
Appendix 2: Employer Feedback Received

We would like to thank the Fund for sharing the draft policy with us and entering into this consultation. We hope our response to it and our subsequent discussions continue to develop our open and collaborative relationship with the Fund, which we believe will increase the chances of good outcomes where both ours and the Fund's objectives can be best met.

Our most significant point of principle relates to paragraph 13 where there is an assumption that a DDA would not be agreed if a covenant may get worse. If this is the case then the best outcomes for the Fund may not be achieved. By not allowing an employer with a deteriorating covenant to enter into a DDA, the build-up of accrual would continue, and the level of debt within the scheme versus net assets of the employer would increase, which in turn increases the risk for other employers. Therefore, even though we expect our own covenant to improve over time, we do not agree with this assumption on principle as each case should be considered on its own merits taking into account the impact on all of the stakeholders.

We have also included comments on the policy on review of employer contributions for completeness, although we do not expect this to have any direct relevance to our individual circumstance as we are seeking to utilise the exit flexibilities, subject to the outcome of this consultation.

Comments on Exit Spreading Payments policy

We welcome the proposal to include exit payment spreading within the Fund's policies. In particular, we agree with the statement in the LGPS SAB guide which states that a Debt Spreading Arrangement may "*better enable the employer to afford to leave the scheme and manage the impact on the business' cashflow*". However, we have some specific comments on the draft wording which we believe can improve the way that this change is implemented.

Paragraph 2.1 - notes the primary factor in determining whether the Administering Authority will agree to phased payments would be the employer's financial ability to make a single capital payment. We would want to see the Administering Authority also consider an employer's other needs for cash – including, but not limited to, capital investment in the business, obligations to other creditors and ongoing spending. As well as considering needs for cash to meet obligations, we would also request that the Administering Authority considers reasons why employers may need to retain capital within

the business at certain times, for example due to banking covenants..

Paragraph 3 states that employers are expected to share their financial position, business plans and financial forecasts with the Administering Authority and we would like to see that these are used to gather a holistic picture of the employer, not only to determine financial affordability. The policy and this process would in our view be enhanced by explicitly noting that the Administering Authority will consider the representations of the Employer and their advisors as part of this process.

Paragraph 3 – The draft policy includes a deadline within which employers must provide financial information in order for an exit payment to be spread. In our view, the proposed timescale of 1 month may often be too short to be achievable (depending where in the financial year the request is made, and the nature of the information requested). We would prefer to have a standard 2 to 3 months, along with flexibility for a longer timescale to be agreed. This will provide more flexibility to the Fund and to employers to agree timescales appropriate to the situation and to the information being sought.

Paragraph 4 - states that the default spreading period will be "three years but longer periods (not exceeding nine years) will be considered where the Administering Authority is satisfied that this doesn't pose undue risk to the Fund...". We support this flexibility around an appropriate time period, although do not see the reason for a nine-year limit – particularly if suitable long term security is in place for the Fund to call upon or otherwise there is a strong covenant. We would like to see this maximum term supplemented with wording which permits the Fund and employers to agree a (potentially longer) term which is appropriate to each situation.

Paragraph 5 – We appreciate the flexibility that the proposed wording gives, rightly acknowledging that there are circumstances when a request to spread an exit payment would not be made until after the exit date.

Paragraph 6 - We appreciate the general flexibility around the frequency and nature of payments. Please could you confirm whether this flexibility is intended to include the rate of interest on payments as well as payment timing, and seek to clarify this within the wording of the policy.

Paragraph 7 - It is helpful that the draft policy sets out the process that the Administering Authority will follow in communicating its decision. It would be helpful if this paragraph could also set out the process that an employer would need to follow if it disagrees with the Administering Authority's decision. In particular, the paragraph could set out if there is a practical appeals process, or the process for a dialogue between the employer and Administering Authority before a final decision is made.

Paragraph 8 - Please can you include more detail on what is reasonably expected to be included in your costs (e.g. actuarial, covenant and legal fees, investment related fees, administration fees etc). Where possible, we would like to see costs provided to employers upfront and any applicable rates/terms of advisers and suppliers. In addition, we would request that the term "all costs" is updated so as to read "all reasonable costs".

Paragraph 9.1 – Please could you provide more detail (including within the policy) as to what a triennial review of spreading arrangements will entail. In particular, do you envisage that the amount or timing of payments due from employers will be altered in any circumstances as part of such a review? Our expectation is that this would not be the case, with employers crystallising their

obligations at the point of exit and only altering the payment profile upon mutual agreement between the Fund and the employer.

Paragraph 9.2 – This paragraph notes that adherence to 'the' notifiable events framework will be required during the spreading period. This paragraph would be made more transparent by explicitly cross-referencing the applicable notifiable events framework that the policy would expect employers to follow. Additionally, as an example of a notifiable event, the draft policy mentions restrictions on employer active membership. Our understanding is that an exit spreading agreement would only be possible if there were no active members remaining and therefore we believe this point can be removed from the draft policy.

Paragraph 10 - states that actuarial advice will be sought on whether there should be a discount given for early payments. In our view it would be reasonable to establish the principles for this in advance and to document these principles in the policy. Our expectation would be that without strong justification to the contrary, a discount should be given to employers who make payments early.

Comments on Deferred Debt Agreement (DDA) policy

We are pleased to see that the Fund will be considering requests from employers wishing to adopt a deferred debt agreement. As above, we have some comments on the wording in the draft policy.

Paragraphs 12.1-12.4 - We welcome the fact while there are examples of factors that the Administering Authority will consider when allowing an exit payment to be spread, it does not present this as an exhaustive list. This wording acknowledges that each employer's circumstances will be different, and we believe this is appropriate. We would appreciate further detail on 12.3 (the rationale for the employer requesting a DDA) to acknowledge the types of reasons which could be acceptable to the Administering Authority (e.g. financial stability of the employer, business planning, a capital investment programme, tolerance of DB risk) together with an acknowledgement that there may be individual circumstances beyond this list in which a DDA would also be reasonable.

Paragraph 13 – notes that a DDA is unlikely to be agreed if it is expected that the employer's covenant may materially weaken. Notwithstanding the fact that "may" is a subjective word and should be clarified, we do not agree with this starting position for DDAs. Specifically, if an employer's covenant is expected to materially weaken it might be in the interests of the Fund and the employer (and other employers in the Fund) to allow a DDA so that no further liabilities are accrued by that employer. Whilst this might be the case even without additional security, if extra security is obtained by the Fund through the DDA process then it will be more likely that the DDA is helpful to all parties. Using fully taxpayer-backed employers as the only example in this paragraph of a circumstance in which risk to the Fund would not be increased in our view gives a perception that DDAs will not be agreed in an appropriately broad set of circumstances

Paragraph 14 – Please can you confirm the type of information employers may reasonably expect to provide. Please could you also consider updating this paragraph to replace the phrase "all costs" with "all reasonable costs" when describing the costs that can be recharged to employers. Alternatively, the comments in this paragraph regarding employers meeting costs could be deleted given that they are closely replicated by paragraph 19, which helpfully also includes a comment noting that estimated costs can be provided on request.

Paragraph 15.3 – notes the situations when a DDA will terminate.

- In the scenarios of a take-over or amalgamation, would the Administering Authority be amenable to re-negotiating a DDA?
- In the scenario of the Administering Authority serves a notice on the deferred employer that it is reasonably satisfied that the deferred employer's ability to meet the contributions payable under the deferred debt arrangement has weakened materially or is likely to weaken

materially in the next 12 months, please could you include an acknowledgement that employers will be able to provide input into the Administering Authority's assessment prior to such a notice being served.

Paragraph 20 – we can realistically see how an employer may exit the fund at short notice (e.g. if the last active member leaves). We are reassured to see that the Administering Authority will consider a DDA in this situation.

Finally on DDA's, we believe the Fund should be open to discussions around an employer specific investment strategy in the event of a DDA to find the best cost/risk balance, together with the funding agreement and covenant position.

Comment on policy on review of employer contributions

Paragraph 23-23.3 – the phrase “it appears likely to the Administering Authority” is used in a number of places. However, it does not go on to say either (a) what information the Administering Authority will use in determining what is likely or unlikely, or (b) what level of consultation there will be between the Administering Authority and the employer in question when reaching conclusions about that employer’s circumstances. Especially as some of the points in these paragraphs relate to the future actions of the employer, we believe it would be appropriate for the Policy to explicitly acknowledge the role of the employer in providing information to the Administering Authority in order for the Fund to make this assessment.

Paragraph 23.3 - also states that contributions may change if “it appears likely to the Administering Authority that there has been a significant change in the ability of the Scheme employer or employers to meet the obligations of employers in the Scheme”. We would appreciate if the wording of this point could explicitly note that contributions payable by employers will not be increased between valuations except in certain exceptional circumstances (which we would expect to be listed and consulted on explicitly).

Paragraph 23.4 – we agree that a review of contributions on the grounds of market conditions is not desirable, as stability of cost is important to employers. In our view this point should be extended so as to also explicitly note that a review of contributions will not be made between valuations due to a change in actuarial approach or firm of actuarial advisors. For example, it would not be appropriate outside of the triennial valuation cycle to change (without consultation on this particular issue) the methodology for deriving CPI inflation assumptions in light of the proposed reforms to the RPI inflation index. Making this point explicit would be consistent with the LGPS SAB guide which states that *“the financial and demographic assumptions used should be consistent in their structure and derivation with the principles in the FSS and those used at the last Fund valuation.”*

Paragraph 24.1-24.6 – on the whole, we appreciate being informed of the changes that could lead to a review of contributions. We agree with most of these although we would like you to confirm that if 24.3 is intended to also include a change in actuarial methodology by the actuary (or a change in actuary). We also note that under 24.4, the Fund intends to take a wide view in assessing the employer’s long term financial strength – this is appreciated, and would like to see similar breadth in considering suitability for a DSA or DDA (which appear to focus more narrowly on current affordability of a lump sum).

Paragraph 28.4 - states that there will be a minimum of 4 weeks’ notice given of any contribution increases. In relation to this, we note firstly that 4 weeks is a short notice period for an increase in contributions, given the potential effect on employers’ budgeting and broader finances, as well as the practicalities around payroll, and we would appreciate a longer period (e.g. 12 weeks) being the expected minimum.

Paragraph 29.1 – We support the Fund’s intention to consider not increasing employer contributions “if it would precipitate the failure of the employer or otherwise seriously impair the employer’s ability

to deliver its organisational objectives or it is expected that the employer’s financial position will improve significantly in the near-term” and thank the Administering Authority for including these provisions.

Comment on appeals process

Paragraphs 30-31 – We would appreciate clarification over the appeals policy, e.g. whether current contributions will continue while an appeal is underway. We also note the following is required – *“31.2 any further information (or interpretation of information provided) which could influence the outcome, noting new evidence will be considered at the discretion of the Administering Authority.”*

We would like this to be reworded so that all new evidence brought forward would be considered, and not at the discretion of the Administering Authority. We believe that this is fair, and essential for an appeals process to be heard properly.

For this appeals process to be authentic, we would like to have written into the policy that the Administering Authority will make their decision in collaboration with the employer, taking into consideration the employer’s reasons for the request and their business plans, as well as simple factors such as affordability (see comment on paragraph 2.1 above).

Closing remarks

We hope that you have found our input helpful. Our overriding view is that the best outcomes for the Fund and for employers can be found through collaborative discussions and through considering in detail each employer’s business and objectives. You will note that many of our comments encourage a collaborative and open way of working.

We would welcome the opportunity to discuss this with you as soon as possible and certainly in time for you to be in a position to fully understand and reflect our comments in the papers that are put to Committee in December. Even though time is tight, it is very important to us that our perspective is

taken into account as this policy has significant and immediate relevance