

Croydon Council

REPORT TO:	PENSION COMMITTEE 7 June 2016
AGENDA ITEM:	11
SUBJECT:	Academies in arrears of LGPS employer contributions
LEAD OFFICER:	Richard Simpson, Assistant Chief Executive (Corporate Resources and Section 151 Officer)
CABINET MEMBER	Councillor Simon Hall Cabinet Member for Finance and Treasury
WARDS:	All
CORPORATE PRIORITY/POLICY CONTEXT: Sound Financial Management: The Pension Regulator has issued guidance relating to employers unwilling to make contributions to the pension scheme. This report addresses this issue.	
FINANCIAL SUMMARY: To date contributions to the value of £645,227 are owed to the Pension Fund. This sum is made up of £597,365 in respect of 2015/2016 and £47,862 relating to the year earlier, 2014/2015.	
FORWARD PLAN KEY DECISION REFERENCE NO: N/A	

1. RECOMMENDATIONS

- 1.1 The Committee are asked to note the content of this report and the actions described below.
- 1.2 The Committee are asked to consider whether they believe the actions taken and those proposed are sufficient to discharge their responsibility under the Pensions Regulator's Guidance.

2. EXECUTIVE SUMMARY

- 2.1 A number of academies are unwilling to pay the employers contribution due from them to the Local Government Pension Scheme. This report describes how this amounts to a reportable breach of the regulations and describes the steps taken to resolve the contravention of the law.

3. DETAIL

- 3.1 When schools convert to Academy status the Scheme Actuary provides a Schedule of Results, detailing the employer liability, the assumptions and data contributing to that calculation and the contribution required from that employer. Staff contributions are calculated on a tiered basis as a proportion of pensionable pay. The employer contribution comprises a set percentage of the pensionable payroll plus a lump sum. This lump sum contribution represents the gap between the notional assets allocated to that employer and the forecast of liabilities, representing pension benefits relating to current and past staff employed by the school. This lump sum is spread over a period of years, in the same way that the Council deficit is recovered. The employer contribution can vary from school to school depending on the base data; most variations are around the number of staff in the LGPS and their individual profiles.
- 3.2 These assumptions have been debated by the Committee and the academies consulted. The current approach has been taken following this consultation – Minute A42/15 refers.
- 3.3 There are academies who contest this approach and dispute the results of the actuarial valuation. Although passing over the contributions collected from their staff they are either not paying or only paying in part their employer contributions. The following 15 schools and academies are in arrears:

Atwood Primary Academy
Edenham High School
St James the Great R.C. Primary
St Mary's Catholic Juniors
St Mary's Catholic Infants
West Thornton Primary Academy

STEP ACADEMY TRUST SCHOOLS

David Livingstone Academy
Gonville Academy
Heathfield Academy
Wolsey Junior Academy

OASIS ACADEMY TRUST

Oasis Academy Arena
Oasis Academy Byron
Oasis Academy Coulsdon
Oasis Academy Shirley Park

Oasis Academy Ryelands

Note that only the Step Academy Trust schools listed above are in arrears; others in the group have paid contributions due in full.

- 3.4 Officers have effectively exhausted options for engaging with these schools. This subject has been raised and discussed at the employers' forum; officers have met with schools individually and in groups and the former Chair and Vice-Chair have also engaged extensively, both via correspondence and in face to face meetings. The scheme actuary has met with representatives of academy trusts and with individual schools. These discussions date back to April 2011. Every opportunity has been offered to academies and schools considering conversion to academy status to meet with officers or with the scheme actuary.
- 3.5 At present these schools owe the Pension Fund £597,365 in respect of employer contributions relating to 2015/2016. A further £47,862 is owed for the financial year 2014/2015. In total £645,227 is owed by academies.
- 3.6 The authority has a statutory duty to report these breaches of the LGPS regulations. Although not trustees, the Pension Committee acts as trustees of the Scheme, and so should meet their obligations and duties under the Regulators Guidance to:
- monitor the payment of contributions to be paid under the schedule of contributions; and
 - report payment failures of material significance to the regulator and to members within a reasonable period.

The Pensions Regulator has been notified of the arrears described above as required by the Guidance. As the Pension Committee is open to the public and as this report will be passed on to the Pension Board and feature in both bodies' annual reports, it is reasonable to assume that scheme members have also been notified of the breach.

- 3.7 The Pensions Regulator has published guidance, which applies to all schemes in Great Britain with valuation effective dates from 29 July 2014 onwards i.e. including this Scheme. It is officers' view that this is a reportable event because:

The sums involved are material;

The academies are not engaging with the administering authority which is interpreted as a refusal to pay;

The academies are not willing to pay and with the passage of time real questions are raised as to whether they are able to pay the outstanding contributions;

Officers have sent emails and made telephone calls and received no response from the schools;

In the instance of sums overdue relating to 2014/2015 contributions have been outstanding for ninety days from the due date.

3.8 The Department for Communities and Local Government (DCLG) have also been notified. They have stated that the Education Funding Agency (EFA) should be informed about non-compliance. They have also advised that this authority should notify the EFA of the details of which academies are not paying the correct rates. DCLG have stated that they will inform EFA of the detail of the Thomas Ferens case and the Ombudsman's ruling that the academy must pay the rate set, and let them know of the possible financial implications should the regulator decide to take action.

3.9 Here is a summary of the Thomas Ferens case:

The Academy (the Thomas Ferens Academy) was established in 2012. A Transfer Agreement determined the assets notionally transferred to the Academy based on an assessment of the ongoing scheme funding level of active members. The Academy says that this assessment has made it unjustly liable for the funding shortfall for all ex-employees of the predecessor school, even though they were never employed by the Academy. The Academy seeks a Determination that East Riding, the local Scheme administrator, acted in breach of the Transfer Agreement and has acted ultra vires in imposing a transfer of the deficit.

Summary of the Ombudsman's determination and reasons

The complaint should not be upheld. The decision reached by East Riding was one which a reasonable administering authority could have reached, and it was empowered to do so.

Next Steps

3.10 Officers are continuing to make every effort to engage with these academies to find a resolution to this impasse through dialogue. A meeting with the Step Academy Trust has been scheduled.

3.11 As all other avenues have been explored and no progress made in recovery the sums involved the Council has instructed lawyers. They are reviewing the documentation relating to this issue and will advise the Council as to the approach most likely to succeed in recovering this sum, plus the costs of taking this action, plus interest accrued on this debt.

3.12 The Committee are asked to note the content of this report and the actions described above. The Committee are asked to consider whether they believe the actions taken and those proposed are sufficient to discharge their responsibility under the Pensions Regulator's Guidance.

4 FINANCIAL CONSIDERATIONS

- 4.1 To date contributions to the value of £645,227 are owed to the Pension Fund. Interest due on the contributions for the period 2014/2015 amount to £2,850. Legal costs associated with recovering these sums are accruing. Interest on investing these sums foregone, if only deposited at bank, would be c. £16,000.

5. OTHER CONSIDERATIONS

- 5.1 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.

6. COMMENTS OF THE SOLICITOR TO THE COUNCIL

- 6.1 The Council Solicitor comments that there are no direct legal implications arising from this report.

(Approved by: Gabriel MacGregor, Acting Council Solicitor & Acting Monitoring Officer)

CONTACT OFFICER:

Nigel Cook, Head of Pensions Investment and Treasury,
Resources Directorate, ext. 62552.

BACKGROUND DOCUMENTS: None

APPENDIX A: Extract from the Pensions Regulator Code on
Funding Defined Benefits Pension Schemes