

meeting **PENSIONS ADMINISTRATION SUB - COMMITTEE**

date **14 JULY 2011** agenda item number **9**

REPORT OF THE SERVICE DIRECTOR (HUMAN RESOURCES)

ACADEMY STATUS AND LGPS PENSION DEFICITS

1. Purpose of the Report

- 1.1 The purpose of this report is to inform the Pensions Administration Sub-Committee of the current position in relation to inherited pension liabilities and deficits when schools convert to academy status.

2. Information and Advice

- 2.1 Academies are publicly funded independent local schools catering for all abilities which were originally introduced in the year 2000, to target schools that were deemed to be failing and where underperformance had become entrenched. The Academies Act 2010 extended the academy model and allowed maintained schools to convert to academy status subject to approval by the Secretary of State for Education.
- 2.2 The total number of academies opened nationally, including those under the previous government, is now in excess of 700. In the year to June 2011, 430 schools converted to academy status. Currently within Nottinghamshire there are 13 academies, with a further 13 schools planning to convert to academy status by 1st September 2011.
- 2.3 When a school converts to academy status, the Secretary of State for Education issues an academy order and enters into a funding agreement with the academy trust who operate the academy. The Local Authority previously responsible for maintaining the school also enters into a commercial transfer agreement with the academy trust.
- 2.4 The commercial transfer agreement, based on a model document prepared by the Department for Education (DFE) and drafted in accordance with central government policy, includes the academy's responsibilities in relation to LGPS deficits. The management of academy deficits is being debated nationally with a variety of views being expressed ranging from retaining all deficits at local authority

level, to academies inheriting all deficits in relation to past employees including those that relate to deferred members and pensioners.

- 2.5 The wording contained within the DFE's commercial transfer agreement clarifies the position, as it states that the Academy Trust 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. The definition of 'Eligible Employees' is the transferring employees who are active members of or eligible to join the LGPS immediately before the transfer date, which indicates that only the deficit in relation to transferring employees is inherited by the academy.
- 2.6 Clarification has been sought from the DFE who have confirmed their policy position is that only the deficit for the transferring employees should apply to academies and any deficit in relation to deferred and pensioner members should remain with the Local Authority.
- 2.7 It has been confirmed that the commercial transfer agreements currently in place with academies, where Nottinghamshire County Council or Nottingham City Council are signatories, contain the DFE's wording in relation to pensions and therefore deficits are calculated in accordance with DFE policy.
- 2.8 It should however be noted that Terry Edwards, Head of Pensions (Local Government Employers), has written to the DFE on the subject of academies and the LGPS and raised a number of issues including deficit share. A copy of the letter (Appendix A) is attached for reference. There is specific reference under 'LGPS employer contribution rates and deficit share' on pages 2 to 5 of the letter. To date no response had been made and there has been no change to the DFE's policy position and their expectation of Local Authorities.

3. Statutory and Policy Implications

- 3.1 This report has been compiled after consideration of implications in respect of finance, equal opportunities, personnel, crime and disorder and those using the service and where such implications are material they have been described in the text of the report.

4. Recommendation

- 4.1 The Pensions Administration Sub-Committee is recommended to note the contents of the report.

M TOWARD

SERVICE DIRECTOR (HUMAN RESOURCES AND CUSTOMER SERVICE)

Background Papers Available for Inspection

Nil

Electoral Division(s) and Member(s) Affected

All

Appendix A



Noreen Graham
Deputy Director
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18 April 2011

Dear Noreen

Academies and the Local Government Pension Scheme

I am writing to you concerning a number of issues relating to academies (and Free Schools) and the Local Government Pension Scheme (LGPS).

Membership of the LGPS

Non teaching staff of an academy (or Free School) are eligible to participate in the LGPS as their employer is a scheme employer by virtue of paragraph 21 of Schedule 2 of the LGPS (Administration) Regulations 2008.

This is confirmed in the following documents on the DfE website, relevant extracts from which are included in Annex A to this letter:

1. Guidance for schools becoming academies – 7 April
2. The Model Funding Agreement – special academies
3. The commercial transfer agreement

However, paragraph 21 of the Model Funding Agreement for Free Schools (see Annex B to this letter) implies that non-teaching staff of a Free School can have access to the LGPS “or to a scheme with comparable pension benefit”. We do not believe that the words in parenthesis are correct and would welcome their deletion from the current Model Funding Agreement for Free Schools on the DfE website. I understand that wording in the Model Funding Agreement is likely to be changed to “The Academy Trust

shall ensure that all employees at the Academy other than teachers (“Non-teaching Staff”) have access to either the Local Government Pension Scheme in accordance with the Local Government Pension Scheme (Administration) Regulations 2008 [SI 2008/239] (“the Regulations”), where the Regulations require this, or such other pension benefits as those Regulations, or any legislation which may in the future replace the Regulations, require for Non-teaching staff.”

The DfE briefing note on the LGPS (see Annex C to this letter) also includes a number of statements that we believe are incorrect and so should be amended i.e. :

- paragraph 1 states “but in London there is a separate pensions authority,”. This is not strictly correct. Whilst there is a pensions administering authority in London called the London Pensions Fund Authority, the pensions authority will be the London Borough maintaining the school before it becomes and academy. We would therefore suggest that the words “but in London there is a separate pensions authority,” should be deleted.
- paragraph 3 says “After conversion, new non-teaching staff will be eligible to join the LGPS and will be automatically enrolled in the Scheme when employed, but will have the option to opt out of the Scheme if he or she gives notice within three months. It is also open to an academy to pay contributions into private pension schemes, but this normally happens only if an academy was previously an independent school and some staff wish to remain in the private scheme.” Again, this is not correct. Firstly, staff are only automatically enrolled if they have a contract of employment that is for 3 months or more. If they have a fixed-term contract that is for, say, 2 months, they are not eligible for membership of the LGPS. Secondly, any employee who is automatically enrolled can opt out of the scheme at any time; they do not have only three months in which to do so, but if they do opt out within 3 months they are treated as not having been a member. Thirdly, we do not believe that any an academy can pay contributions into a private pension scheme, even those academies that were previously an independent school.

Employer contribution rates to the LGPS, share of deficit, and recovery periods

As we understand the position, the academies are charitable trusts set up as companies limited by guarantee, where the member’s liability is limited to not exceeding £10. They have a contractual relationship with the Secretary of State through a funding agreement. All school based staff are paid from a school’s budget which is funded from the Dedicated Schools Grant (DSG) paid by the Secretary of State. The majority of academy funding comes from the DSG and is routed to the academies via the Young Persons Learning Agency. In addition to the funding agreement, there are articles of association, a transfer agreement and there can be supplemental funding agreements and other legal documents.

Paragraph 4 of the DfE briefing note on the LGPS (see Annex C to this letter) states:

“The pensions authority should be asked for a calculation of the employer contribution rate for the academy. The actuarial assessment will be done by the LGPS administering authority’s fund actuary but the school may wish to have their own assessment performed by an independent actuary. The employer contribution rate will be calculated on the basis of the academy’s staff profile and relates only to the academy, whereas nearly all maintained schools in an LA pay the same pooled rate. This means the rate can be higher than the rate which applied to the school when maintained. There is likely to be a charge for the actuarial calculation.”

We would agree with the above except to the extent that we can see no purpose in suggesting that *“the school may wish to have their own assessment performed by an independent actuary”* given that it is the Fund actuary who is responsible for setting the employer contribution rate.

Paragraph 5 of the DfE briefing note on the LGPS (see Annex C to this letter) goes on to state:

“Unlike the Teachers Pension Scheme (TPS), LGPS is a funded scheme and can be in surplus or deficit according to investment performance. Most pension funds are currently managing a deficit, and the deficit in respect of pensionable service prior to conversion transfers from the LA to the academy through the transfer agreement signed prior to conversion. The actuarial calculation of the employer contribution rate will take into account the amount needed to pay off any past service deficit and meet future accruals over a specified period, which is normally taken to be 20 years for academies, although it is for the actuary to take a view on this.”

And paragraphs 8.4 and 13.4 of the commercial transfer agreement (see Annex A to this letter) state that:

“the Company 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.”

This is a position that we would wish to see maintained given that:

- i) the deficits arose whilst the academy was a maintained school, and
- ii) the funding that the Local Authority 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.

It is therefore clearly right and proper that the academy should continue to meet its share of any past underfunding. It is of concern, therefore, that there is an FAQ on the DfE website (see Annex D to this letter) which says that the DfE are:

“currently reviewing these arrangements with the Department for Communities and Local Government and will update the website if and when any changes are planned.”

We would strongly object to any change.

We would also point out that whilst the current guidance from DfE 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.

The second option is “fairer” on the basis that it recognises the local authority 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.

Having considered the apportionment of the deficit we would now like to turn to the question of the deficit recovery period. Whilst paragraph 5 of the DfE briefing note on the LGPS (see Annex C to this letter) recognises it is for the Fund actuary to take a view on the period over which any deficit is recovered, it is implied that the academy might expect the deficit to be spread over the same recovery period applicable to the local authority (normally around 20 years). However, the notice period for termination of the contract specified in the supplemental funding agreement is 7 years. For that reason, a number of LGPS Pension Fund administering authorities and their Fund actuaries are taking the view that this is a suitable deficit recovery period to adopt. As academies are independent charitable trusts there may not be any compunction on another individual scheduled body to pick up any deficiency should an academy fail. As such, from a Fund viewpoint, academies would represent a body of weak covenant, with no protection for the Fund on cessation or for the other employers in that Fund to whom a failed academy's deficit might be levied. The natural conclusion being reached by LGPS Funds is to seek to recoup any existing pension deficit as quickly as possible, and maintain a funding strategy that would cover all costs on exit at any moment. This shortened deficit recovery period (compared to the longer recovery period applicable to a local authority), together with the fact that the academy's age and pay profile may be different to that of the local authority, has the potential to immediately increase the employer pension contribution rate payable by the academy compared to that which would have been paid whilst / if the establishment were still a local authority maintained school.

Understandably, this is causing concern amongst schools who have become academies and those thinking of doing so. Equally understandably, the Pension Funds must (and we support them in this view) seek to protect other employers in the Fund from inheriting any underfunding deficit should an academy fail and the staff and funding not revert to the local authority.

However, we suggest that these concerns can be overcome if the Government provides a legislative guarantee that, should an academy fail and the staff and funding not revert to a local authority, the Government will meet any LGPS underfunding deficit relating to that academy. This would enable the Pension Fund administering authorities and their actuarial advisers to set an employer contribution rate for an academy that allows for the same or a similar deficit recovery period as that applied to the local authority. We would urge that the Government gives consideration to this proposal.

An alternative approach would be to provide that all academies in a Fund should be placed in a funding pool with the same or similar deficit recovery period as that for the local authority and that, if an individual academy were to fail and the staff and funding not revert to a local authority, any deficit attributable to that academy would fall to be shared between the other academies in the pool. Such an approach might not, however, be acceptable to the other academies in the pool.

Exercise of Discretions

Are we correct in assuming that the exercise of discretions under the LGPS in relation to employees of the school who left before the school became an academy, and the pension costs attributable to the exercise of a discretion, will still rest with the local authority? If the right to exercise discretions has passed to the academy it may be very difficult, if not impossible, to determine which LGPS deferred and pensioner members were, when they left, employees of the school that has now become an academy.

Option to retain separate pension benefits, etc

Where staff are transferred from a maintained school to an academy is the transfer a transfer to which the Transfer of Employment (Protection of Employment) Regulations 2006 apply or one which is treated as if it were a relevant transfer within the meaning of regulations 2(1) and 3 of the TUPE Regulations, notwithstanding regulation 3(5) of those Regulations? This is important as it determines whether or not a transferred employee can be given the option to keep the pension benefits accrued with the local authority separate¹ from those with the academy and the calculation of the final pensionable pay² upon which a member's LGPS benefits may be calculated.

¹ Regulation 16(7) of the Local Government Pension Scheme (Administration) Regulations 2008

² Regulation 10 of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007

Optants out

How should employees of a maintained school who have opted out of / opted not to join the LGPS be treated at the point of transfer from a maintained school to an academy i.e. :

- a) does their original option to not participate in a scheme that, amongst other benefits, provides benefits for old age, ill health and survivor benefits, not transfer under TUPE? The person should then automatically be re-enrolled into the LGPS but would have the right to fill in a new opt out form in respect of employment with the academy if they wished to, or
- b) does their original option not to participate in the scheme transfer under TUPE? The person would not automatically be re-enrolled. Their original opt out form would continue to apply but they would have the right to opt into the LGPS if they wished to.

Contracts and admission agreements

The guidance on the DfE website for schools becoming academies (copied at Annex E to this letter) includes some basic guidance on the transfer of contracts and licences.

However, there are a number of related matters that are not touched upon and in respect of which further guidance would be appreciated. These are set out below.

If a contract had been let (e.g. for catering or cleaning services) and the contract covered a number of schools, but only one or some, but not all, of the schools covered by the contract convert to academies at the same time, does the contract end and new, separate, contracts have to be entered into?

If the local authority had let a contract (e.g. for catering or cleaning services) and the contractor participates in the LGPS via an admission agreement, does the admission agreement terminate (because a party to the agreement - the local authority - is no longer the letting body) and a new agreement have to be entered into between the contractor, the academy and the Pension Fund administering authority; or is the admission agreement simply amended to replace references to the local authority with references to the academy?

If the admission agreement relates to a local authority contract covering a number of schools but only one, or some, but not all of those schools convert to academies, does the admission agreement terminate and new admission agreements have to be entered into:

- between the contractor, the academy and the Pension Fund administering authority (to cover the employees of the contractor providing services to the academy under the contract with the academy); and

- between the contractor, the local authority and the Pension Fund administering authority (to cover the employees of the contractor providing services to the school(s) under the contract with the local authority)?

If so:

- i) who should meet the legal costs associated with drawing up or amending an admission agreement(s)?
- ii) who should meet any actuarial costs incurred if, because the contractor has to have two admission agreements, a separate employer contribution rate has to be set for each admission agreement?

If an admission agreement does have to terminate, and a new agreement (or agreements) are entered into, would this require a cessation valuation under regulation 38(2) of the LGPS (Administration) Regulations 2008 and, if so, who should meet any consequential actuarial fees?

If, when letting the original contract and entering into an admission agreement with the contractor, the local authority had agreed that it did not require a bond or indemnity from the contractor as a condition of participating in the LGPS then, in the event that the contractor went into liquidation / ceased to trade, any pension deficit liability would have fallen to be met by the local authority that had let the contract. Would any such liability now fall to be met by the academy? If so, presumably the academy could request an indemnity or bond from the contractor but they would need to be aware that, if they did so, the price of the contract would be likely to increase.

Conclusion

Given that this letter raises a number of policy and technical matters I would strongly recommend that a working group be convened involving representatives from DfE, DCLG and Local Government Employers to work through the issues and, where appropriate, to issue advice as soon as possible. Such advice would be of great assistance to academies, schools considering becoming an academy, local authorities and LGPS administering authorities. I would welcome your views.

I have copied this letter to officials in the Department for Communities and Local Government responsible for the LGPS.

Yours sincerely



Terry Edwards
Head of Pensions
Local Government Employers

Annex A

1. Guidance for schools becoming academies – 7 April

<http://www.education.gov.uk/schools/leadership/typesofschools/academies/cominganacademy/a0061257/how-to-become-an-academy>

<http://media.education.gov.uk/assets/files/doc/g/guidance%20for%20schools%20becoming%20academies%20%20%207%20april.doc>

Pension registrations

3.40 Once the Academy Trust has been established it will be responsible for the pension arrangements for staff employed by the Academy - even if the local authority is acting as the payroll provider for the Academy. The occupational pension schemes are the Local Government Pension Scheme (LGPS) for non-teaching staff and the Teachers' Pension Scheme (TPS) for teaching staff. Both schemes are statutory schemes.

Local Government Pensions Scheme.

3.42 Academies' Funding Agreements require them to offer Local Government Pensions Scheme (LGPS) membership to all non-teaching staff. When a maintained school becomes an academy, existing staff who are already members of the LGPS will be unaffected and their membership of the LGPS will continue. After conversion, any new non-teaching staff will also be eligible to join the LGPS. Further information about the LGPS is available on the DfE Academies website. The first step will be for the school to contact the local authority to obtain the details of the relevant pension authority which presently administers the LGPS scheme.

2. The Model Funding Agreement – special academies

<http://www.education.gov.uk/schools/leadership/typesofschools/academies/cominganacademy/b0061866/supporting-documents/model-funding-agreement--special-academies>

<http://media.education.gov.uk/assets/files/single%20model%20funding%20agreement%20special%20academies%201%20april%202011.doc>

23) The Academy Trust shall ensure that all employees at the Academy other than teachers have access to the Local Government Pension Scheme.

3. The commercial transfer agreement

<http://www.education.gov.uk/schools/leadership/typesofschools/academies/beinganacademy/b0061866/supporting-documents/commercial-transfer-agreement>

<http://media.education.gov.uk/assets/files/doc/c/cl%20-%20co/commercial%20transfer%20agreement%20model%203%20september%202010%20v3.doc>

For Voluntary Aided or Foundation Schools

8. Pensions

- 8.1 The parties acknowledge that the Academy is a “scheme employer” for the purposes of the Local Government Pension Scheme (Administration) Regulations 2008 (“the LGPS Regulations” which expression shall include any regulations amending or replacing the regulations from time to time) and that the LGPS Regulations shall apply to the Company (as the person carrying on the business of the Academy).
- 8.2 The parties acknowledge that the Academy is an “employer” for the purposes of the Teachers’ Pension Scheme Regulations 1997 SI 1997/3001 (“the TPS Regulations” which expression shall include any regulations amending or replacing the regulations from time to time) and that the TPS Regulations shall apply to the Company (as the person carrying on the business of the Academy).
- 8.3 The Company acknowledges that the Eligible Employees shall be, or as the case may be, remain eligible for membership of the LGPS or the TPS (as the case may be) while employed at the Academy following the Transfer Date subject to the terms of the LGPS Regulations and the TPS Regulations.
- 8.4 The Company 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.
- 8.5 The Company shall be responsible for all employer contributions payable to the LGPS and the TPS in respect of the Eligible Employees and any other sum due to the LGPS and the TPS in respect of the Eligible Employees.
- 8.6 The Company shall:
 - 8.6.1 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any of the Eligible Employees;

- 8.6.2 promptly provide to the Council such documents and information which the Council may reasonably request in advance of any onward transfer of any person engaged or employed by the Company; and
- 8.6.3 fully co-operate with the reasonable requests of the Council relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Company.

Or

For Voluntary Controlled or Community Schools

13. Pensions

- 13.1 The parties acknowledge that the Academy is a “scheme employer” for the purposes of the Local Government Pension Scheme (Administration) Regulations 2008 (“the LGPS Regulations” which expression shall include any regulations amending or replacing the regulations from time to time) and that the LGPS Regulations shall apply to the Company (as the person carrying on the business of the Academy).
- 13.2 The parties acknowledge that the Academy is an “employer” for the purposes of the Teachers’ Pension Scheme Regulations 1997 SI 1997/3001 (“the TPS Regulations” which expression shall include any regulations amending or replacing the regulations from time to time) and that the TPS Regulations shall apply to the Company (as the person carrying on the business of the Academy).
- 13.3 The Company acknowledges that the Eligible Employees shall be, or as the case may be, remain eligible for membership of the LGPS or the TPS (as the case may be) while employed at the Academy following the Transfer Date subject to the terms of the LGPS Regulations and the TPS Regulations.
- 13.4 The Company 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.
- 13.5 The Company shall be responsible for all employer contributions payable to the LGPS and the TPS in respect of the Eligible Employees and any other sum due to the LGPS and the TPS in respect of the Eligible Employees.
- 13.6 The Company shall:
 - 13.6.1 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any of the Eligible Employees;

- 13.6.2 promptly provide to the Council such documents and information which the Council may reasonably request in advance of any onward transfer of any person engaged or employed by the Company; and
- 13.6.3 fully co-operate with the reasonable requests of the Council relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Company.

Annex B

Model Funding Agreement for Free Schools

<http://www.education.gov.uk/schools/leadership/typesofschools/freeschools/a0074737/free-schools-model-funding-agreement>

<http://media.education.gov.uk/assets/files/doc/f/free%20schools%20model%20funding%20agreement.doc>

- 21) The Academy Trust shall ensure that all employees at the Academy other than teachers have access to the Local Government Pension Scheme or to a scheme with comparable pension benefit.

Annex C

Local Government Pensions Scheme – DfE briefing note

<http://www.education.gov.uk/schools/leadership/typesofschools/academies/beinganacademy/b0061866/supporting-documents/local-government-pensions-scheme>

<http://media.education.gov.uk/assets/files/pdf/l/local%20government%20pensions%20scheme%20guidance.pdf>

1. Non-teaching staff in a maintained school converting to academy status are likely to belong to the Local Government Pension Scheme (LGPS) and have their pension dealt with by the administering authority applicable to schools in that Local Authority (LA). The pensions authority is sometimes the same local authority as that maintaining the school, but in London there is a separate pensions authority, and in areas affected by local government reorganisation there is often a lead authority which acts as pensions authority for several LAs. When a school is about to convert to academy status, the relevant pensions authority should be contacted at the earliest possible stage.

2. Academies are separate scheme employers under the LGPS. Academies are 'scheduled body' employers, being listed in Part 1 of Schedule 2 to the

LGPS Administration Regulations 2008 [SI2008/239] (as amended). They are not 'admitted bodies'.

3. Academies' funding agreements require them to offer LGPS membership to all non-teaching staff. Where maintained schools apply to convert to Academies under section 3 of the Academies Act 2010 and an Academy order is made under section 4, those existing staff who are already members of the LGPS by virtue of the Administration Regulations would not be affected by the conversion. Their membership of the LGPS would continue unaffected. After conversion, new non-teaching staff will be eligible to join the LGPS and will be automatically enrolled in the Scheme when employed, but will have the option to opt out of the Scheme if he or she gives notice within three months. It is also open to an Academy to pay contributions into private pension schemes, but this normally happens only if an academy was previously an independent school and some staff wish to remain in the private scheme.

4. The pensions authority should be asked for a calculation of the employer contribution rate for the academy. The actuarial assessment will be done by the LGPS administering authority's Fund actuary but the school may wish to have their own assessment performed by an independent actuary. The employer contribution rate will be calculated on the basis of the academy's staff profile and relates only to the academy, whereas nearly all maintained schools in an LA pay the same pooled rate. This means the rate can be higher than the rate which applied to the school when maintained. There is likely to be a charge for the actuarial calculation.

5. Unlike the Teachers Pension Scheme (TPS), LGPS is a funded scheme and can be in surplus or deficit according to investment performance. Most pension funds are currently managing a deficit, and the deficit in respect of pensionable service prior to conversion transfers from the LA to the academy through the transfer agreement signed prior to conversion. The actuarial calculation of the employer contribution rate will take into account the amount needed to pay off any past service deficit and meet future accruals over a specified period, which is normally taken to be 20 years for Academies, although it is for the actuary to take a view on this.

6. Whatever arrangements apply currently for remitting contributions as a maintained school, the academy will itself be responsible for remitting employer and employee contributions to the pensions authority, although a payroll provider may do this on its behalf. The LA may itself be the payroll provider if the academy decides to use its services.

7. If there is a deficit in the relevant pension fund, the Charities Statement of Recommended Practice (SORP) requires that the academy's statutory accounts show the deficit as a liability in the balance sheet. The total deficit can be substantial. However, the Charity Commission has advised that this liability, even if it exceeds the academy's assets, does not mean that the academy is trading while insolvent, because the deficit is being reduced by the contributions made, using the grant payable to the academy. See the advice at

http://www.charitycommission.gov.uk/Charity_requirements_guidance/Charity_governance/Managing_resources/pensions.aspx#2

especially paragraphs 2 and 3.

Conclusion

8. When a school is converting, it is therefore vital to obtain details of the pension authority contacts as quickly as possible (usually from the HR/pay department of the maintaining LA), to ensure that staffing information required by the pension authority's actuary can be supplied by the school or the maintaining authority, and to ensure that the implications for the academy have been fully discussed with the pensions authority.

DfE

August 2010

Annex D

Will academies have to take on local government pension schemes' liabilities?

<http://www.education.gov.uk/schools/leadership/typesofschools/academies/academiesfaq/a0066022/funding-land-and-capital/#faq4>

If a pension fund is managing a deficit then this transfers from the LA to the academy. However, the Charity Commission has advised that this liability does not mean the academy is trading while insolvent, because the deficit is being reduced by the contribution made.

We are currently reviewing these arrangements with the Department for Communities and Local Government and will update the website if and when any changes are planned.

Annex E

Guidance for schools becoming academies – 7 April

<http://www.education.gov.uk/schools/leadership/typesofschools/academies/becominganacademy/a0061257/how-to-become-an-academy>

<http://media.education.gov.uk/assets/files/doc/g/guidance%20for%20schools%20becoming%20academies%20%20%207%20april.doc>

Transfer of contracts and licences

4.6 Schools will need to consider their position in relation to the contracts they (i.e. the Governing Body) may hold with external suppliers, for such

services as catering, cleaning, security, and ICT products and services. If you wish to maintain a contract with an existing supplier, you will need to discuss with the supplier how it could be transferred to the Academy Trust. Contractors are unlikely to object to the transfer as it allows them to retain the business and most contracts will, in any case, contain an assignment clause, permitting its transfer to a new entity.

4.7 Decisions will also need to be made about services currently provided by or bought from the local authority, which the Academy might wish to obtain elsewhere.

4.8 Decisions will also be needed about contracts, if applicable, between the local authority and external suppliers. Does the Academy Trust wish these to be transferred by the local authority to the Academy Trust? If so, then these should be mentioned in any agreement reached with the local authority relating to the transfer of assets/property of the local authority.