



## LOCAL GOVERNMENT PENSION SCHEME

### Amicus Section of Unite Pensions Guide

# Outsourcing Guidance

This LGPS Guide relates to employees transferring under a best value outsourcing process either from a local authority or as a result of a retender of such a contract. Some provisions also extend to new employees who are employed to work on the relevant contract. Where employees are subsequently transferred to a sub-contractor it remains the primary contractor who is responsible for ensuring members' employment terms comply with these statutory requirements. The guidance outlines the issues that face Amicus Section of Unite in these situations and lists some guidelines for Amicus section of Unite officials faced with this scenario.

## CONSULTATION

Amicus section of Unite should be involved in:

- ↪ The option appraisal stage (whether to outsource)
- ↪ The selection process (the bidding stage)
- ↪ The transfer process (when members are to be outsourced/transferred between contractors)

Local authorities should involve recognised trade unions throughout the transfer process with full disclosure of relevant information affecting the workforce. In addition, trade unions should be consulted by the new employer on the terms and conditions to be offered to new starters.

The local authority should also monitor the compliance of the new service provider with the "Code of Practice on Workforce Matters in Local Authority Service Contracts" which covers these provisions.

## TERMS AND CONDITIONS (excluding pension provision)

The code applies to all best value transfers whether or not TUPE strictly applies. This ensures that terms and conditions of employment are protected and replicated when the employer changes.

New starters on a transferred contract should be provided with terms and conditions that are "overall, no less favourable than those of transferred employees". Employers therefore do have the opportunity to vary the terms they offer new employees but as a package the terms should not be worse.



# LOCAL GOVERNMENT PENSION SCHEME

## Amicus section of Unite Pensions Guide

### PENSIONS

When a local government service contract is outsourced, alongside protection for other employment terms and conditions, there is a form of protection for pension rights. The new employer must provide “broadly comparable” pension arrangements for transferring workers.

There are two main ways the new employer can comply with this. Either they can provide a pensions scheme for the transferring workers that roughly mirrors the Local Government Pension Scheme, or they can apply for “admitted body status” to the LGPS. If they opt for the former then they must secure a certificate or passport from the Government Actuary’s Department (GAD) who assess the quality of the pension arrangements proposed by the new employer and confirm that they meet the “broad comparability” test.

#### **Admitted Body Status (ABS)**

Private companies that operate public services contracts can apply to become “admitted body” employers to the LGPS. This basically means that for the purposes of pensions the private company, like a local authority or the Environment Agency, is an employer under the terms of the scheme. So the rules of the scheme laid down in the regulations apply and the members should see comparatively little difference in their pension arrangements.

If an employer has ABS there are again two possibilities regarding those new workers employed on the public service contract. If the employer has a closed admission agreement with the LGPS administering authority then only the original workers that transferred with the contract can be members of the LGPS. Better still of course is for the employer to have an open admission agreement. This means that new employees on a relevant contract can also become members of the LGPS. Should the contract subsequently be returned to local authority control this is the easiest option for a trouble-free transfer.

#### **New Starters**

Unfortunately it is often the case that contractors do not apply for open admission agreements. In the event new starters are not to be offered membership of the LGPS then the new employer must provide them with access to “a good quality pension scheme”. This is a broad term that can cover both final salary or money purchase schemes. In the worst case scenario the minimum pension that has to be offered to new starters on an outsourced contract is a defined contribution scheme where the employer matches whatever contribution the member makes up to 6%.



# LOCAL GOVERNMENT PENSION SCHEME

## Amicus section of Unite Pensions Guide

### AMICUS SECTION OF UNITE'S ROLE

- ↪ As a recognised trade union with a local authority, Amicus section of Unite should be consulted at every stage of the outsourcing or retendering process. As TUPE protects all the general terms and conditions, the area in need of particular attention is pensions.
- ↪ Amicus section of Unite's aim is to have open admitted body status arrangements enabling new starters as well as the transferring members to join the LGPS.
- ↪ Amicus section of Unite should aim to negotiate with the local authority before the bidding stage that ABS is preferred mechanism for pension provision. This means that contractors are aware they are expected to offer ABS and can formulate their bid on that basis.
- ↪ By the time a contractor is selected and the transfer process has started it is generally too late to start negotiating ABS.
- ↪ If an open admission agreement is not available then focus should be on the pension provision being offered to new starters on the contract.
- ↪ The Code provides very minimal protection for new starters' pensions and Amicus section of Unite should aim to negotiate provision as close to the LGPS as possible.
- ↪ If no form of ABS is agreed then the guarantee of "broad comparability" from the Government Actuary's Department must be sought with regard to the pension being offered to transferring employees. Often this is initially provided as an interim certificate, Amicus section of Unite needs to maintain pressure on the local authority to see the full certificate is secured as early as possible.
- ↪ It is the local authority's responsibility to ensure the code is followed both at transfer and afterwards while the contract continues. Amicus section of Unite also need to monitor this and raise concerns when problems arise.
- ↪ When problem arises, in the first instance Amicus section of Unite should raise it with the service provider, the second stage is to bring the issue to the local authority's attention. If this does not satisfactorily resolve the concern then there is an "Alternative Dispute Resolution" process that should be employed, the detail of this is available at: <http://www.communities.gov.uk/pns/pnattach/20040054/1.doc>



## LOCAL GOVERNMENT PENSION SCHEME

### Amicus section of Unite Pensions Guide

# Redundancy / Efficiency

If your employer states in writing that you are leaving their employment on the grounds of redundancy or efficiency, then you should be eligible for a compensation lump sum and/or be able to access your pension before the Normal Pension Age of 65.

### Compensatory Lump Sum

Employers can provide additional compensation above the statutory redundancy payment. To comply with age discrimination legislation, employers must ensure that either their enhanced arrangement mirrors the statutory redundancy system or does not include any age discriminatory element (such as an age or length of service related formula). Having an age or length of service element to a compensation formula does not contravene age discrimination law if it can be objectively justified. Anyone faced with a potentially discriminatory provision in a redundancy compensation formula should ask the reason for the objective justification. It should be noted that cost alone is not sufficient for an objective justification.

The statutory redundancy scheme, despite its blatant age and length of service elements, is specifically exempt from age discrimination law. Similarly any formula for enhanced redundancy payments can qualify for the same exemption if it mirrors the statutory formula. Enhancement can be achieved by doing one or more of the following in relation to the statutory arrangement:

- a) Remove the cap on a week's pay (currently £310)
- b) Increase the multiplier
- c) Multiply the total amount

Any other amendments to the statutory arrangements are likely to be in breach of the legislation. Features such as caps on the maximum number of weeks' pay after the statutory provisions have been enhanced, for example, are likely to be age discriminatory unless they can be objectively justified. Having said this, there is an overall cap on compensation lump sums set at 104 weeks that is laid down by the DCLG.



## LOCAL GOVERNMENT PENSION SCHEME

### Amicus section of Unite Pensions Guide

#### Access to LGPS Pension

If you are a member of the LGPS you have a right to immediate payment of your pension providing you are at least 55 years of age (50 years of age for some members until April 2010). In this situation the pension will not be reduced for early payment.

#### Enhancement

One of the many discretionary elements of the LGPS is the potential for employers to artificially increase an employee's scheme membership (their pensionable service). Your employer should have a published policy on how they use this discretion.

Your employer **can** decide when you leave on redundancy / efficiency grounds to increase your length of scheme membership. This will mean that in terms of calculating your pension and lump sum benefit from the LGPS, your pensionable service will be greater than the period when you were actually paying in contributions. This would normally be done instead of discretionary enhancement to your severance lump sum.

#### Limits On Enhancement

Obviously this discretion only goes so far and there are limits to how much extra service your employer can grant. They should however, publish a policy on how they use this discretion which you can request. The maximum enhancement that can be given is 10 years' additional service.



## LOCAL GOVERNMENT PENSION SCHEME

### Amicus section of Unite Pensions Guide

# Flexible Retirement

The rules of the LGPS allow for flexible retirement from a Local Authority or other employer participating in the LGPS. Flexible retirement means that an employee can scale down their working responsibilities and start to access their pension from the LGPS.

Provided you have the consent of your employer to do so, you may either:

- ↪ Reduce the number of hours you work, or
- ↪ Reduce the grade of your employment

And continue to work whilst drawing on your pension from the LGPS. You can only draw the full available amount of the pension you have built up and cannot elect to draw on a part of this amount and save the rest until a later date.

As a member of the LGPS you can access your full pension from the normal pension age of 65. The pension may be drawn at an earlier age, although a reduction is normally applied – see the guide on Early Retirement for further details. Legislation prohibits you from drawing on your pension before the age of 50, rising to the age of 55 from April 2010. In cases of ill health, pension can be drawn at any age.

Each employer participating in the LGPS is required to formulate a policy on flexible retirement which is available on request.

### **Pension Rights in Continued Employment**

Taking flexible retirement should not restrict your ability to continue building up pensionable service in the LGPS. This would then give you additional pension that could be drawn when you decide to retire completely.



## LOCAL GOVERNMENT PENSION SCHEME

### Amicus section of Unite Pensions Guide

#### Working Past Your 65<sup>th</sup> Birthday

Age Discrimination legislation allows employers to dismiss employees on the grounds of retirement at the age of 65 providing a certain procedure is followed. You have the right to request continuing to work past this retirement age. If this is given you can still have access to your pension at 65 and retire flexibly as described above.

If you do carry on working past your 65<sup>th</sup> birthday, you can delay drawing your pension. Pensions brought into payment after the age of 65 will be increased to reflect the fact that they are brought into payment later. All LGPS pensions must be taken before your 75<sup>th</sup> birthday.

#### Examples

Doris works as a finance administrator. On her 55<sup>th</sup> birthday she takes a reduction in grade of employment and is granted the facility to take flexible retirement. As a result she is able to draw upon her pension, which is reduced by 39% for early payment, and continue working in her new role. In her new role Doris also builds up a further 10 years service in the LGPS, and draws upon this further pension from the age of 65.

Barry works as a school facilities manager. On reaching his 65<sup>th</sup> birthday, he successfully requests continued working on the grounds that he reduces his hours from 5 days a week to 3 days a week. He is allowed immediate access to his pension from the LGPS, which is unreduced as he has reached pension age, and he carried on working beyond the normal retirement age.

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Local Authorities/Local Government