Havering
LONDON BOROUGH

PENSIONS COMMITTEE **17 December 2013**	**REPORT**

Subject Heading:	Ministerial Statement Regarding Academies and Academy Pooling
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Policy context:	LGPS Regulations
Financial summary:	No direct costs to the Pension Fund

The subject matter of this report deals with the following Council Objectives

Clean, safe and green borough	[]
Excellence in education and learning	[]
Opportunities for all through economic, social and cultural activity	[]
Value and enhance the life of every individual	[X]
High customer satisfaction and a stable council tax	[X]

SUMMARY

This report is to inform the London Borough of Havering Pension Fund Committee of the ministerial statement regarding academies' pensions deficits released on 2 July 2013. The report also reviews the current arrangements for setting Academy employer contribution rates and whether the Pension Fund should consider any pooling arrangements.

RECOMMENDATIONS

1) That the London Borough of Havering Pension Fund note the ministerial statement and the positive impact it has for other employers in the Fund.

2) That the London Borough of Havering Pension Fund agree that there should be no changes to the current Academy arrangements for assessing the employer contribution rates.

REPORT DETAIL

Department for Education Academy Guarantee

1. On 2 July 2013 the Secretary of State for Education, Michael Gove, presented a Written Ministerial Statement and laid a Parliamentary Minute in the House of Commons and Lords setting out details of a guarantee that any outstanding Local Government Pension Scheme liabilities on an Academy's closure would be met by the Department for Education. This guarantee, in the event of an Academy failure, would have a positive impact on other employers in the Fund as it would mean that there was a method for recovering liabilities rather than passing costs on to other fund employers.

2. Non teaching staff of Academies are eligible for membership of the Local Government Pension Scheme, whilst teachers remain members of the Teachers Pension Scheme.

3. The need for the guarantee has arisen as many Academies employer contribution rates are significantly higher than the rate which they were previously paying when under Local Education Authority (LEA) control. Factors that may account for this increase are mainly due to the age and other profile factors of each Academy's membership, but could also be impacted by variations in salary scales.

4. Some LGPS funds have introduced shorter deficit recovery periods for Academies to reflect that funding from the Department of Educations is only guaranteed for 7 years.

5. The objective of the Department of Education's guarantee is to ensure that Academies will only pay the same employer's contribution rate as they would if they had remained under LEA control. How this would be achieved would be an area of discussion with the Fund Actuary as new contribution rates will need to be set from 1 April 2014 following the triennial valuation of the Fund.

6. The guarantee is welcome to an extent and removes some of the possibility that remaining employers within the Fund would have to assume responsibility for deficits arising from an Academy ceasing business. The guarantee, although, does not remove all the risk to other employers within the Fund.

7. The Department of Education 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.

8. The Parliamentary Minute sets out the Contingent Liability ceiling and although the failure rate of Academies is likely to be low (DfE assertion), reviews of the protection offered by the Contingent Liability levels indicate that a failure rate of over 2% would possibly exceed the ceiling levels.

9. HM Treasury and the DfE would like to reduce the costs falling upon Academies, but at the same time Administering Authorities also aim to reduce risk and protect other participating employers in the Funds.

10. Should risk arise from a financially failing Academy and the guarantee did not cover the risk, for whatever reason, the Fund would become an unsecured creditor of the Academy along with other creditors.

Havering Current Academy Arrangements

11. Havering Academies have been granted the same pooled assumptions and deficit repayment terms as the Council (over 20 years), the impact of this is to reduce the employer contribution rate for the Academies. If the Council moved to a 7 year past service deficit recover period for Academies, as many authorities have, the impact would be to significantly increase the employer contribution rate due to the shorter period over which the deficit would be recovered.

12. When a school converts to an academy the past service is passed to the Academy based on the active members at time of transfer. What the Academies don't pay for is the liabilities (benefits) that belong to ex-employees who have deferred or pensioner status - that stays with the ceding employer (the pool).

13. They are also given an asset share that is calculated using market conditions (values) as at transfer – this may be different for each academy conversion as market conditions vary daily.

14. At the moment the past service amount is invoiced to the school for a cash sum rather than a % that is included within the overall rate (this protects the fund from falling payroll numbers). Within the three year valuation cycle this has to be paid in full but we currently allow schools to pay this monthly, semi-annually or yearly.

15. The current full calculated employer rates (including % for past deficits) range from 15.6% to 26.1%. Exempt Appendix B provides further detail.

16. The table clearly demonstrates that the current assumption pooling and extended deficit period policy benefits some Academies and not others. However, the main reason for the variations is purely due to the individual membership profile of the Academy.

17. It should also be noted that Admitted Body contractors do have to pay for past service in the same way that Academies do but the difference is that this is offset by being given an equal amount of the asset share (known as fully funded). The admitted bodies have to pay their contributions over the term of the contract so are likely to have shorter deficit repayment terms (leading to higher contribution rated depending upon the membership profile). To compensate for the fact that they were fully funded at the start they also have to be fully funded at the end which is why they may have unexpected cessation costs at the end of the contract if the liabilities and assets grow at different rates during the life of the contract. Past service costs are collected the same way as Academies if applicable.

Pressure to pool with former Local Authorities within the LGPS

18. In December 2011 a joint letter was issued by the Department for Communities and Local Government and DfE recommending that Academies should be pooled with their former local authority within the LGPS. Pooling, and the inevitable cross-subsidy that comes with it would normally be avoided within Local Government and there should be no difference with the Pension fund.

19. In October 2013 a further consultation on ‘Pooling arrangements for Academies within the LGPS was launched, with a final date for submission of 15th November. A response has not been submitted to the Committee in response to this consultation, but the Fund Actuary has shared their consultation response, which is attached at Appendix A.

20. This report proposes that there be no change to the current Havering Pension Fund policy following a review of the:

    - current variation in Academy employer rates;

- current partial pooling method already used by the Havering Pension Fund;
- impact of cross subsidisation on other scheme employers in the Fund; and
- response to the consultation proposed by the Fund Actuary.

Should the outcome of the consultation lead to legislative changes that impact upon the current Fund ‘pooling’ policy a full assessment of the Fund cashflow and employers contribution rates would be established, options would be presented to Members and all options would be consulted upon with the Academies.

IMPLICATIONS AND RISKS

Financial implications and risks:

Should an Academy be financially failing the Fund would call upon the Academy Guarantee. If the guarantee was unable to meet the Academy obligations to the Havering Pension Fund, the Fund would become an unsecured creditor of the Academy along with other creditors.

In the event that Government introduce legislation to impose pooling arrangements it would be necessary to review the contribution rates for all employers in the fund.

Legal implications and risks:

There are no direct legal implications from this report. If legislative changes do result from the consultation on pooling the legal implications will be assessed.

Human Resources implications and risks:

No HR implications or risk arising directly as a result of this report.

Equalities implications and risks:

This report relates to the financial stability and actuarial funding assumptions for Academies as scheme employers. There is no direct impact on the pension or pension entitlement for individuals or groups with protected characteristics arising from this report.

BACKGROUND PAPERS

The Local Government Pension Scheme Regulations (various) and the Guidance notes issued with them

The Ministerial Statement.

Appendix A

Hymans Academies ‘Pooling’ Consultation Response