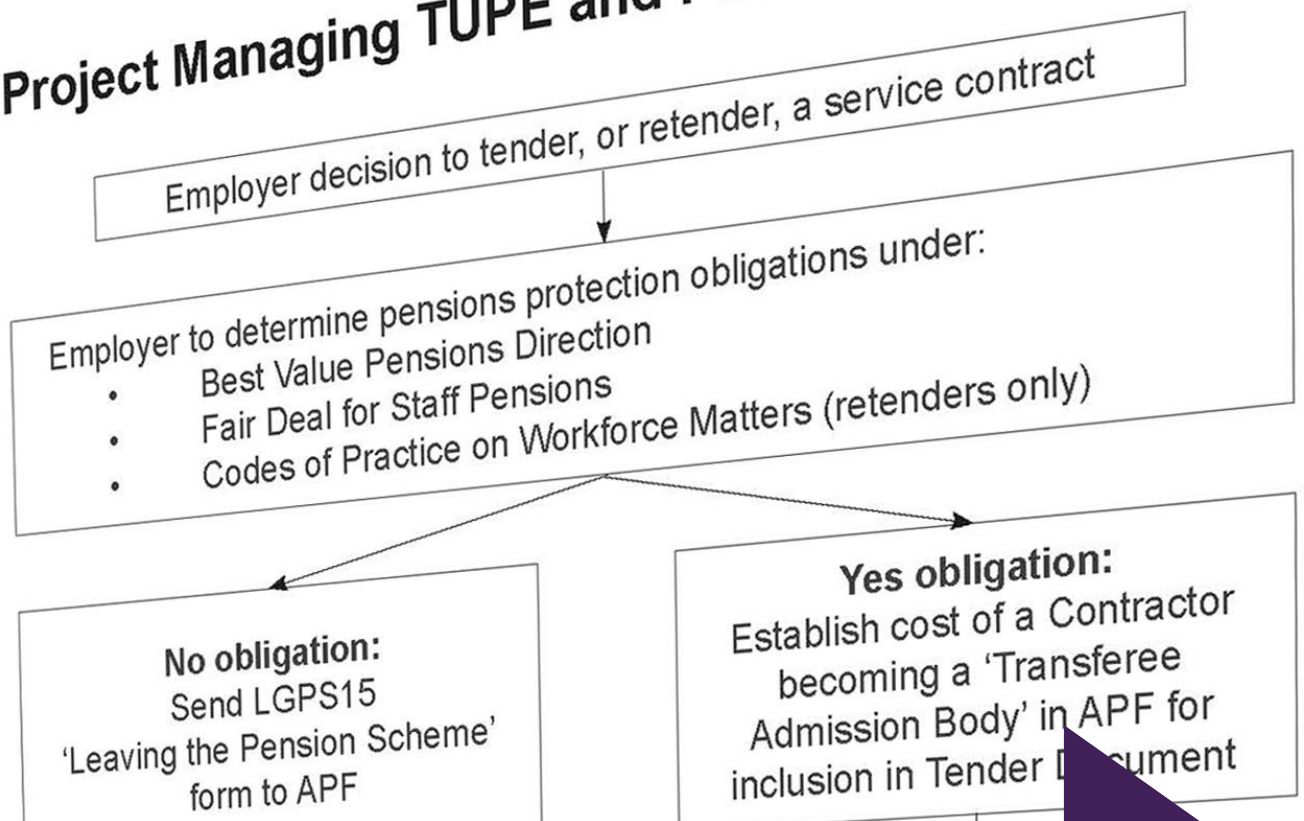


# Project Managing TUPE transfers when outsourcing to a Contractor

An overview of pension implications and procedures  
for LGPS Scheme Employers

## Project Managing TUPE and Pensions - Key Stages

1.0



# Project Managing TUPE transfers when outsourcing to a Contractor

An overview of pension implications and procedures for LGPS Scheme Employers

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# Project Managing TUPE and Pensions - Key Stages

1.0

Employer decision to tender, or retender, a service contract

Employer to determine pensions protection obligations under:

- Best Value Pensions Direction
- Fair Deal for Staff Pensions
- Codes of Practice on Workforce Matters (retenders only)

**No obligation:**  
Send LGPS15  
'Leaving the Pension Scheme'  
form to APF

**Yes obligation:**  
Establish cost of a Contractor  
becoming a 'Transferee  
Admission Body' in APF for  
inclusion in Tender Document

2.0

Appoint 'Lead Officer' to liaise with APF's ER&C Team and other parties

Complete and return 'Member Data Spreadsheet' and 'Mercer Risk Assessment Information' form to ER&C Team

Receive a pensions database 'Report' from ER&C Team

**Report details Correct:**  
Sign and return to ER&C Team

**Report details not Correct:**  
Send LGPS02 and LGPS03  
forms to ER&C Team, as  
required

ER&C Team collates data for  
Fund Actuary

Receive a second Report from  
ER&C Team

Fund Actuary calculates Risk Assessment and Employer Contribution Rate

Employer drafts and issues Tender Document including  
Requirements to ensure pensions protection

Costs of becoming a Transferee Admission Body including any  
Bond requirement

Employer awards the service contract

3.0

Lead Officer to advise the ER&C Team if pension protection ensured by Contractor:

3.2

Employer to issue 'First Instance Decision Letter' to each TUPE transferred LGPS Member - to include transfer arrangements to the Contractor's pension scheme

5.0

Seeking Transferee Admission Body Status in the APF of the LGPS

4.0

Admitting transferring staff to their own pension scheme, either:

Via GAD-certified broadly comparable pension scheme

As a scheduled, Designating or Community Admission Body in another Fund of the LGPS

Lead Officer to send copies of First Instance Decision Letters to the ER&C Team

Lead Officer to Advise if amendments required to draft Admission Agreement and/or Bond Agreement

Employer to determine pension transfer arrangements in contract

Lead officer to send copy of GAD certificate to ER&C Team

Lead officer to initiate transfer from APF to new LGPS Fund

Admission Agreement Sealed by lawyers

Employer to send LGPS 15 'Leaving the Pension Scheme' forms to APF

6.0

Employer to determine obligations under the Codes of Practice on Workforce Matters  
If obligation, Monitor pension protection given to new Contractor staff

7.0

Ending the outsourcing contract

# **Avon Pension Fund**

## **LOCAL GOVERNMENT PENSION SCHEME**

Bath & North East Somerset Council  
Floor 3 South, Riverside, Temple Street, Keynsham, BS31 1LA  
Tel: 01225 477000 ~ Fax: 01225 395258 ~ Email: pensionsedi@bathnes.gov.uk  
Web: www.avonpensionfund.org.uk



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### **APPOINTMENT OF PENSIONS LEAD OFFICER FOR A TUPE EXERCISE**

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NAME OF SCHEME EMPLOYER: .....

SERVICE AREA WHICH MAY BE OUTSOURCED: .....

NAME OF LEAD OFFICER: .....

JOB TITLE OF LEAD OFFICER: .....

DIRECT LINE TELEPHONE NUMBER: .....

FAX NUMBER: .....

EMAIL ADDRESS: .....

OFFICE ADDRESS: .....

.....  
POST CODE: .....

SIGNATURE OF LEAD OFFICER: .....

***I hereby appoint the above-named as Lead Officer in respect of all pensions matters for this TUPE exercise.***

SIGNATURE: .....

NAME: .....

JOB TITLE\*: .....

DATE: .....

\*N.B. the Lead Officer for a TUPE exercise must be appointed by an officer of Director level, or above

## 1.0 TUPE and Outsourcings

### 1.1 An introduction to the issues for LGPS Employers

Employees are given protection by the TUPE Regulations<sup>1</sup> if the service in which they are employed changes hands. In effect their employment, and any associated liabilities, legally moves from the old employer to the new employer. It is, in the first instance, the outsourcing Employer which determines whether or not TUPE should apply; Government intention is that in circumstances where TUPE does not apply in strict legal terms, the principles of TUPE should apply and that staff involved should be treated no less favourably than had the Regulations applied<sup>2</sup>.

Employees' pension rights are not directly protected by the TUPE Regulations<sup>3</sup>. However, Employers which participate in the LGPS should be aware of the legal position regarding staff TUPE transferring from their organisation to an external service provider (i.e. a Contractor) including **obligations to ensure 'pension protection'** going forward.

In cases of outsourcing to a Contractor, that is providing a service which is a function of an LGPS Employer, pension protection can be achieved by ensuring that transferring staff have either:

- i. continuing access to Membership of the LGPS, or
- ii. access to a pension scheme which has been certified by the Government Actuary's Department (GAD) as being 'broadly comparable'<sup>4</sup> to the LGPS.

Continuing Membership of the LGPS can be achieved by the Contractor entering into an Admission Agreement to become a **Transferee Admission Body** in the Avon Pension Fund. **N.B.** In some, less common, circumstances the Contractor may already be a Scheme Employer in an LGPS Fund as a different type of LGPS Employer i.e. a **Scheduled, Designating or Community Admission Body**, in which case the procedure for outsourcing to a Broadly Comparable Scheme should be followed<sup>5</sup>.

Officers of Scheme Employers responsible for Project Managing an outsourcing exercise should note that ensuring compliance with pensions matters can be complex and time-consuming, therefore **pensions must be considered at the earliest opportunity** i.e. when drawing up the tender specification before the procurement process begins<sup>6</sup>.

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<sup>1</sup> **Transfer of Undertakings (Protection of Employment) Regulations 2006** (Statutory Instrument 2006 No 246)

<sup>2</sup> Cabinet Office '**Staff Transfers in the Public Sector Statement of Practice**' 2000 (revised 2007)  
[www.civilservice.gov.uk/Assets/stafftransfers2\\_tcm6-2428.pdf](http://www.civilservice.gov.uk/Assets/stafftransfers2_tcm6-2428.pdf)

<sup>3</sup> **The Transfer of Employment (Pension Protection) Regulations 2005** (Statutory Instrument 2005 No 649) covers the general pension and contribution arrangements for employees to which a TUPE transfer applies

<sup>4</sup> '**Assessment of Broad Comparability of Pension Rights: Statement of Practice by the Government Actuary**' 1999 (Appendix to Cabinet Office '**Staff Transfers in the Public Sector Statement of Practice**' 2000 (revised 2007)); and, '**LGPS Broad Comparability - clarification of definition of minimum pension age**' Government Actuaries Department 2008

<sup>5</sup> Avon Pension Fund's understanding is that the intention of the LGPS Regulations is that continuing Membership of the LGPS would be achieved by the Contractor becoming a Transferee Admission Body; therefore, if access to the LGPS is made available by virtue of the Contractor being a Scheduled, Designating or Community Admission Body, then it would appropriate to consider this as being in lieu of access to a GAD-certified broadly comparable pension scheme

<sup>6</sup> Section 25, Department for Communities and Local Government (CLG) guidance: '**Admitted body status provisions in the LGPS when services are transferred from a local authority or other scheme employer**' 2009  
[www.communities.gov.uk/documents/localgovernment/pdf/1415228.pdf](http://www.communities.gov.uk/documents/localgovernment/pdf/1415228.pdf)

## 1.2 Other types of TUPE and the LGPS

Although this guide covers pensions issues to be considered when Project Managing the outsourcing of staff to an organisation which is working on an Employer's service contract, its noteworthy to mention that TUPE can apply in other circumstances. These include:

- **Academy Status** Where a school becomes an Academy, staff may TUPE transfer to the Academy from an LEA or independent school. There is a section **Academy Status** in the Employers Area of the Avon Pension Fund website<sup>7</sup> containing information on the process which must be followed regarding LGPS pension rights when a school becomes an Academy. Avon Pension Fund should be provided with all of the information outlined in the Academy Status section of the website at the earliest opportunity so that pension arrangements can be in place for the Academy start date.
- **Statutory Reorganisations** These include such events as Local Government Reorganisations (e.g. changes of boundaries or functions between tiers of Councils etc) and other legal changes affecting Scheduled and Designating Bodies (e.g. mergers of Colleges or other reorganisations of public sector bodies etc). Avon Pension Fund should be made aware of any Statutory Reorganisations at the earliest opportunity and will deal with the pensions implications of these on a case-by-case basis.

## 1.3 Does my organisation have an obligation to ensure pension protection when outsourcing a Service to a Contractor?

Organisations thinking of outsourcing a service must take their own legal advice on whether or not they are under an obligation to ensure pension protection for their staff TUPE transferring to a new employer. The legal position will depend on the status of the outsourcing Employer. Avon Pension Fund cannot give a Scheme Employer definitive advice on this point.

When considering their obligations, outsourcing Employers should be aware that:

- Some Employers which participate in the LGPS are **Best Value Authorities**<sup>8</sup>; these include Local Authorities. An LGPS Scheme Employer which is a Best Value Authority is legally obliged under the **Staff Transfers (Pensions) Direction** to ensure pension protection for employees being TUPE transferred to a new employer; and employees can take legal action against a contractor to enforce these rights<sup>9</sup>.
- Some Employers which participate in the LGPS may feel obliged to ensure pension protection for employees TUPE transferring to a new employer under **Fair Deal for Staff Pensions**<sup>10</sup>.

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<sup>7</sup> [www.avonpensionfund.org.uk/employers/academystatus.htm](http://www.avonpensionfund.org.uk/employers/academystatus.htm)

<sup>8</sup> Listed in Section 1 of the **Local Government Act 1999**

<sup>9</sup> The **Best Value Authorities Staff Transfers (Pensions) Direction 2007**, issued by the Secretary of State for Communities and Local Government under Sections 101 & 102 of the Local Government Act 2003  
[www.communities.gov.uk/documents/localgovernment/pdf/sections101-102.pdf](http://www.communities.gov.uk/documents/localgovernment/pdf/sections101-102.pdf)  
[www.communities.gov.uk/documents/localgovernment/pdf/pensions-direction-2007.pdf](http://www.communities.gov.uk/documents/localgovernment/pdf/pensions-direction-2007.pdf)

<sup>10</sup> HM Treasury 'Staff Transfers from Central Government: A Fair Deal for Staff Pensions' 1999, "which Ministers expect to be adopted by other public sector employers" Section 5, Cabinet Office 'Staff Transfers in the Public Sector Statement of Practice' 2000 (revised 2007) [www.civilservice.gov.uk/Assets/stafftransfers2\\_tcm6-2428.pdf](http://www.civilservice.gov.uk/Assets/stafftransfers2_tcm6-2428.pdf); and HM Treasury 'Fair Deal for Staff Pensions: Procurement of Bulk Transfer Agreements and Related Issues' 2004 [www.civilservice.gov.uk/Assets/btapublicfinal\\_tcm6-2409.doc](http://www.civilservice.gov.uk/Assets/btapublicfinal_tcm6-2409.doc)

**N.B.** Outsourcing Employers which are not under an obligation to ensure pension protection can still choose to make provision for TUPE transferred staff to have continuing Membership of the LGPS or access to a broadly comparable Scheme.

The Department for Communities and Local Government (CLG) has produced a useful guide '**Admitted body status provisions in the LGPS when services are transferred from a local authority or other scheme employer**' which contains background information and outlines the respective roles and obligations of the outsourcing Scheme Employer (i.e. the letting authority), the Administering Authority (e.g. the Avon Pension Fund of Bath & North East Somerset Council) and the contractor which has successfully tendered to provide the outsourced service<sup>11</sup>.

Pensions Liaison Officers of Scheme Employers and **managers involved in outsourcing contracts should ensure that they are familiar with the content of these documents**, which are all available to download from the Outsourcings (TUPE) section of the Employers Area of the Avon Pension Fund website at [www.avonpensionfund.org.uk](http://www.avonpensionfund.org.uk)

#### 1.4 Re-tenders of Outsourcing Contracts and Secondary Outsourcing Contracts (Sub-Contractors)

These fall into the following categories:

- **Re-tenders of Outsourcing Contracts.** Any obligations which exist to ensure pensions protection will continue when contracts come to an end and are re-tendered.
- **Old 'pre-pensions protection' Outsourcings.** LGPS Scheme Employers which are **Best Value Authorities** (which includes Local Authorities) may have outsourced services at a time when there was no requirement to ensure pensions protection. When these old outsourcing contracts come to an end and are re-tendered they will then come under the **Staff Transfers (Pensions) Direction** and the re-tender document must include provision for pensions protection.
- **Secondary Outsourcing Contracts.** Where obligations to ensure pensions protection exist and a Contractor lets an outsourcing contract to a sub-contractor (i.e. a secondary outsourcing takes place), the sub-contractor must also provide pensions protection for TUPE transferring staff either via continuing Membership of the LGPS or a GAD-certified Broadly Comparable Pension Scheme.

#### 1.5 Timing - When should Employers consider pensions, and what problems may arise if pensions issues are not addressed appropriately?

Where an obligation to ensure pensions protection exists, Scheme Employers should not proceed with a TUPE transfer of staff until they have ensured that:

- either (i) the contractor has a GAD certified 'broadly comparable' pension scheme in place for the staff, or is a Scheduled, Designating or Community Admission Body in the LGPS (see footnote re 'bulk transfer' obligations<sup>12</sup>);

<sup>11</sup> [www.communities.gov.uk/documents/localgovernment/pdf/1415228.pdf](http://www.communities.gov.uk/documents/localgovernment/pdf/1415228.pdf)

<sup>12</sup> The outsourcing Scheme Employer's contract will normally include an arrangement for the 'bulk transfer' of pension rights from the Avon Pension Fund to the successful contractor's GAD-certified broadly comparable pension scheme. If the successful contractor is a Scheduled, Designating or Community Admission Body in the LGPS, a transfer of pension rights must take place. The outsourcing Employer must liaise with Avon Pension Fund at an early stage to ensure that appropriate transfer arrangements are put in place.

- or (ii) the staff will have continuing Membership of the LGPS by the contractor entering into an Admission Agreement to become a Scheme Employer of the Avon Pension Fund.

If, for example, an outsourcing contract were to start before pension protection had been put into place for an LGPS Member TUPE transferred to a contractor, and that LGPS Member were to die in the meantime, then the outsourcing Scheme Employer would probably find themselves in significant legal difficulties. This is because the LGPS Member would have ceased to be an Active Member of the LGPS on the day the outsourcing contract started and their dependants would not receive the tax-free cash lump sum Death Grant payments and enhanced Survivors Pensions which they would otherwise have been paid.

Ensuring that pension protection is in place can be a lengthy process, therefore, it is important that as soon as an Employer is thinking of outsourcing a service they consider the pension implications. If pension implications are not considered until late in the outsourcing process, the outsourcing Employer may experience delays in being able to start the outsourcing contract.

**Avon Pension Fund will not backdate an Admission Agreement for a contractor to become a Scheme Employer of the LGPS as a Transferee Admission Body<sup>13</sup>.**

## 2.0 Preparing to go out to tender

Where an outsourcing Scheme Employer (i.e. the letting authority) has determined that they are under an obligation to ensure pension protection for their transferring employees, the contract must provide for this to be achieved either via continuing Membership of the LGPS or a broadly comparable pension scheme. The company which is awarded the service contract (i.e. the contractor) decides which option will be used to achieve pension protection.

A company will not be in a position to make an informed bid to provide a service unless the costs of ensuring pension protection via Transferee Admission Body status are included as part of a tender document. Therefore, an outsourcing Scheme Employer should obtain any necessary pension costs from Avon Pension Fund to include in their tender document, before starting their procurement process.

Scheme Employers should understand from the outset that the process of obtaining pension costs to include in a tender document will involve work by the Fund Actuary after ensuring that transferring LGPS Members' pension records are up-to-date<sup>14</sup>; in total **this process will take a number of weeks, and sometimes several months, to complete**. Therefore, if the outsourcing Scheme Employer wishes to avoid delays later on, **Avon Pension Fund should be consulted right at the start of the outsourcing process**.

Avon Pension Fund does not correspond with third party contractors and the outsourcing Scheme Employer must nominate a single Lead Officer to liaise with all parties, including Avon Pension Fund's **Employer Relationship & Communications Team (ER&C Team)**.

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<sup>13</sup> If the process of a Contractor becoming a Transferee Admission Body is already at a very advanced stage at the contract start date, then it may in exceptional circumstances be possible for the lawyers of the parties to enter into a 'memorandum of understanding' for the Admission Agreement to come into effect from the contract start date, provided that none of the TUPE transferred staff has died in the meantime. Outsourcing Employers should note that exceptional circumstances do not include late applications for Transferee Admission Body status or delays in supplying data to Avon Pension Fund

<sup>14</sup> The costs of any work by the Fund Actuary will be charged to the outsourcing Scheme Employer

## 2.1 The role of the outsourcing Scheme Employer's Lead Officer - an overview

The Lead Officer should be either the outsourcing Employer's nominated Pensions Liaison Officer, or the senior manager co-ordinating the organisation's outsourcing exercise. They should have a good understanding of the LGPS, have read the background documents relating to pensions and TUPE which are referred to in this guide, and not have any conflict of interest as regards the outsourcing exercise.

The Lead Officer's role is fundamental to their organisation managing pensions risk and ensuring appropriate pension protection is achieved as part of an efficient and timely outsourcing exercise. The Lead Officer should contact Avon Pension Fund as soon as their organisation is considering outsourcing a service. This is because it is important at the outset to start the process which will establish the pension costs to be included in the tender document for potential contractors to factor into their bid, should they wish to offer continuing Membership of the LGPS.

Where pensions protection is to be ensured by the successful contractor choosing to offer continuing Membership of the LGPS as a Transferee Admission Body, the Lead Officer's role will be to co-ordinate and act as the main channel of communication between the outsourcing Scheme Employer, the contractor and ER&C Team for all the information which will be required to draw up the Admission Agreement.

Where pensions protection is to be ensured by the successful contractor choosing to offer membership of a GAD-certified Broadly Comparable pension scheme (or membership of the LGPS where the Contractor is a Scheduled, Designating or Community Admission Body) the Lead Officer should advise ER&C Team of the status of the pension arrangement and any contractual arrangements in place for a 'bulk transfer' of pension rights to the Contractor's pension scheme. The Lead Officer should forward a copy of the GAD-certificate to the ER&C Team, where applicable.

## 2.2 Establishing pension costs for the tender document

The pensions costs will be calculated by the Fund Actuary (Mercer) who will carry out a **Risk Assessment**<sup>15</sup> and calculate the new **Employer Contribution Rate** which would be payable if the contractor were to offer continuing Membership of the LGPS as a Transferee Admission Body of the Avon Pension Fund. The Employer Contribution Rate is the charge made to a Scheme Employer of underpinning costs of providing the occupational pension scheme benefits provided by the LGPS not met by Member contributions and returns on Fund investments.

To initiate the process, the outsourcing Scheme Employer's Lead Officer advises Avon Pension Fund's ER&C Team of the employees to be TUPE transferred by completing the **Member Data Spreadsheet** and the **Mercer Risk Assessment Information** form. These will be emailed to the Lead Officer by the ER&C Team.

## 2.3 Transferee Admission Bodies and Risk - an overview

Risk relates to liabilities and deficits which can accrue over the course of an outsourcing contract, where the Contractor becomes a Transferee Admission Body in the Avon Pension Fund, regarding funding the provision of Members' LGPS benefits. The outsourcing Scheme Employer will also need to decide whether any pensions deficit which there may already be in respect of the employees to be TUPE transferred will be retained by themselves (i.e. the transferred service is to

<sup>15</sup> Outsourcing Scheme Employers can appoint their own actuary to carry out a Risk Assessment

be treated as fully-funded); or any pensions deficit is to be transferred to the contractor.

Outsourcing contracts should be managed with the aim of ensuring that there is neither a pension funding surplus or a deficit at the end of the contract. How pension risk is to be managed will form part of the contract provisions between the outsourcing Scheme Employer and the successful contractor. For example, within an outsourcing contract it could be agreed that: either, all pension risk will be met by the contractor; or by the outsourcing Scheme Employer in a '**pass through**' arrangement; or that part of the pension risk will be met by the contractor, e.g. through a '**cap and collar**' arrangement.

An outsourcing Scheme Employer will need to specify in the tender document the degree of risk which will pass to the contractor, otherwise it will not be clear what allowance if any the contractor has made for pensions in their tender price, and the Employer will not have a truly competitive tender. If this is not done the tender process could be regarded as defective.

Where pension risk is borne by the contractor, any pensions deficit which does exist at the end of the contract and which is not met by a contractor will be charged to the outsourcing Scheme Employer; therefore, they will need to decide if the contractor must buy a **Bond** to cover them against this risk. Avon Pension Fund has drafted a **Bond Questionnaire** to help the Scheme Employer make this decision. The outsourcing Scheme Employer should reassess the level of a Bond at least every two years.

## 2.4 Completing the 'Member Data Spreadsheet'

The Employer must provide the data which is requested in each column of the spreadsheet, ensuring that it is in the required format.

Avon Pension Fund holds a record of each LGPS Member's pensionable employment on its Altair Pensions System. This holds the information which has been provided by the Scheme Employer. It is essential that the data stored on the Altair Pensions System is correct before pension costs are calculated by the Fund Actuary, otherwise the Employer Contribution Rate will be incorrect and the Risk Assessment flawed.

The Fund's ER&C Team will send a **Report** to the Lead Officer detailing the information which is held on our Altair Pensions System in respect of the LGPS Members to be transferred. If the data the Fund is holding is correct, the Lead Officer should sign and return the **Report** to the Fund.

Where the Fund's records are inconsistent with the Employer's records, the Lead Officer must complete a Form 'LGPS 3' detailing each item of data which needs to be updated and the effective date of the change. Where the Fund is not holding a record of a contributing LGPS Member, the Lead Officer must complete Form 'LGPS 2' so the Fund can set up a record. On receipt of any LGPS 2 and LGPS 3 Forms, the Fund will update our Altair Pensions System in line with the time limits outlined in our published service standards. The Fund will then send an updated **Report** to the Lead Officer to sign to confirm that the data the Fund is holding in respect of the transferring LGPS Members is correct.

## 2.5 Completing the 'Mercer Risk Assessment Information' form

Along with the **Member Data Spreadsheet**, the outsourcing Employer's Lead Officer must also complete and return the **Mercer Risk Assessment Information** form.

The information the Lead Officer provides on this form will enable the Fund Actuary to calculate the pension costs, if the successful contractor were to offer TUPE transferring employees continuing Membership of the LGPS. Unless the outsourcing Scheme Employer is retaining all risk in-house, a Full Risk Assessment will usually be required.

The Fund Actuary will calculate an Employer Contribution Rate on the scenarios of an Admission Agreement being both Open and Closed (i.e. that new staff employed to work on the service contract will be able to join the LGPS, or that membership will be restricted to employees TUPE transferred), unless instructed otherwise. This is because the option of whether to be Open or Closed is one that has to be exercised by the Contractor.

## 2.6 Preparing Tender Information - the Fund Actuary Stage

When the Lead Officer has forwarded the Mercer Risk Assessment Information form and confirmed that the transferring Member Data is correct, Avon Pension Fund's ER&C Team will forward data to the Fund Actuary.

The ER&C Team will provide the Lead Officer with the Fund Actuary's estimated turnaround time and cost of calculating an Employer Contribution Rate and preparing a Risk Assessment (if also required). The estimated turnaround time is not intended to be, and should not be interpreted as, a guarantee that the information will be provided by that date. The ER&C Team will then request confirmation from the Lead Officer that they wish the Fund Actuary to proceed with the calculations.

How long it will take the Actuary to provide the information in practice will depend on their workload at the time the data is sent, the quality of the data and the size of the outsourcing exercise. As a ballpark figure, outsourcing Scheme Employers should factor in a minimum of 8 to 10 weeks for the Fund Actuary stage when project managing their outsourcing exercise. During particularly busy times, such as the Triennial Valuation exercise, the Fund Actuary's turnaround time may be longer.

When the ER&C Team has received the Employer Contribution Rate and Risk Assessment from the Fund Actuary these will be forwarded to the Lead Officer so that pension costs, including any Bond requirement, can be included in the tender document.

## 2.7 The outsourcing Employer's Tender Document

The Employer should indicate in the Tender Document if there is a requirement to ensure pensions protection for the staff who will TUPE transfer to the successful contractor. Such a requirement will be satisfied by the contractor either entering into an Admission Agreement to become a Transferee Admission Body so as to facilitate continuing Membership of the LGPS, or by the contractor offering a pension scheme which is GAD-certified as being Broadly Comparable to the LGPS.

From the results of the Risk Assessment, the Employer must decide if it will retain the Risk or if this Risk is to be transferred to the contractor. This means that, if continuing Membership of the LGPS is to be offered, the Employer must decide if it wishes to retain any funding deficit which may emerge or transfer that liability to the Transferee Admission Body. The Employer will also need to decide if it requires a **Bond** to protect it in the event that the contractor becoming insolvent with a pension liability it cannot meet<sup>16</sup>.

Where there is a requirement to ensure pension protection, the Tender Document should also

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<sup>16</sup> Avon Pension Fund's '**Bond Questionnaire**' may help the outsourcing Scheme Employer determine if they require a Bond and, if so, the appropriate amount of the Bond.

include the following information regarding the Contractor potentially becoming a Transferee Admission Body:

- A copy of the Draft Admission Agreement
- The new Employer Contribution Rate
- The amount of any Bond required
- A copy of the Draft Bond Agreement<sup>17</sup>

### 3.0 Once the outsourcing contract has been awarded

#### 3.1 Notifying Avon Pension Fund

The Lead Officer should notify Avon Pension Fund's ER&C Team of the outcome, providing details of the successful tenderer and whether they will ensure pension protection by either:

- i. seeking to enter into an Admission Agreement to become a Transferee Admission Body in the Avon Pension Fund; or
- ii. by providing access to a GAD-certified Broadly Comparable Pension Scheme, in which case a copy of the GAD Certificate should be forwarded to the ER&C Team. If the successful contractor is already an LGPS Scheme Employer as a Scheduled, Designating or Community Admission Body<sup>18</sup> then the transferring staff may be able to continue in the LGPS under that arrangement, in place of a broadly comparable scheme, and the Lead Officer should advise the ER&C Team of the Fund in which the Contractor participates.

#### 3.2 Notifying staff being TUPE transferred to a Contractor of the decisions made in respect of their pension rights - 'First Instance Decision' letters

The outsourcing Scheme Employer must inform each transferring LGPS Member of decisions made in respect of their pension rights. The way in which the Employer must inform the Member is prescribed in statute;<sup>19</sup> viz

- notification of the decision must be made to the Member in writing (i.e. the 'First Instance Decision Letter')
- it should be done as soon as reasonably practicable
- it must contain a conspicuous statement giving the address from which further information about the decision may be obtained
- it must refer to the Member's right to appeal against the decision under the Internal Disputes Resolution Procedure (IDRP)<sup>20</sup>, including time limits within which to appeal and the job title and address of the Employer's appeals officer

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<sup>17</sup> The **draft Admission Agreement and draft Bond Agreement** can be downloaded from the Employers Area of the Avon Pension Fund website at [www.avonpensionfund.org.uk](http://www.avonpensionfund.org.uk)

<sup>18</sup> If the successful Contractor is a Community Admission Body its Admission Agreement may have to be amended, or the relevant Administering Authority give its express consent, before the TUPE transferred staff can participate in the LGPS under the outsourcing contract; and the outsourcing Scheme Employer may have to give a guarantee to underwrite future pension liability. The Lead Officer must provide the ER&C Team with a copy of the amended Admission Agreement or Administering Authority consent.

<sup>19</sup> Regulations 55 and 57 of the LGPS (Administration) Regulations 2008 (Statutory Instrument 2008 No 239 (as amended))

<sup>20</sup> i.e. the rights under Regulations 58 and 60 of the LGPS (Administration) Regulations 2008

The First Instance Decision letter sent to a Member being TUPE transferred to a Contractor should:

- explain the change to their pensionable employment
- state if their LGPS Membership will cease on their last date of employment with the outsourcing Employer
- outline the way in which any obligations to ensure pension protection will be met by the Contractor (e.g. access to the Contractor's GAD-certified broadly comparable scheme, or continuing Membership of the LGPS by the Contractor becoming a Transferee Admission Body of Avon Pension Fund or a Scheduled, Designating or Community Admission Body of another LGPS Fund)
- outline the arrangements in the outsourcing contract to transfer their pension rights to the Contractor's pension scheme (i.e. their option to participated in a bulk transfer to the Contractor's GAD-certified broadly comparable scheme; or where the Contractor is a Scheduled, Designating or Community Admission Body of another LGPS Fund, the arrangements that have been made for Avon Pension Fund to automatically transfer their accrued LGPS Membership to their new Fund)
- explain their right to appeal against these decisions under IDR<sup>P21</sup>

**The outsourcing Employer must forward a copy of each First Instance Decision letter to Avon Pension Fund.**

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<sup>21</sup> There is both an Employees' and an Employers' Guide to IDR<sup>P</sup> on the Avon Pension Fund website at [www.avonpensionfund.org.uk](http://www.avonpensionfund.org.uk)

## 4.0 Outsourced staff going to the Contractor's pension scheme

### 4.1 GAD-certified Broadly Comparable Pension Schemes<sup>22</sup>

If the successful contractor decides to offer its own pension scheme to the TUPE transferred staff then the outsourcing Scheme Employer should send LGPS 15 'Leaving the Pension Scheme' forms to Avon Pension Fund stating the reason for leaving as TUPE transfer to "name of contractor" along with a copy of the GAD Certificate.

GAD certifies broad comparability in two ways:

- **Passport** - A GAD Passport indicates that the pension benefits the contractor offers TUPE transferring staff have been analysed and considered to be broadly comparable for a wide range of staff who may potentially transfer from the public sector. The Passport may be used to bid on other public contracts to show compliance with one strand of Fair Deal.
- **Individual Certification** - An individual certification is similar to a Passport but the analysis only takes place in respect of the single transfer of the TUPE'd staff. It can be a simpler way to achieve broad comparability than a Passport as the analysis is restricted to a small group. If the analysis determines that the pensions scheme is broadly comparable to the LGPS then a Certificate of Broad Comparability is valid only for the staff concerned.

**Outsourcing Employers should note that it can take some considerable time to achieve GAD certification of broad comparability.**

### 4.2 Changes to Broad Comparability since 2008 and Validity of Certificates

The benefits structure of the LGPS changed on 1 April 2008. **All GAD Certificates of Broad Comparability issued before 26 April 2007 cease to have validity for any transfer of LGPS Members which took place after that date.** GAD have confirmed they would expect that the majority of contractors will need to make changes to their pension schemes in order to continue to meet tests of broad comparability.

On 6 October 2008, GAD issued guidance '**LGPS Broad Comparability - clarification of definition of minimum pension age**'<sup>23</sup> stating that they expect a copy to be appended to all LGPS Passport Certificates issued before 6 October 2008.

On 6 April 2009, GAD issued guidance '**Changes to revaluation in deferment and validity of Certificates of Broad Comparability**'<sup>24</sup>. Occupational pension schemes are permitted to limit the revaluation of Deferred Benefits accrued after 5 April 2009 to 2.5% by the Pensions Act 2008. However GAD have confirmed that where a Contractor reduces revaluation of Deferred Benefits below the level outlined in its current GAD Certificate then the Certificate would be withdrawn.

Contractors and outsourcing Scheme Employers relying on Passport certification are recommended to contact GAD to ensure that it is valid.

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<sup>22</sup> [www.gad.gov.uk/Documents/Staff%20Transfers/stafftransfers2.pdf](http://www.gad.gov.uk/Documents/Staff%20Transfers/stafftransfers2.pdf) (page 16 onwards). It should be emphasised that broadly comparable does not necessarily mean identical to the LGPS

<sup>23</sup> [www.gad.gov.uk/Documents/Staff%20Transfers/LGPS/LGPS\\_BC\\_clarification\\_of\\_MPA.pdf](http://www.gad.gov.uk/Documents/Staff%20Transfers/LGPS/LGPS_BC_clarification_of_MPA.pdf)

<sup>24</sup> [www.gad.gov.uk/Documents/Staff%20Transfers/Broad%20Comparability/Changes%20to%20revaluation%20in%20deferment%20and%20validity%20of%20certificates%20of%20Broad%20Comparability.pdf](http://www.gad.gov.uk/Documents/Staff%20Transfers/Broad%20Comparability/Changes%20to%20revaluation%20in%20deferment%20and%20validity%20of%20certificates%20of%20Broad%20Comparability.pdf)

### 4.3 Transfer of pension rights from Avon Pension Fund to the Contractor's pension scheme

Some, if not most, outsourcing Scheme Employers will come under **Fair Deal** obligations to ensure pension protection for employees TUPE transferring to a new employer<sup>25</sup>. Fair Deal contains provisions relating to the transfer of pension rights from the outsourcing Employer's pension scheme to a Contractor's pension scheme. The transfer must be initiated by the outsourcing Employer. Where a bulk transfer calculation is required from the Fund Actuary, **the Lead Officer must send a letter of authority to the ER&C Team** for the Fund Actuary to disclose personal data about the transferring staff to the Actuary of the Contractor's pension scheme.

- **Bulk Transfer from the LGPS to the Contractor's Broadly Comparable Pension Scheme**

Where pension protection is ensured via a GAD-certified Broadly Comparable Pension Scheme, under **Fair Deal** it is a prerequisite for transferring LGPS Members to be **given the option** to transfer their LGPS Membership into the Broadly Comparable Scheme on a day-for-day basis (or the actuarial equivalent) so that accrued Membership might benefit from future salary increases. This is achieved by making an arrangement in the outsourced service contract for a **Bulk Transfer** from the LGPS to the Broadly Comparable Scheme. This is an agreed enhanced transfer payment and new scheme credit arrangement, and is quite different from a normal transfer of pension rights.

*'Only in exceptional circumstances should staff transfers be contemplated where the contract terms will not ensure appropriate bulk transfer terms. If there are exceptional circumstances justifying a waiver of this contract requirement, these should be explained and discussed with staff representatives at an early stage.'*<sup>26</sup>

The outsourcing Employer's Lead Officer should advise the ER&C Team if there is a bulk transfer arrangement under the terms of the service contract, including the details of the transferring staff who wish to be included in the bulk transfer arrangement. The bulk transfer payment must be calculated by the Fund Actuary<sup>27</sup>.

- **Transfer of pension rights where the Contractor is a Scheduled, Designating or Community Admission Body in the LGPS**

In circumstances where the successful Contractor is able to use the LGPS in place of a GAD-certified Broadly Comparable Pension Scheme, any LGPS Membership which TUPE transferring staff have in the Avon Pension Fund must be transferred to the LGPS Fund in which the Contractor participates<sup>28</sup>. To ensure that the required transfer of LGPS Membership is made, the outsourcing Employer's Lead Officer must advise the ER&C Team of the details of all of the TUPE transferring staff and the details of the LGPS Fund in which the Contractor participates.

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<sup>25</sup> HM Treasury 'Staff Transfers from Central Government: A Fair Deal for Staff Pensions' 1999, "which Ministers expect to be adopted by other public sector employers" Section 5, Cabinet Office 'Staff Transfers in the Public Sector Statement of Practice' 2000 (revised 2007)  
[www.civilservice.gov.uk/Assets/stafftransfers2\\_tcm6-2428.pdf](http://www.civilservice.gov.uk/Assets/stafftransfers2_tcm6-2428.pdf)

<sup>26</sup> HM Treasury 'Fair Deal for Staff Pensions: Procurement of Bulk Transfer Agreements and Related Issues' 2004 Section 27 [www.hm-treasury.gov.uk/d/pensions\\_bta\\_guidance\\_290604.pdf](http://www.hm-treasury.gov.uk/d/pensions_bta_guidance_290604.pdf)

<sup>27</sup> The Fund Actuary's costs must be paid by the outsourcing Scheme Employer

<sup>28</sup> By virtue of Regulation 16(7) of the LGPS (Administration) Regulations 2008 (Statutory Instrument 2008 No 239 (as amended))

If more than 9 LGPS Members are involved in the transfer then a bulk transfer payment must be calculated by the Fund Actuary<sup>29</sup>

## **5.0 Outsourced staff staying in the Avon Pension Fund**

### **5.1 How a successful Contractor becomes a Transferee Admission Body of the Avon Pension Fund of LGPS**

The successful Contractor can become a Transferee Admission Body of the LGPS by entering into an Admission Agreement with Bath & North East Somerset Council (the Administering Authority of the Avon Pension Fund of the LGPS) and the outsourcing Scheme Employer.

The Admission Agreement is a legal document which allows the Contractor to provide Membership of the LGPS to employees TUPE transferring to their organisation. Outsourcing Scheme Employers should note that an Admission Agreement cannot be backdated. Where an Employer has an obligation to ensure pension protection for TUPE transferring staff, LGPS Membership must be continuous therefore an outsourcing contract should not come into effect before the Admission Agreement.

Avon Pension Fund's ER&C Team will send the Lead Officer three documents for forwarding to the successful Contractor:

- 'Application to Become an Admission Body' form. When the Contractor has completed and returned this to the Lead Officer it should be forwarded to the Fund's ER&CT to provide us with details of the legal entity seeking Transferee Admission Body status.
- 'Draft Admission Agreement'. The draft Admission Agreement contains a number of provisions prescribed under the LGPS Regulations<sup>30</sup>. The Lead Officer should forward a copy to the Contractor, if this was not done at the Tender Stage.
- 'Draft Bond Agreement'. If the outsourcing Employer requires a Bond<sup>31</sup> the Lead Officer should forward a copy to the Contractor, if this was not done at the Tender Stage.

### **5.2 The Legal Stage of the Admission Agreement (and the Bond Agreement, if required)**

If the Contractor's lawyers wish, the provisions of the Draft Admission Agreement or Draft Bond Agreement to be amended they should advise the Lead Officer of their proposed amendments. The Lead Officer should forward details of the Contractor's proposed amendments to their own lawyer and the Fund's ER&C Team. The ER&C Team will inform the Lead Officer whether the Fund's Solicitor agrees with the proposed amendments, or proposes further amendments.

If the lawyers of all parties are in agreement with the wording, the Admission Agreement (and the Bond Agreement, as appropriate) should be finalised by the outsourcing Scheme Employer's lawyer who should liaise with the Contractor's lawyer and the Fund's Solicitor<sup>32</sup> to arrange signing.

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<sup>29</sup> The Fund Actuary's costs must be paid by the outsourcing Scheme Employer.

<sup>30</sup> Regulations 6, 7 and Schedule 3 of the LGPS (Administration) Regulations 2008 (Statutory Instrument 2008 No 239 (as amended))

<sup>31</sup> Avon Pension Fund's 'Bond Questionnaire' may help the outsourcing Scheme Employer determine if they require a Bond and, if so, the appropriate amount of the Bond

<sup>32</sup> The Fund Solicitor's costs must be paid for by the outsourcing Scheme Employer

The Admission Agreement will include a Schedule of LGPS Members TUPE transferring to the new Transferee Admission Body. If it subsequently transpires that the employees who have actually been TUPE transferred differs from those listed in the Schedule then a formal amendment will have to be made to the Admission Agreement and signed by the lawyers of all parties<sup>33</sup>.

How long it takes the Fund's Solicitor to seal the Admission Agreement (and Bond Agreement if required) will depend on their workload at the time, and the extent to which variations to the standard draft Admission Agreement are requested by the outsourcing Scheme Employer and Contractor. As a ballpark figure, the Lead Officer should factor at least 4 weeks for the Admission Agreement stage, and longer if a Bond Agreement is also required, when project managing their outsourcing exercise.

### 5.3 Scheme Employer preparations for the prospective Transferee Admission Body

The outsourcing Scheme Employer must ensure that their Contractor is fully prepared to take on the statutory and contractual obligations they will have as an LGPS Scheme Employer from day one. This is most important because:

- Breaches of pensions legislation can incur penalties<sup>34</sup> which, if not met by the Contractor, may fall on the outsourcing Employer as ultimate guarantor.
- Where a Transferee Admission Body fails to fulfil its obligations to Avon Pension Fund, the Fund will write to the Contractor (cc'd to the outsourcing Scheme Employer) outlining the breach and giving a reasonable period in which to rectify the breach under the terms of the Admission Agreement.
- If the Transferee Admission Body fails to rectify the breach within the reasonable period Avon Pension Fund will decide whether or not to terminate the Admission Agreement. The outsourcing Scheme Employer should note that termination of the Admission Agreement may render their outsourcing contract voidable or void.

While the Admission Agreement is being drawn up, the Lead Officer should proactively ensure that their Contractor understands the role of the Scheme Employer as a pensions administrator including, but not limited to:

- making First Instance Decisions;
- notification of First Instance Decisions;
- dealing with starters, leavers and changes;
- recording multiple part-time posts separately on HR/payroll systems;
- making payments to the Fund;
- drafting and publishing policies on Employer discretions etc<sup>35</sup>.

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<sup>33</sup> Any additional legal costs incurred by the Fund will be charged to the outsourcing Scheme Employer

<sup>34</sup> The Pensions Regulator and the Pensions Ombudsman can impose penalties on an Employer for breaches of pensions legislation (in some instances up to £50,000 per case) and also award Members unlimited compensation for maladministration. Any penalties incurred by Avon Pension Fund will be recharged to an Employer, under Regulation 43 of the LGPS (Administration) Regulations 2008 (Statutory Instrument 2008 No 239 (as amended)), if the breach is a consequence of a failing by that Employer

<sup>35</sup> The Lead Officer may wish to draw the attention of their Contractor to the Employers' Area of the Avon Pension Fund website, including the guide '**The Role of the Employer as a Pensions Administrator**'; and the one day LGE course '**Understanding the Employer Role**'.

The Lead Officer must advise the ER&C Team of the contact details of their Contractor's HR, Payroll and Finance officers. The ER&C Team will then contact the Contractor's HR, Payroll and Finance officers, advise them of the procedure for sending payments and returns to the Fund, and invite them to attend a training session with Fund officers on their administrative role. The Lead Officer should encourage the Contractor's HR, Payroll and Finance officers to attend training with the Fund's officers.

The Lead Officer should instruct the current payroll provider of the transferring LGPS Members to prepare a report outlining their last 10 years pay details. This information must be given to the Contractor so that they will be able to calculate Final Pay correctly in situations where the Member's last 12 months pay might not constitute their Final Pay<sup>36</sup>.

Where a Contractor is becoming a Transferee Admission Body of the Avon Pension Fund it is not necessary for the outsourcing Scheme Employer to send LGPS 15 'Leaving the Pension Scheme' forms to the Fund.

#### **5.4 Pensions Costs and Fund Valuations under Transferee Admission Agreements**

The Fund Actuary will set an Employer Contribution Rate (ECR) which will apply from the commencement date of the Admission Agreement. Every three years the Actuary will calculate the assets and liabilities for each Employer (the Triennial Valuation) so that their ongoing ECR can be established.

As part of the process of setting the ECR for a Transferee Admission Body, the ER&C Team will liaise with the outsourcing Employer to discuss any 'cap-and-collar' or 'pass-through' arrangements and guarantees where relevant, and the appropriate deficit recovery period to apply. When the Contractor's ECR has been agreed with the Fund, the outsourcing Employer will advise their Contractor.

To ensure that the true costs/benefits of outsourcing are clearly identified and are assigned to the outsourcing department, Employers which are large organisations may want to ensure that any pension liabilities in respect of TUPE transferred staff are charged to the appropriate department within their organisation, rather than falling on their general ECR. The ER&C Team can obtain a '**Schedule of Payments**' from the Fund Actuary which will allow an outsourcing Employer to allocate any deficit, or surplus, appropriately within their organisation<sup>37</sup>.

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<sup>36</sup> Regulation 10 of the LGPS (Benefits, Membership & Contributions) Regulations 2007 (Statutory Instrument 2007 No 1166 (as amended))

<sup>37</sup> Fund Actuary costs to calculate a Schedule of Payments will be recharged to the outsourcing Employer

## 6.0 Ongoing Monitoring Obligations - the Two Tier Codes of Practice

Some Scheme Employers may have TUPE transferred staff when they were under an obligation to ensure pension protection for employees through either:

- **The Code of Practice on Workforce Matters in Local Authority Service Contracts**<sup>38</sup>; or
- **The Code of Practice on Workforce Matters in Public Sector Service Contracts**<sup>39</sup>

These Codes of Practice, which have now been withdrawn for new outsourcing exercises<sup>40</sup>, are commonly known as the **Two Tier Codes** and form part of the service specification and conditions for outsourcing contracts, and re-tenders of contracts, relating to: transferees, new joiners working on the service contract, the outsourcing Employer's monitoring role, enforcement and **Alternative Disputes Resolution Procedure**<sup>41</sup> for TUPE transfers which come under their provisions.

The Fund understands that the withdrawal of the Two Tier Codes is not retrospective.<sup>42</sup> Therefore, outsourcing Employers which have obligations under the Two Tier Codes will remain under an obligation to ensure that any new staff appointed by the Contractor to work on the service contract have been offered Membership of either:

- The LGPS
- A final-salary Defined Benefit pension scheme
- A Defined Contribution or Stakeholder pension scheme, to which the Contractor will match Member contributions up to 6%

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<sup>38</sup> '**Code of Practice on Workforce Matters in Local Authority Service Contracts**' Office of the Deputy Prime Minister, Circular 03 (Annex D), 2003 [www.communities.gov.uk/documents/localgovernment/pdf/134855.pdf](http://www.communities.gov.uk/documents/localgovernment/pdf/134855.pdf)

• LGE has produced a 'Frequently Asked Questions' guide to the Code of Practice on Workforce Matters in Local Authority Service Contracts [www.lge.gov.uk/lge/core/page.do?pageId=119749](http://www.lge.gov.uk/lge/core/page.do?pageId=119749)

<sup>39</sup> '**Code of Practice on Workforce Matters in Public Sector Service Contracts**' Office of Government Commerce (the Cabinet Office) 2005 [www.ogc.gov.uk/documents/Code\\_of\\_Practice\\_on\\_workforce\\_matters.pdf](http://www.ogc.gov.uk/documents/Code_of_Practice_on_workforce_matters.pdf)

<sup>40</sup> The Local Authority Two Tier Code was withdrawn on 24 March 2011; the Public Sector Two Tier Code was withdrawn on 13 December 2010

<sup>41</sup> '**Code of Practice on Handling Workforce Issues - Alternative Disputes Resolution Procedure**' ODPM 2003 [www.communities.gov.uk/documents/corporate/doc/752664.doc](http://www.communities.gov.uk/documents/corporate/doc/752664.doc)

<sup>42</sup> "*The withdrawal of the two-tier code will not impact on existing TUPE regulations and provisions in the Employment Act 2008 or other employment legislation. There may be instances where contracts will be due for renewal or are currently out to tender and it will be a matter for local authorities to take legal advice on the particular contract specifications and circumstances. The abolition will not be applied retrospectively. Therefore existing contracts and the employment terms that flow from them will not be affected by withdrawal of the code.*" Statement by the Secretary of State for Communities & Local Government on the withdrawal of the Local Authority Two Tier Code, 23 March 2011

## 7.0 What happens when an Outsourcing Contract comes to an end?

When an outsourcing contract comes to an end the outsourcing Employer will normally take back the staff who were TUPE transferred to work on the service contract. The outsourcing Employer may wish to re-tender the contract to a service provider and, where the outsourcing Employer is under an obligation to ensure pension protection<sup>43</sup>, the Fund Actuary will need to calculate a new Risk Assessment and Employer Contribution Rate (ECR). If the outsourcing Employer does not wish there to be a gap between a current contract finishing and a new contract starting, the Lead Officer should ensure that Avon Pension Fund is notified in good time for potential pensions costs to be included in the tender document.

Where the current contractor is a Transferee Admission Body, the Fund Actuary will carry out an assessment of pension assets and liabilities when the outsourcing contract comes to an end. From this assessment, the Actuary will produce a '**Final Certificate**' detailing any funding surplus or deficit which may exist. The funding aim over the course of an outsourcing contract is that there should be neither a surplus or a deficit at the end of the contract. Where the pensions Risk is borne by the Contractor, the outsourcing Employer's Lead Officer must give the ER&C Team 18 months notice that the contract is coming to an end. The Actuary will then assess the funding position and increase or decrease the Transferee Admission Body's ECR over the remaining 18 month period, as appropriate, so that the surplus or deficit at the end of the contract is minimised.

## 8.0 Employer contacts at Avon Pension Fund

Employers should direct all queries relating to TUPE and outsourcings to Avon Pension Fund's 'Employer Relationship & Communications Team' (ER&C Team)

The primary contacts at the ER&C Team are:

Dianne Evans	Tel: 01225 395267	Email <a href="mailto:dianne_evans@bathnes.gov.uk">dianne_evans@bathnes.gov.uk</a>
Andy Brooks	Tel: 01225 395391	Email <a href="mailto:andrew_brooks@bathnes.gov.uk">andrew_brooks@bathnes.gov.uk</a>

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<sup>43</sup> See the section 1.4 of this guide 'Retenders of Outsourcing Contracts and Secondary Outsourcing Contracts'

## 9.0 Additional Information

Scheme Employers may find other useful background information about TUPE in the following documents:

- **'Employment Rights on the Transfer of an Undertaking'** Department for Business Innovation & Skills 2009 [www.berr.gov.uk/files/file20761.pdf](http://www.berr.gov.uk/files/file20761.pdf);
- **'Disclosure of Employee Information under TUPE'** Information Commissioner's Office 2008 [www.ico.gov.uk/upload/documents/library/data\\_protection/practical\\_application/gpn\\_disclosure\\_employee\\_info\\_tupe\\_v1.0.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/practical_application/gpn_disclosure_employee_info_tupe_v1.0.pdf)
- **'Workforce Matters in Local Authority Public Private Partnership Agreements - Guidance and Standard Drafting for Authorities in England and Wales'** July 2010, issued by Local Partnerships (which is an organisation jointly owned by HM Treasury and the Local Government Association) [www.localpartnerships.org.uk/UserFiles/File/Legal/Final%20Updated%20Workforce%20Guidance%20July%202010.pdf](http://www.localpartnerships.org.uk/UserFiles/File/Legal/Final%20Updated%20Workforce%20Guidance%20July%202010.pdf)
- **TUPE - Frequently Asked Questions** [www.lge.gov.uk/lge/core/page.do?pageId=124301](http://www.lge.gov.uk/lge/core/page.do?pageId=124301)
- **'ERU checklist guide to Handling the TUPE Process'** LGE 2010 [www.lge.gov.uk/lge/aio/7709773](http://www.lge.gov.uk/lge/aio/7709773);

## 10.0 Disclaimer

The guide 'Project Managing TUPE transfers when outsourcing to a Contractor - An overview of pension implications and procedures for LGPS Scheme Employers' is issued to Scheme Employers participating in the Avon Pension Fund for background information purposes only; the guide does not constitute advice; the guide is not an authoritative statement of the law and does not confer any statutory or contractual rights; Scheme Employers are advised to take legal advice on their pensions obligations regarding TUPE; Avon Pension Fund and Bath & North East Somerset Council do not accept any liability for loss or damage, consequential or otherwise, in reliance on the guide; nothing in the guide can override the provisions of the Local Government Pension Scheme Regulations, other legislation, or government guidance.