COSOP supplementary guidance note: pension protection for compulsory staff transfers within the public sector

Introduction

The purpose of this note is to restate and to clarify the current policy on pension protection when staff are compulsorily transferred between different parts of the public sector[1]. This note is for the attention of Government Departments to be used by scheme actuaries involved with staff transfers, and should be read alongside the Cabinet Office *Statement of Practice on Staff Transfers in the Public Sector.*

This clarification note is being issued due to:

- the revised Cabinet Office *Statement of Practice on Staff Transfers in the Public Sector*, updated in December 2013 ('COSOP 2013');
- the *Fair Deal for staff pensions* 2013 ('New Fair Deal'), which requires staff compulsorily transferring out of the public sector, in future, to retain access to a public service pension scheme (as opposed to transferring to a broadly comparable scheme, which was the position under Fair Deal 2004);
- the reforms to public service pensions, which can have implications for managing staff transfers; and
- the transitional protections afforded to members of public service pension schemes.

Where the Devolved Administrations have direct responsibility for the pension arrangements of transferring staff it is for them to determine whether to apply the policy set out in COSOP 2013 and supplemented by this note.

Current policy

The current policy on pension protection requirements for compulsory staff transfers within the public sector is set out in COSOP 2013. COSOP 2013 states that *"there should be appropriate arrangements to protect occupational pensions … of staff in all these types of transfer*". However, the New Fair Deal explicitly does not deal with staff transfers within the public sector.

The policy for pension protection under COSOP 2013 is, therefore, that the existing approach outlined in Fair Deal 2004, based on broad comparability and bulk transfer requirements, continues to apply when staff are compulsory transferred within the public sector. However, this should now be by reference to the requirements of annexes A (Broad comparability assessments) and B (Bulk transfers) of the New Fair

[1] Arrangements for staff who move voluntarily between different parts of the public sector are covered by the 'Transfer Club' arrangements. Staff who are outsourced from the public sector are covered by Fair Deal arrangements.

Deal. This means that when staff are compulsorily transferred within the public sector the presumption is that they will be:

- transferred into the receiving public sector employer's pension scheme (as opposed to remaining in the transferor employer's scheme), with a 'broad comparability' assessment carried out; and
- offered a bulk transfer of accrued pension rights.

Broad comparability tests and bulk transfer arrangements.

When staff are compulsorily transferred between the schemes of public sector employers, annexes A and B of New Fair Deal should, as far as practicable, be followed in determining the requirements for:

- broad comparability tests between the transferor and receiving public sector schemes (annex A), and;
- bulk transfer arrangements, where staff opt to transfer their accrued pension rights to the receiving public sector employer's scheme (annex B).

When assessing broad comparability between schemes there may be specific scheme features (e.g. ill health benefits and survivor pensions) which may not be exactly replicable. This might mean that all of the requirements of annex A of the New Fair Deal (e.g. A.12.15 and A.12.16) cannot be met. However paragraph A.12 of the New Fair Deal recognises that some flexibility may need to be applied in the practical implementation of the general principles on which the assessment of broad comparability should be made and such an approach should be adopted in these circumstances.

When considering bulk transfer arrangements, transferring staff who have accrued any final salary benefits should be offered a service credit on a day-for-day basis (or actuarial equivalent, where there are benefit differences between the schemes) in respect of their final salary benefits. Transferring staff who have accrued any career average salary benefits (regardless of whether the in-service revaluation rate is higher than the deferred revaluation rate, or not) should be offered a bulk transfer option giving equivalent like-for-like benefits in the receiving public sector employer's scheme (or actuarial equivalent, where there are benefit differences between the schemes).

Approach to transitional protection on staff transfers

The Government has put in place protections for scheme members who, as at 31 March 2012, were within 10 years of their scheme's Normal Pension Age, with further tapered protection being provided on a scheme by scheme specific basis. This section clarifies the position when staff with transitional protection (either full or tapered) are compulsorily transferred between schemes.

Where staff qualify for transitional protection in the transferor employer's scheme, the member will be transitionally protected in the receiving scheme if they would also have qualified for transitional protection in the receiving scheme had they been a member of that scheme.[2] In such cases, staff should be moved into the most appropriate section of the receiving employer's scheme, and receive either full or taper protection depending on their individual circumstances. To the extent that the transitional protection provided in the transferor employer's scheme is not replicated by the receiving scheme, these differences should be considered as part of the broad comparability assessment.

Where staff do not qualify for transitional protection under the 'both schemes test', they will be moved into the receiving employer's post reform pension scheme. Again, the difference in pension provision should be considered as part of the broad comparability assessment.

Exceptions

There may be exceptions to the approach set out in this note, where it would be preferable to deliver pension protection by permitting staff to retain access in the transferor employer's scheme. Consideration should be given to whether transferring staff between schemes could be counterproductive to the aims of the organisational change requiring the compulsory transfer of employment. Examples might include:

- where the direct costs of the transfer or associated administration costs (e.g. actuarial fees) might not represent value for money; or
- where staff, despite transferring to a new employer, are expected to pursue their longer term career with the transferor employer.

However, the general presumption remains that staff will be transferred into the receiving employer's pension scheme and robust justifications for any exception would be required.

Further advice

Any questions about this guidance note or the general policy should be raised with HM Treasury. Any questions about specific transfers should be raised with the relevant public service scheme and/or the relevant Department's actuarial advisers as appropriate.

HM Treasury
March 2015

[2] This is the 'both schemes test'used for the Transfer Club.