



## Pension Fund Committee

1 February 2024

<b>Title</b>	<b>Contribution Review Policy</b>
<b>Date of meeting</b>	1 February 2024
<b>Report of</b>	Head of Pensions and Treasury
<b>Wards</b>	All
<b>Status</b>	Public
<b>Urgent</b>	No
<b>Appendices</b>	Appendix A – Revised Contribution Review Policy
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### Summary

Barnet Council, facing financial challenges like many councils across the country, requested a £5-£8m annual reduction in Pension Fund deficit contributions for two years. In context, the council pays 9.3% towards recovering a pension fund deficit, but an assessment at 30 September 2023 indicated a 127% funding position.

In considering this request, protocols were introduced to manage conflicts, and legal advice prompted a review of our Contribution Review Policy (the “Policy”) as the current Policy did not appear to adequately consider a scenario where a request came from the Council as an employer.

The revised wording recognises a Local Authority may face a changing financial situation and so would wish to review how it meets its obligations while balancing public responsibilities.

Officers consulted on the revised Policy and received very limited engagement and no objections.

Therefore, Officers recommend to the Committee to formally adopting the proposed changes, giving the Committee flexibility in reviewing the Council's contribution request.

## Recommendations

Officers recommend to the Committee that the proposed changes to the Contribution Review Policy (set out in Appendix A) are formally adopted.

### 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.

#### Context

- 1.1 On the 2 November 2023, the Head of Paid Services, on behalf of the Council in its capacity as a Scheme employer, made a request that, due to current financial challenges that the Council is facing 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 last assessed as at the 31 March 2022 valuation) 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 Also of relevance, in early 2023 the Council decided to overpay its pension contributions relative to what the Fund Actuary recommended at the 31 March 2022 valuation.
- 1.4 The papers supporting this request and the Committee’s initial response can be viewed within the Public Papers for the 2 November and 29 November 2023 Pension Fund Committee meetings which can be accessed using the following link.

[Browse meetings - Pension Fund Committee \(modern.gov.co.uk\)](#)

#### Process for considering a pension contribution review

- 1.5 There are mechanisms introduced by the Local Government Pension Scheme Regulations 2013 (“Regulations”) to consider such a request and in 2021 the Pension Fund Committee introduced a Policy to inform how any such a request would be approached.
- 1.6 Clearly, a request from the Council to review its pension contributions is not a trivial matter, even when it is in a circumstance where the Council had elected to overpay contributions initially.
- 1.7 The Council therefore introduced protocols to manage conflicts associated with such a request and Officers supporting the Committee have taken both actuarial and legal advice.
- 1.8 This process led Officers to approach leading King’s Counsel to clarify certain aspects of the process and how this relates to the Fund’s Policy on contribution reviews.

## Legal advice

- 1.9 After taking extensive legal advice, including from leading Counsel, the Committee concluded that:
- The Policy introduced in 2021 imposed greater restrictions on the ability to take forward a request than required by the Regulations. The Committee felt the purpose of the restrictions were important to protect the Pension Fund but asked Officers to review the restrictions in light of Counsel's opinion.
  - The Policy does not appear to have considered the possibility of a request coming from the Council in its capacity as a Scheme employer when it was drafted. This created difficulty when considering the Council's request. The Committee therefore asked Officers to prepare a refreshed Policy to better accommodate a scenario where the request is made from the Council.
- 1.10 A key area of difficulty related to how "ability to meet obligations" should be interpreted in the context of a request being made from a Tax raising body.
- 1.11 After seeking Counsel's advice on this issue, and to give clarity over the issue raised in 1.10 above, it is proposed to clarify, within the Policy, the threshold for "meeting obligations" for a Tax Raising body as follows:

*"For the purposes of an employer review request, in particular in the case of an employer which is a local authority or other tax-raising or other publicly funded body, the Pension Fund Committee will be prepared to consider not only the employer's absolute ability to meet its obligations to the Fund, but also its ability to do so consistently with its other public responsibilities."*

- 1.12 This revised wording would allow the Committee to determine whether there has been a change in the ability to meet obligations without necessarily inferring that there is an absolute inability to meet its obligations and also recognises a council has broader responsibilities (statutory or otherwise).

## Consultation process

- 1.13 The Policy forms part of the Funding Strategy Statement and so the Committee felt it was important to consult with all employers within the Fund when considering a review.
- 1.14 A formal consultation of the Policy was launched on 11 December 2023 running to 15 January 2024. The consultation was circulated to all employers, the Pension Fund Committee, Local Pension Board and Union representatives.
- 1.15 Very limited engagement (two responses) was received through the consultation process and no objections. Questions were limited to whether employees were impacted by the change and whether maintained schools would also see a reduction to contribution rates.
- 1.16 MDX stated they had no comments and understood the rationale for the proposed changes.

## Officers' Recommendation

- 1.17 On the basis of limited comments received and no objections, Officers recommend to the Committee that the proposed changes are formally adopted. The changes adopted would allow, should the Committee feel the underlying case merits it, the Committee to consider the contribution review request from the Council.

## **2. Alternative Options Considered and Not Recommended**

- 2.1 Given the limited response to the consultation and no objections, alternative amendments to the Policy were not considered appropriate.

## **3. Post Decision Implementation**

- 3.1 The revised Policy will be uploaded to the Council's website and stakeholders will be notified of the changes.

## **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 council's 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 This review is important to the Council's request to review contribution rates.
- 5.2 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 15.1 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 No further consultation is required.

## 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 initial consideration of the request made at 2 November 2023 Pension Fund Committee meeting (29 November 2023 Pension Fund Committee meeting):  
[Agenda for Pension Fund Committee on Wednesday 29th November, 2023, 7.00 pm \(modern.gov.co.uk\)](#)
- 9.2 Council's original request made at 2 November 2023 Pension Fund Committee meeting:  
[Temporary Easement In Contribution](#)
- 9.3 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 \(modern.gov.co.uk\)](#)
- 9.4 Pension Fund Committee paper which introduced the contribution review Policy in 2021 ([linked](#))