



# Tyne and Wear Pension Fund

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**My Reference** HC/Pens  
**You Reference:**

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**Date:** 5th August 2016

Dear Benjamin

## **Further Education and Sixth Form Colleges - Consultation on developing an Insolvency Regime for the Sector**

I refer to your consultation on the above topic. Thank you for the opportunity to comment on these proposals.

This response reflects the views of South Tyneside Council in its role of administering authority to the Tyne and Wear Pension Fund, a fund operating within the Local Government Pension Scheme. Consequently this response primarily addresses administrative, technical and pension liability issues in respect of the Local Government Pension Scheme (LGPS).

The Consultation raises nine questions. We believe that it is appropriate that we respond under Question 9. However, our comments may have consequential issues across the other questions raised.

Our comments are set out below.

### **General concerns and principles**

It is a key factor that under any insolvency arrangement including a proposed Special Administration Regime (SAR) an LGPS fund is an unsecured creditor. This is a concern, as a pension deficit could potentially be a major contributor to insolvency. LGPS administrators have a fiduciary duty to mitigate potential losses ending up having to be met by other employers participating in the fund it administers.

It is therefore critical that:-

- any SAR should ensure that steps are taken to prevent any risk arising of a pension liability of a college falling on other employers in an LGPS fund and ultimately the tax payer.
- any SAR should not put a LGPS fund in a worse position that it would have been under normal insolvency rules.
- the SAR should not impede or limit an administering authority in carrying out its statutory duties and the SAR does not prevent the college or the administering authority carrying out any of the requirements placed on either organisation by the LGPS's regulations.

## **Ongoing payment of pension contributions**

The provisions of the SAR must ensure continuing compliance with the provisions that deal with Actuarial Valuations (Regulations 62-66 of the LGPS Regulations 2013 as amended) and Payment of Contributions (Regulations 67-71 of the LGPS Regulations 2013 as amended)

It must be made crystal clear that, during any period during which a college is deemed insolvent but remains “artificially” open due to the operation of a SAR, pension contributions for both future service and any past service deficiency as set out in the actuary’s rates and adjust certificate must continue to deducted/paid over to the appropriate LGPS Fund. It needs to be appreciated that any failure to deduct or pay over pension contributions would almost certainly compel an LGPS administering authority to take legal action against the college/ the persons administering the SAR. In addition we believe it likely that where contracts provide for the members’ participation in the LGPS, a college could be open to action by its LGPS members for constructive dismissal.

Any SAR must clearly set out the process to ensure collection of all contributions required by the actuary’s Rates and Adjustments certificate. This must include circumstances where there is no opportunity to obtain a revised certificate to adjust contributions during the period the SAR. Any appointed administrator must have a stated responsibility to ensure the collection and remittance to the pension fund of all required pension contributions.

## **Exiting employer**

Where an LGPS scheme employer ceases or continues to exist but ceases to have any active contributing members, it at that point becomes an exiting employer and is not eligible to continue to participate in the Scheme. If the employer has a deficiency in the funding of the pension benefits for their current and former employees, it is then immediately liable to pay an exit payment to cover these liabilities.

Guidance on how this statutory requirement is to be complied with and managed is required and provision needs to be included within the regime clarifying that any appointed administrator has a responsibility to carry out their function in such a way that these requirements are not impeded or compromised.

A form of Government guarantee to prevent any pension liability falling on the other employers in the LGPS fund and ultimately the local taxpayer should be put in place.

## **Strength of Employer Covenant**

It should be noted that LGPS funds in England and Wales are currently undertaking their triennial fund valuations as at 31<sup>st</sup> March 2016. New contribution rates will come into force from 1<sup>st</sup> April 2017. An employer’s strength of covenant determines and influences the decisions around the funding strategy that is applied to each organisation participating in the Fund.

The clarification that colleges have no Government backing is likely to weaken their position on covenant. This will need to result in more prudence within the funding strategy. There will be a need to more quickly reduce and ultimately eliminate any deficiency. As a consequence, and if we assume all other factors remain unchanged, then logic dictates that college employer contribution rates will almost certainly rise.

Administering authorities will, in conjunction with their advisors, need to review college covenants. It is recognised that a balance may need to be met during the regime, but ultimately the focus of administering authorities must be to prevent the costs of any outstanding liability falling on other employers participating in the fund and being borne by local taxpayers.

Regard also needs to be taken of the regulatory provision requiring that, where in the opinion of an administering authority there are circumstances which make it likely that the scheme employer will become an existing employer, the administering authority may obtain a revised certificate from their actuary to specify how contribution rates can be adjusted with a view to providing assets equivalent to an exit payment by the likely date of exit.

It should be recognised, that currently in many funds and in order to manage risk and to allow colleges to access beneficial financial assumptions in the setting of LGPS employer contribution rates and deficit recovery periods, agreements will be in place to secure a first call on assets of a college to manage deficit recovery. Any regime should contain specific provisions protecting such agreements. Without this protection, administering authorities are likely to feel compelled to revisit how college employer contribution rates are set and what deficit recovery periods are allowed, notwithstanding that any major tightening of approach may destroy any possibility of rescuing a struggling college.

### **Area reviews**

Whilst this consultation is not specifically about the area review process we are concerned that consideration of LGPS pension matters have not and may not play a prominent role. LGPS administering authorities may not be aware until any merger, closure or setting up of a new establishment until it has been agreed. This again raises concern over pension liabilities. To address this we would encourage and welcome moves at the earliest opportunity to encourage all those involved in the process to engage with all relevant bodies, and particularly LGPS pension funds, to consider pension matters, and with particular attention to funding deficits.

### **The long term future of colleges in the LGPS**

We understand that it is not inconceivable that colleges may be removed from the LGPS altogether. If this were to be the case it would lead to a significant deficit crystallisation event across the sector. This would need to be funded in some way. This is a matter of serious concern and may impact on the funding strategy applied to colleges. However, much of the concern would be ameliorated if steps are taken to ensure that deficits do not fall to be met by other employers participating in the LGPS fund.

I hope these comments and observations are helpful and are will be of use to you during the consultation.

Yours sincerely

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