

Bath & North East Somerset Council

MEETING:	AVON PENSION FUND COMMITTEE	
MEETING DATE:	16 March 2012	AGENDA ITEM NUMBER
TITLE:	ACADEMIES	
WARD:	ALL	
AN OPEN PUBLIC ITEM		
List of attachments to this report: Appendix 1 – Guidance Note from Secretaries of State, 11 December 2011 Appendix 2 – Employer Contribution Rates for Avon Pension Fund Academies		

1 THE ISSUE

- 1.1 In December 2011 the Secretaries of State for Education and Communities and Local Government issued a guidance note relating to the treatment of academies within the LGPS. The note was prompted by Government concern that “no academy should pay unjustifiably higher employer contributions to the LGPS compared to maintained schools in the local area”. The Government is accordingly looking for a consistency of approach across all LGPS funds based on this principle.
- 1.2 This report explains the guidance and how the Fund’s policy for academies complies with the guidance.

2 RECOMMENDATION

That the Committee:-

- 2.1 Notes the information set out in the report.

3 FINANCIAL IMPLICATIONS

3.1 The Fund currently has 27 academies as scheme employers. As many schools have yet to convert, it is anticipated that the number will continue to grow over next few years.

3.2 An employer contribution rate is calculated for each new academy. Each academy is allocated a share of the deficit which existed at 31 March 2010 according to the size of its payroll (relative to the unitary authority it is leaving) on conversion. A future service rate is calculated for each academy based on the profile of its active membership.

4 BACKGROUND

4.1 Current government policy means that schools converting to academies become “scheduled bodies” in the Fund (employing body is required to offer membership of the LGPS to eligible staff; the Fund cannot refuse membership). However, no specific guidance had been provided to administering authorities regarding the treatment of past service deficits and how liabilities would be treated should an academy default. As a result, there has been an inconsistent treatment of academies across LGPS funds, with some academies paying significantly higher contribution rates than they did as a maintained school.

4.2 In order to achieve greater consistency, a guidance note relating to the treatment of academies within the LGPS was jointly issued jointly by the Secretaries of State for Education and Communities and Local Government in December 2011 (see Appendix 1). The essential problem which the guidance note was trying to address was that some funds, almost certainly just a minority, have increased contribution rates for academies by reducing the period over which a deficit is recovered compared to that of their former unitary authority. Their justification for this was the perceived risk associated with an academy, given that there had been no formal commitment from Government that they would intervene as administrator and honour any outstanding pension liability should an academy become insolvent. The note seeks to amend this perception, as follows:-

“It is recognised that consideration has to be given about the risk to the fund should a school or Academy fail. Should a maintained school ever be wound up it will be the function of the local authority to transfer pupils to another educational institution. Pension liabilities would be managed within the local authority’s employer contribution rate.

Equally, if the Secretary of State for Education considered that an Academy was performing poorly, he would review the position, broker support and, where necessary, take steps either to replace the Academy Trust sponsors (the members of the Academy Trust) or the Academy Trust. If either party to the Academy arrangements ever decided that those arrangements should be brought to an end, it would have to give notice to the other party. The education provision for the affected children and young people would need to continue in an appropriate educational establishment.

The Government would be bound to consider all available options for dealing with an Academy’s outstanding LGPS pension liabilities including, but not limited to,

the assignment of assets and liabilities to a new or an existing educational establishment where this was the desired outcome.”

- 4.3 The guidance note is clearly hoping that those funds who have taken a pessimistic view of the solvency risk associated with academies and therefore set high contribution rates will now revise their policies. To reinforce this message, it urges funds to “positively consider” any request from an academy to be pooled with the local authority for LGPS purposes. If this still does not have the desired effect, in that “inconsistencies or unjustifiably high employer pension contributions...remain” then “consideration will be given to what other steps, including regulatory changes, would be needed following discussions with LGPS experts, including Scheme actuaries”.
- 4.4 In this context “pooling” means the academies using the same employer contribution rate as the unitary authority it was formerly part of and the assets and liabilities remaining “pooled” with those of the unitary authority.

5 AVON PENSION FUND CURRENT POLICY

- 5.1 Since the Government’s legislation permitting academies to convert to academies was introduced, 27 local authority schools have converted to academies in the Avon area. **Each of these has been allocated a share of the deficit which existed at 31 March 2010 according to the size of its payroll on conversion. A future service rate has been calculated for each academy based on the profile of its active membership.** Any difference in an academy’s contribution rate compared to what it would have been paying if it had continued as a maintained school stems almost entirely from the level of its future service rate. Whereas the future service rate for the four local education authorities is c.12% on average, the rates for the new academies range from 10.2% to 15%.
- 5.2 Appendix 2 provides a comparison of the rates for each academy against the relevant local authority.
- 5.3 **The Fund’s actuary has been consulted on the Guidance Note and confirms that the approach adopted by the Fund for setting contribution rates is “broadly in line with the spirit of the letter”. He notes that “the differences with the joint letter include the assessment of the future service cost, which under the policy adopted by the Avon Pension Fund will be driven by the membership involved in the new academy and not the entire Council membership (as would have been the case if pooled)”.**
- 5.4 With regard to the issue of pooling, the actuary favours individual future service rates because it “demonstrates transparency of cost and avoids cross subsidy”. In addition, it reflects the employer’s own practices for pay etc. over which the former LEA (local education authority) has no control.
- 5.5 There is also a question mark on the way in which pooling would impact accounting practices. It would be much more difficult for an academy to produce stand-alone accounting figures on a “defined benefits” type approach in accordance with accounting standards if there were pooling involved due to the assets and liabilities not being separately identifiable. In addition, (i) explanations which might be sought by an academy with regard to liability changes from one year to another would be much more difficult to provide where pooling was involved and (ii) the accounting figures for all those participating in the pool might

be delayed if one of the participants did not supply data within the agreed timescale.

5.6 Any decision to allow the academies to pool their liabilities with those of the local authority would need to be agreed in principle by both the actuary and the Avon Pension Fund. However, this would not in itself be sufficient; the local authority with whom an academy wished to pool its liabilities would also have to give its consent.

5.7 So far as the actuary's position is concerned, it is as follows:-

"We do not have any objection to the pooling concept, as long as both the LEA and academies accept the principle of cross subsidy of cost and from the LEA perspective that they would remain responsible for the liabilities in the long term (i.e. if there is any concern regarding the academy's financial covenant). If all parties accept the cross subsidy of costs then pooling may be beneficial both practically and politically for the Fund and its employers".

5.8 There is no specific provision within the LGPS Regulations for a pooling arrangement such as that envisaged in the guidance note to be established. However, the actuary is confident that the Regulations do not preclude this type of arrangement and this view is apparently shared by other actuaries.

5.9 Pooling arrangements are already used by some LGPS funds for specific groups of employers. However, the actuary's experience is that some funds are finding significant difficulties in allocating funding positions (and collecting deficits) when a participant of that pool wants to leave the Fund (or a pool) and, due to these difficulties, some are looking to unpick pooling arrangements rather than set up new ones.

6 CONCLUSIONS

6.1 It is suggested that the primary purpose of the guidance note is not to promote pooling per se but to persuade a minority of pension funds which have increased contribution rates significantly for academies in their area that they should reconsider their policies. Permitting an academy to request pooling is simply intended to reinforce this message; the threat of regulatory change is a more direct sanction, albeit not one which the Government would find it easy to implement.

6.2 It should be emphasised that the Avon Pension Fund does not fall within this minority. **Consequently it is recommended that, for the reasons set out in this paper, namely that the current policy is in the spirit of the guidance, provides greater transparency and removes cross-subsidisation, the pooling facility should not be used.** Indeed, despite the potential benefits of a pooling arrangement to the Fund (in the event of an academy default), it is not clear why an LEA should be willing to take financial responsibility for the liabilities of a defaulting academy over which it has no control.

6.3 The Fund has previously expressed its concern to the DfE regarding the lack of clarity as to the guarantee for academy liabilities in the event of default or closure. Therefore, the guidance letter provides some assurance around the covenant of the academies and the role of the Secretary of State should an academy fail.

However it does not provide a “guarantee” and the Fund will continue to pursue this issue with the DfE to gain greater assurance.

6.4 A position statement regarding the Fund’s policy on Academies will be circulated to all academies and LEA’s following this meeting.

7 RISK MANAGEMENT

7.1 The Avon Pension Fund Committee is the formal decision-making body for the Fund. As such it has responsibility to ensure adequate risk management processes are in place. It discharges this responsibility by ensuring the Fund has appropriate investment and funding strategies that are regularly monitored. In addition it monitors the benefits administration, the risk register and compliance with relevant investment, finance and administration regulations.

8 EQUALITIES

8.1 This report is for information only.

9 CONSULTATION

9.1 N/a

10 ISSUES TO CONSIDER IN REACHING THE DECISION

10.1 N/a

11 ADVICE SOUGHT

11.1 The Council's Monitoring Officer (Divisional Director – Legal & Democratic Services) and Section 151 Officer (Divisional Director - Finance) have had the opportunity to input to this report and have cleared it for publication.

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Background papers	Academies and the LGPS – Mercers Viewpoint, Jan 2012
Please contact the report author if you need to access this report in an alternative format	