



Working with GAD on bulk transfers back into a public service pension scheme under 'Fair Deal'

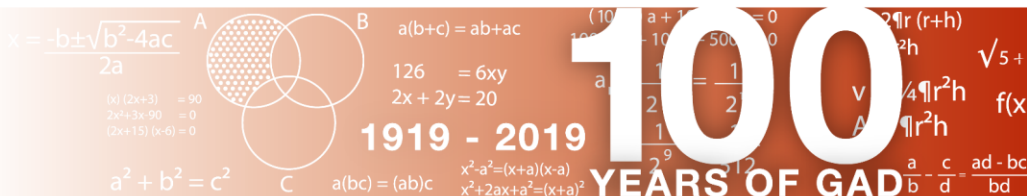
1. Purpose

- 1.1 This document has been prepared for Contracting Authorities. Its purpose is to help Contracting Authorities understand the steps that need to be followed when former public service staff with pension protection are re-joining an unfunded public service pension scheme (PSPS). This document is designed to cover situations where staff are re-joining the NHS Pension Scheme or the Civil Service pension schemes but may be applicable in transfers into other schemes. We recommend you check with the Government Actuary's Department (GAD) before relying on this document for staff in other circumstances.
- 1.2 The pensions aspects of staff transfers can involve the movement of substantial amounts of money and impact directly on the pension benefits of transferring staff. So, it is important that the process to be followed is understood, and correctly and efficiently implemented. This document sets out what GAD can do, what you will need to do and how GAD can help you, the Contracting Authority, make the decisions needed.
- 1.3 This document does not constitute formal advice from GAD, and circumstances can vary significantly between different transfers of staff. Contracting Authorities and any third parties should not act on the basis of this note alone and not without having first consulted with or sought explicit advice from GAD. This document is not relevant to transfers of staff involving the Local Government Pension Scheme or any other funded PSPS or between unfunded PSPSs.

2. Fair Deal policy

- 2.1 Fair Deal is a non-statutory government policy. It sets out how pensions should be dealt with when public service staff are (or have previously been) compulsorily transferred to the private sector.
- 2.2 There are 2 main elements to the Fair Deal policy which are:
 - broad comparability – looking at the adequacy of future pension provision for the transferring staff
 - bulk transfer – giving transferring staff an option to transfer past pension benefits earned in their private sector scheme to their PSPS
- 2.3 **Broad comparability.** Under the Fair Deal (2013) policy, public service staff who are compulsorily transferred to the private sector are expected to remain in the relevant PSPS. For re-lets of contracts, where former public service staff with Fair Deal protection are currently members of a private sector pension scheme, the policy expects those staff to be re-admitted to the relevant PSPS where possible. This may possibly also be relevant mid-contract. In some cases, it is not possible to re-admit staff to the relevant PSPS and a broad comparability assessment of their alternative scheme will be required.





Where staff remain in a PSPS or are readmitted back into a PSPS, broad comparability is not required to be certified. The remainder of this note deals with the bulk transfer aspect of Fair Deal only.

2.4 Bulk Transfer. Where public service staff who have pension protection move to a PSPS following a contract re-let or re-negotiation under Fair Deal, the policy requires that a bulk transfer option be offered. That is, staff should be offered the option to transfer pension benefits earned in their previous private sector scheme to their new PSPS under bulk transfer terms. As part of the bulk transfer, members have the option to maintain a final salary link on any final salary pension benefits that they have earned and/or retain active service revaluation on any career average scheme benefits that they have earned in the previous scheme.

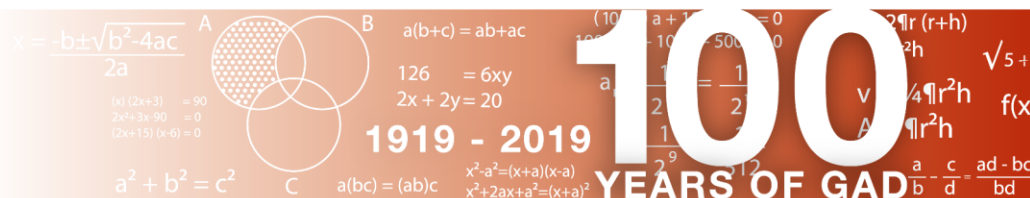
2.5 Some additional detail on Fair Deal policy is set out in Appendix D.

3. Government Actuary's Department's role

3.1 GAD provides actuarial and general consulting advice and assistance in respect of bulk transfer exercises and, where public service staff are not able to re-join the relevant PSPS, broad comparability (see Appendix D). We can assist with the following areas of work:

- Reviewing the contractual terms that applied when staff were originally outsourced, and advising (from a non-legal standpoint) on implications for the current transfer
- Reviewing and advising on the appropriateness of the private sector scheme's bulk transfer terms (which specify how to calculate the amount that will be paid to the PSPS)
- Calculating the pension credits to be offered in the PSPS to transferring staff if they opt to transfer their pension benefits back in-house
- Specifying the calculation of the amount that the PSPS requires in order to provide the revised credits for transferring staff
- Advising on any potential pensions shortfall (where the amount of money that the PSPS requires is higher than the amount that the private sector scheme proposes to pay, which is typically the case)
- Commenting on the preparation of communication materials that may be issued to transferring staff
- Co-ordinating the required bulk pension transfer (and shortfall) payments and liaison with the PSPS administrators on updating member records for transferring staff





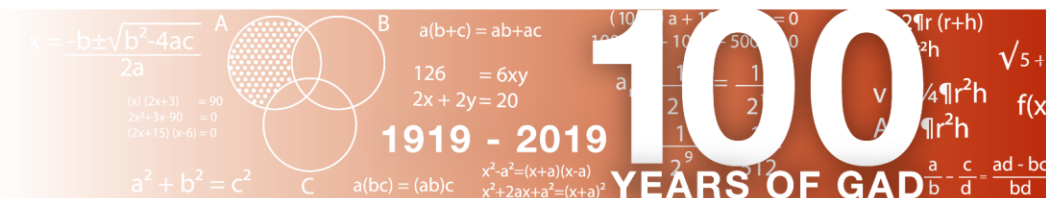
- 3.2 In addition to completing specific tasks, GAD will be on hand to guide you through the process, provide advice and answer any questions that you may have.
- 3.3 GAD needs to be commissioned in order to provide advice and should be contacted at an early stage of a contract let/re-let. GAD charges for services provided and an estimate of our fees will be provided as part of the commissioning process.
- 3.4 GAD is not able to advise on legal matters, and you are advised to take appropriate legal advice.

4. Process and timescales: bulk transfer exercise

The table below summarises the 5 key stages and indicative timeframes for a typical bulk transfer exercise into a PSPS. Appendix A provides more detail on each stage, sets out the decisions that you will need to make and how GAD can help you in making those decisions.

Stage	Detail	Timeframe
1. Initial stage	Engage with GAD and get an understanding of the steps involved and GAD's likely costs	As soon as possible after inception of project
2. Initial pension shortfall estimate that the Contracting may be liable for (if required)	GAD estimate the potential shortfall between the bulk transfer amount paid by members' current pension scheme and the amount required by the PSPS to provide the benefits.	Ideally prior to the staff transfer date, but target completion within 1 month of contract let/re-let. Initial indicative shortfall estimates, based on whatever data is available can be provided at any time during the process, to suit your needs.
3. Agreement of bulk transfer terms	Formalise the terms on which the bulk transfer of pension benefits will be made, including a shortfall estimate based on full data.	Ideally prior to the staff transfer date, but target completion within 2 to 3 months of contract let/re-let
4. Member bulk transfer options process	Scheme administrators send members option packs and information (not advice) to help them decide whether or not they wish to transfer their current private sector pension scheme benefits to the PSPS.	Target sending out option packs to members within 3 to 4 months of contract let/re-let. Members then have 3 months in which to make a decision.
5. Agreement and payment of bulk transfer amount and shortfall payment	Calculate and agree bulk transfer amount and shortfall payment, followed by actual payment. Credits added to PSPS member administration records	Target completion within 2 months from the end of the options period. Complete and accurate individual member data is required in order to complete this step.





Importantly, the pensions process does not always run to an ideal timeline (for example, there could be delays/difficulty in obtaining good data, variable levels of engagement from important stakeholders, prolonged discussions/negotiations on some of the financially material elements to the transfer or the need to seek policy clarification from another department). Whilst GAD will endeavour to assist you in overcoming obstacles that may arise, most causes of delay are not likely to be within GAD's control. Our experience therefore is that the whole pensions process might typically take up to year from receipt of good data (with a wide variation depending on the circumstances in each case).

5. Further information

For further details on anything contained in this document, please speak to your usual GAD contact or contact the Staff Transfers Team at GAD at the following email address:

StaffTransfers@gad.gov.uk

Government Actuary's Department
August 2019



Appendix A: Process for Fair Deal bulk transfers back into the PSPS

Stage		Detail	What you need to do
1. Initial stage			
1.1	Commissioning GAD	GAD will provide a draft Engagement letter that needs to be countersigned by you before GAD can commence work.	<ul style="list-style-type: none"> • check that you are happy with the contents of the letter • provide contact details for inclusion in letter • it will need to be signed by both you and GAD
1.2	Membership Data	GAD require the pension information as detailed in the GAD data template referred to in Appendix B for each member involved in the transfer exercise.	<ul style="list-style-type: none"> • provide list of transferring staff • send the GAD data template to the private sector scheme's pension administrators for completion OR • authorise GAD to directly contact the private sector scheme's pension administrators, providing relevant contact details
1.3	Benefit information	Details of the private sector scheme's benefit provisions	<ul style="list-style-type: none"> • request the provisions via the current contractor OR • authorise GAD to contact the current contractor, providing relevant contact details
1.4	Bulk transfer terms	The proposed terms on which the private sector scheme will calculate the bulk transfer value paid from that scheme, known as the 'Letter A', together with an estimate of the bulk transfer value at an illustrative payment date.	<ul style="list-style-type: none"> • request the proposed terms via the current contractor. OR • authorise GAD to contact the actuary to the private sector scheme, providing relevant contact details
1.5	Agreeing who will prepare option packs	Option packs, providing the transferring members with details of their bulk transfer option, are usually (but not always) prepared by the administrators to the private sector scheme.	<ul style="list-style-type: none"> • project lead to request confirmation at time of Letter A request OR • authorise GAD to contact the actuary to the ceding scheme. <p>Where the ceding scheme does not prepare the option packs, then the PSPS administrator may take on this role, but will charge for this service. You will need to commission the PSPS administrator to prepare option packs if applicable.</p>

1.6	Pension material from terminating and new contracts (if available)	Pension material in the contracts may impose requirements (eg a minimum bulk transfer amount).	<ul style="list-style-type: none"> provide a copy of the pension material of the terminating and new contracts to GAD <p>The wording of pension material is not always clear and there may be room for differing interpretations. If this is the case, you may need to decide how far to pursue this matter (and legal advice will be needed).</p>
2. Shortfall estimate			
2.1	Letter A	GAD to assess the proposed Letter A to ensure it is compliant with Fair Deal and any contract requirements and reconcile the private sector scheme actuary's calculation of the bulk transfer value.	
2.2	PSPS Credits	GAD to calculate the credits to be awarded in the PSPS, for agreement with the ceding scheme actuary (if needed).	
2.3	PSPS Funding Requirement	GAD to prepare a letter setting out the terms on which the PSPS would accept the transfer of liabilities, known as the 'Letter B'. These terms are set by the PSPS and HM Treasury and are non-negotiable.	
2.4	Shortfall advice	<p>Where the PSPS Funding Requirement (2.3) is higher than the bulk transfer value (2.1) there will be a "shortfall". Under Fair Deal, the Contracting Authority will be liable to meet the shortfall, though the contractual terms may be relevant.</p> <p>GAD can provide you with an estimate of the potential shortfall payable (usually assuming that all relevant transferring members opt to transfer their private sector pension benefits to the PSPS).</p>	<ul style="list-style-type: none"> decide whether you are content for GAD to agree the bulk transfer terms offered, or whether you would like GAD to enter into discussion with the private sector scheme's actuary on these terms. GAD will provide an initial view on whether or not the proposed bulk transfer terms are "reasonable" and assist you in determining the likelihood of being able to negotiate improved terms confirm in writing that you agree to meet the shortfall, whatever the amount (see Appendix C), before terms can be formally agreed and option packs issued decide whether you wish GAD to update the shortfall estimates from time-to-time

3. Agreement of bulk transfer terms			
3.1	Formalise bulk transfer terms	GAD to countersign Letter A on behalf of you and sign Letter B on behalf of you and the PSPS.	
3.2	Staff communications	Keeping staff informed of the pensions process and of the decisions that they need to make.	<ul style="list-style-type: none"> • decide what, if any, communications should be given to transferring staff, over and above the options exercise described below <p>GAD can assist in some aspects of staff communication, but GAD cannot provide advice to staff.</p>
4. Options Exercise			
4.1	Option packs drafted	Option packs to be drafted by the agreed administrators.	<ul style="list-style-type: none"> • decide if you wish any of GAD, the PSPS or Government Legal Department to review the draft option packs before they're sent out to staff
4.2	Individual member credit details	GAD may be required to calculate and provide individual member credit details for inclusion in the option packs.	
4.3	Option period	Option packs are sent out to the members. Members then have 3 months in which to choose whether to bulk transfer their private sector scheme pension benefits to the PSPS or not.	
4.4	Collation of results	At the end of the option period, the administrator collates member decisions and the actuary to the private sector scheme and GAD are informed so that final calculations can commence.	
4.5	Member records	PSPS administrator updates member records and sends out confirmation letters to the members opting to transfer. Depending on which PSPS is involved, this may not be done until after bulk transfer and shortfall payments have been made.	

5. Bulk transfer and shortfall payment calculations

5.1	Bulk transfer payment	The private sector scheme actuary calculates the bulk transfer payment to be made from the private sector scheme for agreement with GAD.	
5.2	PSPS Funding Requirement	GAD calculate the PSPS funding requirement and any shortfall and will advise you accordingly.	
5.3	Payment	Once a payment date has been agreed and all payment amounts have been agreed at that date, then payment is made.	<ul style="list-style-type: none">• organise payment of any shortfall amount
5.4	Liaison with PSPS administrators	Liaise with PSPS administrator to confirm conclusion of project and updating of member records	

Appendix B: GAD Data Requirements

Membership data

At an early stage GAD may ask you for a list of transferring staff. Provisional member data should be available early in the process for providing initial shortfall estimates.

However, final membership data will usually not be available until some weeks after the staff transfer date. While GAD can start preparations and liaise with the private sector scheme's administrators, detailed calculations will only be possible once GAD has the data and the list of transferring staff has been agreed.

We will provide you with a data template to be populated with the pensions data for the transferring staff from the private sector scheme as at the staff transfer date. This needs to be completed and returned to GAD. This can either come directly from the administrators or from you. GAD would not expect this data to become available until some weeks after the staff transfer date.

For the secure transmission and storage of personal data GAD operates an encrypted system called Egress. GAD can arrange for the person who will supply the member data to be registered on Egress and GAD will send them information on how to share the data.

Benefits provided by the private sector scheme

To be able to assess what benefits should be provided in the PSPS for members who opt to transfer their pension benefits, GAD needs to be provided with a benefit specification setting out the details of the benefits to which the transferring members would be entitled to in the private sector scheme at the staff transfer date. The Certificate of Broad Comparability applicable at the date of previous transfer is usually sufficient for this purpose, together with confirmation that there have been no changes to the benefit provisions in the private sector scheme in respect of the transferring members, or details of any such changes if applicable.

Commercial contract (if available)

It would be very helpful for GAD to see any pensions material in the original commercial contract when the services were outsourced to the private sector employer and the new contract. GAD would wish to review what (if any) end of contract transfer requirements apply – especially whether there is specified a minimum transfer basis that should be applied which potentially could reduce any shortfall.

Appendix C: GAD Shortfall Undertaking Statement

Before the Letter A and Letter B can be agreed, and the option packs can be sent out to members, GAD requires confirmation that the Contracting Authority accepts liability for any shortfall payable. To do this, GAD requires you to provide the following, in writing, from a signatory with the authority to do so.

“In relation to the TUPE transfer of staff from *[old employer]* to *[new employer]* that took place on *[transfer date]*, and the consequent bulk transfer of accrued pension benefits that is expected to take place from the *[private sector pension scheme]* to the *[public service pension scheme]*, I confirm that *[Contracting Authority]* understands and acknowledges the following:

1. *[Contracting Authority]* understands and acknowledges that:

- i) the maximum liability for a shortfall cannot be quantified in advance
- ii) the actual shortfall could be greater or less, and possibly very much greater or less, than any estimate provided, being the difference between 2 large numbers which could move in different directions depending on for example market conditions
- iii) unless requested and agreed otherwise in writing, GAD will not update any estimates previously supplied to show the effect of changes in market conditions (and other factors) over time as more information becomes available, until the final amount assessment

and

2. *[Contracting Authority]* agree to accept the shortfall, if required, whatever the amount, and to pay it into the *[public service pension scheme]* on demand.

By signing this, I confirm that I am duly authorised to sign on behalf of *[Contracting Authority]*.

Signature:

Name:

Position with *[Contracting Authority]*:

Date: ”

Appendix D: Technical Detail

Relevant policy guidance

Most transfers from a private sector pension scheme to a public service pension scheme are covered by [Fair Deal 2013](#).

However, there are other policies covering staff transfers which may need to be followed:

- [Fair Deal 2004](#)
- [Cabinet Office Statement of Practice](#)

You will need to identify, possibly after taking legal advice, what policy guidance applies to your staff transfer exercise. GAD is not able to advise you on this matter.

Members ineligible to re-join their previous public service pension scheme

There are certain circumstances where former members of a PSPS are ineligible to re-join that PSPS. For example, some former members of the '1995 Scheme' section of the National Health Pension Scheme (NHSPS) may be ineligible to re-join the NHSPS.

Examples of the type of transferee who *might* be ineligible to re-join the NHSPS are those who already have an NHSPS pension in payment or who are above age 60 at the (new) date of transfer and who have deferred benefits in the 1995 Scheme (e.g. because they didn't transfer their NHSPS benefits to the private sector pension scheme as part of the original transfer).

Eligibility should be checked early in the process.

The Fair Deal requirement for ineligible members is that they will need to be offered membership of an alternative scheme that is broadly comparable to the PSPS they should have otherwise re-joined. A bulk transfer option is also required into that alternative scheme. GAD can advise separately on this.