Leicestershire County Council

LOCAL PENSION BOARD

17 SEPTEMBER 2018

REPORT OF THE DIRECTOR OF CORPORATE RESOURCES

BONDS AND GUARANTORS

Purpose

1. The purpose of this report is to inform the Board about bonds and guarantors when Academy and Multi Academy Trusts outsource work to new employers under the transfer of undertakings (protection of employment) regulations (TUPE).

Background

2. When an Academy or Multi Academy Trust (MAT) outsources work under TUPE the scheme members Local Government Pension Scheme benefits have to be maintained under Fair Deal.

3. The Academy or MAT can do this in two ways;

    a. The new employer sets up a broadly comparable pension arrangement , or
    b. The new employer opts to become a transferee admission body (TAB) in the Leicestershire Pension Fund. This is the more common option and requires two legal documents to be completed, an admission agreement and bond.

4. The new employer has to ensure a bond is set up with their bond provider, in advance of the transfer of staff. The value of the bond is calculated by the Fund's Actuary. The bond is used if the new employer becomes financially unstable and is unable to meet its financial commitments in the scheme. The Fund claims against the bond so member's pension benefits can be paid without the need to discharge the cost across other employers in the Fund.

5. Bonds are made up of two elements;

    a. The market related risk of the employer,
    b. The capital cost. If a member is made redundant age 55 or over they are entitled to immediate payment of their pension benefits unreduced. This creates a capital cost that is paid directly to the Fund.

6. The Leicestershire Fund currently includes both elements in the calculation of bond values for new employers who have received employees from outsourcing Academies and MATs; this is known as the "full bond".

Challenge

7. The Fund is being challenged by Academies, MATs and the new employers about the bond values as they feel they are unreasonable. Their view is the guarantee is "two fold" i.e. the new employer is having to stand an unreasonable bond value when in reality any amount of deficit remaining, if the new employer defaults, will be passed back to the Academy or MAT automatically under the LGPS regulations, therefore negating the need for the market related element of the bond.

8. The Fund takes its current approach because if the new employer defaults, and the Academy or MAT is unable to meet the cost, it can still go to the bond provider to meet the cost.

9. The Fund currently requests the full bond because its view is the Academy or MAT cannot act as guarantor without the Secretary of States approval. If approval is granted by the Secretary of State, the Fund will only request the capital cost bond which will be lower than the value of the full bond. However, the Pension Manager is not aware of approval being granted by the Secretary of State.

10. The Department for Education (DfE) informal opinion is that an Academy or MAT cannot act as guarantor without the approval of the Secretary of State.

11. The Ministry of Housing Communities and Local Government (MHCLG) informal opinion is an Academy or MAT can act as guarantor without the approval of the Secretary of State. This is supported by regulation 64(3) of the Local Government Pension Scheme Regulations 2013.

12. Differing informal views from DfE and MHCLG create uncertainly causing Administering Authorities to take differing approaches.

Investigation

13. The Pension Manager understands if an Academy or MAT acts as guarantor without the Secretary of States approval they are breaching their obligations under the Funding Agreement with the DfE.

14. The Pension Manager has requested an opinion from the Local Government Association (LGA) to help officers decide if a change of approach is required in the Leicestershire Fund. The LGA are aware of the issue. They have agreed that MHCLG raise this issue with the DfE to help resolve the current conflicting position. In addition, the LGA are expecting MHCLG to issue further consultation on Fair Deal in the LGPS by the end of 2018. One of the options being put forward is the outsourcing employer would remain the scheme employer, thereby negating the issue.

15. The Pension Manager has approached the Fund's Actuary and their informal opinion is the Fund should consider its position, believing an Academy or MAT (whether explicitly or implicitly) is the guarantor when they outsource to a third party [new employer].

16. The Pension Manager has approached a number of other LGPS Funds and their informal opinions are to allow Academies or MATs to act as guarantor without the Secretary of States approval.

Recommendation

17. The Local Pension Board is asked to recommend further investigation that will support officers in making a decision; whether or not to allow Academies and MATs to act as guarantor without the need for Secretary of State approval, thereby only requiring a capital cost bond.

Equality and Human Rights Implications

18. None.

Officers to Contact

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