

60-second summary

Best practice guidance for academies in the LGPS



Julie Baillie
Senior Actuarial Consultant

The latest best practice [guidance](#) for academies in the LGPS includes a summary of the longstanding Department for Education (DfE) guarantee for academies that was extended last year to cover (some) academy outsourcings. We look at the latest guidance and the continuing guarantee in more detail, and why some outsourced contracts are still problematic.

What does the latest guidance cover?

The Education and Skills Funding Agency (ESFA) make available a raft of guides for academies, covering topics from choosing an external auditor to energy and carbon reporting. Their latest publication is best practice guidance for academies as participating employers in the LGPS. It includes high-level information about which employees are eligible for LGPS membership, what contributions employers and employees are required to pay, and how an academy should engage with their relevant LGPS fund.

The guidance provides useful signposting and links to more detailed information, useful for newer academies grappling with the LGPS. Particularly helpful are sections that clarify differences between a fund's triennial valuation and an employer's annual accounting valuation (a common source of misunderstanding for even seasoned academies). Further helpful jargon busting includes the difference between "pooling" for contribution-setting purposes (something that academies can and should engage with directly) and asset pooling which relates to how LGPS funds invest their assets with specialist LGPS investment pools.

Also included is a useful summary of the DfE Academy LGPS guarantee, with focus on outsourcing and "pass-through" arrangements. The proper management of outsourcing contracts is a crucial part of academies' financial management. Pension costs can be a complex and sometimes overlooked part of the arrangements; any measures to streamline academies' LGPS commitments will be more efficient and cost-effective for contractors, academies and their LGPS funds.

DfE Academy guarantee

The ESFA released a [policy paper](#) in 2023 regarding the operation of the DfE Academy Guarantee and its application to academy outsourcings; the policy was further updated on 7 May 2024 with an explanation of what constitutes a "pass-through" arrangement.

General DfE guarantee for academies

Since 2013, the DfE has offered a guarantee covering academies (and free schools) as employers in LGPS funds. Under the terms of the guarantee, if an academy closes and ceases to be an employer in an LGPS fund, the DfE will pay to cover any shortfall in the academy's LGPS pension funding. This is an open-ended guarantee that is regularly assessed – the latest commitment to the guarantee was issued by the DfE in 2022, with an increased annual ceiling of £20m.

Guarantee arrangements for academy outsourcings

Prior to 2023, any academy outsourcing a service through a TUPE transfer had to seek ESFA approval before letting a contract.

Traditional outsourcing arrangements hand contractors a significant amount of pension-related risk, exposing them to changing financial conditions and member-specific events. At the end of a contract, any funding shortfall is met by the contractor; failing that, a LGPS fund can seek payment from any guarantor or, in the case of insolvency, a bond provider.

Under a “pass-through” contract the pension risks largely remain with, or pass back to, the academy, removing a large element of uncertainty and associated costs for potential contractors. However, under the guidance set out in the [Academies Financial Handbook](#) (Section 5) academies are not typically permitted to offer a guarantee directly without ESFA approval, making the operation of “pass-through” contracts more difficult.

The ESFA's 2023 policy paper states that pension liabilities associated with a pass-through contract are automatically guaranteed by the DfE for certain staff in limited scenarios, namely:

1. Staff currently working for an academy who then transfer to an outsourced contractor under TUPE
2. Staff who transferred to an outsourced contractor under TUPE before the academy converted (ie when it was still a maintained school) and the outsourced contract passes to the academy on conversion.
3. Staff who currently work for the local authority which is providing services to the academy under a contract, but the contract is then awarded to another third-party contractor and the staff transfer to the new contractor under TUPE.

Outsourcings in scenarios 2 and 3 were not previously covered and could not be guaranteed by an academy; the relevant staff were already providing the service, but had not been employed directly by the academy and so would not be passing “back” at the end of a contract.

This welcome update streamlined the outsourcing process and partially closed a loophole in the previous guarantee. However, the problematic scenario now arising most frequently is where the academy wishes to arrange a pass-through contract with LGPS eligibility also available to new employees ie an “open” contract. New staff employed by the contractor aren't covered under any of the listed scenarios, and so are excluded from the automatic guarantee.

It is possible to accommodate LGPS admission under an open pass-through agreement by using a more complex funding arrangement to recognise the additional risk of the unguaranteed members. However, this additional complexity wipes out a lot of the benefits of a pass-through arrangement. Alternatively, LGPS funds may refuse entry of an admission body which has an open pass-through contract with an academy where a suitable guarantee can't be agreed, instead permitting only a closed agreement or a traditional arrangement (which, as before, still requires the academy to contact the ESFA).

Your actuary can provide more information about the risks posed to academies and to LGPS funds by outsourcing arrangements and help you find solutions to manage the risk.

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