could, in extremis, rebound on taxpayers and so result in adverse public finance consequences and produce, in the end, poor value for money. Against this, the contractors argue that the identification and better management of risk is inherent in achieving best value within the contracting out process, and that transfer of pensions risk from a local authority to a contractor is actually unsustainable.
34. However, the existing arrangements still offer financial advantages to local authorities in a competitive market, and authorities should be free to achieve the best deal possible at minimal risk for council tax payers and the transferring employees, without undue restrictions. The indemnity arrangements are clearly established within the current regulatory framework as a statutory safeguard should things go wrong with a contract.
35. Communities and Local Government invite comments on the following steps which could be taken:
 - a. The current guidance should be reformed and updated to clarify:
 - i. The purpose of the legislation
 - ii. To make clear the statutory and non-statutory roles of all the key stakeholders and
 - iii. To set out all the key steps involved for protecting the rights of pensions for staff transferring from the authority to a contractor.
 - b. The guidance could also:
 - i. Ensure that relevant information is available to key stakeholders at the invitation to tender stage of the contracting out process, addressing some of the concerns about uncertainty over pension costs.
 - ii. Clarify the policy that local authorities should **not require** ABS as a condition of contract so addressing concerns about backdoor compulsion to adopt ABS.
 - iii. Set out in detail the Government's view on how pension risks should be addressed and managed by all interests, and how risks identified by local authorities are to be met by means of the regulatory based indemnity arrangements in order to protect the interests of taxpayers.

36. Consultees may wish to add to this list and exemplify their own suggestions.

Please turn to questions one, two and three of the accompanying questionnaire.

Approach two: In addition to updating the guidance consider making minor regulatory modifications to make the existing framework work better.

37. There is some general agreement that the original intentions are sound and that the existing framework be retained but made to work better and so more efficiently by focusing on those particular areas where implementation has perhaps drifted from the original regulatory intentions.
38. In addition to developing more pointed guidance materials as set out at approach one, this might involve, for example, considering specific regulatory changes as identified below:
- a. A specific provision to refund any pensions surplus at the end of a contract to remove asymmetric risk and so enabling contractors to benefit from fund performance and actuarial assumptions;
 - b. Requiring annual actuarial monitoring of contracts to check for employee related or other changes that could have an impact on the pensions position;
 - c. Requiring an annual review of the indemnity cover;
 - d. Requiring the prepared risk assessment to be published locally; and
 - e. Requiring contracting/letting authorities to provide a statement, as part of the bidding process, about the actuarial aspects of ABS, for example, to replicate paragraph 42 of the Department's (revised) 2003 guidance.
39. Consultees may wish to explore the advantages and disadvantages and assess the initial suggestions above. Others may also be suggested as part of the consultation.

Please turn to questions four to ten of the accompanying questionnaire

Approach three: Consider the possibility of introducing some broader regulatory changes which enhance the options available, while at the same time, avoiding any conflict with the key policy basis of ABS.

40. Broad changes, either contractual or possibly regulatory, could be considered to support the effective management of pension risks. The following steps may address cost implications inherent in providing continued access to the LGPS whilst ensuring that provisions continue to meet the needs of local authorities, contractors and taxpayers:
 - a. Allowing for pass-through of pension costs in the contracting process.
 - b. Introducing a requirement for mandatory open admission agreements.
 - c. Cap and collar arrangements.

Allowing for pass-through of pension costs

41. It has been suggested by contractor representatives during informal discussion stages of this review exercise that pension risks could be shared between the letting authority and contractor or indeed removed from the contracting process altogether. This arrangement has been described for convenience as pass-through.
42. With pass-through, the intention would continue to be that contractors would contribute only for membership accrued during the contract and would have no past service liabilities (other than to the extent that some factors, such as higher than expected pay rises, impact on the cost of past service) nor ongoing liability at the end of the contract.
43. The letting authority would retain and meet the actual cost of all the investment risk and essentially meet the actual cost of pensions rather than have to meet the cost of a contract inflated either by over-cautious risk assumptions or by the price of contractor failure in terms of quality delivery or financial performance. The contractor would pay contributions but any excess above the rate specified at the outset of the contracting process, adjusted to take account of subsequent variations only for specified factors (those within the contractor's control), would be reimbursed through the contract.
44. The precise apportionment of costs and risks between the contractor and letting authority is an area which will require close attention, particularly where a public sector pension scheme is involved. Costs additional to the specified contribution rate to be borne by contractors would be those within the contractor's control; e.g. the value of all liabilities arising from

changes in pensionable pay, levels of early retirements or the exercise of employer discretions which exceed those based on the specified actuarial assumptions.

45. The benefits, it is argued, of introducing pass-through arrangements include providing added certainty amongst contractors and letting authorities. In effect, it would allow contractors to concentrate properly on service delivery rather than pension risk. Contractors put off by pension issues might enter the market, particularly smaller companies. Better value for money may arise as no pension premium payable by local authorities would be involved. It is argued that if much or all of the pension risks were retained by local authorities, the result might be greater competition, realistic prices and better value for money to the public sector. It also creates a level playing field with in-house bids.
46. However, the potential disadvantages of pass-through arrangements include a markedly higher level of risk being retained by the public sector/taxpayers, an economic distortion of the contract letting process, creating added complications to the bid-process and for authorities when managing pension risks within and around the contract.
47. It should also be noted that **full** pass-through of pension costs would represent a significant change from the current arrangements, and some would argue that effectively removing pension risk from contractors runs counter to the philosophy of risk transfer currently inherent in the contracting out of local authority services.

Consider the scope to explore whether it is lawful or desirable to require contractors to adopt mandatory open admission agreements as a standard for all outsourcing and contract re-tenders when ABS is the contractor's preferred route of providing pension provision for transferring local authority employees.

48. It has been suggested by employee representatives during informal discussion stages of this review that contractors should be required to sign up to open admission agreements when delivering services or functions outsourced by local authorities when ABS is the contractor's preferred route for providing pension rights for transferring local authority employees. This means that all new employees on a relevant contract can also become members of the LGPS, in contrast to closed agreements where only members of staff who originally transferred with the contract can be members of the LGPS.

49. The benefits, it has been argued, of introducing a mandatory requirement to provide open admission agreements would address multi-tier workforce issues and ensure that contractors could not bid for contracts on the basis of an ability to spend less on pension provision for new starters. It has been suggested that the provision of open contracts would reduce the likelihood of contractors wishing to replace transferred staff with new joiners at the first available opportunity and support the premise of cost savings from outsourcing not being at the expense of the workforce.
50. However, it may be argued that TUPE applies to all staff transferred under Best Value and protects employees during the life of an outsourced contract. Furthermore, it could be suggested that requiring contractors to provide open admission agreements for employees working on outsourced local authority contracts could have a detrimental effect on transferring employees. Some contractors who may have ordinarily considered a closed admission agreement and enable transferring employees to have continued access to the LGPS may instead choose to provide access to their own or an alternative pension scheme⁶.

Cap and collar arrangements

51. Another approach could involve including contractual changes, such as cap and collar arrangements, which some authorities already insert as clauses in their contracts.
52. Cap and collar arrangements work by specifying in the contract an upper and lower limit on the pension contribution rate. The contractor pays the contribution rate certified by the actuary. But, where the actuary specifies a contribution rate outside the range between the upper and lower limits, there is an adjustment in the contract price. The contracting authority meets the cost in excess of the agreed maximum, but the contractor does not get the benefit of contributions falling below the lower limit. Such arrangements form part of the contract between the contracting authority and the contractor; they are not part of the admission agreement and do not involve administering authorities when introduced.
53. Cap and collar arrangements are normally specified at preferred bidder stage, though greater transparency and a more even playing field would suggest that, if such arrangements may be on offer, this should be made clear at the outset in the invitation to tender.

⁶ By virtue of directions issued under section 101 of the Local Government Act 2003, contracting authorities are required to ensure the pension rights for their transferring staff are the same as, broadly comparable to, or better than, those rights received as an employee of the authority.

54. It has been claimed that cap and collar arrangements may provide added certainty and would largely address some practical problems. On the other hand, there are potential disadvantages in that contractors might always price near the cap for safety, and authorities never benefit from the collar; and it needs separate negotiation in each contract, incurring unproductive costs.
55. The issues summarised above are for consideration and analysis at this stage. It is for interested parties to assess the significance of all these factors so the department can consider the responses and determine a satisfactory way forward.

Please turn to questions eleven to twenty-two of the accompanying questionnaire

Further considerations and a summary of approaches set out in this document

56. Views are invited from stakeholders on the propositions set out in this document. In addition, stakeholders are asked to consider questions twenty three to twenty seven of the accompanying questionnaire.
57. It should be emphasised that Communities and Local Government is not currently proposing the introduction of any of these arrangements. Rather, it is seeking from all stakeholders a balanced assessment of any possible changes to the existing ABS framework as a basis for further consideration and for advising Ministers in due course.

Annex A

Summary of stakeholder views

As set out at paragraph 3, the Department's discussion paper of 20 July 2006 set out some of the reported concerns with ABS in detail and sought emerging views on possible revised arrangements under which contractors would pay an agreed contribution rate and most pension risk costs would be passed through to the contracting authority ("pass-through").

A statistical breakdown of the limited number of comments received indicates that out of 23 respondents, broadly 61% supported pass-through arrangements, 35% did not and 4% were non-committal. Contractors and charities were largely supportive of pass-through but some concerns were expressed by a majority of the scheme employer and administering authority interests who responded. Some respondents commented that other options, such as cap and collar arrangements, are available and should be explored.

In general terms, the outcome of consultation and of discussions among stakeholders in the working group indicates that:

Employers' representatives do not support compulsory pass-through or guidance being statutory. They recognise that because well-informed contractors would conservatively price risk, passing all pension risk to such contractors may increase local authority costs. At the moment, with a mix of well informed and less well-informed contractors, it is not clear where the optimal position lies. It has been suggested that historically a significant proportion of contractors bid lower than expected.

Thus, while the employers' representatives do not object to the principle of pass-through, they would not accept it as a mandatory requirement. They may be willing to recommend it as the normal route of preference, provided that there are adequate safeguards for funds and that the advantages and disadvantages are fully set out in authoritative guidance, leaving authorities free to decide whether or not to treat pensions in this way through contractual arrangements.

Employer representatives consider that it is for local authorities and contractors to determine what is best in each individual case; local variation must be allowed to take account of local circumstances. A level playing field needs to be ensured not only between competing contractors but between contractors and in-house bids, including in subsequent generation contracts.

Employers' representatives also do not support the Trade Union suggestion that ABS should be mandatory as this would run contrary to the Directions Order issued under section 101 of the Local Government Act 2003.

Contractors' representatives do not regard it as ethical to seek to obtain an optimal position by relying on contractors being inadequately informed.

They recommend the use of ABS with pass-through arrangements with the contractor effectively paying a contribution rate specified in the contract. The contractor would be responsible for additional pension costs that are under its control, including pay increases above the norm, redundancies, ill-health and employer driven enhancements. The local authority would retain other pension risks including investment, longevity and changes to actuarial assumptions, as they would have done prior to the contracting exercise.

Contractor representatives suggest that this should be set out in statutory guidance and if the local authority departs from the guidance, it must state its reasons for doing so and place them in the public domain, for all staff and potential bidders to see.

Contractors' representatives have concerns about the sustainability of the current approach, based on non-statutory guidance and without pass-through, and where they maintain that in practice contractors offering a BC scheme are often unlikely to win bids.

Trades union (TU) representatives want pensions issues removed from contracting-out negotiations. They support pass-through linked to ABS being mandatory (through statutory guidance or provided within regulation) and open to new joiners. In their view this is the only way to achieve a level playing field with an in-house bid since entitlement to LGPS membership is the only option available to the latter.

TU's suggest that:

- The prevalence of repeated retendering of contracts over the working lifetime of an employee has a dramatic effect on their pension security if they do not remain in the LGPS through ABS. Transferring from one scheme to another is also administratively cumbersome where ABS instead provides continuity.

- The outsourcing and retendering process often does not properly accommodate pension issues in the current framework. Transfers occur before pension arrangements have been properly discussed or confirmed. Employees are transferred before a certified 'broadly comparable' scheme is set up and there is sometimes a significant time gap before contribution payments restart following the transfer.
- The situation for new starters on outsourced public services is worse as they can end up being transferred in a retendering process with only basic levels of pension protection. This automatically creates inequalities between employees and complications for the management of the contract.

The third sector can build foreseen pensions costs into their bids but unexpected large termination payments or contribution hikes can be fatal, and few negotiations between charities and local authorities are sophisticated enough to cover these eventualities in the contract.