



**Haringey** Council

# **URGENT BUSINESS SHEET**

**Report Title: Pension Fund: Academies – Deficit Recovery Period**

**Committee/Sub etc: Corporate Committee**

**Date: 20<sup>th</sup> June 2011**

**The report is late because essential consultation was necessary which took longer than anticipated.**

**The report is too urgent to await the next meeting because the school in question's academy application would be delayed unacceptably.**

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The Head of Local Democracy & Member Services concurs with the admission of this item.





**Haringey** Council  
Agenda item:

Corporate Committee

On 20 June 2011

Report Title: Pension Fund: Academies – Deficit Recovery Period

Report of Director of Corporate Resources

Signed : Julie Parker

*J. Parker* 14/6/11

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Wards(s) affected: All

Report for: Non key decision

**1. Purpose of the report**

- 1.1 To consider options for the deficit recovery period for new Academies joining the Pension Fund as separate employers.

**2. Recommendations**

- 2.1 That the Committee note the deficit recovery period for new Academies of 20 years as set out in the Funding Strategy Statement.
- 2.2 That the calculation of deficits transferring to academies is done by applying the Council's funding level at the point of transfer.
- 2.3 That a consultation is undertaken with a view to amending the Funding Strategy Statement to reflect the possibility of an academy being served notice and to enable assessments of employer covenant to be reflected in deficit recovery periods.

**3. Reason for recommendations**

- 3.1. The legal view is that it would be unlawful to set a deficit recovery period shorter than 20 years under the current Funding Strategy Statement.
- 3.2. Applying the funding level at the point of transfer to calculate the deficit is the standard way of carrying out such calculations and is clearly justifiable.
- 3.3. Consultation is required in order to make changes to the Funding Strategy

Statement and the proposed changes will offer more protection to the Pension Fund.

#### **4. Other options considered**

4.1. Recovering the deficit in one lump sum, over 3 years and over 7 years in line with the Council's schools' deficit recovery periods. These options are set out in section 16.

#### **5. Summary**

5.1. New academies are required to offer their non-teaching staff access to the Local Government Pension Scheme. As the Council currently has a pension fund deficit if a school becomes an academy, the element of the deficit relating to the school staff will transfer to the academy.

5.2. Options for the period over which the deficit should be recovered are considered in this report. On the advice of Legal Services, Counsel opinion has been sought to inform this decision.

## **6. Head of Legal Services Comments**

- 6.1. The Council is the administering authority of the Haringey Pension Fund ("the Fund"). The administering authority must obtain (1) an actuarial valuation of the assets and liabilities of the Fund every three years starting from 31 March 2010; (2) a report by the actuary in respect of the valuation; and, (3) a rates and adjustment certificate prepared by an actuary.
- 6.2. The rates and adjustment certificate specifies the common rate of employer contribution and any individual assessment and is based on the actuary's own opinion. In calculating the common rate the actuary must have regard to (amongst other things) the Funding Strategy Statement ("FSS").
- 6.3. The administering authority is required to prepare and publish a FSS. It is also required to keep the FSS under review and to make revision when there is a material change in its policy on matters set out in the FSS. A change in the deficit recovery period applying to academies would require such a revision. In reviewing and revising the FSS the administering authority must consult such persons as are appropriate.
- 6.4. In the FSS, the deficit recovery period for organisations which are classed as "scheduled bodies" such as academies has to be agreed with each academy depending on the strength of their covenant. Such a period cannot exceed 20 years.
- 6.5. It is for the Fund's actuary to set the employer contributions rate having regard to the FSS. The general policy is that the administering authority targets recovery of any deficit over a period not exceeding 20 years. In agreeing the maximum length of the deficit recovery period (which must not be more than 20 years), the actuary must assess each academy's covenant before a recovery period can be agreed with each academy.
- 6.6. Further comments have been provided in the main body of the report.

## **7. Equalities & Community Cohesion Comments**

- 7.1. There are no equalities issues arising from this report.

## **8. Consultation**

- 8.1. Not applicable.

## **9. Financial Implications**

- 9.1. The financial implications are set out in detail in section 17 of this report. If officers' recommendation is implemented, a deficit of £665,000 would transfer to Alexandra Park Academy and they would initially pay an employer contribution rate of 22.1%. If other new academies are set up, the Fund Actuary will calculate an employer contribution rate specific to their situation.
- 9.2. As with all other employers in the Fund, contribution rates will change over time and will next be reviewed at the triennial valuation of the Pension Fund in 2013. There is no cross subsidisation in the Fund and so the academies will be responsible for the decisions they take.

<b>10. Use of appendices /Tables and photographs</b>
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10.1. None
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<b>11. Local Government (Access to Information) Act 1985</b>
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11.1. Not applicable
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## **12. Background**

12.1. Although Academy Trusts can set their own terms and conditions, they are required in their funding agreement with the Department for Education to ensure that their non-teaching staff have access to the Local Government Pension Scheme. Academies are scheme employers under the Administration LGPS Regulations. If a maintained school in Haringey converts to an Academy they would need to apply to be a separate employer within the Haringey Local Government Pension Scheme (providing the Trust is based within the Haringey area). The Council currently has a deficit within the Pension Scheme and so if a school becomes an academy, the element of the deficit relating to the school staff will transfer to the Academy Trust. However, the standard funding agreement by which the Department for Education provides funding to the academy contains a break clause which allows either party to terminate the agreement by giving 7 years notice.

12.2. The Pension Fund's policy on deficit recovery periods for its existing employers is set out in the Funding Strategy Statement agreed, after consultation with the employers and Fund Actuary, by Pensions Committee on 20<sup>th</sup> December 2010. These periods are applied by the Fund Actuary in setting the employer contribution rates.

12.3. At the present time only one school in Haringey is converting to academy status – Alexandra Park. There are currently 50 non-teaching staff in the Pension Scheme at the school who would transfer.

## **13. Options for Deficit Recovery Periods**

13.1. The Council has a deficit recovery period of 20 years, which is accepted by the Fund Actuary on the assumption the Council will continue to exist in some form in the long term. Department for Education guidance suggests that an academy should have a deficit recovery period the same as the Council, although it acknowledges that it is a matter for the Fund Actuary to take a view on.

13.2. The following options have been considered:

1. Require the Academy to pay the deficit in total at time of transfer
2. A deficit recovery period in line with that for school licensed deficits (3 years)
3. A deficit recovery period relating to the academy funding guarantee (7 years)
4. A deficit recovery period equivalent to that of the Council (20 years)

13.3. The financial implications of each option are considered in section 17 and following internal legal advice, Counsel opinion has been sought to inform the decision. The legal view is set out in section 19 below.

#### **14. Financial Implications of options for Alexandra Park**

14.1. The Fund Actuary has calculated figures for the Alexandra Park Academy to enable the financial implications of the decision to be understood. He has set out two possible ways of calculating the amount of the deficit:

14.2. The first calculates the liabilities relating to the staff transferring and then applies the same funding level as the Council to these to calculate the deficit. This method is the standard one and is clear. As a result the majority of Fund Actuary's clients are applying this method.

14.3. In the second, he seeks to ensure that the deferred and pensioner members are fully funded and so he spreads the Council's deficit across active contributing members only to arrive at a revised funding level. This revised funding level is then applied to the liabilities of the staff transferring to the academy. This method produces a much larger deficit. Records of who the deferred and pensioner members of a particular school are do not exist, so it is not possible to verify that this figure is representative of those that relate to the school. It is for this reason that the Fund Actuary has said that this method could be easily challenged.

14.4. The deficit figures under each of these methods are shown below along with the employer contribution rates which would be required over each of the periods under consideration. For comparison the Council's current rate is 22.9%.

Deficit recovery period	Method 1 deficit £665,000	Method 2 deficit £1,660,000
3 years	40.0%	71.9%
7 years	28.0%	41.9%
20 years	22.1%	27.2%

#### **15. Other Academies**

15.1. Grieg City Academy is already a separate employer in the Pension Scheme having joined in 2003 under previous legislation allowing the set up of academies. A deficit was transferred to them using method 1 detailed above with a deficit recovery period of 20 years – the same as the Council's.

15.2. There is nothing in the two different sets of legislation for academies which suggests the pension deficits should be treated any differently. In 2003 it was extremely rare for a pension fund employer not to meet their liabilities, deficits were much smaller and pension funds and actuaries were less aware of the risks of failure. For all these reasons actuarial advice at the time was for the deficit recovery period to be the same as the Council's.

- 15.3. If a shorter deficit recovery period was introduced for new academies, in order to be consistent it would also be appropriate to consider applying it to Greig City going forward.
- 15.4. Other local authorities are considering these options at the present time and information obtained from them is that the majority are implementing a recovery period the same as the Council, with a few considering 7 years. No evidence of option 1 or 2 being implemented has been found.

## **16. Legal view**

- 16.1. On the advice of Legal Services, Counsel opinion has been sought on the implications of implementing an immediate recovery of the deficit or a 3 year recovery period in line with licensed deficit recovery.
- 16.2. The advice is that it would be unlawful to implement either of these options at the current time for the following reason
- (1) The function of fixing employers' contribution rates under the Administration Regulations is conferred on the Fund's Actuary and not on the administering authority.
  - (2) The purpose of the employers' contribution is to require the employer to contribute, on a recurring basis, to the funding both of any deficit of past service and to the benefits in respect of future service.
  - (3) The Funding Strategy Statement (FSS) contains a policy on the recovery of past service deficits.
    - i) it allows for a long recovery period, generally for a period of 20 years;
    - ii) in relation to scheduled bodies the policy is for a maximum recovery period subject to an assessment of that employer's covenant.
    - iii) the policy is based on the assumption that the employing authorities are an ongoing concern.
  - (4) There is a risk that the imposition on an academy of a very short period for paying its past service deficit might appear irrational, unless there is very good grounds for supposing that the schools covenant is very insecure.
- 16.3. The likelihood of early termination of the funding agreement is something that needs to be evaluated. Consultation with the school and Department for Education would help cast light on those risks. It is only once those risks have been weighed will the actuary be in a position to judge how those risks should be reflected in the recovery period for past service deficit and the contributions rate.
- 16.4. It is usually unlawful for a public authority to depart from its published policy. The administering authority is not allowed to depart in relation to an issue on which the general policy is stated, from that policy in an individual case. If the administering authority considers that a different policy should be adopted in relation to academies generally, this is an



occasion on which it would be obliged, under the Administration Regulations to revise the FSS. That in turn would entail consultation.

- 16.5. It would be wise for the Corporate Committee, in collaboration with the Fund's Actuary to review the FSS with a view to making express provision for the situation of Academies, in order to make such a process explicit. It would be legitimate for the FSS to be revised (after consultation) to cater for a commensurately short recovery period for academies in cases where a 7 year notice is actually served and for the Rates and Adjustment Certificate to be revised immediately so as to phase the employer's contributions appropriately over the 7 years period. This would result in a two stage approach. Firstly, there will be an initial assessment of the academy's covenant which would feed into the initial employer contributions rate and secondly, a 7 year recovery period for any academy which is in fact given a notice of termination.

## **17. Conclusion**

- 17.1. In the light of the legal view, it is officers' view that the deficit recovery period for new academies should be 20 years. This is in line with the current Funding Strategy Statement and the period applied to Grieg City Academy. It is also officers' view that the method of calculating the deficit should be the application of the Council's funding level to the academy (shown as method 1 above). This is on the basis that this method is the standard one which is clearly justifiable. This view is supported by the Fund Actuary.
- 17.2. It is recommended that consultation on changes to the Funding Strategy Statement is commenced with the Pension Fund employers and Fund Actuary to implement the suggestions of Counsel. This would be to enable an immediate move to a 7 year recovery period in the event an academy is served a 7 year termination notice under its Funding Agreement. It would also consider ensuring the Statement is flexible enough to enable an assessment of an employer's covenant to influence the deficit recovery period. It is proposed a revised draft Statement is presented to the next Corporate Committee meeting in September for approval.

