

Non-Executive Report of the: PENSIONS BOARD 23 SEPTEMBER 2020	 TOWER HAMLET
Report of Neville Murton, Corporate Director, Resources	Classification: Unrestricted
Admission Employer Exit Credit Policy	

Originating Officer(s)	Miriam Adams, Pensions & Investments Manager
Wards affected	All Wards

Introduction

This Admission Employer Exit Credit Policy demonstrates the steps the Fund will consider such that a consistent approach is taken between employers over time and the interests of all parties, including any employer providing a guarantee, are taken into consideration.

Recommendations:

The Board is asked to

- note the admission employer exit credit policy agreed in principle by the Pensions Committee pending finalised guidance from MHCLG.

1. REASONS FOR THE DECISIONS

- 1.1 To inform the Board of the recently approve policy and keep the Board updated on recent and key developments in the LGPS. The policy was approved by the Pensions Committee during their July meeting and became immediately applicable to existing employers who joined the Fund before 14 May 2018 who are subject to a risk sharing arrangement as per point 3 in the policy.
- 1.2 This policy also applies to any pre-14 May 2018 admission which has been extended or 'rolled over' on the same terms that applied on joining the Fund to ensure a consistent approach is take between employers over time and the interests of all parties, including any employer providing a guarantee, are taken into account.

2. ALTERNATIVE OPTIONS

- 2.1 There are no alternative options to this report.

3. DETAILS OF REPORT

- 3.1 In light of concerns raised in the consultation document, the government has amended its proposals and published the LGPS (Amendment Regulations 2020) (the 'Amending Regulations').
- 3.2 Exit credits were first introduced to the LGPS in the Local Government Pension Scheme (LGPS) (Amendment) Regulation 2018 and came into effect from 14 May 2018. This brought the ability for LGPS Funds to pay money to an employer exiting the LGPS where a surplus was revealed on cessation. Although this gave Funds more flexibility in dealing with employers participation in the Fund, one of the key issues in practice was that it also gave rise to the potential for employers to receive an exit credit without taken on any pensions risk (i.e. the financial risk remained the responsibility of another employer).
- 3.3 Previously when an employer leaves the Fund, the Actuary will calculate their cessation position on a minimum risk basis unless it can be shown that there is another employer in the Fund who will take on financial responsibilities in the future. If the Fund is satisfied that there is another employer willing to take on responsibility for the liabilities, for example a guarantor then the cessation position may be calculated on the ongoing/long term funding basis. If there is no other employer to take on responsibility for the liabilities, then the exit credit policy will apply.
- 3.4 The updated Regulations while still requiring the Actuary to carry out an exit valuation, place the responsibility for determining the level of any exit credit on the Administering Authority having considered various factors.

The new amendments addressed short falls of the previous regulations by addressing the fact that contractors were getting surpluses that was in some cases more than the total contributions paid in the period or surpluses which was due to Fund investment performance

- 3.5 The new amendments for exit credits include:
- Administering authorities will be able to determine, at their discretion, the amount of any exit credit due, having regard to any relevant consideration
 - The period in which an exit credit (when due) is payable will be extended from three to six months. This will help offer administering authorities a more appropriate length of time for managing the cessation process and arranging any payment.
- 3.6 The effect of the changes has been backdated to 14 May 2018 (when exit credits were introduced) – unless an exit credit has already been paid, in which case the old rules apply. Making legislation with retrospective effect is unusual this gives room for possible challenge from employers.

A review of employers in the Fund likely to come up to exit is ongoing to enable the Fund to establish whether there might be an exit credit (or indeed an exit debit event).

- 3.7 In the Ministry of Housing Communities & Local Government (MHCLG) partial response to the consultation on changes to the Local Valuation Cycle and the Management of Employer Risk any disputes in respect of the Fund's determination should first be routed through the Fund's internal dispute resolution process (IDRP). It is also possible for disagreements to be escalated to the pensions Ombudsman if the IDRP is not successful in settling the matters. Advice is being taken to review the possibility of amending the current IDRP process which applies to individual disputes or establishing a separate IDRP process for non-individual disputes.
- 3.7 Updated Funding Strategy Statement will be presented to the Committee at the earliest time once MHCLG clarification is received.
- 3.9 The Fund will seek legal and actuarial advice when making each final exit credit determination.

4. FINANCIAL IMPLICATIONS

- 4.1 There are no direct financial implications. However, the outcomes could have financial implications for the Fund.

5. LEGAL COMMENTS

- 5.1 There are no immediate legal implications arising from this policy. If in due course an employer claims an exit credit and disputes the administering authority's calculation of that credit, they would need to raise this via the Internal Dispute Resolution Process (IDRP). As an Administering Authority of LGPS pension funds, the Council must ensure adherence to the new regulations when making exit credit determinations.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 The employer's contribution is a significant element of the Council's budget and consequently any improvement in costs management will reduce the contribution and increase the funds available for other corporate priorities.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The effective and efficient management of scheme costs is key to the achievement of the funding strategy objectives and this is considered to be a good decision which can result in greater cost savings to the fund.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 There is no direct Sustainable Action for A Greener Environment implication arising from this report.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 The rigorous robust management of LBTH Pension Fund results in better quicker and more effective decision making which can lead to better Fund performance and reduction in the contribution required from the Council towards the Fund.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 There are no crime and disorder reduction implications arising from this report.
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Linked Reports, Appendices and Background Documents

Linked Reports

- None

Local Government Act, 1972 Section 100D (As amended)

List of “Background Papers” used in the preparation of this report

- None

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London Borough of Tower Hamlets Exit Credit Policy Statement

The below sets out the general guidelines that the London Borough of Tower Hamlets Pension Fund (“the Fund”) will follow when determining the amount of an exit credit payable to a ceasing employer in line with Regulation 64 of the Local Government Pension Scheme Regulations 2013 (“the Regulations”). Please note that these are guidelines only and the Fund will also consider any other factors that are relevant on a case-by-case basis.

These considerations may result in a determination that would be different if these guidelines were rigorously adhered to. In all cases, the Fund will make clear its reasoning for any decision.

Admitted bodies

1. No exit credit will be payable in respect of admissions who joined the Fund before 14 May 2018 unless it is subject to a risk sharing arrangement as per point 3 below. Prior to this date, the payment of an exit credit was not permitted under the Regulations and the Fund assumes this was reflected in the commercial terms agreed between the admission body and the letting authority. This will also apply to any pre-14 May 2018 admission which has been extended or ‘rolled over’ on the same terms that applied on joining the Fund.

2 No exit credit will be payable to any admission body who participates in the Fund via a pass through approach.

3 The Fund will make an exit credit payment (if any) in line with any contractual or risk sharing agreements which specifically covers the ownership of exit credits/cessation surpluses or if the admission body and letting authority have agreed any alternative approach (which is consistent with the Regulations and any other legal obligations). This information, which will include which party is responsible for which funding risk, must be presented to the Fund in a clear and unambiguous document with the agreement of both the admission body and the letting authority within one month of the admission body ceasing participation in the Fund.

4 If there is any dispute from either party with regards interpretation of contractual or risk sharing agreements as outlined in 3, the Fund will withhold payment of the exit credit until such disputes are resolved.

5 The Fund will also consider any representations made by the letting authority regarding monies owed to them by the admission body in respect of the contract that is ceasing or any other contractual arrangement between the two parties. The letting authority must make such representations in a clear and unambiguous document within one month of the admission body ceasing participation in the Fund.

6 Where a guarantor or similar arrangement is in place, but no formal risk-sharing arrangement exists, the Fund will consider how the approach to setting contribution rates payable by the admission body during its participation in the Fund reflects which party is responsible for funding risks. This decision will inform the determination of the value of any exit credit payment.

7 If the admission agreement ends early, the Fund will consider the reason for the early termination, and whether that should have any relevance on the Fund's determination of the value of any exit credit payment. In these cases, the Fund will consider the differential between employers' contributions paid (including investment returns earned on these monies) and the size of any cessation surplus.

8 The decision of the Fund is final in interpreting how any arrangement described under 3, 5, 6 and 7 applies to the value of an exit credit payment.

9 If an admitted body leaves on a gilts-exit basis (because no guarantor is in place) as set out in the Funding Strategy Statement, then any exit credit will normally be paid in full to the employer.

Scheduled bodies and resolution bodies

1 Where a guarantor or similar arrangement is in place, but no formal risk-sharing arrangement exists, the Fund will consider how the approach to setting contribution rates payable by the employer during its participation in the Fund reflects which party is responsible for funding risks. This decision will inform the determination of the value of any exit credit payment.

2 Where no formal guarantor or risk-sharing arrangement exists, the Fund will consider how the approach to setting contribution rates payable by the employer during its participation in the Fund reflects the extent to which it is responsible for funding risks. This decision will inform the determination of the value of any exit credit payment.

3 The decision of the Fund is final in interpreting how any arrangement described under 1 and 2 applies to the value of an exit credit payment.

4 If a scheduled body or resolution body becomes an exiting employer due to a reorganisation, merger or take-over, then no exit credit will be paid.

5 If a scheduled body or resolution body leaves on a gilts-exit basis (because no guarantor is in place), then any exit credit will normally be paid in full to the employer.

General

The Fund will advise the exiting employer as well as the letting authority and/or other relevant scheme employers of its decision to make an exit credit determination under Regulation 64. Subject to any risk sharing or other

arrangements and factors discussed above, when determining the cessation funding position the Fund will generally make an assessment based on the value of contributions paid by the employer during their participation, the assets allocated when they joined the Fund and the respective investment returns earned on both.

The Fund will also factor in if any contributions due or monies owed to the Fund that remain unpaid by the employer at the cessation date. The Fund's default position will be to deduct these from any exit credit payment. The final decision will be made by Neville Murton, the Section 151 officer with responsibility for the Fund, in conjunction with advice from the Fund's Actuary and/or legal advisors where necessary, in consideration of the points held within this policy.

The Fund accepts that there may be some situations that are bespoke in nature and do not fall into any of the categories above. In these situations, the Fund will discuss its approach to determining an exit credit with all affected parties. The decision of the Fund in these instances is final.

The Fund will advise the exiting employer of the amount due to be repaid and seek to make the payment within six months of the exit date. In order to meet the six-month timeframe, the Fund requires prompt notification of an employer's exit and all data and relevant information as requested. The Fund is unable to make any exit credit payment until it has received all data and information requested.

If the exiting employer or letting authority wishes to dispute the determination of the amount of an exit credit, this must be routed through the Fund's internal dispute resolution process in the first instance.