

Pension Scheme Exit Payment – an unplanned liability?

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We have recently encountered a number of situations where academies have found themselves liable to large sums of money (sometimes as much as £50,000-£100,000) after their commercial contracts with catering providers have exposed them to reimburse payments - which were never contemplated on when entering the contracts years ago.

Cases experienced have often followed a similar series of events:

1. An academy has sought to outsource its catering facility and has agreed with specialist contractors for them to take on the academy's catering requirements.
2. The staff who were employed by the academy within the existing catering facilities have TUPE'd (transferred over under protective employment legislation) to the contractor. Where the staff had a Local Government Pension Scheme (LGPS) (and were entitled to maintain these under The Best Value Authorities staff Transfers (Pensions) Direction 2007) the contractors had to enter an Admission Agreement with the LGPS funds in order to continue providing to these schemes.
3. Separately, the academy and the contractor have entered into a Commercial Contract for the provision of catering services, including terms for reimbursements.
4. Years later the academy decides to either change their catering provider or bring the services back in-house.
5. Under the relevant laws, including the LGPS Regulations 2013, the contractor becomes an 'exiting employer' in respect of the LGPS funds. This means that an actuarial assessment of the contractor's "notional" fund must be carried out. Any underfunding crystallises a debt payable by the contractor to the LGPS fund.
6. (In most cases we have dealt with) an unexpected event, such as a death-in-service benefit payment has led to a large exit liability arising.
7. The contractors pay the liability to the LGPS funds before seeking reimbursement from the academy under the 'contractual provisions' of the commercial agreement.

The claims often arise under contracts which were signed and agreed a long time ago and, for many, come out of the blue - long after the end of the contract, especially if the LGPS has taken a while to calculate and assess the value.

Such claims can understandably cause significant issues to academy budgets and forward planning. These types of cases often involve the commercial contract provisions which were signed between the contractor and the academy, and can therefore have varying outcomes depending on the precise wording which was used.

If you have a situation which follows a similar pattern to the above, or are concerned about any pension liabilities that have either arisen or may not have been considered at the outset of entering an arrangement, please contact us. We can discuss your individual situation and assess, and provide tailored advice of the precautions or options available to you.

Our experience has shown there are a range of discussions which can be had with contractors and LGPS both before and after an exit payment situation has arisen, which can limit any potential exposure.

It is also important for academies and schools to be aware of the terms of any protection bonds which may have been put in place to cover these types of liabilities. Often these bonds are time-limited and without specific agreement and will not be extended, even if a commercial agreement between an academy or school and the contractor is.

Please do not hesitate to contact us if you are considering using, changing or terminating a contractor, in order to consider if there are any liabilities of which you need to be aware. Our team will be able to review your current documentation or discuss any situations you have encountered with your contractors or LGPS.

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