

**PENSION SCHEMES ACT 1993, PART X  
DETERMINATION BY THE PENSIONS OMBUDSMAN**

<b>Applicant</b>	Mr D Jones
<b>Schemes</b>	Local Government Pension Scheme ( <b>LGPS</b> ) Lambert Smith Hampton Group Pension Scheme ( <b>LSH Scheme</b> )
<b>Respondent(s)</b>	Ealing Council ( <b>Ealing</b> )

**Subject**

Mr Jones has complained that Ealing have failed to fulfil their obligations under Transfer of Undertakings (Protection of Employment) (**TUPE**) legislation and associated statutory provisions with regards to his pension; namely, the Best Value Authorities Staff Transfers (Pensions) Direction 2007, the Code of Practice on Workforce Matters in Local Authority Service Contracts and the Cabinet Office Statement of Practice.

**The Pensions Ombudsman's determination and short reasons**

The complaint should be upheld against Ealing because they did not adhere to the provisions of the Best Value Authorities Staff Transfers (Pensions) Direction 2007 when Mr Jones' employment transferred to Lambert Smith Hampton.

## DETAILED DETERMINATION

### Material Facts

1. Mr Jones was employed by Ealing until 2005 and was a member of the LGPS. In 2005, his employment was transferred to Dunlop Haywards Ltd under a TUPE arrangement. (Dunlop Haywards Ltd was later re-named Erinaceous Commercial Property Ltd and then Erinaceous Consultancy Services Ltd). Mr Jones remained an active member of the LGPS because Dunlop Haywards Ltd had Transferee Admission Body status (Regulation 5A).
2. In April 2008, Erinaceous Consultancy Services Ltd went into administration. Ealing novated its contract with Erinaceous Consultancy Services Ltd. Mr Jones' employment was transferred to Lambert Smith Hampton (**LSH**). By Deed of Variation, dated 28 April 2008, the terms of the contract were amended. Amongst other things, Condition 9.1 "Workforce matters" was replaced by a new Condition 9.1 which provided that the principles set out in the Code of Practice on Workforce Matters in Local Authority Service Contracts (ODPM Circular 3/2003) (the **Code of Practice**) should apply. It also provided that LSH would satisfy these principles if they offered transferring employees any of the following: ongoing access to the LGPS, access to a broadly equivalent scheme approved by the Government Actuary's Department (**GAD**), or access to their own pension scheme under which they would contribute an amount equal to the employer's contribution under the transferring employees' employment contracts with Erinaceous.
3. Mr Jones' active membership of the LGPS ceased in April 2008.
4. Under the LGPS, LSH is neither a "Scheme Employer" (as defined in the LGPS (Administration) Regulations 2008) nor a "transferee admission body". LSH offer a group self-invested personal pension arrangement (a "Group SIPP") which Mr Jones became a member of. On 23 July 2008, Mr Jones was made redundant by LSH. Had he still been a member of the LGPS, Mr Jones would, under regulation 19 of the Local Government Pension Scheme (Membership, Benefits and Contributions) Regulations 2007, have been entitled to immediate payment of his pension without reduction.

5. Mr Jones submitted a formal complaint to Ealing under their internal dispute resolution (**IDR**) procedure in November 2009. Ealing issued their stage one decision in November 2011.
6. Extracts from the relevant statutory and non-statutory documents are provided in an appendix to this document.

### Mr Jones' Position

7. The key points submitted by Mr Jones are summarised as follows:
  - Ealing failed to comply with Regulations 4, 5 and 10(2) of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI2006/246) (**TUPE 2006**).
  - Ealing failed to comply with the Best Value Authorities Staff Transfers (Pensions) Direction 2007, the Code of Practice on Workforce Matters in Local Authority Service Contracts or the 2000 Cabinet Office Statement of Practice, including the 1999 HM Treasury guidance (**Fair Deal**).
  - He considers the Code of Practice and Fair Deal to have statutory force under Section 102 and 103 of the Local Government Act 2003 and Section 19 of the Local Government Act 1999.
  - Because Ealing did not comply with their statutory obligations, he was denied continued active membership of the LGPS.
  - He was not offered a broadly comparable scheme as an alternative nor was he properly compensated in line with GAD guidance.
  - He lost a redundancy benefit in the form of an early retirement pension as provided for under the LGPS Regulations and clause 13.7.3.2 of his local Terms and Conditions of Service (Part 3).
  - Ealing shares the responsibility for LSH's failure to replicate the LGPS early retirement provisions in its own pension scheme.
  - He considers that Ealing should have foreseen the 'exceptional circumstances' they say relate to the decision to enter into a contract

with LSH. He also points out that Fair Deal requires the strength of any exceptional circumstances to be rigorously tested.

- He refers to advice from GAD that,  
  
“Some redundancy and injury benefits take the form of early retirement pensions or lump sums which are similar to the pension scheme benefits and are paid through similar channels.  
The Cabinet Office has issued guidance on these benefits stressing that it is imperative that any public contract resulting in the transfer of staff stipulates clearly that all redundancy benefits and options are taken on by the new employer.”
- To ensure an even-handed approach, any compensation should be calculated by GAD.
- He did not cash the £250 cheque sent to him by Ealing and it may now have expired.
- Ealing took three and a half years to complete the IDR procedure and LSH failed to provide a full, formal response.

### **Ealing's Position**

8. The key points from Ealing's submissions are summarised below:

- Mr Jones is not entitled to immediate unreduced benefits under the LGPS. He may request the early payment of actuarially reduced benefits and has been supplied with Ealing's policy on the exercise of its discretion to pay such benefits.
- If Mr Jones had been active member of the LGPS on 23 July 2008 and had been dismissed on the grounds of redundancy, he would have been entitled to immediate payment of unreduced benefits.
- If Mr Jones made an election under Regulation 30 after his 55<sup>th</sup> birthday, a decision would have to be made as to whether consent should be given for his benefits to be paid. If so requested, a decision would also have to be made as to whether the actuarial reduction should be waived on compassionate grounds.
- During the negotiations to novate the contract between Ealing and Erinaceous, LSH stated that they would not consider becoming an admission body.

- If they had not entered into a contractual arrangement with LSH, the Erinaceous workforce would have been made redundant.
- No other organisation had expressed an interest and it was not, therefore, possible for Ealing to enter into a contractual agreement with any organisation other than LSH. Nor was there any obligation for Ealing to allow Mr Jones to transfer back into their employment.
- The circumstances under which they entered into a contract with LSH were exceptional. Fair Deal (November 2007) explicitly mentions that there may be exceptional circumstances in which it is not possible to insist on a broadly comparable scheme
- Even if LSH had been willing to apply to become an admission body, there was insufficient time for them to do so, or to obtain a broad comparability certificate from GAD, before the agreement had to be concluded.
- The guidance issued by the GAD, dated May 1999, stated that the assessment of benefits against which broad comparability would be measured would not take account of any benefits which were payable solely as a result of a member being made redundant where these exceed the benefits available to an individual who resigns. Thus, even if LSH had agreed to offer a broadly comparable scheme, they would not have been required to offer unreduced benefits on redundancy.
- Mr Jones did not object to the transfer to LSH (within the meaning of Regulation 4(7) of TUPE 2006) nor did he ask Erinaceous or the administrator to dismiss him by reason of redundancy. Mr Jones has not alleged that he has the right to treat himself as having been dismissed by Erinaceous or the administrator.
- They are willing to accept that Mr Jones' employment contract has been subject to two relevant transfers for the purposes of the TUPE legislation. With regard to the second transfer in April 2008, they were neither the Transferor nor the Transferee.
- The right to benefits under Regulation 19 is not within the TUPE exclusion.

- Potentially, TUPE imposes an obligation on a Transferee to provide transferring employees with the same rights to an unreduced pension on redundancy as they had immediately prior to the transfer. However, any claim Mr Jones might have would be against LSH and not Ealing.
- Any such rights would exist by operation of the TUPE legislation and would not depend on any contractual commitment by LSH to Ealing.
- There was no obligation for Ealing to insert a clause into their contract with LSH to require them offer Mr Jones unreduced benefits on redundancy nor could they have insisted that LSH agree to such. No contract between Ealing and LSH could deprive Mr Jones of any TUPE rights he might otherwise have.
- There is no factual or legal dispute about the 2007 Direction which, even if resolved in Mr Jones' favour, would give him an entitlement to immediate and unreduced access to his LGPS benefits.
- Even if there had been a breach of any obligation under the 2007 Direction (which they deny), this would not change the fact that Mr Jones is not eligible for unreduced benefits with effect from 23 July 2008. They deny that they breached any legal obligation to Mr Jones in entering into an arrangement with LSH.
- Compliance with the 2007 Direction is a public law issue and not a pensions issue nor a private law issue. An individual may not use the courts to seek compliance with the 2007 Direction and/or seek judicial review of any decision by Ealing to enter into a contract on the basis that the contract failed to meet the requirements of the 2007 Direction.
- They acknowledge that they did not provide a full and formal response to Mr Jones' complaint, of 12 November 2009, until 8 November 2011. They have apologised to Mr Jones and paid him £250. They point out, however, that they attempted to provide Mr Jones with advice about alternative routes to accessing his benefits early during that time.

9. Ealing made further submissions which are summarised below:

- Fair Deal requires that each case be determined on its own merits and this was done in Mr Jones' case.

- Fair Deal envisages the contracting authority being in control of the process. It does not fetter the authority in relation to decisions it makes when the circumstances are outside its control.
- Fair Deal does not specify that the authority is obliged to have an actuary determine what payment constitutes “appropriate compensation”. It could be something other than a lump sum payment. For example, a benefit (financial or otherwise) provided by the new employer. This was accepted in a previous case (M01124).
- If Fair Deal had intended that an actuary was to calculate a specific sum for compensation, it would have contained a clear indication of the assumptions the actuary was to use.
- The actuary should be in an analogous position to a medical adviser whose expertise is sought in ill health retirement; the decision regarding the benefit/compensation remains the authority’s decision.
- The assessment of what, if any, compensation is due should take into account the relative bargaining power of the authority and new employer. It should also take into account the consequences of a failure to agree. They provided valuable consideration for LSH entering into the contract without which it is unlikely that LSH would have entered into the contract. This is an indication of the relative bargaining powers of the two parties. This valuable consideration indirectly benefitted the Erinaceous employees by avoiding their dismissal by the administrator. The securing of continued employment provided appropriate compensation in accordance with Fair Deal. They were entitled to conclude that no further compensation was required.
- Fair Deal does not say that the authority is directly responsible for paying compensation. It could therefore be a benefit from the new employer.
- The decision as to what constitutes appropriate compensation is not a matter for the Pensions Ombudsman’s jurisdiction.
- If any compensation is due, it should be based on a comparison between the overall benefits available to Erinaceous employees after the TUPE transfer and the benefits available if they had been dismissed. It should not

be a comparison with the benefits available on a hypothetical transfer to an employer with pension protection.

- Had a broadly comparable scheme been available to Mr Jones, he would have been credited with membership from April to July 2008; a period of 90 days. Any compensation should be based on the difference in the benefits he accrued over those 90 days.
- The LGPS would not have paid a lump sum for that 90 day period and, therefore, it is reasonable to assume that a broadly comparable scheme would not do so either. Mr Jones would have accrued an annual pension of around £182 payable at age 65. Over that period, he accrued a fund value of £4,017 in the LHS Scheme. Their rough calculations indicate that there is not an obvious need to pay any compensation.
- The cost of obtaining actuarial advice would be disproportionate.

## Conclusions

10. Mr Jones' complaint, put in its simplest form, is that he has not been provided with the pension rights to which he was entitled; either under the LGPS or under the pension scheme offered by LSH.
11. Determining what those rights are and who is responsible for providing them is not quite so simple.
12. The key pieces of law are:
  - The Transfer of Undertakings (Protection of Employment) Regulations 2006
  - The Best Value Authorities Staff Transfers (Pensions) Direction 2007
  - *Proctor & Gamble v SCA* [2012] EWHC 1257 (Ch)
13. Mr Jones has expressed the view that the Code of Practice and Fair Deal have statutory force by virtue of the Local Government Act 2003 (I take him to mean Sections 101 and 102 since 103 concerns something quite different) and the Local Government Act 1999. Neither the Code of Practice nor Fair Deal were issued under powers contained in either act. The 2007 Direction, on the other hand, was.



14. There is no disagreement that, when Mr Jones' employment transferred to Dunlop Haywards Ltd, his pension rights were protected. Dunlop Haywards Ltd met the resulting obligation by becoming an admitted body and allowing Mr Jones continued membership of the LGPS. The disagreement concerns the position when Mr Jones' employment transferred to LSH in 2008.
15. Mr Jones' employment transferred to LSH when the contract between Ealing and Erinaceous was novated. Ealing's decision to enter into a contract with LSH is not within my jurisdiction. I do not therefore have to consider the reasons put forward by Ealing for having entered into the contract. I start from the point that the contract between Ealing and LSH is a fact. My role is to determine what, if any, protection should have been afforded to Mr Jones' pension rights and whether Ealing should have provided it.
16. Although not a retendering exercise in the conventional sense, the agreement between Ealing and LSH was a transfer or a service provision change for the purposes of TUPE 2006. I find that, at the time Mr Jones' employment transferred to LSH, TUPE 2006 and the 2007 Direction both applied.
17. Unlike Fair Deal and the Code of Practice referred to by Mr Jones, TUPE 2006 and the 2007 Direction have statutory force and must be complied with by the relevant body. Regulation 10 of TUPE 2006 provides that the rights, powers, duties or liabilities under or in connection with an occupational pension scheme do not transfer. The important exception to this covers any provisions which do not relate to benefits for old age, invalidity or survivors. The exception would cover the benefits provided under Regulation 19 of the LGPS Regulations.
18. Ealing's responsibilities to Mr Jones are governed by TUPE 2006 and the 2007 Direction. Under the 2007 Direction, the contract between Ealing and LSH had to provide that LSH secured "pension protection" for Mr Jones and that the pension protection was enforceable by him. The "pension protection" obligation was fulfilled if, after the transfer to LSH, Mr Jones had the right to acquire pension benefits which were the same as, broadly comparable to or better than those he had the right to acquire before. The Deed of Variation, which replaced Condition 9.1 of the original contract, referred to the Code of Practice, but not to the 2007 Direction. The Deed set out an agreement between the parties that the principles set out in the Code of Practice should apply. It also provided that

LSH would satisfy those principles if it offered Mr Jones ongoing access to the LGPS, access to a broadly equivalent scheme as approved by the GAD or access to its own pension scheme into which it would contribute the same employer's contribution as had been paid by Erinaceous. Whilst the first two options clearly would meet the requirements of the 2007 Direction, the third option would not. In agreeing to vary the terms of the contract as provided for in the Deed of Variation, Ealing were not complying with the 2007 Direction. This is a simple statement of fact and makes no comment on whether or not there was room for Ealing to do otherwise.

19. Ealing have referred to the provision in Fair Deal to the effect that a broadly comparable pension scheme may not be offered in exceptional circumstances. This is indeed the case. However, Fair Deal then provides for the affected staff to be offered compensation and for the contracting authority to take actuarial advice on the calculation of such compensation. Ealing clearly considered that there were exceptional circumstances surrounding the novation of their contract with Erinaceous. Under Fair Deal, their approach should then have been to provide appropriately calculated compensation for Mr Jones.
20. Fair Deal stated that actuarial advice should be taken by the contracting authority on the calculation of any compensation. The determination of any compensation is for the authority to make, acting on that advice. As with any other decision, an authority could be expected to give adequate reason for departing from such advice.
21. The reference to seeking actuarial advice suggests that Fair Deal intends that the compensation is calculated by reference to the future loss of pension benefits for those staff who would not have access to a broadly comparable scheme. The fact that it lacks specific detail as to the assumptions to be used by the actuary simply reflects the fact that the type of alternative scheme is potentially very wide.
22. Ealing have suggested that compensation need not be in lump sum form and could be additional benefit from the new employer. They argue that Fair Deal does not provide that the contracting authority should be directly responsible for paying compensation. It is not unreasonable for the assessment of compensation to take into account benefits provided by the new employer. In the previous case referred to by Ealing (M01124), actuarial advice had been

sought. The independent actuary had advised that the new pension arrangement was comparable in value to the LGPS and more flexible. He advised that it was a not unreasonable alternative to a broadly comparable scheme. The new employer had also offered a 10% increase in basic pay on transfer.

23. However, in view of the fact that both the 2007 Direction and Fair Deal are concerned with securing “pension protection”, any assessment of compensation due would not be expected to stray too far from the respective pension provisions. The simple fact of securing ongoing employment, in and of itself, cannot be sufficient. The premise behind the TUPE legislation and the 2007 Direction is that replacement employment is not enough. As for responsibility, both the 2007 Direction and Fair Deal apply directly to Ealing and not to LSH.
24. Broad comparability is assessed by GAD and their guidance makes it clear that their assessment does not include any benefits which are payable solely as a result of the member being made redundant where these exceed the benefits available to a member who resigns from employment. Thus, whilst Fair Deal required Ealing to pay compensation to Mr Jones on his transfer to LSH, the calculation of that compensation was not required to take into account the loss of his access to immediate payment of unreduced benefits on redundancy under Regulation 19.
25. Ealing have argued that any compensation for Mr Jones should be based on a comparison between what he might have accrued in a broadly comparable scheme for the period April to July 2008 and his fund value in the LSH Scheme. However, this is looking at the situation from the wrong end. Any compensation should be calculated on the basis of the circumstances which existed when Ealing entered into the contract with LSH. The assumption, at that time, would be for Mr Jones’ employment with LSH to be ongoing and therefore his membership of their scheme to be ongoing. Ealing need to ask their actuary to calculate any compensation on the basis that he had been asked to do so in April 2008 without the subsequent hindsight that Mr Jones was to be made redundant in July 2008. It follows that any compensation for redundancy paid by LSH is not relevant to this calculation.

26. Mr Jones has also complained that Ealing took over three years to respond to his complaint. Ealing have apologised and paid Mr Jones £250 for distress and inconvenience. Mr Jones has not suffered any financial loss as a direct result of the delay in dealing with his complaint and the amount paid by Ealing is in line with the usual (modest) sums I award. I see no reason to make alternative directions.

**Directions**

27. Within 21 days of the date of my final determination, Ealing are to refer the matter to an actuary for them to assess an appropriate amount of compensation due to Mr Jones under the 2007 Direction. Upon receipt of actuarial advice, Ealing will pay the recommended amount to Mr Jones.

**Tony King**  
Pensions Ombudsman

11 March 2015

## Appendix

### **The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (SI2007/1166) (as amended)**

28. As at the date Mr Jones was made redundant, Regulation 19 provided,

- “(1) Where -
  - (a) a member is dismissed by reason of redundancy; or
  - (b) his employing authority has decided that, on the grounds of business efficiency, it is in their interest that he should leave their employment; and
  - (c) in either case, the member has attained the age of 55,
 he is entitled to immediate payment of retirement pension without reduction.
- (2) In the case of a person who is a member on 31st March 2008, and to whom paragraph (1) applies before 31st March 2010, that paragraph applies as if “the age of 50” were substituted for “the age of 55”.

### **The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI2006/246)**

29. As at the date Mr Jones was made redundant, Regulation 2 provided that a "relevant transfer" meant,

“a transfer or a service provision change to which these Regulations apply in accordance with regulation 3 and "transferor" and "transferee" shall be construed accordingly and in the case of a service provision change falling within regulation 3(1)(b), "the transferor" means the person who carried out the activities prior to the service provision change and "the transferee" means the person who carries out the activities as a result of the service provision change”

30. Regulation 3 provided that the TUPE Regulations applied to a ‘service provision change’. This is described as,

- “(1) (b) ... a situation in which -
  - (i) activities cease to be carried out by a person ("a client") on his own behalf and are carried out instead by another person on the client's behalf ("a contractor");
  - (ii) activities cease to be carried out by a contractor on a client's behalf (whether or not those activities had previously been carried out by the client on his own

behalf) and are carried out instead by another person ("a subsequent contractor") on the client's behalf; or

- (iii) activities cease to be carried out by a contractor or a subsequent contractor on a client's behalf (whether or not those activities had previously been carried out by the client on his own behalf) and are carried out instead by the client on his own behalf,  
and in which the conditions set out in paragraph (3) are satisfied.
- (2) In this regulation "economic entity" means an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary.
- (3) The conditions referred to in paragraph (1)(b) are that-
  - (a) immediately before the service provision change-
    - (i) there is an organised grouping of employees situated in Great Britain which has as its principal purpose the carrying out of the activities concerned on behalf of the client;
    - (ii) the client intends that the activities will, following the service provision change, be carried out by the transferee other than in connection with a single specific event or task of short-term duration; and
  - (b) the activities concerned do not consist wholly or mainly of the supply of goods for the client's use."

31. Under Regulation 4, a transfer does not operate to so as to terminate the contract of employment of any person employed by the transferor and assigned to the organised grouping of resources or employees that is subject to the relevant transfer, which would otherwise be terminated by the transfer. Any such contract shall have effect after the transfer as if originally made between the person so employed and the transferee. All the transferor's rights, powers, duties and liabilities under or in connection with any such contract shall be transferred by virtue of this regulation to the transferee.

32. Regulation 10 contains the so-called "Pensions Exception" and provided,

- "(1) Regulations 4 and 5 shall not apply -
  - (a) to so much of a contract of employment or collective agreement as relates to an occupational pension scheme within the meaning of the Pension Schemes Act 1993; or
  - (b) to any rights, powers, duties or liabilities under or in connection with any such contract or subsisting by virtue

of any such agreement and relating to such a scheme or otherwise arising in connection with that person's employment and relating to such a scheme.

- (2) For the purposes of paragraphs (1) and (3), any provisions of an occupational pension scheme which do not relate to benefits for old age, invalidity or survivors shall not be treated as being part of the scheme.
- (3) An employee whose contract of employment is transferred in the circumstances described in regulation 4(1) shall not be entitled to bring a claim against the transferor for -
  - (a) breach of contract; or
  - (b) constructive unfair dismissal under section 95(1)(c) of the 1996 Act,

arising out of a loss or reduction in his rights under an occupational pension scheme in consequence of the transfer, save insofar as the alleged breach of contract or dismissal (as the case may be) occurred prior to the date on which these Regulations took effect."

### **The Best Value Authorities Staff Transfers (Pensions) Direction 2007 (The 2007 Direction)**

33. Since 1 October 2007, best value authorities in England have been required by the Best Value Authorities Staff Transfers (Pensions) Direction 2007 to include provision for pension protection in their outsourcing agreements. The 2007 Direction applies both to new service contracts and to re-lets of existing service contracts. Specifically, the contract must provide for two points:
  - That the contractor shall secure "pension protection" for each transferring employee. This is defined as rights to acquire pension benefits that are "the same as, or count as being broadly comparable to or better than those he had, or had a right to acquire, as an employee of the authority".
  - That the transferring employees can enforce the provision of the pension protection against the contractor. Transferring employees are defined as those that transfer under TUPE.

(Paragraphs 5 and 6, 2007 Direction.)

34. The 2007 Direction therefore gives statutory force to some of the "future service accrual" principles contained in the Fair Deal guidance. The 2007

Direction also goes beyond Fair Deal in certain aspects. The 2007 Direction requires that the affected public-sector bodies include provisions in their outsourcing contracts which will provide transferring employees with the ability to directly enforce their right to "pension protection" against the contractor. However, the 2007 Direction only provides protection for the future, although these are protected under Fair Deal 1999.

35. The 2007 Direction does not cover the treatment of accrued pension benefits. This is still governed by Fair Deal 1999 and Fair Deal 2004.

### **Fair Deal**

36. Fair Deal is a non-statutory policy applying to pension provision for public sector staff when they are compulsorily transferred to a non-public sector employer. All parties to outsourcing transactions must be aware of the impact on the Fair Deal guidance on how future pension provision is reflected in the legal agreements. The Statement of Practice applies directly to central government departments, agencies and the NHS. The government also expects other public-sector organisations to follow the Statement of Practice when outsourcing a function to the private sector.
37. Under the Local Government Act 2003, a "best value authority" (a local authority, police or fire authority and various other bodies) is under an obligation to have regard to guidance issued by the Secretary of State on matters relating to the employment or pensions of existing staff. Therefore, even though it is not legally binding, in practice outsourcing local authorities must adhere to the principles of the Statement of Practice.
38. The guidance does not apply directly to contractors. It is necessary for the outsourcing public-sector body to incorporate the requirements of the guidance and the 2007 Direction as appropriate as contractual terms in their project agreements with contractors.
39. The guidance states that there may be exceptional circumstances where there are special reasons for not providing a broadly comparable scheme. It states that such reasons must be rigorously tested and that it would then be necessary for the terms of the business transfer to provide for appropriate compensation for all staff. The contracting authority is to take actuarial advice on the calculation of compensation in the event that such exceptional circumstances arise.