



Fair Deal: A note by GAD on take-home pay protection for transfers of staff between public service pension schemes

Introduction

1. The purpose of this note is to provide Contracting Authorities with an overview of what the Fair Deal policy expects of future pension provision for transferring staff, in particular in relation to take-home pay protection. It highlights a particular action that a Contracting Authority/employer must take at the point of transfer.
2. This document covers situations where a transfer of staff involves staff moving from one public service pension scheme (PSPS) to another, normally due to a change in employment under TUPE. It does not cover situations where staff need to be offered membership of a separate pension scheme that is “broadly comparable” to the relevant PSPS.
3. This document is not formal advice from GAD, and circumstances can vary significantly between different transfers of staff. Contracting Authorities and anyone else should not act on the basis of this note alone and should consult with their GAD contact and seek appropriate legal advice. GAD is not responsible for any decisions made by third parties on the basis of this note.
4. Staff transfers between PSPSs generally take place under either:
 - the Cabinet Office Statement of Practice (COSoP) policy (essentially public sector to public sector transfers of staff), or
 - Best Value Directions 2007 (for some transfers from the Local Government Pension Scheme)

If you are in any doubt about what policy or rules apply in a particular transfer, and whether staff are covered by one of these approaches, please seek legal advice.

Fair Deal: Broad comparability assessments – overview

5. Under both the policies mentioned above, the principles behind a broad comparability assessment are set out in Annex A of Fair Deal 2013. In short, the aim of the assessment is to check that a new employer offers transferring staff a package of benefits, in respect of service after the staff transfer date, that:
 - has an overall value at least as big as they would have had, were they to have remained with their original employer and not changed pension schemes, and
 - provides transferring staff with access to pension scheme benefits in similar situations to those where they previously had access to benefits, were they to have remained with their original employer and not changed pension schemes.

Further information on the broad comparability assessment is outside the scope of this note.

Fair Deal: Take home pay

6. Fair Deal also requires that staff must not suffer a reduction in take-home pay at the point of transfer – eg as a result of a higher member contribution rate in the new pension scheme. In this regard, the full-rate member contribution rates payable in each of the relevant pension schemes are compared, and not any reduced rate that might be payable by staff as a result of them choosing to pay reduced member contributions in return for earning reduced benefits.
7. The requirement is that staff should be given a (usually non-pensionable) pay uplift, as soon as possible after transfer, to compensate for any reduction in take-home pay at transfer resulting from differences in the full rates of member contribution payable at transfer in the respective pension schemes.
8. **The Contracting Authority is responsible for ensuring that the members' new employer implements the pay uplifts described below (where required) which should be calculated by the new employer's payroll provider.**
9. The pay uplifts should be effective from the transfer date. Where they are not implemented from the transfer date, then they should be implemented as soon as reasonably practicable and backdated to the transfer date.
10. The pay uplifts, as a percentage of basic pay should remain constant while the monetary value of the uplifts should increase in line with the percentage increase in members' basic pay.
11. The percentage uplift to pay is unaffected if a member moves into a higher contribution band at some point in the future, or if member contribution rates change at some point in the future.
12. The pay uplifts should continue throughout a member's employment with their new employer while they remain a contributing member of their new pension scheme unless the member voluntarily moves to a different post with different terms and conditions.
13. Some members may, on transfer, receive a salary increase (or other change in pay) as a result of the transfer. In such cases you may wish to seek legal advice on what is needed to comply with the principle of pay protection that we understand arises under the Transfer of Undertakings (Protection of Employment) Regulations 1981(TUPE). You should in any event seek advice about whether the approach to be adopted is compliant with TUPE.
14. GAD is happy to provide general assistance in this matter. eg to review the pay uplifts to be awarded or to provide advice on some of the principles behind the calculations, although you should note that GAD are not payroll experts.
15. If GAD has been commissioned to provide a certificate of broad comparability for the transfer of staff then, once the pay uplifts have been calculated they should be notified to your GAD contact.