COMMITTEE: **Pensions Committee**	DATE: **21 February 2013**	CLASSIFICATION:	REPORT NO.	AGENDA NO.
REPORT OF: **Corporate Director (Education, Social Ca and Wellbeing) & Corporate Director (Resources)** ORIGINATING OFFICER(S): **Kate Bingham – Interim Service Head (Education, Social Care and Wellbeing Resources)**		TITLE: **Recovery of Pension Fund Deficit Contribution – Academy Conversion** Ward(s) affected: N/A		

Lead Member	**Cllr Alibor Choudhury - Resources**
Community Plan Theme	**All**
Strategic Priority	**One Tower Hamlets**

1. SUMMARY

1.1 Two maintained community schools, Old Ford Primary School (OFPS) and Culloden Primary School (CPS), within the London Borough of Tower Hamlets (LBTH) have received an Academy Order from the Secretary of State for Education and plan to convert to academy status by 1st April 2013.

1.2 This report outlines the latest government guidance on academy conversion, including advice from the actuary and details the possible risks to the LBTH Local Government Pension Scheme (LGPS) as a consequence of maintained schools converting to academy status.

1.3 Further, the report provides specific details of the actuarial assessment in respect of the two maintained schools to become academies (OFPS and CPS) under the umbrella of one Multi-Academy Trust.

2. DECISIONS REQUIRED

2.1 The Committee is recommended to agree a deficit recovery period of 14 years for the amount of deficit attributable to active transferring members and that attributable to deferred and pensioner members of the LBTH Local Government Pension Scheme to Old Ford Primary School and Culloden Primary School on the creation of the Multi Academy Trust.

3. REASONS FOR DECISIONS

3.1 An academy is a "Scheduled Body" within the LGPS and each 'converting' academy should have it own contribution rate calculated and will be responsible for a share of the LGPS deficit.

3.2 In order to calculate that contribution rate, both the appropriate share of the deficit and the deficit recovery period must be determined and agreed by the Pension Committee.

3.3 Whilst each contribution rate to the scheme must be determined on its merits the Committee is reminded that it resolved at the meeting of 17 November 2011; *that a deficit recovery period of 14 years be approved for the amount of deficit* *attributable to active transferring members and that attributable to deferred and pensioner members of the LGPS to* the two community schools that had previously converted to academy status. Members should be aware that at that time, members of the Committee were informed that any decision made by the Committee in respect the deficit recovery for the two named schools that were converting to academies **would not** be binding on further academy conversions. Further, that the decision applied only to the two named schools that were to become academies, and it was not a policy setting decision as this was reserved to Council. However, were this Committee to take a different approach they would need to give good reason why different terms would be offered to other schools that wished to convert to academies. The letter referred to at paragraph 6.1 could be such a reason as this had not been issued when the last decision was taken.

3.4 The Committee is asked to agree that the appropriate share of the deficit is determined by attributing a share of the whole deficit i.e. that applying to the current (or active) transferring staff and that attributable to the deferred and pensioner members. The Local Authority (LA) will retain responsibility for the pension liabilities of former education staff (whose benefits will not transfer to the academy) and a deficit share calculated on this basis will ensure that LA will not lose funding.

3.5 In addition, the Committee is asked to agree that the appropriate deficit recovery period for both OFPS and CPS is 14 years in accordance with the guidance in the Fund's funding strategy as at 31st March 2012, taking note of the risks associated with that decision and if members were to wish to agree to a period of deficit recovery which was different to that they should have good reasons why they wished to differ from this proposal.

4. ALTERNATIVE OPTIONS

4.1 As they are scheduled bodies, the authority is required to admit new academies into the Scheme. This report is about the basis on which deficits will be recovered.

4.2 A further alternative is to agree to a "pooled" arrangement, in accordance with current central government guidance.

4.3 If a contribution rate assessment is approved then:

(a) In terms of determining the share of the deficit to be allocated, the alternative is to base the calculation of those active transferring members only; and

(b) In terms of the deficit recovery period, the alternative is to base the calculation on the current period of funding guarantee for academies of seven years.

5. BACKGROUND

5.1 In May 2010 the Secretary of State for Education, Michael Gove, wrote to all maintained schools in England inviting them to opt out of Local Authority Control and convert to academy status.

5.2 An academy is a "Scheduled Body" within the LGPS, which allows non teaching staff to be members of the local authority's pension scheme, with members of staff transferring from the "old" maintained school to the "new" academy retaining their membership of the LGPS. New academy non-teaching staff also have the right to join the scheme.

5.3 Both OFPS and CPS have proposed conversion dates of 1st April 2013. The conversion of the individual schools to academy status will be combined into one Multi-Academy Trust (MAT).

5.4 Whilst MATs are groups of Academies managed and operated by one proprietor. The employer of non-teaching staff in Academies is the proprietor of the Academy Trust and not the individual Academy within the Trust and so it is the proprietor who is the employer for LGPS purposes.

5.5 Within a MAT all Academies are governed by one Trust (the Members) and a board of Directors (the Governors). The MAT holds ultimate responsibility for all decisions regarding the running of the individual Academies, from setting the curriculum to HR. However, it can delegate some of these decisions to governing bodies of individual Academies to enable more focused local control, though it remains legally responsible for staff and standards across all schools in the chain.

5.6 As a number of non teaching staff working in OFPS and CPS are members of the Fund the Committee is asked to agree an appropriate policy on the deficit recovery period for these staff. As the two schools are being combined into one MAT one new employer contribution rate has been have determined.

5.7 This report includes:

- the current Department for Education (DfE) and Department for Communities and Local Government (DCLG) guidance (included in a briefing note from Hymans and Robertsons @ Appendix 1);
- further details in relation to the introduction of a pooling arrangement;
- a report from the actuary which covers the employer contribution rate for the MAT based on a previous decision of the Committee (Appendix 2 and 3); and
- an outline of the risks to the Pension Fund and risk management implications.

6. CURRENT GUIDANCE FROM THE GOVERNMENT

6.1 In December 2011, the Secretary of State for Education and the Secretary of State for Communities and Local Government issued a joint letter to LAs and LGPS Funds. This letter, coupled with a DfE briefing note, clarified Ministers' views of how academies should be treated within the LGPS (Appendix 1, Annex 1 and 2).

6.2 Their preferred approach is that where an academy wishes to "pooled" with the LA for LGPS pension purposes, rather than be treated as a standalone employer within the fund, the fund should positively consider this.

6.3 This followed previous advice from the DfE to schools considering academy status that the level of contribution as an academy would be close to existing levels. The DfE also advised schools that the normal deficit recovery period is 20 years although it is for the actuary to take a view on this, but does not provide any details on who would provide a guarantee. The only advice from the DCLG, at that stage, was that any pension deficit recovery period would be a matter for the relevant administering authority to agree and this is one of the issues before the Pensions Committee.

7. POOLING ARRANGEMENTS

7.1 The DfE/DCLG's aims are to achieve consistency of approach between different LAs in the treatment of Academies and that no Academy should pay 'unjustifiably higher' employer contribution rates. If these aims are not achieved by guidance, they suggest that legislation will follow but it is now more than 12 months later and none has yet been provided.

7.2 As set put in Appendix 1, in practice this means that the LA's pool will effectively underwrite the liabilities of failed Academies. Some Councils may regard this as unfair, and may actually prefer legislation 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.

7.3 Further, if pooling was to go ahead it would raise a number of practical issues. First there would be a 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: would there be a question of refund of contributions? Then there would be the issue of assessing the initial allocation of assets within the Council pool. The accounting treatment also presents a difficulty in that there will need to be clarity about Financial Reporting Standard (FRS) 17 requirements for Academies. Finally, as is the intention for this Authority going forwards, there is 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). This could be done but may lead to additional administration burdens.

8. CONTRIBUTION RATE ASSESSMENT

8.1 In order to calculate the MAT's employer contribution, officers requested a determination from the Fund's actuary of the required level of employer contribution and amount of deficit attributable to the active transferring members and that attributable to deferred and pensioner members in line with the previous decision of the Committee on 17 November 2011 (i.e. a deficit recovery period of 14 years for the amount of deficit attributable to active transferring members and that attributable to deferred and pensioner members of the LBTH LGPS).

8.2 Appendix 2 and 3 contains the actuary's report on the proposed MAT employer contribution rate, based on a deficit recovery period of 14 years for active members and that attributable to deferred and pensioner members, resulting in a total contribution of 32.9% of payroll.

Appropriate share of the deficit

8.3 The initial DfE guidance stated that *"the Academy shall be responsible for any LGPS deficit relating to the Eligible Employees' membership of the LGPS referable to service up to and including the Transfer Date."*

8.4 This is a position that the LA would wish to see maintained given that:

i) the deficits arose whilst the academy was a maintained school, and

ii) the funding that the LA was receiving from the Government, and from which the deficit would have been recovered over a number of years, has now been passed to the academy.

8.5 It is therefore clearly right and proper that the academy should continue to meet its share of any past underfunding.

8.6 However, whilst the current guidance requires the academy to be responsible for a share of the funding deficit, there is no guidance on how this calculation should be performed. There are two main ways that a share of the funding deficit could be allocated:

i) the academy could only be attributed with a share of the deficit that applies to those current LGPS staff who transfer to the academy, or

ii) the academy could be attributed with a share of the whole deficit i.e. that applying to current LGPS staff who transfer to the academy and that attributable to deferred and pensioner members.

8.7 The second option is the preferred option as it is considered “fairer” on the basis that it recognises the LA will lose funding in respect of the provision of education services but will remain responsible for the pension liabilities of former education staff whose benefits will not transfer to the academy.

Local Authority deficit recovery periods

8.8 A survey on academy deficit recovery periods in 2011 conducted by the Chartered Institute of Public Finance and Accountancy received 27 LA responses. A summary of the responses are in Table 1 below:

Table 1: Academy Deficit Recovery Periods

Deficit Recovery Period	Number of LAs
7 to < 20 years	9
20 years	10
> 20 years	8
	27

8.9 The converting academies are scheduled bodies of the fund and, as such, are considered subject to the same deficit recovery period set out in the funding strategy statement, effective as at 31st March 2012 (as per Appendix 1, paragraph 3.7.3 in report 5 .1 *2011/12 Annual Pension and Statement of Account* agreed by the Committee on 20 November 2012).

8.10 The Administering Authority normally targets the recovery of any deficit over a period **not exceeding** 20 years. However, these are subject to the maximum lengths set out in the Table 2 below:

Table 2: Maximum length of deficit recovery period

Type of Employer	Maximum Length of Deficit Recovery Period
Statutory bodies with tax raising powers	A period to be agreed with each employer not exceeding 20 years.
Community Admission Bodies	a period equivalent to the expected future working lifetime.
Transferee Admission Bodies	the period from the start of the revised contributions to the end of the employer’s contract subject to not exceeding expected future working lifetime.

9. RISKS TO THE PENSION FUND AND RISK MANAGEMENT IMPLICATIONS

9.1 There are a number of risks to the Fund that the Committee should consider prior to making any decision on the deficit recovery period.

9.2 An academy will be a company limited by guarantee. It can therefore be argued that a shorter deficit recovery period should be applied similar to that adopted in the private sector.

9.3 There is currently no guarantor who would continue to meet deficit payments should the academy cease to exist before the end of the recovery period.

9.4 The Secretary of State for Education is only guaranteeing revenue funding for a rolling seven year period with the amount being confirmed for only the next school year. Setting the deficit recovery period at 14 years is a compromise between the 20 year period used for the Council and this rolling 7 year period

9.5 With maintained schools, the LA has the duty and right to intervene should a school get into financial difficulties. There is no such right or responsibility with an academy which is a stand alone business.

9.6 The council is the guarantor of the deficit of maintained schools. It has no such role for academies and the Secretary of State for Education has not offered any guarantees to fund pension deficits should schools get into financial difficulties. Some authorities have taken a different view and have allowed academies to keep the same rate as the local authority on the basis that should the academy fail; the academy will revert back to a LA maintained school, which is an assumption shared by the DfE. There is no guidance at the moment about how any deficits will be treated and who will bear the liability for them . This means currently they would fall on the Pension Fund. At the same time, the Council tax payer needs to have reasonable protection from liabilities arising from the decisions of an independent body.

9.7 The Secretary of State for Education has not identified the mechanisms to be used to deal with academies that get into financial difficulties.

9.8 The total deficit will be higher over a recovery period of 20 years compared to seven years due to inflation costs.

10. COMMENTS OF THE CHIEF FINANCIAL OFFICER

10.1. The comments of the chief financial officer have been incorporated into the report.

11. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL)

11.1 Under the current legislation all schools who receive Secretary Of State approval may take on academy status and the council must allow this to happen.

11.2 Under the relevant pension legislation academies count as “scheme employers” so any existing staff who are part of the local government pension scheme remain within the scheme without the academy having to apply for admitted body status.

11.3 Any non-teaching staff employed by the academy will be automatically enrolled into the pension scheme, unless they specifically opt out.

11.4 The LGPS is a funded scheme and is currently managing a deficit.

11.5 Central Government suggests that the normal period for recovery of the deficit is set at 20 years However each Pension Fund must make its own determination on the deficit recovery period and members have attached to this report the advice from the fund's actuary Hyman Robertson

11.6 Although the letter referred to in para 6.1 and attached to this report issued on 23.12.11 ("the Letter") is designed to give local authorities some comfort, it is not legislation and is not legally binding on the government.

11.7 It is clear that the decision on the deficit period is one for the individual Pension Fund as they legally bear the liability for any deficits and have to recover them from their admitted members. If the Academy Trust ceases to exist then although the government may choose to assist with any deficit they are not legally obliged to do so.

11.8 On pooling again this is a decision for the Pension Fund. The Letter is encouraging Pension Funds to agree to pooling as that will limit the level of contributions require from the Academy Trust. In making this decision members need to take due regard to this encouragement and balance it with the advice from the Pension Fund's actuary Hyman Robertson whose report is attached. As with the deficit period this is no guarantee of underwriting of any loss as a result of the pooling decision by the government.

12. ONE TOWER HAMLETS CONSIDERATIONS

12.1 The Pension Fund Accounts demonstrate the financial stewardship of the scheme members and employers assets. A financially viable and stable pension fund is a valuable recruitment and retention incentive.

13. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

13.1 There is no Sustainable Action for A Greener Environment implication arising from this report.

14 CRIME AND DISORDER REDUCTION IMPLICATIONS

14.1 There are no any Crime and Disorder Reduction implications arising from this report.

15. EFFICIENCY STATEMENT

15.1 The monitoring arrangement for the Pension Fund and the work of the Pension Fund Investment Panel should ensure that the Fund optimises the use of its resources in achieving the best returns for members of the Fund.

LOCAL GOVERNMENT ACT 1972 (AS AMENDED) SECTION 100D

LIST OF "BACKGROUND PAPERS" USED IN THE PREPARATION OF THIS REPORT

Brief description of "background papers"	***Name and telephone number of holder***
Not applicable	***And address where open to inspection***