



Outsourcing

This guidance 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. This guide is primarily focussed at organisers and reps and outlines the issues that face GMB in these situations.

Consultation

GMB 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 employment terms they offer new employees but as a package the terms should not be worse.



LOCAL GOVERNMENT PENSION SCHEME 2008

GMB Pensions Guide

www.gmb.org.uk/LGPSGuide

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 pension 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%.



GMB's Role

Here are a few guidelines for those faced with outsourcing/retendering processes:

- ❖ As a recognised trade union with a local authority, GMB 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.
- ❖ GMB's aim is to have open admitted body status arrangements enabling new starters as well as the transferring members to join the LGPS.
- ❖ GMB should aim to negotiate with the local authority before the bidding stage that ABS is the 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 GMB 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, GMB 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. GMB also need to monitor this and raise concerns when problems arise.
- ❖ When problem arises, in the first instance GMB 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 from the LGPS Guide section of the GMB website.