Croydon Council

REPORT TO:	**PENSION COMMITTEE** **2 December 2014**
AGENDA ITEM:	**6**
SUBJECT:	**Update on Guidance for LGPS Actuaries in relation to Academies**
LEAD OFFICER:	**Director of Finance and Assets (Section 151 Officer)**
CABINET MEMBER	**Councillor Simon Hall** **Cabinet Member for Finance and Treasury**
WARDS:	**All**
CORPORATE PRIORITY/POLICY CONTEXT: Sound Financial Management: This report is to give an update to the Pension Committee on the treatment of Academies by the Actuarial Valuation Process.	
FINANCIAL SUMMARY: There are no direct financial consequences to this report; however any change in current policy will result in a reallocation of costs to Scheme employers.	
FORWARD PLAN KEY DECISION REFERENCE NO.: N/A	

1. RECOMMENDATIONS

1.1 The Committee is asked to note this report.

If the

2. EXECUTIVE SUMMARY

2.1 This report provides a summary of the discussions and decisions taken by the Pension Committee in regards to actuarial valuations of academies. The report provides a survey of government statements on actuarial valuations of academies and concludes that this Council has been consistent in complying with this guidance and the professional requirements of the Scheme's Actuary.

3. DETAIL

3.1 The issue around how Academies are treated within the Local Government Pension Scheme (LGPS) specifically in relation to actuarial valuations is a contentious one and the subject of national debate. Unfortunately, definitive central government guidance is lacking and a final resolution to this issue does not appear to be imminent.

Background

3.2 The Academies Act 2010 gave schools the opportunity to become independent from their local Authority and assume responsibility for their own finances. When a school decides to take this option, the Scheme 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), the employer contribution rate, and a deficit recovery figure which relates to liabilities in respect of past employees who are deferred or retired members. Hence the liability calculation has two components, employer contributions that relate to active members who are still employed and contributing to the scheme and deficit contribution that relate to the past service deficit or funding gap.

Government Guidance

3.3 Although the Government has sought to influence local decisions about how academies are treated at the point of conversion and thereafter at each subsequent valuation, the detailed guidance promised by the Department for Education (DfE) and the Department for Communities and Local Government (DCLG) in 2012 has yet to be published.

3.4 The initial DfE guidance on the approach to allocating LGPS assets and liabilities and setting contribution rates was issued in August 2010. This offers practical advice on the process and at paragraph 4, states:

> *'The employer contribution rate will be calculated on the basis of the academy's staff profile and relates only to the academy, whereas nearly all maintained schools in an LA pay the same pooled rate. This means the rate can be higher than the rate which applied to the school when maintained.'*

Paragraph 5 says:

> *'The actuarial calculation of the employer contribution rate will take into account the amount needed to pay off any past service deficit and meet future accruals over a specified period, which is normally taken to be 20 years for Academies,* ***although it is for the actuary to take a view on this.****'*

3.5 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). The deficit recovery period of 15 years was a compromise between the 24 years applied to the Council and the 7 years over which Academies are expecting to receive guaranteed funding from the DfE.

3.6 Subsequently the Secretaries of State for Education and Communities and Local Government (DfE / 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 (December 2011). 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 Government 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. That letter concluded by saying that:

> *'If it is found that inconsistencies or unjustifiable high employer pension contributions to the LGPS remain, consideration will be given to what other steps, including regulatory changes, would be needed.'*

3.7 The government consider that insufficient progress had been made to ensure the long term stability of scheme costs, with some Academies suffering, or at risk from, dramatic increases in employer contribution rates and issued a further consultation in 2013, which is discussed below, in narrative sequence, in paragraph 3.14.

3.8 Following receipt of this letter, the Pensions Committee, at the meeting of 21 February 2012, discussed the practical and conceptual issues the Secretaries of State had raised. 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 regrettable 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.

3.9 The Committee resolved to continue with the funding principles already adopted and continue to use a compromise recovery period of 15 years in calculating contribution rates. Minute A06/12 refers.

3.10 Finally, the DfE laid 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. Providing 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."*

3.11 The statement confirmed 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.

3.12 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.

3.13 The advice provided to the Committee at that time was that although the proposed guarantee was welcome it was limited in terms availability, raising the question whether it 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. At that point further consultation on pooling was expected and therefore the Committee felt it might be pragmatic to delay a final decision on changes in contribution policy for academies until that consultation is completed.

3.14 The most recent consultation on this subject was launched in October 2013. It offered some options for pooling and invited comments about how best stability of academy employer contribution rates could be achieved. The consultation has now closed and it seems unlikely that any further regulations will be made before the General Election In May 2015.

3.15 It should be noted that throughout the Council has been consistent in complying with all government guidance for the valuation process and the professional requirements of the Scheme's Actuary. The topic remains a difficult question and although pooling seems an attractive option for Academies any change in the balance of contributions will mean that there are winners and losers and a shift in the allocation of risk. The principle of equity has guided discussions on this subject to date and consideration about where risk sits weighs too. Any change to the current allocation basis will necessarily result in some employers shouldering a greater share if others have a reduced charge.

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.

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 direct legal implications 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