

Academies and the Local Government Pension Scheme

Consultation on Options for Pooling

Introduction

1. Under the Local Government Pension Scheme (Administration) Regulations 2008, the proprietor of an Academy School is a Scheme employer within the Local Government Pension Scheme (LGPS). All non-teaching staff employed by Academy Trusts are automatically eligible for membership of the LGPS, and new staff with contracts over 3 months should be enrolled into the scheme unless they complete the opt out process.
2. The Regulations further state that the employees of a proprietor of an Academy will belong to the Fund maintained by the administering authority within whose local government area the relevant Academy is located. Free Schools run by Academy Trusts are also scheme employers within the LGPS, and will belong to the Fund in which they are physically located. Where an employer would be forced to contribute to more than one fund, they can apply to the Secretary of State for Communities and Local Government for a direction to substitute a single fund for all employees.
3. Under the 2008 Regulations, each Academy Trust is a scheme employer in its own right, and unless determined otherwise, will have its own employer contribution rate, calculated by the Fund Actuary. In undertaking a Fund Valuation to determine employer contribution rates, the Fund Actuary must have regard to the Fund's Funding Strategy Statement. The Funding Strategy Statement in turn must set out the Fund's approach to pooling scheme employers for the purposes of the valuation. In setting and amending the Funding Strategy Statement, the Fund must consult all key stakeholders, although the final decision on pooling rests with the Administering Authority.
4. All Academy schools previously maintained by Oxfordshire County Council, and Academy Trusts running Free Schools located within Oxfordshire are scheme employers within the Oxfordshire LGPS Fund. The Funding Strategy Statement has not been amended since the growth in academy numbers under the Academies Act 2010, the Pension Fund Committee previously determining to delay any decision until there were sufficient numbers of academies to allow for a meaningful consultation. **As such, all academies within Oxfordshire remain as standalone employers for the purposes of the Fund Valuation, have their own individual employer contribution, and are liable for all future pension costs.**
5. Given the growth in numbers of Academies within Oxfordshire during 2012/13, and the concerns being expressed by some academies about their pension risks

and potential liabilities, the Pension Fund Committee determined at its meeting on 7 December 2012 to undertake a consultation exercise on the options for pooling and to consider any changes to the current Funding Strategy Statement at their meeting on 8 March 2013. This timescale will allow any changes to be taken into account by the Actuary for the next formal Fund Valuation, to be undertaken as at 31 March 2013.

6. This consultation paper sets out the key issues for consideration, and invites feedback from interested stakeholders. This feedback needs to be received by 22 February 2013 to enable the Pension Fund Committee to consider the views expressed in reaching their determination.

The benefits (and costs) of pooling

7. One of the statutory objectives of the Fund Valuation process is to maintain as near stable employer contribution rates as possible. Contribution rates are determined in relation to the change in asset values and pension liabilities, as well as any change in the financial assumptions used by the Actuary.
8. Changes in asset values and actuarial assumptions apply equally to all employers within the Fund. Changes in pension liabilities though vary by employer, depending on the pay and service of the employees, the length pensions are in payment, and the pattern of ill-health retirements amongst other factors. It should be noted that in the case of other early retirements, whether as a result of redundancy, flexible retirement or employer/employee choice, any additional pension liabilities are met by the employer/employee at the time of retirement as a separate charge (which can be phased over an agreed period of no more than 5 years).
9. Where employee numbers are small, there is an increased risk that staff turnover can lead to a significant change in staff profile over the 3 year period between valuations, and therefore a significant variation in employer contribution rates (e.g. one or two younger staff being replaced by older, long serving LGPS members). Similarly, pensioners living longer (or shorter) than assumed at the time of the valuation can have an impact where overall numbers are small.
10. Of much greater risk is a single ill-health retirement at tier 1, whereby the employer needs to fund the additional costs of making the employee's pension up to the level they would have received had they worked to their normal retirement age. Where the employee retires due to ill-health at an early age, the additional costs of making up their pension and paying it early can be significant.
11. By way of illustration, if an employee was forced to retire early at the age of 35, the additional costs chargeable to the employer range from £250,000 (for a

teaching assistant on c£25,000, to £400,000 for an office Manager on c£40,000 and to £750,000 for a finance director on £70,000. Even when the early retirement is later, the costs can be considerable, with the equivalent costs for an early retirement at the age of 50 ranging from £165,000 to £500,000.

12. Where employers are pooled for valuation purposes, the impact of a small number of ill-health retirements are shared, and costs spread across all pooled employers. Similarly, in a wider group of employees, the average age and service profile is less likely to vary significantly under normal staff turnover. Pooling therefore enables a group of smaller employers to spread those risks largely outside their control, and therefore maintain as near stable employer contribution rates as possible.
13. As well as sharing the uncontrolled risks associated with scheme membership, pooling will share the costs/savings which are directly under the control of the employer. The most significant issue here for academies is the ability for each Academy to set its own terms and conditions for its staff. Under the current final salary scheme, any decision to award additional pay to scheme members increases not only their future pension liability, but increases the pension benefit of all previous pension service the scheme member has linked to their current pension record.
14. Where a pool is established where the individual members of the pool are free to determine their own policies, and staff terms and conditions, employers can be required to bear a share of costs resulting directly from the decisions of others within the pool. Similarly, employers are able to make decisions in the knowledge that they do not bear the full consequences in terms of pension liabilities.
15. For the Fund as a whole, there are potential benefits of pooling small employers, to ensure no employer is driven out of business by an unaffordable increase in employer contribution e.g. following a high cost ill-health retirement. Where an employer ceases to exist leaving a pension liability, this will be picked up by the Fund as a whole. To reduce the risk to all employers within a Fund, the Administering Authority can seek to establish pooling arrangements, so that risks are shared. The Oxfordshire Fund currently has a pooled arrangement for small admitted bodies, and a separate pooled arrangement for small scheduled bodies.
16. The County Council and the City Council have also set up pooled arrangements to pool pension risks with their contractors, following a TUPE transfer of staff. In these cases, the pension risk has not been passed across to the new contractors, although provision in the service contracts makes the contractor liable for any pension costs arising directly from their actions/inactions (i.e. the costs of ill-

health retirements are pooled, but the contractor remains responsible for costs associated with pay awards above the Council's own pay policy).

Options for Pooling

17. The Administering Authority has previously considered the option to enable academy schools to be pooled with the County Council as their former maintaining authority. This followed the publication of a joint letter from the Secretaries of State for Education and Communities & Local Government which supported the approach.
18. At the time the issue was considered there were insufficient numbers of Academies schools in Oxfordshire for a representative consultation exercise. The Administering Authority did consult the County Council, and the Cabinet responded on behalf of the Council against the option. The main argument raised by the Cabinet was the fact that as the number of Academy schools in Oxfordshire increased, the County Council's own contribution rate would become increasingly influenced by the decisions of the individual Academy Trusts. N.B. Academies and maintained schools make up over 40% of the total employer contributions of the County Council and its former maintained schools.
19. The Administering Authority supported the position presented by the Cabinet, and determined not to pool the Oxfordshire academies with the County Council. In light of the reduction of the County Council's responsibility for maintaining school provision and the ability of each Academy Trust to set their own terms and conditions, it was deemed inappropriate for the academies to be pooled with the County Council. The potential for schools not previously maintained by Oxfordshire County Council to join the Oxfordshire LGPS Fund, whether through Secretary of State Direction or the growth in Free Schools, would further suggest pooling the academies with the County Council to be inappropriate.
20. If academies are not to be pooled with the County Council, there are a number of alternative options including:
 - A single pool to include all academies
 - A single pool to include all academies below a certain size (current pools are based on 50 employees or fewer), with the option for larger academies to opt in.
 - A single pool open to all academies based on a one-off option to join
 - Creation of a series of pools. These could be based on Academy sponsors, school partnerships etc.
21. The option to include all academies in a single pool has the advantage of simplicity, and provides the greatest degree of protection for individual academies

against the risk of an extreme pension cost. Apart from the general downside of pooling, this option also involves the compulsory pooling of those larger academies which would be deemed to be of sufficient size to stand alone.

22. The second option seeks therefore to balance the need to protect the smaller academies against the risk of significant volatility in their future employer contribution rate, whilst allowing those Academies large enough to manage their own risk to do so. Whilst academies deemed too small to manage their own risk would be automatically placed in the pool, the option could be retained for larger academies to join the pool if they so wished. It should be noted that any option to join a pool would be a permanent decision to ensure the stability of the pool and its contribution rate.
23. The third option retains the right for all academies to make their own decision whether to join a pool or not (though once the decision is made to join the pool it becomes binding to ensure stability of the pool and its contribution rate). Clearly the success of this option in spreading risk will depend on the numbers of academies exercising their right to join the pool. The Administering Authority would need to consider its position in the event that the smaller academies choose not to join the pool, and the potential risks to the Fund as a whole of any subsequent failure to meet pension liabilities.
24. The fourth option of creating multiple pools based around a common factor seeks to reduce the variability between the decisions made by individual Academy Trusts and therefore the main disadvantage of pooling. The potential problems with such an option are around the lack of transparency over which pool an individual academy should join (e.g. should it join a partnership pool, or a sponsor pool where both options exist) and the risk that some academies may be left with no pool to join. The latter risk can be mitigated by combining this option with one of the previous options above. This option also carries the risk that if not all schools within any potential pool convert to academy status at the same time, the pool may not initially be of sufficient size to spread the risk effectively.
25. In determining the way forward, it should be noted that the final decision lies with the Administering Authority, and that the Administering Authority does have the right to pool employers. In reaching its determination, the Administering Authority must have regard to the views of key stakeholders, and specifically welcomes the views on the questions set out in the annex.
26. The Pension Fund Committee meeting on 8 March 2013 will consider all responses to the consultation questions, as well as any overall comments received as part of this consultation exercise. It will then determine what changes if any to make to the Funding Strategy Statement, which will form the

basis for the 2013 Valuation, and therefore the calculation of employer contribution rates effective from 1 April 2014.

27. All responses should be sent to Sean Collins, Service Manager (Pensions), Oxfordshire County Council, Unipart House, Garsington Road, Oxford. OX4 2GQ, or by email to sean.collins@oxfordshire.gov.uk. All responses received by 22 February 2013 will be summarised and reported to the Committee. It would be helpful if all responses make clear on whose behalf the response is made, so that the Committee is clear the extent to which the responses are representative of the various stakeholders involved, and whether responses differ between stakeholders e.g. are views consistent between schools of irrespective of size, irrespective of sponsorship arrangements etc.

28. A summary of all responses made will be publicly available, although individual respondees will not be identified.

Sean Collins

Service Manager (Pensions)

9 January 2013

Annex 1 Consultation Questions

Responses are invited on the specific consultation questions included below. General comments related to the question of pooling arrangements are also welcome. It would be helpful if all responses include information on whose behalf the response is made, which would enable further analysis of the responses and in particular, any characteristics leading to key differences of views.

Please submit all responses to Sean Collins, Service Manager (Pensions), Oxfordshire County Council, Unipart House, Garsington Road, Oxford. OX4 2GQ, or by email to sean.collins@oxfordshire.gov.uk to be received by 22 February 2013.

Details of Organisation making Response

1. Organisation on whose behalf response has been submitted.
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2. Name and Contact Details in Case of Query
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3. If an Academy sponsor, please provide the number of Academies sponsored (or potentially to be sponsored) in Oxfordshire (plus number if any sponsored outside of Oxfordshire)
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4. If response made on behalf of a school (or specific group of schools), please provide the number of current LGPS members within the school. N.B. We are not looking for an exact response here, but a broad indication of size of current pension risk, and in particular to distinguish between small employers (fewer than 50 members) and larger employers (50 plus members).
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4 If the Administering Authority determines to set up a pool for small academies, do you believe that any larger employer should have the right to make a one-off decision to join that pool?

Yes

No

Don't know

Comments

5 Do you support the establishment of a single pool into which all academies have the right to join? N.B. Although membership of this pool is not compulsory, once a decision to opt in has been made there is no option to opt back out.

Yes

No

Don't know

Comments

6 Do you support a model of multiple pools which individual academies can opt to join, or a group of academies can seek to set up a new pool? If yes, please indicate the basis on which these pools should be established e.g. a pool per sponsor, school partnerships etc.

Yes

No

Don't know

Comments

- 7 Please feel free to provide any further comments you wish the Pension Fund Committee to consider in arriving at its decision on future pooling arrangements.
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