Croydon Council

REPORT TO:	**PENSION COMMITTEE** **3 September 2013**
AGENDA ITEM:	**9**
SUBJECT:	**Recovery of Pension Fund Deficit Contributions from Academies**
LEAD OFFICER:	**Executive Director of Corporate Resources and Customer Services**
CABINET MEMBER	**Deputy Leader (Statutory) and Cabinet Member for Housing, Finance and Asset Management**
WARDS:	**All**

CORPORATE PRIORITY/POLICY CONTEXT:

Sound Financial Management: This report is to give an update to the Pension Committee of the treatment of Academies.

FINANCIAL SUMMARY:

This report is to update the Pension Committee on the treatment of Academies in light of a Minute from the Secretary of State for Education.

FORWARD PLAN KEY DECISION REFERENCE NO.: N/A

1. RECOMMENDATIONS

1.1 The Committee is asked to note this report and agree to continue with the current arrangements, that is:

1. The share of deficit should be calculated including deferred and pensioners and active members;
2. A compromise recovery period be adopted, between the 7 year government guaranteed support period and the current recovery period for the Council, that is to say 15 years..
3. As requested by CLG, the Council as administering authority writes to all academies and maintained schools to set out the administering authority's position on this issue.

2. EXECUTIVE SUMMARY

2.1 This report is to update the Committee and seek agreement to the approach to be taken by the pension scheme in recovering deficit contributions from academies, in light of a Minute dated 2nd July 2013 from the Secretary of State for Education.

3. DETAIL

3.1 The Academies Act 2010 gave schools the opportunity to become independent from their local Authority and assume responsibility for their own finances. For those schools that decide to take this option the Actuary calculates the Local Government Pension Scheme liability that relates to staff employed at that school, (Teachers' Pension liabilities are not impacted as theirs is an unfunded scheme) which forms the basis of the contribution rate calculation. The contribution rate has two components, that part that relates to current liabilities relating to staff that are in the Scheme and still at work and the deficit contribution that relates to the funding gap. At its meeting on 29 November 2011 this Committee agreed that the share of the Pension Fund deficit that relates to an Academy, including that part that relates to deferred pensioners and pensioners in receipt of benefits, should be recovered over a period of 15 years (Minute B02/11 refers).

3.2 Subsequently the Department for Education (DfE) / Department for Communities and Local Government (DCLG) wrote to all administering authorities setting out the approach they would prefer authorities take in dealing with Academies over the question of deficit recovery contributions. In that note the government gave an overview of the Academies programme and stated the Government's desire for consistency of treatment across LGPS funds. The Governments also emphasised their desire for the post conversions pension contributions to be the same for academies as those for a Local Authority maintained school. It suggested that LGPS funds 'positively consider' requests to be pooled with the former Local Authority employer that maintained the school.

3.3 Pensions Committee, at the meeting of 21 February 2012, discussed the practical and conceptual issues. The practical issues included the problem with the stated desire for consistency going backward, that is to say what should be done with Academies that have already been set up in the Fund on an individual non-pooled basis. There was an issue around assessing the initial allocation of assets within the Council pool and the accounting treatment about FRS17 requirements for Academies. Finally, there was a question around what is to be done where the Council is paying off its deficit via monetary payments (as opposed to a percentage of pay). The conceptual issues were more problematic. The DfE/DCLG wanted to achieve consistency of approach between different local authorities in treatment of Academies and that no Academy should pay 'unjustifiably higher' employer contribution rates. In practice this means that the Authority's pool will effectively underwrite the liabilities of any failed Academies. This was considered as unfair, and the lack of a legislative framework considered regretable to avoid potential future complaints from other employers claiming that they didn't get treatment similar to that secured by DfE/DCLG for Academies or because they have been disadvantaged by being exposed to liabilities in respect of failing Academies.

3.4 At that point in time further detailed guidance was been promised by DfE/DCLG. The Committee resolved to continue with the funding principles already adopted and to use a compromise recovery period of 15 years in calculating contribution rates. Minute A06/12 refers.

3.5 The Department of Education (DfE) presented a Minute before Parliament on 2 July stating that DfE is:

"... providing a guarantee to LGPS Administering Authorities that in the event of the closure of an Academy Trust any outstanding liabilities will not revert to the fund. Provided such assurances will give Administering Authorities the confidence they need to treat academies equitably and ensure that there is no significant divergence in employer contribution rates upon academy conversion."

The statement confirms that the Secretary of State has the power to determine the distribution of an academy's assets and that in the first instance pensions liabilities would be met from those assets. Any remaining LGPS deficit would then be met in full by the DfE. However closer analysis of this Minute suggests a number of unresolved issues.

3.6 Under the terms of the guarantee, the DfE and HM Treasury reserve the right to 'withdraw the guarantee at any time'. Instances when the guarantee may be withdrawn include:

- Estimated contingent liability (CL) ceilings are exceeded (which could mean the withdrawal of the guarantee when it is most needed).
- Projected costs are no longer affordable from within DfE's existing budget.
- Projected costs are not approved by HM Treasury.
- HM Treasury reserve the right to remove the guarantee due to spending considerations or policy developments.

3.7 In its role providing guidance to the Administering Authority the Committee will need to consider to what extent the provision of this guarantee would lead them to change the approach and assumptions used when setting contribution rates (including for example any deficit recovery periods). The proposed guarantee, in its current form, does not offer the same degree of security that Administering Authorities assume for employers with the strongest covenant. The critical issues include:

- Deficit spread period – As the DfE previously only guaranteed Academy funding for a period of 7 years, this figure was used as the lower end of the range in setting a compromise rate (i.e. the 15-year recovery period sits midway between 7 years and the 23-year figure used by the Council). Deficit spread periods could justifiably be extended with a funding guarantee to a similar period adopted for Local Authorities (around 20 years). A longer deficit recovery period leads to a lower contribution rate.

- For existing academies, there may need to be a revision of the rates currently paid to reflect the existence of the guarantee. This would take place as part of the 2013 valuations and be reflected in rates payable from April 2014.

3.8 The proposed guarantee is welcome but it is limited in terms of availability, and may no longer be there when it is needed most. The limits and conditions on the guarantee mean that the degree of security is less than for the most secure employers in the Fund. A further consultation on pooling is expected, therefore it might be pragmatic to delay a final decision on changes in contribution policy for academies until that consultation is completed. The timing of the announcement means that this can all be factored into contribution strategy decisions later this year as part of the 2013 valuation exercise which will determine contribution rates from April 2014.

3.9 Communities and Local Government (CLG) has written to all administering authorities to ask that we share this information about the 'guarantee' with Academies and maintained schools which are considering converting to academy status, to inform the dialogue between pension administrators and employers. The Department stated that this continues to be a theme discussed at both the Policy Review Group and meetings with actuaries and treasurers. DCLG is in the process of discussing with LGPS Actuaries and treasurers to discuss the potential impacts of the DfE guarantee.

4. RECOMMENDATIONS

The Committee is asked to note the content of this report and reaffirm the previous decisions about the calculation methodology for Academy contribution rates. The Committee is asked to concur with the CLG's request that the administering authority writes to all academies and maintained schools to set out the administering authority's position on this issue.

5 FINANCIAL CONSIDERATIONS

5.1 There are no further financial considerations flowing from this report.

6. OTHER CONSIDERATIONS

6.1 Other than the considerations referred to above, there are no customer Focus, Equalities, Environment and Design, Crime and Disorder or Human Rights considerations arising from this report

7. COMMENTS OF THE SOLICITOR TO THE COUNCIL

7.1 The Council Solicitor comments that there are no specific legal considerations arising from this report.

(Approved by: Gabriel Macgregor, Head of Corporate Law on behalf of the Council Solicitor & Monitoring Officer)

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BACKGROUND DOCUMENTS: None