Non-Executive Report of the: **PENSIONS BOARD** **23 SEPTEMBER 2020**	TOWER HAMLETS
Report of Neville Murton, Corporate Director, Resources	**Classification:** Unrestricted
Contribution Deferral Policy Statement	

Originating Officer(s)	Miriam Adams, Pensions & Investments Manager
Wards affected	All

Introduction

This report provides the Board with policy on how the Fund will make its determination in respect of deferral of employer contributions during COVID-19 lockdown and gradual unwinding of social distancing and related restrictions.

Recommendations:

The Board is asked to note:

- the content of this report and admission contribution deferral policy:
- that the period of deferral is limited to 3 months after which extensions may be granted on a monthly basis:
- that the total annual contributions must be paid by 31 March of the applicable year and interest may apply:
- the decision to consider and approve requests was delegated to the S151 Officer: and

1. <u>REASONS FOR THE DECISIONS</u>

1.1 To ensure consistent treatment is applied across employers over time and enable employers, guarantors and the Fund understand the risks associated with granting contribution flexibility. It also enables the Fund to consider appropriate measures to manage the risks where possible.

2. <u>ALTERNATIVE OPTIONS</u>

2.1 There are no alternative options to this report.

3. DETAILS OF REPORT

3.1 The Pensions Regulator published on 27 March 2020 Scheme administration COVID-19 guidance for trustees and public service setting out the critical processes for administrators including paying members' benefits, retirement processing, bereavement services as well as any administration functions required to support this function. A revised statement was published on 16 June 2020. On 25 June, the Corporate Insolvency and Governance Act 2020 received royal assent and came into force on 26 June. The measure introduced by the Act which is designed to assist companies during the pandemic includes provisions for a moratorium during which companies can defer debts. The Scheme Advisory Board (SAB) is seeking legal advice on the potential impact of a moratorium on employer deficit contributions.
In addition, LGPS administrators can access the LGPS guidance under frequently asked questions for administrators.

This policy covers delay of contribution payment or temporary reduction of rates payable.

3.2 COVID-19 has led to an extraordinary period of lockdown and social distancing measures which has put many employers with LGPS liabilities under considerable financial pressure as their sources of revenue have reduced. This pressure on employers is expected to continue over the short to medium term as Government measures to curb the spread of the infection are gradually lifted and public confidence improves. In addition, where employers have opted to furlough staff, pay continues to be pensionable (i.e. if a member receives 80% of their pay under furlough, employee and employer contributions are due on this level of pay). However, the Government furlough scheme only compensates employers by 3% of pay towards employer pension contributions (the minimum employer contribution under auto-enrolment rules). Therefore, the balance of employer pension contributions must be found by the employer through other sources which may deplete any cash reserves held by employers, putting their businesses at risk.

3.3 LGPS frequently asked questions for administrators does state that employers cannot delay or pause paying employee contributions. Employee contributions must be submitted to the administering authority in line with the timescales in the Pensions Act 1995. That is, by either the 22nd (where they are paid electronically) or the 19th of the month following the last day of the month in which the contributions are deducted. If an employer fails to submit employee contributions on time, paragraph 148 of TPR Code 14 states that where 'the scheme manager has reasonable cause to believe that the failure is likely to be of material significance to the regulator in the exercise of any of its functions, they may give notice of the failure to the regulator and the member within a reasonable period after the end of the prescribed period.

3.4 There are several risks to the operation of the Fund to consider, such as:

- Cashflow

- Fund returns
- Administrative complexity

Several considerations which may help protect the Fund from taking excess risks are required at employer level:

- Covenant and solvency
- Interest
- Redundancy
- Guarantors/letting employer
- Employee contributions
- Evidence that the LGPS is not the only avenue being used to preserve cash.
- Evidence that where applicable the Guarantor is aware of the application

4. FINANCIAL IMPLICATIONS

4.1 There are no direct financial implications. However, the outcomes could have financial implications for the Fund.

5. LEGAL COMMENTS

5.1 There are no immediate legal implications arising this policy

6. ONE TOWER HAMLETS CONSIDERATIONS

6.1 The employer's contribution is a significant element of the Council's budget and consequently any improvement in costs management will reduce the contribution and increase the funds available for other corporate priorities.

7. BEST VALUE (BV) IMPLICATIONS

7.1 The effective and efficient management of scheme costs is key to the achievement of the funding strategy objectives and this is considered to be a good decision which can result in greater cost savings to the fund.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

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

9. RISK MANAGEMENT IMPLICATIONS

9.1 The rigorous robust management of LBTH Pension Fund results in better quicker and more effective decision making which can lead to better Fund performance and reduction in the contribution required from the Council towards the Fund.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

10.1 There are no crime and disorder reduction implications arising from this report.

Linked Reports, Appendices and Background Documents
Linked Reports

- Appendix A – Hymans Robertson LLP advice paper on COVID-19 contribution deferral

Local Government Act, 1972 Section 100D (As amended)
List of "Background Papers" used in the preparation of this report

- LGPS Scheme Advisory Board - Covid-19 and LGPS
- DB scheme funding and investment: COVID-19 guidance for trustees | The Pensions Regulator
- https://www.lgpsregs.org/news/covid-AFAQs.php

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London Borough of Tower Hamlets COVID-19 Contribution Deferral Policy Statement

COVID-19 – Policy on the deferment of employer contributions
As a result of Government policies to manage the spread of COVID-19, many employers are experiencing a severe impact on their immediate and ongoing revenues. The London Borough of Tower Hamlets Pension Fund (“the Fund”) recognises the challenges this may bring in respect of meeting employer pension costs over the shorter term. This document sets out the Fund’s policy on granting flexibility in respect of the payment of employer contributions during these unprecedented times.

The Fund is restricted by the LGPS Regulations in granting flexibility as there are limited circumstances where contribution rates certified in the Rates and Adjustments Certificate can be amended. In addition, the Regulations require that employer contributions in line with the Rates and Adjustments Certificate must be paid within each 12 month period.
As a result, the Fund is not able to consider reducing contributions or granting contribution holidays to employers. However, the Fund is able to consider the deferral (or temporary reduction) of employer contributions whereby an employer delays payment of employer contributions at the full rate for the current year that are owed to the Fund.

The Fund will only consider deferral where an employer makes a formal request. All other circumstances will be considered as late payments to the Fund and handled in accordance with the Fund’s administration policy. In making a request for deferral, the Fund requires:

1. A clear business case and rationale for the request, including evidence that the employer will likely be able to meet the deferred contributions at the end of the deferment period;
2. Assurances that other financial obligations, such as dividend payments, will also be suspended during the period of deferral;

3. Evidence the employer is seeking relief from other creditors, including any other pension arrangements, to ensure the Fund is being treated consistently; and
4. Evidence of discussions with their letting employer or any employer providing a guarantee.

Failure to provide the above will result in the Fund being unable to provide a deferral of contributions.

The request and accompanying evidence will be considered on a case by case basis and, if successful, would be approved by Neville Murton, the Section 151 officer with responsibility for the Fund, after the Fund has taken covenant, legal

and actuarial advice.
The Fund will also consult with any associated employer that is providing a guarantee to the employer seeking deferral.

The Fund will respond to a request for contribution deferment as quickly as possible and usually within a 21 day period.
Employer contributions should be remitted as usual during the period that a deferment request is being considered.
Where a request for deferral is not approved in the first instance, the Fund may require additional evidence or security to reconsider the request. There is no explicit appeals process for contribution deferment requests. If an employer feels they have been treated unfairly by the Fund, they may refer to the Fund's standard complaints and Internal Dispute Resolution Procedure (IDRP) processes.

Where a request for deferral is accepted, employers will be able to defer contributions for up to 3 months.

Following the 3-month period, 1-month extensions may be granted on request subject to submission of updated evidence of the employer's financial position. Extensions cannot go beyond 31 March 2021 at which point annual employer contributions for the whole 2020/21 year are due in full. Where contributions are not received in full by 31 March 2021, the Fund has a statutory obligation to consider reporting the failure to make employer contributions to the Pensions Regulator.

It should be noted that employee contributions should be remitted as usual during the period of deferment, and are unaffected by the employer's decision to request (or not) any deferral.