Pension Fund Committee

29 November 2023

Title	**Contribution Review**
Date of meeting	29 November 2023
Report of	Head of Pensions and Treasury, David Spreckley
Wards	All
Status	Public with accompany Appendices (Exempt) Exempt enclosures - Not for publication by virtue of paragraph 5 of Part 1 of Schedule 12A of the Local Government Act 1972 as amended (Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings)
Urgent	No
Appendices	Appendix A – Actuarial Update 30 September 2023 Appendix B (Exempt, Legal Advice. Not for publication by virtue of paragraph 5 of Part 1 of Schedule 12A of the Local Government Act as amended) Appendix C – Actuarial advice related to Contribution Review Appendix D (Exempt, Supplementary Legal Advice. Not for publication by virtue of paragraph 5 of Part 1 of Part 1 of Schedule 12A of the Local Government Act as amended)
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Summary

This report considers the Council's request to ease Pension Deficit Contributions.

In summary:

- Regulations and the Fund's own Policy appear to allow for a review to be conducted, although the Fund's Policy goes further than strictly required by regulations and introduces some uncertainty depending on how "ability to meet obligations" is interpreted
- Both legal and actuarial advice recommend that post valuation experience is not taken into account when assessing any change to contributions – in practice this may limit the scope to reduce contributions
- If the Committee are concerned over how "ability to meet obligations" should be interpreted for a tax raising body but believe the case for a review is justified, then it would be possible to amend the Fund's Policy on contribution reviews to provide for more flexibility on employer requests as part of the process
- Having considered the position, Officers recommend that a review is conducted and that, based on actuarial advice received, the Council's contribution is reduced by 8% for the period from 1 April 2024 to 31 March 2026
- This recommendation is contingent on certain safeguards being implemented as set out in Table 3 within Section 1 of this report and the Fund's Policy being amended to give clarity on what "ability to meet obligations" means for a Tax Raising body

Recommendations

Having considered the financial situation of the Council as presented by the Head of Paid Services (and through discussions within the Council more generally), legal advice, the Fund's Policy on contribution reviews and actuarial advice, the Head of Pensions and Treasury makes the following recommendation to Committee:

- Due to the financial pressures presented by the Council and its projected reduction in reserves, and subject to the points below, that the contribution rate profile is amended as per Table 2 – i.e. an 8% reduction in contribution rate during 24/25 and 25/26. To be clear, this is a profile that the Actuary would have been able to certify for the 31 March 2022 valuation without relying on post valuation experience.

This is subject to:

- The Council agreeing to implement the mitigations suggested in Table 3 of Section 1.
- That the Fund's contribution review Policy is amended to clarify what "ability to meet obligations" means in the context of a tax raising body and also to allow the Committee to review contributions in a scenario where the Committee sees fit (addressing the points in this paper under 1.20 to 1.23 and table 3 c)).

Note that the Administering Authority is required to consult on any changes to the review Policy with any persons it considers appropriate (ideally all employers in the Fund) as it forms part of the Funding Strategy Statement (FSS) and so any agreement to amend contributions would be subject to this consultation process.

1. Reasons for the Recommendations

Note on references to “Council”, “Committee” and “council” within Sections 1 and 2 of this report.

Council, with an upper case “C”, refers to Barnet Council as an employer in the Fund, but not in its function as “Administering Authority”. References to the “Committee” refers to the Council’s function as “Administering Authority” and references to “council” with a lower case “c” refers to Local Authorities and councils in general.

Why is this report needed?

1.1 The Head of Paid Services has, on behalf of the Council, made a request that, due to current financial challenges and the fact that the Pension Fund is currently in surplus, deficit contributions should be eased by £5 - £8m per annum for two years.

1.2 In context, the Council is broadly paying 9.3% towards recovering a deficit (as the Fund was 95% funded when the contribution rate was assessed) when the Actuary has recently assessed that the Funding position at 30 September 2023 was 127%. This is at the same time as the Council is experiencing a position of rapidly depleting useable reserves. The Council’s full request can be found here.

1.3 The Committee heard this request on 2 November 2023 and convened an extraordinary meeting on 29 November 2023 to respond.

1.4 This timeframe is needed as, otherwise, it would not be possible to include the easement within any budget consultation for 24/25 – the budget will be considered for consultation at the December Cabinet meeting.

What contribution rate was agreed for the Council from 1 April 2023?

1.5 In order to understand the context of the request it is important to understand what was agreed at the 31 March 2022 valuation and why (and also to understand what has happened since then). This is set out in Table 1. (next page).

Table 1. Summary of 31 March 2022 Outcome

	31 March 2022 Outcome
Assets (Total Fund)	£1,502m
Liabilities (Total Fund)	£1,573m
Deficit (Total Fund)	£71m
Employer contribution to cover benefits earned (Primary)	19.1%
Secondary rate*	9.3%
Total Employer (as a percentage of salaries)	28.4%
Minimum Rate Acceptable by Fund Actuary	27.4% *(i.e. Council overpaid relative to minimum – this was for stability reasons)*
Rate payable prior to 1 April 2023 *(Note the Rates and Adjustment certificate is set 12-months following the valuation date)*	28.9% *(i.e. from 1 April 2023 Council experienced a contribution reduction of 0.5%)*

*Under Hymans' methodology, the Secondary Rate broadly equates to deficit contributions.

What is the current funding position?

1.6 The Fund Actuary has calculated the Funding Level as 127% at 30 September 2023 – see actuarial updated included as Appendix A. Higher than expected inflation is expected to cause a drag on this funding level over the period to the next valuation.

1.7 The primary driver for this change is higher real long-term interest rates (the 40 year Index Linked yield increased from negative 1.8% at 31 March 2022 to positive 1.3% at 30 September 2023) combined with asset values remaining relatively steady. Actuarial liability values are correlated with interest rates, when interest rates go up liabilities go down because with higher interest rates more investment return is expected to be received on assets held. Very roughly, a fall in interest rates by 1% and a reduction in assets by around 10% could unwind the surplus position calculated at 30 September 2023.

1.8 Note that action was taken over the summer to reduce the Fund's growth exposure from 50% to 30% of total allocation and, at the same time, increase the Fund's income exposure from 50% to 70% i.e. a significant step was taken to consolidate the surplus and the Fund's allocation to more stable "income" assets is now likely to be amongst the highest of any LGPS.

1.9 The Council has never made a request of this nature before and, indeed, prior to amendments to regulations in 2020, there would not have been a legal pathway to consider the request. Therefore, officers have taken specialist legal and actuarial advice to consider the request.

1.10 This paper sets out:

- The key points to the legal analysis
- The Fund's Policy on contribution reviews
- A consideration of what the reference within our Policy of "change in ability to meet obligations" means (which is a key consideration for the Committee in this context)
- Actuarial analysis
- Consultation and engagement considerations
- Other wider considerations
- Officer's recommendation plus other options also considered.

1.11 The legal and actuarial advice received in relation to this issue are included as Appendices B and C. Following initial comment on this paper by Committee members officers have sought further supplementary legal advice and will be included as an exempt Appendix. Note that the Legal Advice received is privileged and so is exempt under Schedule 12A of the Local Government Act 1972 (as amended).

Process for undertaking a review

1.12 There is broadly a two-stage process for conducting a review of contributions in-between valuations:

- The first stage is for either the Administering Authority (or an employer) to initiate the request;
- The second stage is for the Administering Authority to conduct the review with regard to the views of the Fund Actuary

If there are insufficient grounds for conducting a review in the first place, then the process would not move beyond stage 1.

1.13 The Fund has a Policy on how to conduct a review if requested by an employer. The key condition to be met in order to take forward contribution review is summarised under 1.16 b) below. If the Committee do not feel this condition has been met, then it would not be able to conduct a review in accordance with the Policy (unless it amended its Policy).

1.14 To the extent a review is conducted, the Fund Actuary would be required to reflect any bounds placed on them by regulations. A key bound (around allowing for post valuation experience) is summarised under 1.16 a).

Legal Advice

1.15 The legal advice has considered the Fund's Policy together with the Regulatory Framework, including both DHULC statutory guidance and the non-statutory guidance published by the Scheme Advisory Board.

1.16 The key conclusions of the legal advice, which is attached in full as an exempt appendix under Appendices B and D, are that:

a. Whilst not definitive, the Regulations appear to imply that market conditions at the last valuation should be used when recalculating contributions (i.e. it is unclear, under the Regulations, whether post valuation experience can be allowed for. Our legal advisors' view is that if the intention was that post valuation experience could be allowed for then the regulations would have been explicit); and

b. That to satisfy the Fund's own Policy on contribution reviews, in order to conduct a review requested by the Council as a scheme employer, the request must be triggered by a significant change in its liabilities; and/or a significant change in the ability of the Council to meet its obligations to the Fund. Of the changes listed in the Policy (which are not exhaustive), the following appear to be the most relevant to the Council:
    - A change in its immediate financial strength; and/or
    - A change to its longer-term financial outlook.

1.17 The implications of 1.16 b) are considered in paragraphs 1.19 to 1.31 below.

1.18 Note the legal advice confirms that the requirement under 1.16 b) above is stronger than the strict regulatory position under Regulation 64A of the LGPS 2013 regulations, which only requires an employer to ask for a review and for a fund's FSS to set out its Policy for conducting reviews (both these conditions have been met) – i.e. if 1.16 b) above presents a practical barrier to conducting the review, but that the Committee are sympathetic to the request more generally, it may be possible to amend the Policy within the bounds of the Regulations – this is considered further under 1.29 to 1.31 below. This would not remove the need for the Committee, representing the Administering Authority, to still require strong reasons from the Council to accept such a request.

Financial Strength of a council

1.19 The question of "financial strength", as it applies to a tax raising body such as a Local Authority is complex and nuanced. The Fund's contribution review Policy, as noted above under 1.16 b), allows a contribution review if the employer can demonstrate either, amongst other things not relevant to this request, "a change in its immediate financial strength and / or change to longer-term financial outlook". Within the Policy, these events are cited as examples of a broader condition which is "a significant change in the ability of the employer to meets its obligations to the Fund".

Meaning of "obligations"

1.20 Clearly, a council must meet its statutory obligations, however, this does not mean a council cannot face a difficult financial situation where it would be prudent to review how any statutory obligations are met. For example, the Council is facing immediate financial pressures of a projected £26m overspend for 23/24 and a savings gap of around £100m over the next 6-years. The Council is also experiencing a "changed" longer-term financial outlook, demonstrated by lower projected level reserves relative to 22/23 levels. All things being equal, this now means the Council will have a shallower range to absorb future financial shocks without relying on increasing taxes or central government support.

1.21 Our legal advisors have advised that where the Policy refers to an employer request being triggered by a 'significant change in the ability of the Scheme employer to meet its obligations to the Fund', a Scheme Employer's "obligation" are wide and varied under the Regulations. However, in this context, the primary obligation is the requirement to pay employer contributions in accordance with the rates and adjustments certificate rather than to meet benefit payments (as meeting benefit payments is a Fund obligation not an employer obligation as LGPS benefits are guaranteed by the statutory regulations).

1.22 Our legal advisors have further advised that the Policy, as currently drafted, requires a significant change in an employer's ability to meet its obligations to the Fund (rather than an absolute inability to meet its obligations).

1.23 This means that "ability to meet obligations" should be read as the requirement to pay contributions and a change in ability to pay should not be inferred as an inability of the Council to pay. More detailed explanation of this can be found in a supplementary legal paper (exempt item Appendix D.)

A council's need to operate to a balanced budget

1.24 Note that councils are not permitted to borrow to meet revenue expenditure and so if reserves drop significantly the only options to a council to manage its budget would be to reduce service expenditure, increase fees / charges and / or increase taxes. The ability to do this in the short-term may be limited and have negative consequences on residents and users of services.

1.25 Viewed through this lens, the Committee may consider the Council's ability to meet its obligations (i.e. contributions in this context) within a balanced budget to have changed significantly in the short-term – the Council has indirectly asked the Committee to prioritise utilising cash to useable reserves over funding a pension deficit which, the Fund Actuary has estimated as at 30 September 2023, no longer existed – this doesn't seem like an unreasonable request in the broader context and spirit of the contribution review Policy and, clearly, from a tax payer perspective, it may not be appropriate to actively overfund the Pension Fund over the period 24/25 to 25/26, whilst relying on useable reserves to meet revenue expenditure.

1.26 In terms of further context on this point, we are aware of another council, who had entered into a S114 situation, reviewed its Rates & Adjustment certificate – i.e. it took steps to reshape its obligation towards its Pension Fund. There is no suggestion that the council in question was not able to meet its obligation to pay contributions, but, clearly, in a S114 situation, its ability to meet its obligation had changed and so a decision was taken to change the pace at which it met its pension obligations (contributions).

1.27 To be clear, there is no suggestion from the Council that a S114 situation is imminent or even likely. However, any responsible council would want to take pre-emptive steps to improve financial resilience to mitigate the likelihood that a S114 notice would be necessary in the future.

PFC item considering 2021 Review Policy

1.28 Officers have revisited the Pension Fund Committee paper, which introduced the contribution review Policy in 2021 (linked), and there does not appear to be any specific reference to how "change in ability of the employer to meet obligations" should be interpreted in a scenario involving a request being made by the Council. It is very likely that a scenario where the Council is the employer to request a review was not considered in detail and so was not well captured by the Policy. On the other hand, if, at the time, the Committee felt that Council should not be captured by its own Policy, then it could have made this explicit, but did not do so.

Reviewing the Policy to give clarity

1.29 As noted under 1.18 our legal advisors have confirmed that in referencing a 'change in the ability of the Scheme employer to meet its obligations' when an employer makes a request, the Policy goes further than what is strictly required by either the Regulations or the SAB guidance.

1.30 However, if the Committee feels that its own Policy's reference to the meaning of "obligations" is unclear, then it may be sensible to amend the Policy to clarify the position in a scenario where the request is made by a tax-raising body.

1.31 Our legal advisors have confirmed that this would be an acceptable approach – i.e. for the Committee to agree to the request for a review and at the same time ask officers to clarify the Policy for a situation when the request is made by a tax-raising body. The Committee would, of course, still need to have strong reasons to accept such a request. More details of the legal framework for an LGPS fund to amend its contribution review Policy can be found in a supplementary legal paper (exempt item Appendix D.)

Actuarial Impact

1.32 At 31 March 2022 the Actuary calculated that, using the principles set out in the Fund's Funding Strategy Statement, an employer contribution rate of 27.4% would be sufficient, at a 70% probability of certainty, to meet all accruing benefits and ensure the Fund was at least 100% funded within a 17 year time-frame.

1.33 This rate was 1.5% lower than the 28.9% rate that the Council was paying at the time. Rather than taking the full reduction, the Council then decided to reduce its rate to 28.4% of salaries (i.e. reduce by 0.5% but paying 1% more than the Actuary strictly required). The rationale of this was for stability reasons and the S151 officer was able to meet this contribution requirement within a broadly balanced budget – to a degree this demonstrates the significant change in financial situation of the Council since the Rates and Adjustment Certificate was certified.

1.34 The Actuary has said that, if instructed, they could review the contribution requirement, but as per the legal advice received, would not be able to allow for post valuation experience in the calculation. This means the Actuary would need to work to the following parameters when undertaking the analysis:

- The Fund must still target to be at least 100% funded within the 17 years time horizon using the same assumptions and approach agreed by the Pension Fund Committee through 2022 valuation process;
- That the long-term rate cannot be higher than 28.4% set by the Council through the 2022 valuation process (as was the level of long-term commitment that the Council indicated it would be prepared to make towards the Fund)

1.35 Given these parameters, the Actuary has confirmed that the following contribution pattern would be possible based on financial conditions at 31 March 2022.

Table 2. Actuarial Reprofiling Calculations

Period	23/24	24/25	25/26	26 – 40
Actuary allowable rate	27.4%	27.4%	27.4%	27.4%
Primary Rate (cost of benefits)	19.1%	19.1%	19.1%	19.1%
Reprofiled rate	28.4%	20.4%	20.4%	28.4%
Implied Secondary Rate	9.3%	1.3%	1.3%	9.3%

The full actuarial analysis is provided in Appendix C.

Comment:

- The reprofiled rate would allow an 8% reduction in contributions rates (from 28.4%) in 24/25 and 25/26. Based on a Council payroll of £80m this is worth around a £6.4m reduction. Note that the maintained schools also form part of the Council's pool and so the reduction would also apply to them (around £1.6m) – therefore the total reduction in cash towards the Fund would be around £8m p.a.
- An 8% reduction would still be greater than the Primary Rate of contribution (i.e. cost of future service benefits). This means that, despite the easement, there would still be a secondary rate contribution (i.e. very importantly, the easement would not contribute to a lower projected surplus relative to the position at 30 September 2023, indeed, given a modest Secondary Rate would still be paid, it would be expected that the surplus would grow marginally)

1.36 On this basis, it would appear that implementing a meaningful reduction in contributions may be possible (albeit the Committee would not be able to apply an easement towards the £8m level requested by the Council).

Safeguards

1.37 At the Pension Fund Committee meeting the Committee made it clear to the Council that implementing appropriate safeguards would be a key and necessary condition to any agreement to review contributions. Safeguards could fall under three broad areas:

- Ensuring that the Council has not "banked" any easement in its long-term financial planning
- Protecting the Fund in a scenario where the funding level deteriorates
- Providing a mechanism to modify any easement in a scenario where the Council's financial position changes dramatically (e.g. if an increase in Central Government funding is forthcoming, or, indeed, if the financial situation of the Council deteriorates further)

1.38 Note that 'security of member benefits' is not a concern in this context. Pension benefits are statutory in nature and guaranteed by the Regulations and so, in the extreme, would need to be funded through general council revenue via raising taxes or through Central Government support. Whether or not to agree to the Council's request therefore feels more like a question of responsible budgeting and not putting the Pension Fund in a position where it is required to increase contributions significantly in the future.

1.39 The table below considers each of these in turn and suggested mitigations:

Table 3. Mitigation Suggestions

	Importance	Suggested mitigation
a) Long-term budgeting	Very important – given wider pressures, may be difficult to recover "budget" if ceded	Council demonstrates commitment by setting long-term rate of pension contributions at 28.4% within its MTFS process. Note that there would be an actuarial valuation of the Fund at 1 April 2025 with a new contribution agreement effective from 1 April 2026. Clearly, if the current funding position persists it may not be appropriate that the Council continues to pay at 28.4%. However, in a downside scenario at 1 April 2025 (i.e. funding position has deteriorated significantly from current levels), the starting point for discussions would be 28.4%, not 20.4% of pay.
b) Funding Deterioration	Important – triennial review mitigates this impact to a degree, but if funding position unwinds, Committee could be heavily criticised for allowing an easement.	In discussions with Actuary, Officers understand that "hard coding" a catch-up mechanism within the revised Rates & Adjustment certificate could be difficult from a legal / regulatory perspective. A better approach would be to rely on the Fund's contribution review Policy – however, in order to do this the Policy would need to be amended as, currently, the only criteria for review are change in liabilities (not funding) and change in financial situation of the employer. As a control, the impact of any contribution easement shall be included part of the Fund's overall monitoring of investment performance.
c) Council financial situation changes significantly	Less important than 1) and 2) given triennial valuation process, fact more than Primary Rate of contribution is being paid and that the Council will need to commit to the longer-term rate of 28.4% within the MTFS.	Suggest no formal process implemented but Council reports to PFC each 6-months on financial performance – in the first instance this could be by referencing the quarterly reports that the Council makes to Overview & Scrutiny and Cabinet.

Need to consult

1.40 At the Committee meeting on 2 November, Committee members raised an important point around consultation and acting in a transparent way.

1.41 Our legal advisors have confirmed that, in relation to the request, there is a requirement under Reg 64A to consult the Council as the scheme employer making the request, but not all employers in the Fund or other parties.

1.42 The Administering Authority could consult more widely but there is no legal reason to do so unless the FSS / Policy is being updated also.

1.43 Our legal advisors have further confirmed that to the extent the FSS/Policy is revised then there would be a requirement to consult "such persons" as the administering authority considers appropriate. The DLUHC guidance from March 2021 on FSS requirements states they expect all Fund employers to be included in any consultation on changes to the FSS relating to the new powers.

1.44 As the Contribution Review Policy forms part of the FSS, any change to the Contribution Review Policy (as referred to under 1.29 to 1.31 and table 3 c) would constitute a change to the FSS. However, to the extent the Contribution Review Policy is amended, it would only impact tax raising bodies and the Council is the only tax raising body within the Fund.

1.45 It may therefore be argued that the only party that would be impacted by any change to the Policy would be the Council. However, taking into account the views of the Committee, and legal advice received, it would be appropriate to consult with all employers in the Fund on any proposed change to the contribution Policy and so any agreement by the Committee on this issue must be subject to that consultation. Officers may also use this as an opportunity to give greater clarity within the Policy on consultation requirements for any future reviews.

1.46 Legal commentary on the impact of reviewing our Policy is provided in Appendix D.

1.47 In addition, and recognising feedback from the Committee, it would also be important to engage with other key stakeholders, including pension fund members, Unions, DHULC, GAD, and the LGA. If any contribution adjustment is agreed, then officers will implement a communication plan on this issue to relevant stakeholders.

Other considerations

Net cashflow position of the Fund

1.48 The Fund has been able to rely on contributions to meet pension outgo (i.e. not required to disinvest assets to meet benefit outgo). It is likely that if an 8% reduction in contributions is provided then the Fund would need to rely on some modest levels of investment income to meet benefit payments (c£2m p.a. or yield equivalent to 0.1% of the Fund).

1.49 This should not be a concern as the whole purpose of a funded pension scheme is to utilise its assets to meet benefit outgo. As highlighted in the July investment strategy review paper, Officers will develop a longer-term strategic plan around how contributions and income yield from assets should be utilised to meet benefit outgo whilst new contributions can be put to work in take advantage of an illiquidity premium and higher expected returns from taking a longer-term view.

Treatment of other employers

1.50 Given 1.45 above, the Committee may expect other employers (or group of employers) to make similar requests. As per its Policy, the Committee should be open to such requests, although other employers do not have the same covenant profile as the Council and different actuarial approaches apply to different employer groups. This means that the outcome of such a review applied to different employers may not be the same.

1.51 It will also be a requirement for costs associated with the requests to be met by the employer.

1.52 One very important point is that the Council (and maintained schools) operate within a separate pool to other employers within the Fund where assets are separately tracked and notionally ring-fenced. This means that the proposal does not have any financial impact on the funding level of other employer pools within the Fund.

Wider scrutiny

1.53 Whilst, we understand, other Local Authorities are investigating a reduction in contributions, Barnet is likely to be amongst the first to implement a change. The position may therefore attract scrutiny from third parties. Officers will work with the Council's communications team so any media coverage can be responded to quickly and a set of "Key Facts" are put together in order to aid any need to respond to requests.

Conflicts of interest

1.54 The Council acknowledges that, as Administering Authority, it may be placed in a position of conflict in considering this request. The Council has sought to manage this through the following protocols:

Decision making:

- The request has been made by the Head of Paid Services (not the S151 Officer), effectively representing the Council
- The response to the request has been considered and responded by the Head of Pensions and Treasury (not the S151 Officer) who has represented the interests of the Pension Fund Committee (working closely with the Chair of the Pension Fund Committee in responding to the request)

More broadly:

- Actuarial and Legal Advice has not been shared with the Head of Paid Services or S151 officer before publication of this report
- This report has been cleared by the Assistant Director for Finance not the S151 Officer

The Committee's Terms of References is linked.

Recommendation

1.55 Having considered the financial situation of the Council as presented by the Head of Paid Services (and through discussions within the Council more generally), legal advice, the Fund's Policy on contribution reviews and actuarial advice, the Head of Pensions and Treasury makes the following recommendation to Committee:

- Due to the financial pressures presented by the Council and its projected reduction in reserves, and subject to the points below, that the contribution rate profile is amended as per Table 2 – i.e. an 8% reduction in contribution rate during 24/25 and 25/26. To be clear, this is a profile that the Actuary would have been able to certify for the 31 March 2022 valuation without relying on post valuation experience.

This is subject to:

- The Council agreeing to implement the mitigations suggested in Table 3.
- That the Fund's contribution review Policy is amended to clarify what "ability to meet obligations" means in the context of a tax raising body and also to allow the Committee to review contributions in a scenario where the Committee sees fit (addressing the points in this paper under 1.20 to 1.23 and table 3 c)). Note that the Administering Authority is required to consult on any changes to the review Policy with other employers in the Fund as it forms part of the FSS and so any agreement to amend contributions would be subject to this consultation process.

1.56 Finally, given wider pressures faced within the Local Authority sector, practice in this area is likely to emerge. Officers are unaware of the exercise of this new power by other LGPS funds to date in a situation where a S114 has not been served. In forming its recommendations, Officers have taken a relatively cautious approach, specifically in relation to not allowing for post valuation experience and setting the upper bound of contributions to 28.4%. If practice, or guidance, emerges which suggest alternative approaches then Officers may wish to revisit this decision. Conversely, if practice and / or guidance emerges that suggests the approach taken by Officers is inappropriate, we may, again, need to revisit this recommendation.

2. Alternative Options Considered and Not Recommended

A summary of options considered but not recommended is provided in the table on the following page:

Option	Detail	Why not taken forward
No review conducted	This would apply if the request from the Council was not allowed under the regulations and / or the Fund's Policy.	As detailed under 1.29 to 1.31, the Policy may not be clear in a situation where the request is being made from a tax raising body. Officers, on balance, felt that the financial position presented by the Council does represent a significant change and also that there could be very negative consequences for the Council if its reserves drop to very low levels. Officers have also been given comfort from its legal advisors that "obligation" means requirement to pay contributions (rather than the requirement to pay benefits) and that a "change" in ability to pay contributions does not mean an inability to pay. Therefore, it was felt that it would be appropriate to conduct a review, but would also recommend that the criteria for "significant change in ability to meet obligations" is clarified within the Fund's Policy to includes the ability for the Council to operate statutory services within a balanced budget plus a certain level of reserves.

No contribution change after conducting a review	After considering the actuarial advice the Committee decide that no change is appropriate (even if the grounds for a request are reasonable)	Actuarial advice confirms that there is scope to provide a contribution easement within the parameters of the 2022 FSS. Whilst not allowable in the actuary's technical calculation, our legal advice has confirmed that the Committee can take into account the funding situation at the time of making the decision whilst acknowledging that this could change before the next Fund valuations in 2025. Given the significant funding improvement since the valuation date, it was felt that this option is not appropriate (as the surplus would increase whilst Council's reserves are deteriorating), which would not be prudent financial management of the Council's resources. This implies, equally, that if the Fund had experienced a reduction in funding since the valuation date it would have been less easy to agree to the request.
Easement less than 8%	The Actuary has presented 8% as the maximum – the Committee could agree to lower easement	Officers felt that agreeing to a lower easement than implied by the Actuary's calculation would be arbitrary and not consistent with the FSS. The Council's agreement to pay more than the actuary's rate reflected scenario where it was able to meet this higher contribution rate within a balanced budget, which it now cannot do.

Easement of more than 8%	It may be possible to agree to a higher easement, but this would mean adjusting the 2022 FSS and / or asking the Council to commit to a higher long-term rate than 28.4%	Officers, in consultation with the Actuary felt that this would be a more risky approach and may attract negative comment and scrutiny. This is because adjusting the actuarial aspects to the FSS may be more problematic under the Regulations and require more detailed consultation and that the Actuary felt that targeting a rate greater than 28.4% from 1 April 2026 would not be consistent with the LGPS's stabilisation principles (as well as the Rates & Adjustment certificate only covering the period to 31 March 2026, and so the Actuary would have no legal certainty that the rate would, indeed, increase beyond 28.4%)

3. Post Decision Implementation

3.1 Further legal and actuarial advice may be required before any decision can be implemented.

3.2 Implementation will also be subject to any consultation on changes to the Fund's Policy on Contribution Reviews.

4. Corporate Priorities, Performance and Other Considerations

Corporate Plan

4.1 In its original request the Council stated that the request supports Our Plan for Barnet 2023-26. Under 'Being an effective and engaged council' the priority set out is 'making the best possible use of our financial resources, now and in the future, so that we are able to continue to deliver on what matters to Barnet residents'.

Corporate Performance / Outcome Measures

4.2 Not applicable in the context of this report.

Sustainability

4.3 The recommendation would, all things being equal, help the Council retain a higher level of useable reserves which increases overall sustainability.

Corporate Parenting

4.4 Not applicable in the context of this report.

4.5 Council, in setting its budget, considers the Corporate Parenting Principles both in terms of savings and investment proposals. The councils proposal seeks to protect front line social work and services to children in care and care leavers by finding alternative savings.

Risk Management

4.6 Officers have taken extensive legal and actuarial advice to manage the risks associated with this request.

4.7 Officers have also engaged informally with the LGA and DHULC although, to be clear, neither the LGA nor DHULC have signed off on the details of this paper (nor would they be able to).

Insight

4.8 Not applicable in the context of this report.

Social Value

4.9 Not applicable in the context of this report.

5. Resource Implications (Finance and Value for Money, Procurement, Staffing, IT and Property)

5.1 Overfunding the Pension Fund whilst the Council faces significant budgetary pressures impacting its useable reserves position may not be considered an efficient use of resources.

6. Legal Implications and Constitution References

6.1 The Council's Constitution – Part 2B section 15 includes within the responsibilities of the Pension Fund Committee.

6.2 The terms of reference for the committee includes: "To have responsibility for all aspects of the governance, investment and administration of the LB Barnet Pension fund".

7. Consultation

7.1 Paragraphs 1.40 to 1.47 sets out the consultation considerations related to this Paper.

8. Equalities and Diversity

8.1 Pursuant to the Equality Act 2010, the Council is under an obligation to have due regard to eliminating unlawful discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; advancing equality of opportunity between persons who share a relevant 'protected characteristic' and those who do not share it; and fostering good relations between persons who share a relevant 'protected characteristic' and persons who do not share it. The 'protected characteristics' are: age, disability, gender reassignment, pregnancy, and maternity, race, religion or belief, sex and sexual orientation. The Council also has regard to the additional protected characteristic of marriage and civil partnership even though this does not apply to the public-sector equality duty.

8.2 The rules governing admission to and participation in the Pension Fund are in keeping with the public-sector equality duty. The Public Sector Equality Duty requires public authorities in carrying out their functions, to have due regard to the need to achieve the objectives set out under s149 of the Equality Act 2010. Good governance arrangements will benefit everyone who contributes to the fund.

9. Background Papers

9.1 Council's original request made at 2 November 2023 Pension Fund Committee meeting: Temporary Easement In Contribution

9.2 Overview and Scrutiny – 4 Sept 2023 – Q1 financial performance: (Public Pack)Q1 Financial Performance Agenda Supplement for Overview and Scrutiny Committee, 04/09/2023 19:00 (moderngov.co.uk)

9.3 Pension Fund Committee paper which introduced the contribution review Policy in 2021 (linked)