

Pension Fund Committee- 8 March 2013 - Addendum

Agenda Item 16 – Academies and Pooling within the Oxfordshire LGPS Fund

Summary of Consultation Responses and Revised Recommendation

1. Twelve responses were received to the consultation exercise by the close of the consultation period. A summary of the bodies responding is as follows:

Secondary Academies	6
LEA Maintained Secondary	1
Primary Schools Conversion Agreed	2
Academy Sponsor	1
Schools Forum	1
Association of School & College Leaders	1

2. A summary of the responses to the 6 specific consultation responses is set out below:

	Yes	No	Don't Know
1. Should membership of a pool be compulsory for all academies?	5	6	1
2. Should membership of a pool be compulsory for all small academies?	9*	1	2
3. Where a pool is established for small academies, should there be an opt-out arrangement?	7	3	2
4. Should larger academies have the right to opt into a compulsory pool for small academies?	9	1	2
5. Should there be a single pool into which all academies have a right to join?	10	2	0
6. Do you support the option of multiple pools?	1	10	1

*includes the 5 positive responses from question 1, who were not required to answer question 2.

3. All respondents provided further comments to support their responses. A summary of these responses is as follows:
- It would not be acceptable to make membership of a pool compulsory for all academies, where alternative financial safeguards exist
 - Compulsion is only acceptable where restrictions can be placed on membership of the pool, so pool members are not forced to pay for

the actions of others i.e. schools should meet the costs of pay increases above the standard level etc.

- Compulsion is only acceptable where it is agreed to pool academies with the County Council
- The Council's decision not to support the pooling of academies with itself, is inconsistent with its support for the conversion of all schools to academy status, and the pension risk will remain a major barrier to conversion.
- Compulsion is acceptable in the case of small schools (definition not universally agreed) where the financial risks outweigh the concerns regarding compulsion.
- Exceptions to pooling should only be agreed where there are clear financial safeguards (size of school, or financial backing of Academy Trust/Sponsor)
- The financial risks are such that schools of any size should have the right to join a pool to mitigate their risk.
- The creation of multiple pools is unlikely to meet the requirement for pools to be viable/sustainable, will be difficult for individual academies to make informed choices, and will create the danger of some schools being excluded.
- The issue of pensions, and the potential financial risk needs to be better explained to all academies, and in particular to maintained schools before they make the decision to convert.

4. Even based on the limited number of consultation responses, there is no clear consensus on the way forward. Three of the responses stated a clear preference for the option to pool academies with the County Council, which was specifically excluded from the consultation, as a result of the risks to the Council's own contribution rate from the decisions of individual Academy Trusts.
5. These three responses argued that the County Council's position could be protected by having similar arrangements as those in place for the transferee admission bodies who share a contribution rate with their previous employer. Membership of the pool would require each academy to agree to retain Terms and Conditions for staff consistent with staff in maintained schools, or to meet the costs of any variations they independently agreed.
6. The position of Academies though is very different from the transferee admission bodies. For the transferee admission bodies, the funding of pension liabilities is set out in the service contract between the contractor and their previous employing authority. There is no such legal arrangement

between the County Council and an Academy, so the pension arrangements cannot be replicated.

7. The ability of an Academy Trust to set its own terms and conditions for staff is a key point made by the Department for Education in promoting the Academy model. Whilst academies may not have made any significant use of this freedom to date, the County Council is not in a position to restrict academies going forward, when the financial issues facing academies may lead to much greater consideration of changes to terms and conditions.
8. As such, it is the position of the County Council that it remains opposed to the option of pooling academies with itself. It is the County Council's position that there are alternative pooling options which appropriately mitigate the potential pension risk, such that its opposition to pooling with the Council is not inconsistent with its support for the academy programme.
9. Whilst there may not be clear consensus for a pooling model going forward, the consultation responses do indicate full support for pooling in some form. Whilst five responses did indicate support for the compulsory pooling of all academies, there was a small majority against such an option.
10. There was though greater consensus around the option of compulsory pooling for all small academies, with right to opt out if supported by appropriate financial safeguards. The right for larger academies to join such a pool was also supported by the majority of respondents.
11. Perhaps the strongest consensus was in the opposition to the option to set up multiple pools based on varying school characteristics. Such an option was seen as unduly complicated and likely to lead to fragmentation. This in turn would mean the option failed to address the overall objective of mitigating the financial risks to individual academies and the Pension Fund itself.
12. On the basis of the responses, the most appropriate way forward would therefore appear to be to establish a pool to which all small academies would be automatic members. All such academies would have the right to request an opt out, based on a financial case whereby future pension liabilities were underwritten by the Academy Trust. Approval of such an opt out request would be based on the financial standing of the Academy Trust or sponsoring organisations.
13. The position of small academies within a Multi-Academy Trust or an Umbrella Trust would need to be considered alongside the legal basis of the Trust arrangements. Where a number of small schools convert under a single Multi-Academy Trust employer, it is expected that the size of the Multi

Academy Trust will determine whether it automatically joins the small academy pool. As a single employer, all Academies within the Multi-Academy Trust would share the same contribution rate.

14. Where each academy retains separate legal status under an Umbrella Trust, consideration would need to be given to any legal guarantees provided by the Umbrella Trust, as under the Pension Regulations it is understood that each academy would still be seen as a separate employer. The arrangement may require the academies within the Umbrella Trust to be pooled for the purposes of the Pension Regulations, to enable each to share a common contribution rate.
15. To be consistent with the current definitions of a small employer within the Oxfordshire Fund, a small academy would be defined as one with 50 or less LGPS members. Given the potential risks to those larger academies, it is proposed that they would have the right to opt into the small academies pool. It should be noted that all decisions to opt into or out of the academy pool need to be on a permanent basis to ensure the stability of the pool itself, and to avoid the risks of academies gambling on membership decisions based on a short term understanding of any risks e.g. opting into the pool when faced with a clear risk of an ill-health retirement.
16. **The Committee are RECOMMENDED to amend their Funding Strategy Statement to include :**
 - a. **the requirement to the pooling of all academy schools within Oxfordshire where total LGPS membership for the employer is 50 or less;**
 - b. **the option for small academies to opt out of such a pool, subject to the approval by the Committee of a financial case whereby the future pension liability is underwritten by the Academy Trust, such opt out where agreed to be permanent;**
 - c. **the option to consider further pooling arrangements in respect of individual academy schools under a single Umbrella Trust; and**
 - d. **the option for all academy employers where scheme membership exceeds 50 employees to join the pool on a permanent basis.**