



# Powys

## LOCAL GOVERNMENT PENSION SCHEME

PENSION ARRANGEMENTS FOR  
STAFF TRANSFERRED UNDER  
TUPE

CYNGOR SIR *POWYS* COUNTY COUNCIL

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# **Pension Arrangements for Staff Transferred under TUPE**

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# **Pension Arrangements for Staff Transferred under TUPE**

## **INTRODUCTION**

As a commissioning council, Powys County Council continues to consider a wide range of ways to deliver services, including a variety of delivery models with a number of potential partner organisations. Where the use of alternative service delivery models involves the transfer of Council staff to partner organisations, policy in relation to arrangements for staff pensions is required. This document sets out the policy to be applied to pensions for Council staff who are eligible to be members of the Local Government Pension Scheme (LGPS) in respect of differing types of partner organisations.

## **1. LEGISLATIVE FRAMEWORK**

The principal driver for this policy document is the requirement placed on the Council by The Welsh Authorities Staff Transfers (Pensions) Direction 2012. This order applies where Council staff are transferred to partner organisations as a consequence of a transfer of undertakings and obliges the Council to ensure that staff pensions are protected. The protection of staff pensions may be achieved in one of two ways, either by:

- Ensuring that the partner organisation provides transferred staff with access to a pension arrangement which has been certified by the Government Actuary as being broadly comparable to the LGPS; or
- Enabling transferred staff to remain eligible for the LGPS by admitting the partner organisation into the Powys Pension Fund.

This policy document sets out arrangements in respect of the second bullet point (above).

Arrangements for the admission of organisations into the LGPS are set out in Part 3 of Schedule 2 to the Local Government Pension Scheme Regulations 2013 [SI 2013 No. 2356].

## **2. KEY PENSION FUND ISSUES**

The key issues for an LGPS Pension Fund in relation to the admission of partner organisations are as follows:

- The terms of the service contract between the Council and the partner organisation.
- The partner organisation's proposals in relation to pension arrangements for post transfer appointees.

- In relation to transferred staff, the treatment of the Council's Pension Fund deficit and the funding of pension rights accrued up to the date of transfer.
- Arrangements for the mitigation of the pensions funding risk associated with the possible insolvency of the partner organisation.
- Arrangements for the mitigation of the pensions funding risk associated with a post transfer deficit arising.

The policy contained in this document seeks to address each of the above issues for each type of potential partner organisation.

### **3. PARTNER ORGANISATION TYPES AND THEIR CHARACTERISTICS**

Six different partner organisation types have been identified and the relevant individual characteristics of each are set out below.

#### Joint Venture Companies

- Council shares ownership with a third party
- Council may have a management role within the JVC
- Council's JVC partner may be a commercial or non-commercial organisation
- JVC will have a strong financial covenant because of the involvement of the Council (a tax raising body).

#### Arms-Length Wholly Owned Companies

- Council owns the company
- Council may have a management role within the company
- Company will have a strong financial covenant because of the involvement of the Council (a tax raising body)

#### Third Party Contractors

- Likely to be a commercial organisation
- May be local, regional or national organisation
- Covenant based on the contractor's overall financial strength

### Charitable Trusts

- May be a very small organisation specific to the service being provided
- General funding of the trust may be uncertain particularly where reliant upon grant funding and / or fundraising
- Covenant likely to be weak.

### Social or Community Enterprises

- Likely to be a very small organisation specific to the service being provided
- General funding of the enterprise likely to be limited to the specific service
- Non-professional management of the enterprise may be a feature
- Covenant likely to be very weak.

### Preceptors (eg. Town and Community Councils)

- Funding certainty
- Strong covenant as tax raising body.

## **4. IMPLEMENTATION AND REVIEW**

The policy contained within this document will be implemented with immediate effect following approval of Cabinet (Summer 2016).

Where relevant, Council procurement procedures are amended to include specific reference to the policy contained herein. Adherence to agreed policy will be a qualification requirement for procurement tenders that involve staff transfers.

Policy will remain under constant review throughout and may be amended from time-to-time as required by changes to statutory regulation and the Council's continuing commissioning experience.

## **Annex 1**

### **Local Government Pension Scheme policy in respect of staff transfers to a Joint Venture Company (large – more than 20 staff transferred)**

#### Historic Pension Accrual Funding

In respect of transferred staff, pension rights accrued up to the date of transfer to the JVC will be fully funded. Full funding will be achieved via a notional transfer of Pension Fund assets from the Council to the JVC.

#### Treatment of Post Transfer Appointees

This relates to the pension arrangements for staff appointed by the JVC after the date of transfer (i.e. staff who are not subject to transfer from the Council to the JVC). This is a matter for the JVC to determine. However, the Council's preference is for an open admission agreement with the Powys Pension Fund to enable such staff to become members of the Local Government Pension Scheme in parallel with transferred staff.

#### Third Party Insolvency Risk

[Note that for clarity, reference to 'third party' in this context refers to the JVC and not the Council's JVC partner.] The pensions risk associated with third party insolvency involves the possible cost of paying redundancy benefits ('pension strain') and the non-payment of LGPS contributions.

This risk will be mitigated by the JVC purchasing and maintaining an insurance bond at a value to be agreed by Powys Pension Fund. It is for the JVC to determine how the cost of the bond is met by the Council and the partner organisation. However, it is recommended that the bond cost be divided between the parties in the same proportion to the profit-share arrangements between the JVC partners.

#### Cessation Deficit Risk

This is the risk that at the end of the service contract between the Council and the JVC there is a pension deficit.

This risk will be underwritten and guaranteed by the Council and supported by the JVC entering into a Risk Sharing Agreement with the Council and the Pension Fund. The Agreement will require the JVC to avoid undertaking any actions that may lead to a pension deficit arising (for example, awarding pay increases at a level beyond that which would have been awarded by the Council). The Risk Sharing Agreement will also contain an explicit clause that will exclude, from the Council's guarantee, liabilities arising from the failure of the JVC partner to fulfil their obligations in relation to pension matters (for example, failure to pay over to the Pension Fund pension contributions).

## **Annex 2**

### **Local Government Pension Scheme policy in respect of staff transfers to a Joint Venture Company (small – less than 20 staff transferred)**

#### Historic Pension Accrual Funding

In respect of transferred staff, pension rights accrued up to the date of transfer to the JVC will be fully funded. Full funding will be achieved via a notional transfer of Pension Fund assets from the Council to the JVC, within the Powys Pension Fund.

#### Treatment of Post Transfer Appointees

This relates to the pension arrangements for staff appointed by the JVC after the date of transfer (i.e. staff who are not subject to transfer from the Council to the JVC). This is a matter for the JVC to determine. However, the Council's preference is for an open admission agreement with the Powys Pension Fund to enable such staff to become members of the Local Government Pension Scheme in parallel with transferred staff.

#### Third Party Insolvency Risk

[Note that for clarity, reference to 'third party' in this context refers to the JVC and not the Council's JVC partner.] The pensions risk associated with third party insolvency involves the possible cost of paying redundancy benefits ('pension strain') and the non-payment of LGPS contributions.

This risk will be mitigated by the Council providing a guarantee to underwrite the risk in full. A bond is not appropriate in this case because of the number of staff involved. To purchase and maintain such a bond would not be cost-effective.

#### Cessation Deficit Risk

This is the risk that at the end of the service contract between the Council and the JVC there is a pension deficit.

This risk will be underwritten and guaranteed by the Council and supported by the JVC entering into a Risk Sharing Agreement with the Council and the Pension Fund. The Agreement will require the JVC to avoid undertaking any actions that may lead to a pension deficit arising (for example, awarding pay increases at a level beyond that which would have been awarded by the Council). The Risk Sharing Agreement will also contain an explicit clause that will exclude, from the Council's guarantee, liabilities arising from the failure of the JVC partner to fulfil their obligations in relation to pension matters (for example, failure to pay over to the Pension Fund pension contributions).

## **Annex 3**

### **Local Government Pension Scheme policy in respect of staff transfers to an Arms-Length Wholly Owned Company**

#### Historic Pension Accrual Funding

In respect of transferred staff, pension rights accrued up to the date of transfer to the ALWO will be fully funded. Full funding will be achieved via a notional transfer of Pension Fund assets from the Council to the ALWO.

#### Treatment of Post Transfer Appointees

This relates to the pension arrangements for staff appointed by the ALWO after the date of transfer (i.e. staff who are not subject to transfer from the Council to the ALWO). Where an ALWO is created an open admission agreement with the Powys Pension Fund will be entered into to enable such staff to become members of the Local Government Pension Scheme in parallel with transferred staff.

#### Third Party Insolvency Risk

The pensions risk associated with third party insolvency involves the possible cost of paying redundancy benefits ('pension strain') and the non-payment of LGPS contributions.

This risk will be mitigated by the Council underwriting the risk and acting as guarantor to the ALWO in respect of pension liabilities.

#### Cessation Deficit Risk

This is the risk that at the end of the service contract between the Council and the ALWO there is a pension deficit.

This risk will be underwritten and guaranteed by the Council and supported by the ALWO entering into a Risk Sharing Agreement with the Council and the Pension Fund. The Agreement will require the ALWO to avoid undertaking any actions that may lead to a pension deficit arising (for example, awarding pay increases at a level beyond that which would have been awarded by the Council).



## **Annex 4**

### **Local Government Pension Scheme policy in respect of staff transfers to a Third Party Contractor (large – more than 20 staff transferred)**

#### Historic Pension Accrual Funding

In respect of transferred staff, pension rights accrued up to the date of transfer to the contractor will be fully funded. Full funding will be achieved via a notional transfer of Pension Fund assets from the Council to the contractor.

#### Treatment of Post Transfer Appointees

This relates to the pension arrangements for staff appointed by the contractor after the date of transfer who will be employed in relation to the delivery of the service contract between the Council and the contractor (i.e. staff who are not subject to transfer from the Council to the contractor). This is a matter for the contractor to determine. However, where the contractor opts for an open admission agreement to enable such staff to become members of the LGPS, the Council will not accept any liability for pension rights of such staff (see below).

#### Third Party Insolvency Risk

The pensions risk associated with third party insolvency involves the possible cost of paying redundancy benefits ('pension strain') and the non-payment of LGPS contributions. This risk will be mitigated either by the contractor purchasing and maintaining an insurance bond at a value to be agreed by Powys Pension Fund; or by the contractor providing a commercial guarantee (equivalent in value to that assessed for an insurance bond), from an organisation of appropriate financial strength.

#### Cessation Deficit Risk

This is the risk that at the end of the service contract between the Council and the contractor there is a pension deficit. In respect of staff transferred from the Council to the contractor - this risk will be underwritten and guaranteed by the Council and supported by the contractor entering into a Risk Sharing Agreement with the Council and the Pension Fund. The Agreement will require the contractor to avoid undertaking any actions that may lead to a pension deficit arising (for example, awarding pay increases at a level beyond that which would have been awarded by the Council). Where the contractor opts for an open admission agreement in respect of post transfer appointees, this risk will be guaranteed by the contractor and where a deficit arises, the contractor will discharge this liability by deficit recovery payments at a rate and for a duration as agreed by Powys Pension Fund.

## **Annex 5**

### **Local Government Pension Scheme policy in respect of staff transfers to a Third Party Contractor (small – less than 20 staff transferred)**

#### Historic Pension Accrual Funding

In respect of transferred staff, pension rights accrued up to the date of transfer to the contractor will be fully funded. Full funding will be achieved via a notional transfer of Pension Fund assets from the Council to the contractor.

#### Treatment of Post Transfer Appointees

This relates to the pension arrangements for staff appointed by the contractor after the date of transfer who will be employed in relation to the delivery of the service contract between the Council and the contractor (i.e. staff who are not subject to transfer from the Council to the contractor). This is a matter for the contractor to determine. However, where the contractor opts for an open admission agreement to enable such staff to become members of the LGPS, the Council will not accept any liability for pension rights of such staff (see below).

#### Third Party Insolvency Risk

The pensions risk associated with third party insolvency involves the possible cost of paying redundancy benefits ('pension strain') and the non-payment of LGPS contributions.

This risk will be mitigated either by the contractor providing a commercial guarantee (equivalent in value to that assessed for an insurance bond), from an organisation of appropriate financial strength; or where the former is not available, by a guarantee from the Council.

#### Cessation Deficit Risk

This is the risk that at the end of the service contract between the Council and the contractor there is a pension deficit.

In respect of staff transferred from the Council to the contractor - this risk will be underwritten and guaranteed by the Council and supported by the contractor entering into a Risk Sharing Agreement with the Council and the Pension Fund. The Agreement will require the contractor to avoid undertaking any actions that may lead to a pension deficit arising (for example, awarding pay increases at a level beyond that which would have been awarded by the Council).

Where the contractor opts for an open admission agreement in respect of post transfer appointees, this risk will be guaranteed by the contractor and where a deficit arises, the contractor will discharge this liability by deficit recovery payments at a rate and for a duration as agreed by Powys Pension Fund.

## **Annex 6**

### **Local Government Pension Scheme policy in respect of staff transfers to a Charitable Trust (large – more than 20 staff transferred)**

#### Historic Pension Accrual Funding

In respect of transferred staff, pension rights accrued up to the date of transfer to the charity will be fully funded. Full funding will be achieved via a notional transfer of Pension Fund assets from the Council to the charity.

#### Treatment of Post Transfer Appointees

This relates to the pension arrangements for staff appointed by the charity after the date of transfer who will be employed in relation to the delivery of the service concerned (i.e. staff who are not subject to transfer from the Council to the charity). This is a matter for the charity to determine. However, where the charity opts for an open admission agreement to enable such staff to become members of the LGPS, the Council will not accept any liability for pension rights of such staff (see below).

#### Third Party Insolvency Risk

The pensions risk associated with third party insolvency involves the possible cost of paying redundancy benefits ('pension strain') and the non-payment of LGPS contributions.

This risk will be mitigated by the charity purchasing and maintaining an insurance bond at a value to be agreed by Powys Pension Fund.

#### Cessation Deficit Risk

This is the risk that at the end of the service contract between the Council and the charity there is a pension deficit.

In respect of staff transferred from the Council to the charity - this risk will be underwritten and guaranteed by the Council and supported by the charity entering into a Risk Sharing Agreement with the Council and the Pension Fund. The Agreement will require the charity to avoid undertaking any actions that may lead to a pension deficit arising (for example, awarding pay increases at a level beyond that which would have been awarded by the Council).

Where the charity opts for an open admission agreement in respect of post transfer appointees, this risk will be guaranteed by the charity and where a deficit arises, the charity will discharge this liability by deficit recovery payments at a rate and for a duration as agreed by Powys Pension Fund.

## **Annex 7**

### **Local Government Pension Scheme policy in respect of staff transfers to a Charitable Trust (small – less than 20 staff transferred)**

#### Historic Pension Accrual Funding

In respect of transferred staff, pension rights accrued up to the date of transfer to the charity will be fully funded. Full funding will be achieved via a notional transfer of Pension Fund assets from the Council to the charity.

#### Treatment of Post Transfer Appointees

This relates to the pension arrangements for staff appointed by the charity after the date of transfer who will be employed in relation to the delivery of the service concerned (i.e. staff who are not subject to transfer from the Council to the charity). This is a matter for the charity to determine. However, where the charity opts for an open admission agreement to enable such staff to become members of the LGPS, the Council will not accept any liability for pension rights of such staff (see below).

#### Third Party Insolvency Risk

The pensions risk associated with third party insolvency involves the possible cost of paying redundancy benefits ('pension strain') and the non-payment of LGPS contributions.

This risk will be mitigated by a guarantee from the Council.

#### Cessation Deficit Risk

This is the risk that at the end of the service contract between the Council and the charity there is a pension deficit.

In respect of staff transferred from the Council to the charity - this risk will be underwritten and guaranteed by the Council and supported by the charity entering into a Risk Sharing Agreement with the Council and the Pension Fund. The Agreement will require the charity to avoid undertaking any actions that may lead to a pension deficit arising (for example, awarding pay increases at a level beyond that which would have been awarded by the Council).

Where the charity opts for an open admission agreement in respect of post transfer appointees, this risk will be guaranteed by the charity and where a deficit arises, the charity will discharge this liability by deficit recovery payments at a rate and for a duration as agreed by Powys Pension Fund.

## **Annex 8**

### **Local Government Pension Scheme policy in respect of staff transfers to a Social or Community Enterprises**

#### Historic Pension Accrual Funding

In respect of transferred staff, pension rights accrued up to the date of transfer to the enterprise will be fully funded. Full funding will be achieved via a notional transfer of Pension Fund assets from the Council to the enterprise.

#### Treatment of Post Transfer Appointees

This relates to the pension arrangements for staff appointed by the enterprise after the date of transfer who will be employed in relation to the delivery of the service concerned (i.e. staff who are not subject to transfer from the Council to the enterprise). This is a matter for the enterprise to determine. However, where the enterprise opts for an open admission agreement to enable such staff to become members of the LGPS, the Council will not accept any liability for pension rights of such staff (see below).

#### Third Party Insolvency Risk

The pensions risk associated with third party insolvency involves the possible cost of paying redundancy benefits ('pension strain') and the non-payment of LGPS contributions.

This risk will be mitigated by a guarantee from the Council.

#### Cessation Deficit Risk

This is the risk that at the end of the service contract between the Council and the enterprise there is a pension deficit.

In respect of staff transferred from the Council to the enterprise - this risk will be underwritten and guaranteed by the Council and supported by the enterprise entering into a Risk Sharing Agreement with the Council and the Pension Fund. The Agreement will require the enterprise to avoid undertaking any actions that may lead to a pension deficit arising (for example, awarding pay increases at a level beyond that which would have been awarded by the Council).

Where the enterprise opts for an open admission agreement in respect of post transfer appointees, this risk will be guaranteed by the enterprise and where a deficit arises, the enterprise will discharge this liability by deficit recovery payments at a rate and for a duration as agreed by Powys Pension Fund.

## **Annex 9**

### **Local Government Pension Scheme policy in respect of staff transfers to a Preceptor (for example a Town or Community Council)**

#### Historic Pension Accrual Funding

In respect of transferred staff, pension rights accrued up to the date of transfer to the preceptor will be fully funded. Full funding will be achieved via a notional transfer of Pension Fund assets from the Council to the preceptor.

#### Treatment of Post Transfer Appointees

This relates to the pension arrangements for staff appointed by the preceptor after the date of transfer who will be employed in relation to the delivery of the service concerned (i.e. staff who are not subject to transfer from the Council to the preceptor). This is a matter for the preceptor to determine.

#### Third Party Insolvency Risk

The pensions risk associated with third party insolvency involves the possible cost of paying redundancy benefits ('pension strain') and the non-payment of LGPS contributions.

As preceptors are, by definition, tax raising bodies this risk doesn't arise.

#### Cessation Deficit Risk

This is the risk that at the end of the service contract between the Council and the preceptor there is a pension deficit.

In respect of staff transferred from the Council to the preceptor - this risk will be underwritten and guaranteed by the Council and supported by the preceptor entering into a Risk Sharing Agreement with the Council and the Pension Fund. The Agreement will require the preceptor to avoid undertaking any actions that may lead to a pension deficit arising (for example, awarding pay increases at a level beyond that which would have been awarded by the Council).

In relation to staff of the preceptor who were not transferred from the Council, this risk will be guaranteed by the preceptor and where a deficit arises, the preceptor will discharge this liability by deficit recovery payments at a rate and for a duration as agreed by Powys Pension Fund.

## **Annex 10**

### **Local Government Pension Scheme policy in respect of procurement qualification**

Where the Council undertakes a procurement exercise to secure the services of a third party for the delivery of a service and where this involves the transfer of staff from the Council to the third party, the Council's procurement process will include specific qualification questions in relation to pension matters.

#### Procurement Qualification Questions

Are you able to provide staff transferred from the Council access to a pension arrangement which has been certified by the Government Actuary as being broadly comparable to the Local Government Pension Scheme ?

Yes / No

If 'Yes' please provide a copy of the relevant GAD Certificate for inspection and verification. If 'No' please answer question 2 below.

Are you willing and able to enter into an admissions agreement with the Powys Pension Fund to enable staff transferred from the Council to remain eligible for membership of the Local Government Pension Scheme under the terms set out in the policy below ? [Note. Relevant annex/es of the Council's policy should be included in the procurement questionnaire.]

Yes / No

If 'Yes' your tender will progress for further evaluation. If 'No' your tender fails the qualification criteria and will be rejected.