Pensions Committee 22 September 2016	TOWER HAMLETS
Report of: Debbie Jones, Corporate Director, (Children's Services) and Zena Cooke, Corporate Director (Resources)	**Classification:** Unrestricted
Mulberry School for Girls and Ian Mikardo High School - Academy Conversion – Pension Contribution Rates	

Lead Member	Councillor Rachael Saunders, Cabinet Member for Education, Children's Services and the Third Sector
Originating Officer(s)	Kate Bingham, Service Head (Children's Services Resources) and Bola Tobun, Investment & Treasury Manager
Wards affected	Shadwell & Bromley North
Key Decision?	Yes
Community Plan Theme	A Fair and Prosperous Community

Executive Summary

Two maintained community schools, Mulberry School for Girls (MSFG) and Ian Mikardo High School (IMHS), 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 November 2016.

The report provides details of the decisions the Pension Committee needs to take in respect of these two schools as a result of the decision to become academies. Primarily it covers the deficit recovery period and the consequent rate that will be applicable.

Recommendations:

The Committee is recommended to:

1. Confirm that in line with the pensions committee resolution at its meeting of 17 November 2011(and subsequent decisions on individual Academy conversions) there should be a recovery period of 14 years to determine the amount of pension deficit attributable to Mulberry School for Girls and Ian Mikardo High School; and
2. Note that the final contribution rate for each school mentioned above will be provided at the meeting.

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Consultation and Version Control
[Please state version number and all changes must be tracked or report will not be accepted]

Version Number	1.0 [Please update]	**Version Date**	dd/mm/yy

Name	**Title**	**Date Consulted**	**Date Cleared**	**Version**
	Corporate Director			
	Department Finance			
	Corporate Finance			
	Legal Services			

Decision Type

Key Decision?		**Urgent Decision?**		**Exempt from Call-In?**		**Restricted Report or Partially Restricted (e.g. appendix)?**
Yes/No		Yes/No?*		Yes/No?*		Yes/No?*

*If the answer is yes make sure the forthcoming decision on the website states this or else the decision cannot be taken.

Further details on the procedure for Urgent Decisions can be found in the **Intranet Library** and the What to Do with Your Decision If **guidance note**.

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1. REASONS FOR DECISIONS

1.1 An academy is a "Scheduled Body" within the LGPS and each 'converting' academy should have its own contribution rate calculated and becomes responsible for a share of the LGPS deficit.

1.2 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.

1.3 Whilst each contribution rate to the scheme must be determined on its merits the Committee is reminded that it resolved at its 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 were converting to academy status at that time. The same deficit recovery period was subsequently applied to two further convertor schools in February 2013.

1.4 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 four schools that were converting to academies would not be binding on future academy conversions. Further, that 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.

1.5 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 non-school based education staff (whose benefits will not transfer to the academy) and a deficit share calculated on this basis will ensure that LA does not lose funding from the decision.

1.6 In addition, the Committee is asked to agree that the appropriate deficit recovery period for both MSFG and IMHS is 14 years in accordance with the guidance in the Fund's current funding strategy.,

2. ALTERNATIVE OPTIONS

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

2.2 An alternative is to agree to a "pooled" arrangement, in accordance with current central government guidance. Section 3.5 considers this aspect further.

2.3 If a contribution rate assessment is approved then:

(a) In terms of determining the share of the deficit to be allocated, an 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 or indeed another period of years which has some rational basis.

2.4 It is not considered appropriate to use a different basis unless there are good reasons for doing so and officers consider that there are no material differences

relating to either of the schools under consideration in this report from the situations previously considered by the Committee.

2.5 If Members were minded to consider an alternative approach, such as pooling, we would also suggest that such a consideration should be extended to cover other schools that have previously converted or indeed consider options such as a school pool.

3. DETAILS OF REPORT

3.1 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 existing maintained school to the proposed academy retaining their membership of the LGPS. New academy non-teaching staff would also have the right to join the LGP Scheme.

3.2 Both MSFG and IMHS have proposed conversion dates of 1st November 2016.

3.3 As a number of non-teaching staff working in MSFG and IMHS are current members of the Fund the Committee is asked to agree an appropriate policy on the deficit recovery period for these staff.

3.5 Current Government Guidance

3.5.1 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 could be treated within the LGPS.

3.5.2 Their preferred approach is that where an academy wishes to become "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.

3.6 Pooling Arrangements

3.6.1 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.

3.6.2 However, in practice this means that the pool would effectively underwrite the liabilities of failed Academies. Some Councils may regard this as unfair, and would want legislation which avoided 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.

3.6.3 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: Then there would be the issue of assessing the initial allocation of assets within the Council pool. Finally, there is a question around what is to be done where the Council chooses to pay off its deficit via monetary payments (as opposed to a percentage of pay) and how other employers (such as an Academy did not inadvertently benefit from this).

3.6.4 Taking all these issues into consideration it is thought to be better to consider the issue of Pooling separately and across the whole school population rather than in isolation to these two current conversions.

3.7 Contribution Rate Assessment

3.7.1 In order to calculate the individual schools' employer contribution, officers have 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 decisions of the Committee on 17 November 2011 and 21 February 2013 (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).

3.7.2 At the time of preparing the report there was still some data outstanding that would enable this to take place and so it is proposed that the proposed rate be advised to Members at the meeting. There are two further considerations for the Committee: the appropriate share of the deficit and the deficit recovery period. Both are considered below.

3.8 Appropriate share of the deficit

3.8.1 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."*

3.8.2 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.

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

3.8.4 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.

3.8.5 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.

3.9 Local Authority deficit recovery periods

3.9.1 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.

3.9.2 The Administering Authority normally targets the recovery of any deficit over a period **not exceeding** 20 years. In previous cases the Committee has determined that a period of 14 years was appropriate reflecting a balance between the recovery period applicable as a maintained school against the maximum length of guaranteed funding for an Academy School (7 Years).

3.9.3 Officers do not consider that, for these schools, there are any compelling reasons to adopt a different stance from this previous position and are recommending that the period of 14 years is maintained.

3.10 Risk Management Implications

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

3.10.2 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.

3.10.3 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.

3.10.4 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.

3.10.5 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 separate legal entity.

3.10.6 The council is the guarantor of the deficit of maintained schools. It has no such role in relation to academies and the Secretary of State for Education has not offered any guarantees to fund pension deficits should an individual school 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 would 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.

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

3.10.8 The total deficit will be higher over a recovery period of 20 years compared to a lower number of years due to the effects of inflation.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

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

5. LEGAL COMMENTS

5.1 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.

5.2 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. 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.

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

5.4 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.

5.5 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. As discussed in the body of the report, it is essential that the committee is consistent when making decisions for all Academies on the recovery period for any deficit. There does not appear to be any reason for the Committee to deviate from previous decisions to set the recovery period at 14 years. .

5.7 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. There is sufficient information in the report on which the committee may reasonably take a view about what the recovery period should be.

5.8 When taking decisions in relation to the appropriate recovery period for the deficit for the Academies, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't (the public sector duty). Decisions taken by the Committee must support compliance with the Council's statutory duties in respect of proper management of the Pension Fund.

6. ONE TOWER HAMLETS CONSIDERATIONS

6.1 A financially viable and stable pension fund is a valuable recruitment and retention incentive.

7. BEST VALUE (BV) IMPLICATIONS

7.1 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.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

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

9. RISK MANAGEMENT IMPLICATIONS

9.1 As set in section 3.10

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

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

11. SAFEGUARDING IMPLICATIONS

11.1 Safeguarding implications if any have been incorporated into the report.

Linked Reports, Appendices and Background Documents

Linked Report

- Cabinet Report 4th October 2016.

Appendices

- NONE

Background Documents – Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2012

- NONE

Officer contact details for documents:

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