

# Warwickshire Pension Fund

Academies Training Event

Robert Bilton FFA

30 September 2021



Hymans Robertson LLP is authorised and regulated by the Financial Conduct Authority

# Agenda

- Background to outsourcings
- Stakeholders in an outsourcing
- Pension funding implications
- Practical considerations



**Rob Bilton**

[robert.bilton@hymans.co.uk](mailto:robert.bilton@hymans.co.uk)



# Background to outsourcings



# Why employers outsource?

Employers in LGPS outsource for many reasons

- Cost savings – same for less
- Efficiency – more for the same cost?
- Innovation
- Shared services

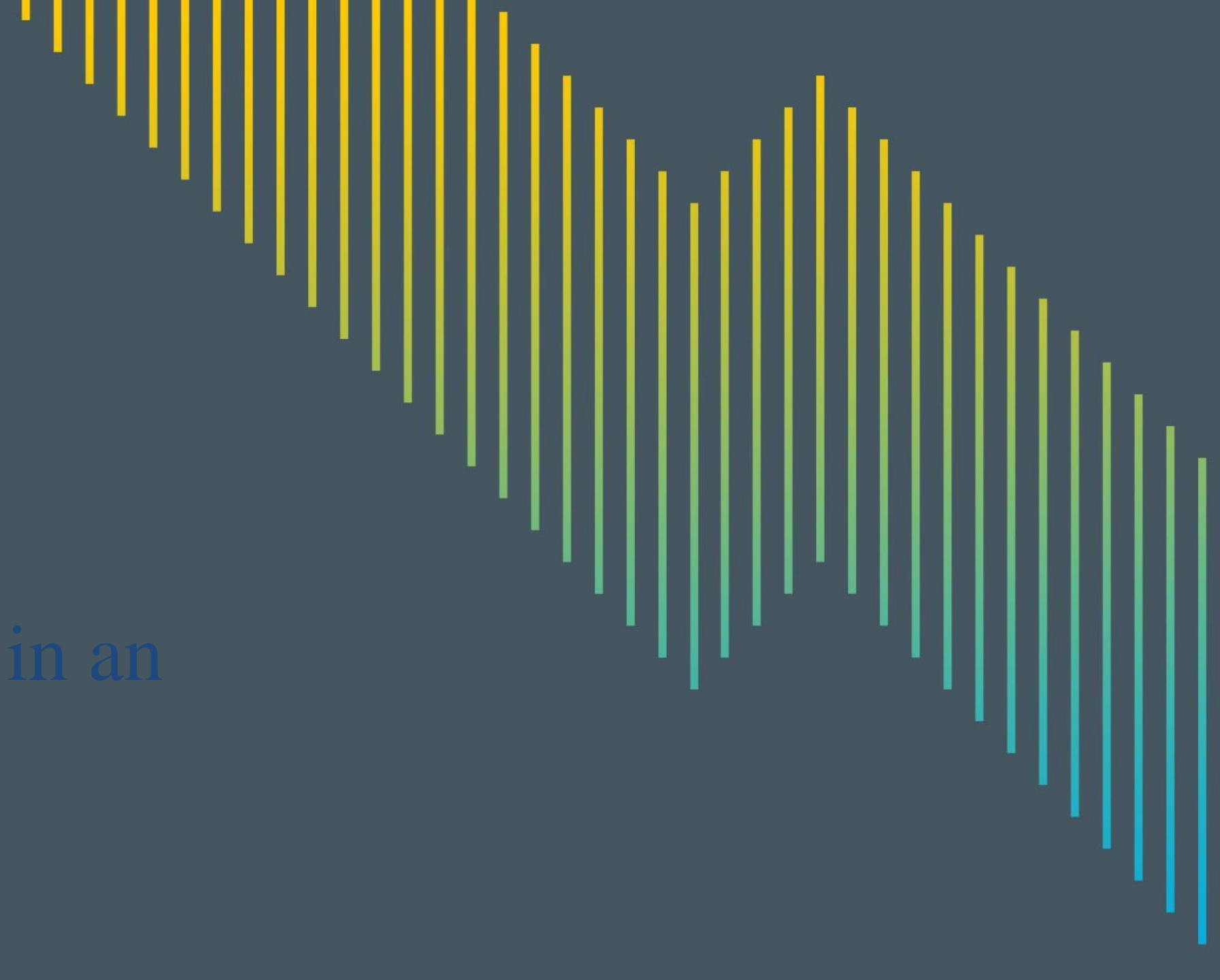
**However, have they remembered the pension costs?**

# Why are pension costs an issue?

- Transfer of Undertakings (Protection of Employment) (“TUPE”)
  - Protects employees’ rights when the organisation they work for transfers
  - Impact outgoing and incoming employer
  - Sits alongside other Regulations and Guidance to protect pension provision
- (new) Fair Deal
  - Implemented in October 2013
  - Covers central government departments, NHS & **Academies**
  - Simplified the pension protection
  - Winning contractor must offer continued access to current public sector pension scheme

**Transferred Academy staff must have continued access to LGPS**

# Stakeholders in an outsourcing





# The 3 main stakeholder groups



The Letting Authority – the Academy



Administering Authority – the Fund



New Scheme employer – the Winning bidder/contractor

# Letting Authority - Role

- Use Fair Deal guidance as it applies to their organisation
- Ensure pension issues are considered before the tender process and contact the Fund
- Open communication channels with staff and trade unions
- Assess and understand the financial pensions risk and costs

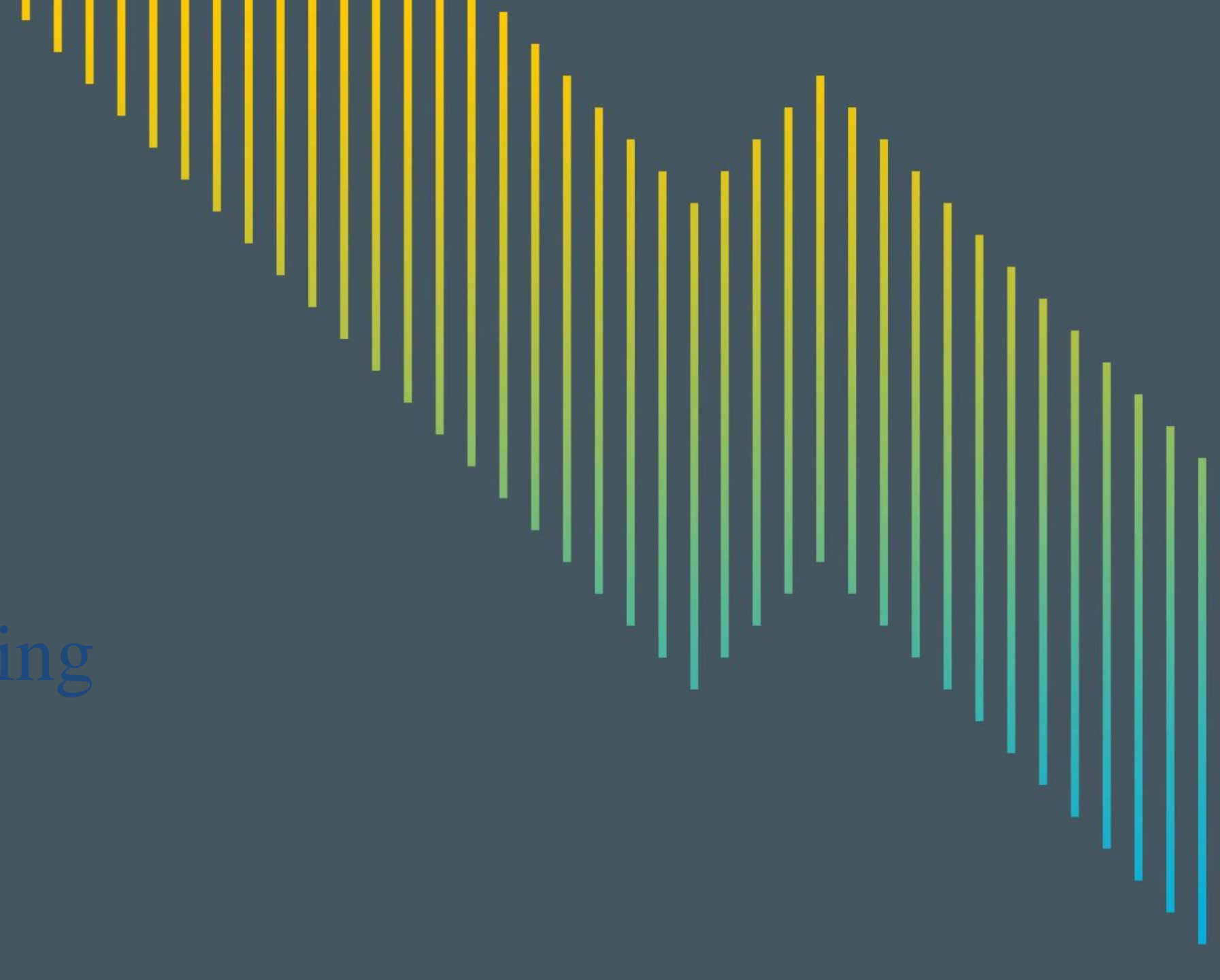
# Administering Authority - Role

- Responsible for terms of Admission Agreement
- Protect the Fund and other Fund employers
- Makes the decision to admit Contractor, and that the decision is in accordance with the Regulations
- Oversee the new employer admission process – contact with Letting Authority / Contractor / LGPS members

# Winning Contractor/Bidder - Role

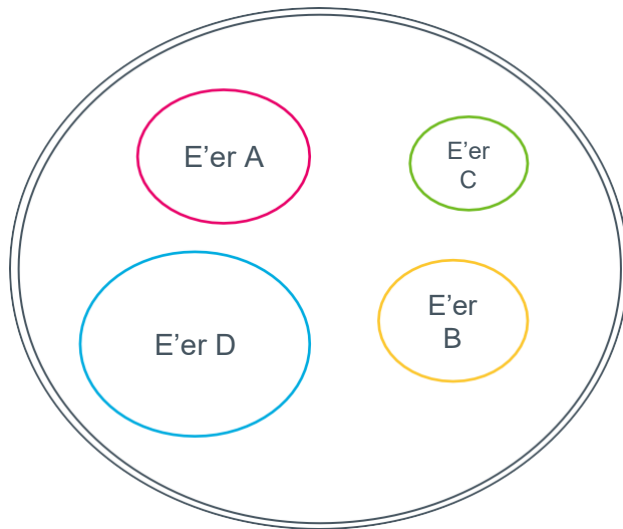
- Price in pension costs and risk to contract bid
- Ensure they complete risk assessment
- May have to secure a Bond/Guarantee – depends on the funding arrangement (Traditional/Pass-through)
- Ensure they provide information as required from Administering Authority
- Ensure they have completed applicable discretionary statements

# Pension funding implications

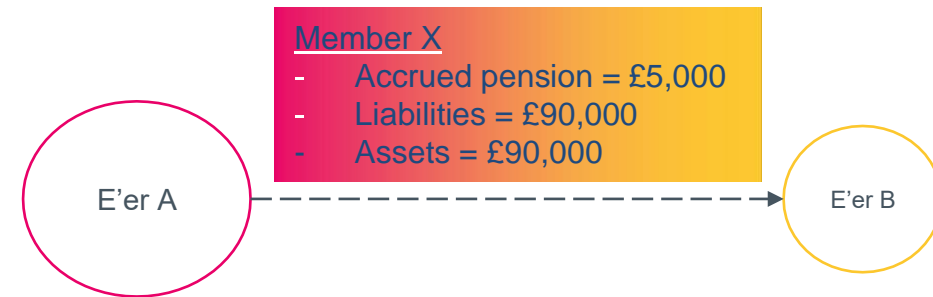


# Pension funding for outsourcing

- One fund, lots of employers
- Each employer responsible for their share of the Fund



- Accrued pension rights follow a member when they move
- Typically, assets equal to liabilities transfer



**Options available for managing pension funding aspects**

# Participation options for Contractor



Route 1: 'traditional' agreement



Route 2: pass-through

# Route 1: Traditional agreement

## Joining

- Contractor joins Fund via admission agreement
- Member's liabilities and assets transfer to Contractor (fully funded at outset)
- Contribution rate based on Contractor's membership (may be different from Letting Authority)

## Leaving

- Contractor leaves the Fund at end of contract\*
- Cessation valuation of liabilities and assets
  - In deficit: Contractor makes payment
  - In surplus: Contractor may receive exit credit
- If Contractor can't pay, Letting Authority will be liable

---

## During participation

- Contractor exposed to all pension funding risks e.g. investment performance, membership experience
- These risks affect the Contractor's funding position in the Fund i.e. it will fluctuate
- Contribution rate will be re-assessed at each formal valuation (every 3 years) and may change



# Route 1: Traditional agreement

\* Participation can finish earlier if Contractor becomes insolvent or no active members in the LGPS

# Route 1: Traditional agreement

- Pro's

- Letting Authority passes all funding risks to Contractor
- Contractor pays for own liabilities and membership experience
- Currently, better understanding by bidders and other advisors of this route

- Con's

- Uncertainty over pension costs means bigger margins built into contract pricing, leading to higher outsourcing costs for the Letting Authority
- Contractor not aware of pension cost impacts – lead to problems later on e.g. cessation
- More administration (and cost) for all parties throughout the contract lifecycle

# Route 2: Pass-through

- A route to simplify the administration and participation of Contractors in the LGPS
  - Increasing frequency of outsourcings to small businesses
  - Introduction of Exit Credits (May 2018)
- Limits Contractor's exposure to pension funding risks
- Less uncertainty about cost of participation in the LGPS

**Warwickshire Pension Fund's preferred option for all outsourcings**

# Route 2: Pass-through

## Joining

- Contractor joins Fund via admission agreement
- No liabilities and assets transfer to Contractor
- Contribution rate equal to Letting Authority's Primary Rate (cost of future benefit accrual)

## Leaving

- Contractor leaves the Fund at end of contract\*
- No cessation valuation

---

## During participation

- If Letting Authority's Primary Rate changes then Contractor's rate also changes (continue to match)
- Contractor may need to pay for pension costs within its own control (depends on commercial terms)
- No other pension funding risk exposure for Contractor

# Route 2: Pass-through

\* Participation can finish earlier if Contractor becomes insolvent or no active members in the LGPS



# Route 2: Pass-through

- Pro's

- More clarity for all parties over contribution rate and terms of participation
- Lower 'uncertainty margins' in bids
- Simpler to administer for all parties (and lower contract lifecycle costs)

- Con's

- Letting Authority retains pension risks
- Letting Authority may pay for Contractor's decisions e.g. excessive salary growth\*

# Route 2: Pass-through

Mitigation options available - discussed later



# Practical considerations





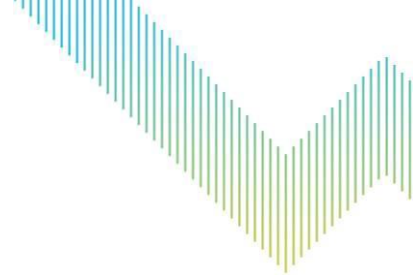
# Risk management

- LGPS regulations\* place a requirement to ensure appropriate risk mitigation in place against Contractor insolvency
- Two main routes
  - Indemnity or bond e.g. from a bank or insurer
  - Guarantee from Letting Authority
- Pass-through
  - By nature of pass-through, Letting Authority guarantee
  - Ensure DfE are notified of pass-through arrangement!
- Traditional agreement
  - Both options available
  - Typically guarantee route is chosen – simplicity and cost

**Warwickshire Pension Fund has final approval**

# Risk management

\* Schedule 2 Part 3 of LGPS Regulations 2013



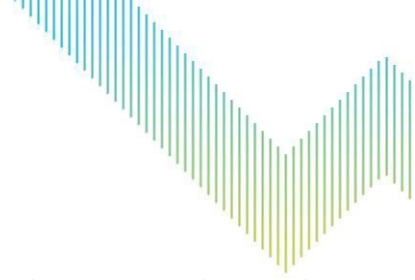
# Areas to consider\*

- Approach to new joiners (“Open” or “Closed”)
- Do the commercial arrangements reflect the chosen pensions route?
- What pension cost information needs to be provided for tenders?
- Pass-through
  - Are the commercial terms and admission agreement clear about the treatment of exit credits?
  - Will the Contractor be responsible for any Contractor-controlled risks e.g. excessive pay growth, early retirement strains etc.?
- Traditional agreement
  - Has the Contractor fully understood the risks and priced them?

**Any questions or uncertainty – contact the WPF straight away**

# Areas to consider\*

\* As we are not lawyers, this information is not, nor should be construed as, legal advice. Employers should seek professional legal advice when outsourcing services.



# Admission Agreements

- Admission Agreement required before Contractor can participate in the Fund
  - Tripartite agreement
  - 3 Sets of Lawyers normally need to see the document (Fund / Letting Authority / Contractor)
- Process can be time consuming
- Sign agreement before transfer of staff
  - Avoids members being classed as deferred and losing certain pre-retirement protections
  - Avoids issues with auto-enrolment, potential breach of commercial agreements and unlawful deduction of pension contributions

**Early engagement with the Warwickshire Pension Fund is vital**

# Summary

- Pensions funding implications are an important aspect of any outsourcing
- Warwickshire Pension Fund's preferred approach is pass-through...
- ...but Letting Authority has ultimate choice
- Early engagement with the Fund is important to avoiding problems (and costs) later on

**Any questions?**

Thank you

This Powerpoint presentation contains confidential information belonging to Hymans Robertson LLP (HR). HR are the owner or the licensee of all intellectual property rights in the Powerpoint presentation. All such rights are reserved. The material and charts included herewith are provided as background information for illustration purposes only. This Powerpoint presentation is not a definitive analysis of the subjects covered and should not be regarded as a substitute for specific advice in relation to the matters addressed. It is not advice and should not be relied upon. This Powerpoint presentation should not be released or otherwise disclosed to any third party without prior consent from HR. HR accept no liability for errors or omissions or reliance upon any statement or opinion herein.