COMMITTEE:	DATE:	CLASSIFICATION:	AGENDA NO.
Pensions Committee	**14 November 2013**	**Unrestricted**	

REPORT OF:	TITLE:
Interim Corporate Director of Resources ORIGINATING OFFICER(S): Oladapo Shonola – Chief Financial Strategy Officer	**Update on Government Guarantee of Academies Pension Liabilities** Ward(s) affected: N/A

1. SUMMARY

1.1 This report provides a further update on the Department of Education backed guarantee to cover pension fund liabilities that arise if an academy closes down. The report sets out the conditions attached to the government guarantee and assesses whether the guarantee is sufficient to mitigate Fund risks to, and therefore, lead to a reduction in deficit recovery periods for academies in the Fund.

1.2 The report also presents to the Committee representations received from four academies seeking a review of their recovery period and, consequently, a reduction in their current assessed contribution rates. Finally, the report sets out details of a recently published consultation that proposes to impose pooling arrangements for academies and local authorities in the LGPS.

2. DECISIONS REQUIRED

2.1 Members are recommended to:

- Note the content of this report;
- Consider the representations from the admitted academies in the LBTH Pension Fund and review original decision to set deficit recovery periods at 14 years;

3. REASONS FOR DECISIONS

3.1 Members had agreed to recover pension fund deficit from academies over a 14 year period. A review of this decision is required following the statement by the Secretary of State for Education in Parliament that stated that a guarantee is now in place which will make good any losses relating outstanding pension fund liabilities that arise from an academy closing down.

4. ALTERNATIVE OPTIONS

4.1 The London Borough of Tower Hamlets Pension Fund is bound by legislation to ensure that members of the Fund receive benefits as they fall due under the Fund's terms and the Committee has been delegated decision making powers to ensure that the Fund is properly managed. The Committee's responsibility extends to deciding deficit recovery periods in line with the Fund's risk management process.

4.2 The Committee in discharging its delegated duties, as trustees of the Fund, need to be informed of developing and emerging issues as they relate to the LGPS, so that the Committee has all available information when making decisions. Therefore, it is appropriate that Members are made aware of recent developments including the representations submitted by employer members of the Fund following guarantee issued by government.

4.3 Although directed by government, the Pensions Committee is not bound by legislation to review the deficit recovery period that it has already set for admitted academy employer in the Fund at this time. However, the Committee should be mindful that government has threatened to bring forward legislation that would enforce equitability and has published a consultation that is geared toward achieving this goal.

5. BACKGROUND

5.1 Academies came to being under the Academies Act 2010. As well as allowing new schools to be formed, the Act allows current LEA maintained schools to convert to academies. The legislation automatically allows converting/new academy trusts to be admitted to the LGPS. This enables the trusts non-teaching staff to join/retain their membership of the LGPS.

5.2 Government had previously recommended that an application by an academy to join the LGPS should be viewed favourably and that the terms of admittance should also be similar to those of the admitting body.

5.3 The Committee has, over the past two years, admitted a number of Academies into the LBTH Pension Fund with deficit funding recovery period set at 14 years for each of the admitted academies. The Committee admitted Sir William Burrough and Bethnal Green Academy to the Fund at its meeting of 17 November 2011, and Old Ford and Culloden Primary schools on 21 March 2013. This was deemed a reasonable recovery period having weighed up the fact that government legislation only guarantees academy funding for 7 years and the likelihood that government would seek to minimise any negative outcomes from one of its major programmes.

5.4 In setting the deficit recovery periods for the admitted academies, the Committee took the view that a shorter recovery period of 7 years, may bring about extremely difficult financial challenges for a converting school, but, on the other hand, a 20 year period was deemed too risky for the Fund in the absence of any express guarantee that any funding shortfall will be met by the Government.

5.5 The Secretary of State for Education announced in July 2013 that his department will now provide a guarantee to meet the outstanding pension liabilities should an academy be forced to close down – the full statement is attached at Appendix 2. However, the guarantee is subject to certain conditions being met and also sets out instances that could lead to the guarantee being withdrawn, these include:

- Estimated contingent liability ceilings being exceeded;
- Projected costs are no longer affordable from within Department for Education's existing budget;
- Projected costs are not approved by HM Treasury; and
- HM Treasury reserve the right to remove the guarantee due to spending considerations or policy development.

5.6 In October, the Government started consulting on pooling arrangements for Academies within the LGPS – the consultation is attached at Appendix 3. The consultation proposes the following options for Academy and Local Authority pooling arrangements:

a) Requiring that pension arrangements for an academy and local authority are pooled should an academy want this;
b) Providing that the academy and local authority pensions arrangements are pooled without any choice from either parties;
c) Providing that the pensions arrangements for the schools sector – academies and local authority maintained schools are pooled together; and
d) Providing pooling arrangements for academies only.

5.7 Three out of the four options proposed will transfer financial risk away from central government to local authorities and the other option will introduce risk sharing between academies – although the consultation does not state whether the last option will be implemented on a voluntary or enforced basis.

5.8 The Pension Fund will be exposed to additional financial risk if pooling is introduced through legislation without a full guarantee that any financial loss that arises from the closure of an academy will be fully mitigated. It is clear that the language used in the ministerial statement to Parliament in July 2013 limits governments liability in many different ways as set out in 5.5, but it is also clear that government is keen to persuade the parties involved, especially academies, that the guarantee is 'cast-iron' regardless of the fact that it carries, with it, many caveats.

6 ACADEMIES REPRESENTATION

6.1 Following the ministerial statement to Parliament in July 2013, academies were advised to make representations to their administering authority with a view to having their deficit recovery period reviewed and reset to match that of the local authority.

6.2 LBTH Pension Fund has received representations from all the academies currently admitted as employers in the scheme asking for a review of their deficit recovery period and, consequently, their contribution rates. The representations are attached at Appendix 1 and the Committee is asked to formally review these representations.

6.3 The representations from Old Ford and Culloden wrongly assume that their contribution rate ought to come down to 15.8%. The 15.8% referred to relates to the future service rate, which forms part of the overall contribution rate for an employer in the Fund. Culloden and Old Ford are also now responsible for the payment of any funding deficit on top of the future service rate contribution – the school would have been responsible for this payment in the past, but paid as part of the £16.5m (2013/14) deficit payment by the Council in relation to its pension pool within the overall Fund.

7 POOLING ARRANGEMENTS FOR ACADEMIES WITHIN LGPS

7.1 It appears that academies have accepted the government's position that the guarantee to make good any pension fund liability that arises from the closure of an academy is sufficient to facilitate a similar recovery period to local authorities. However, local authorities including officers of LBTH Pension Fund, based on the Fund's risk management principles, are generally not persuaded that the guarantee is full enough to justify academies having the same recovery period as councils. The failure of government to persuade local authorities on this point has led to the proposed enforcement of government'swish for equity to be attained through legislation(i.e. pooling arrangement for academies within LGPS).

7.2 In reviewing the proposal in the consultation, the threat of pooling for academies appears to be encouraging disparate treatment of employers within the LGPS. Academies programme would be subject to government directed arrangements due to the support from the present day government, whilst the Council continues to set policies for the remainder of employers in the Fund under current risk management processes. There is a suggestion that government is demanding that local authorities abandon proper risk management of their Funds for political expediency and this carries many risks including the long term impact such an approach could have on the council's finances and also the potential for other employers in the Fund to challenge what they would likely consider to be inequitable/discriminatory.

7.3 It is also worth noting that, same as all employers in the Fund, academies are independent entities and are allowed to make decisions to further the goals of their governing bodies. Any risks arising from such decisions should largely be borne by the academy and not shared around other members who would not have derived any benefit from a decision that was made solely for the advancement of an academy's goals. Enforcing pooling of academies pension with local authorities pension in the manner proposed contradicts the principle that academies are independent from local authorities and as such the existence of one should not be detrimental or create a burden on the other.

7.4 The current government has made their view on the importance of the academy programme very clear, but continued commitment/funding is not 100% guaranteed beyond what has been set out in legislation. A fresh/extended mandate will be required after the expiry of the current 7 year funding agreement and in the absence of a full guarantee, Committee must be consistent in its application of existing risk management principles in determining the deficit recovery period for academies in order to protect the Fund and prevent challenge from other employers in the Fund.

7.5 The decision by Committee to set a 14 year deficit recovery period was balanced and had considered, and took into consideration, the likelihood of government intervention in minimising any negative fallout from the closure of an academy when deficit recovery periods for the academies were set for admitted employer members of the Fund. Having weighed up all factors, a deficit recovery period of 14 years was approved in each case by the Committee. This is more than the 7 year funding guarantee, but less than the 20 years recovery period for the Council.

7.6 The Committee could chose to extend the recovery period for academies further up to 20 years, but it is important that this is weighed up against the potential additional risk that such a decision would pose to the Fund and the possibility of challenge from other employers in the Fund. Although, there is no indication at this time that the latter would happen.

7.7 The triennial valuation is being finalised by the Fund's actuary and it is expected that revised contribution rate for each employer member of the Fund, including academies, will be known. For academies, the deficit recovery element of the contribution rate will be based on the current agreed recovery period of 14 years -although, estimates for a 20 year recovery period can also be provided.

8. COMMENTS OF THE CHIEF FINANCIAL OFFICER

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

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

9.1 A person is entitled to membership of the local government pension scheme (LGPS) if he or she is employed by a body listed in Schedule 2 to the LGPS (Administration) Regulations 2008 (a scheduled body). A proprietor of an academy who has entered into Academy arrangements within the meaning of section 1 of the Academies Act 2010 is relevantly a scheduled body and thus an employing authority under the LGPS.

9.2 An employing authority must contribute to the fund each year in accordance with a rates and adjustment certificate obtained by the Council from an actuary. The Council is required to obtain such a certificate every three years which sets out the common rate of employer's contribution and any individual adjustments. An individual adjustment is any percentage or amount by which, in the actuary's opinion, contributions at the common rate should be increased or reduced for a particular body by reason of the circumstances peculiar to that body. The actuary is required to specify the assumptions relied upon in determining an employer's contribution. It is understood that one of the relevant assumptions concerns the appropriate recovery period for any deficit, which is a matter on which the Council as the administering authority may express a preference. There is material in the report on which the committee may reasonably take a view about what the recovery period should be.

10. ONE TOWER HAMLETS CONSIDERATIONS

10.1 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.

11. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

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

12. RISK MANAGEMENT IMPLICATIONS

12.1 The Committee must be mindful of the risk management principles that guide the management of the Fund and any deviation from such agreed principles could increase financial risk to the Fund.

12.2 There is a risk that extending the deficit recovery period for academies would lead to irrecoverable debt/liabilities were one of the academies currently in the Fund to close. Whilst the government guarantee may mitigate some of this risk, the absence of a full guarantee means there are risks to the Fund offering a similar deficit recovery period to the Council and the proposed pooling arrangement.

13. CRIME AND DISORDER REDUCTION IMPLICATIONS

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

14. EFFICIENCY STATEMENT

14.1 The Committee is not required to make a decision on any of the matters in this report, so there are no efficiency implications arising from this report.

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 And address where open to inspection***
None	N/A