PENSIONS COMMITTEE – 18 DECEMBER 2020

Report of the Director of Corporate Services

STAFFORDSHIRE PENSION FUND EXIT CREDITS POLICY

Recommendation of the Chair

1. That the Pensions Committee approve the draft Exit Credits Policy for the Staffordshire Pension Fund, provided at Appendix 2.

2. That the Pensions Committee notes the need for wider consultation with Scheme Employers and approves that, following a suitable period of consultation, any minor changes to the Exit Credits Policy be agreed by the Director of Corporate Services, in consultation with the Chair.

Legislation and Background

3. The Local Government Pension Scheme Regulations 2013 were amended in 2018 to allow exit credits to be paid for the first time. The changes came into effect on 14 May 2018.

4. This meant that when an employer ceased to be a participating employer in the Local Government Pension Scheme (LGPS), an exit credit became due if their pension liabilities had been overfunded at their date of exit. (An employer typically ceases to be a participating employer when their last active member of the LGPS leaves or when an admission body's admission agreement comes to an end e.g. on expiry on a contract.) Previously any 'surplus' had been retained by the Pension Fund and reallocated to the letting employer's notional assets.

5. Unfortunately, the amendment to the Regulations resulted in some significant exit credit payments being made by several Local Authority Pension Funds. These were unexpected, as they had not been factored in at the outset, where contracts were often let 100% funded. And in some cases, due to external factors, such as high investment returns over the period of the contract, exit credit payments were quite significant. Exit credit payments may also have exceeded the level of contributions actually paid in.

6. Following an MHCLG consultation in May 2019, updated regulations with respect to exit credit payments came into force on 20 March 2020. These had effect from 14 May 2018. The new regulations required the administering authorities of LGPS pension funds to determine, at their

discretion, the amount of any exit credit payment due, having regard to any relevant considerations.

7. The new responsibility placed on the administering authority for determining the level of any exit credit, and the discretion available, makes it essential that the Pension Fund adopts a fair and reasonable exit credits policy which:

   - ensures that a consistent approach is taken between employers and over time;
   - aims to protect the interests of the members and employers as a whole;
   - ensures that representations from all interested parties are taken into account;
   - is consistent with the approach set out in the Fund’s Funding Strategy Statement and other associated policies; and
   - takes into account relevant actuarial and legal advice.

8. The Staffordshire Pension Fund draft Exits Credits Policy, having regard to the above, is presented for approval at Appendix 2.

Consultation

9. The Fund’s Actuary, Hymans Robertson has reviewed the draft Exit Credits Policy and their views have been incorporated. However, given the potential impact the Exit Credits Policy may have on participating Scheme Employers, it is considered appropriate to consult with them on the Fund’s approach. Following Pensions Committee approval of the draft Exit Credits Policy, it will be published on the Latest News page on the Fund’s website, for consultation throughout January 2021. An email will also be sent to Scheme Employers alerting them of such and finally, the consultation will be referenced in the Employer Focus Newsletter.

10. Should there be any queries or comments arising from the consultation that result in a significant change being proposed to the Exit Credits Policy, then further approval may need to be sought from this Committee. Where only minor changes are proposed, Committee is asked to delegate the approval of these to the Director of Corporate Services, in consultation with the Chair.

11. Once a final version is approved, the Fund’s Funding Strategy Statement (FSS) will need to be updated to reflect the terms of the Exit Credits Policy and an updated FSS, which also reflects other recent changes, such as inter valuation contribution level reviews, will be presented to Committee for approval in due course.

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Director of Corporate Services

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Background Documents: None

Appendix 1

Equalities implications: There are no direct equalities implications arising directly from this report.

Legal implications: The legal implications are considered in the report.

Resource and Value for money implications: Whilst there are no direct resource and value for money implications, not having an Exit Credits Policy may result in the Pension Fund having to make large payments to exiting Employers.

Risk implications: Having and Exit Credits Policy in place, mitigates the risk of the Pension Fund having to make large payments to exiting Employers.

Climate Change implications: There are no direct climate change implications arising from this report.

Health Impact Assessment screening – There are no health impact assessment implications arising from this report.

Staffordshire Pension Fund

Exit Credits Policy

Introduction

The Local Government Pension Scheme (Amendment) Regulations 2020 came into force on 20 March 2020 and are retrospectively effective from 14 May 2018.

If an employer becomes an exiting employer on or after 14 May 2018 under Regulation 64 of the 2013 Local Government Pension Scheme (LGPS) Regulations (as amended) it may be entitled to receive an exit credit.

Determination

In accordance with Regulation 64(2ZAB) of the LGPS Regulations 2013, the Administering Authority will determine the amount of any exit credit (which may be zero) by taking into account the factors set out in Regulation 64(2ZC):

(a) the extent to which there is an excess of assets in the fund relating to that employer over the liabilities specified in paragraph (2)(a);

(b) the proportion of this excess of assets which has arisen because of the value of the employer's contributions;

(c) any representations to the administering authority made by the exiting employer and, where that employer participates in the scheme by virtue of an admission agreement, any body listed in paragraphs (8)(a) to (d)(iii) of Part 3 to Schedule 2 to these Regulations; and

(d) any other relevant factors.

Exit Valuation

When an employer becomes an exiting employer, Staffordshire Pension Fund (the Fund) must obtain from the Fund Actuary:

(a) an actuarial valuation as at the exit date of the liabilities of the Fund in respect of benefits in respect of the exiting employer's current and former employees; and

(b) a revised rates and adjustments certificate showing the exit payment due from the exiting employer; or the excess of assets in the Fund relating to that employer over its liabilities as calculated by the valuation

When commissioning the valuation from the actuary, the Fund will also request the actuary to confirm the proportion of any excess of assets which has arisen because of the value of the employer's contributions. This a factor the Fund must have regard to when making its determination as to the amount of the exit credit.

Notification

The Fund will notify its intention to make a determination on whether to pay an exit credit to:

- the exiting employer;
- where the exiting employer is a ‘transferee’ admission body, the scheme employer in connection with that body (i.e. the letting authority); and
- where the exiting employer is an admission body of any type, any other body that has given a guarantee in respect of the admission body.

Policy

In determining whether an exit credit may be payable, Staffordshire Pension Fund (the Fund), will review each case on its own merits and will apply the following guidelines:

1. For pre 14 May 2018 admissions, the Fund will take into account the fact that original commercial contracts between admission bodies and letting authorities/guarantors could not have been drafted with regard to the May 2018 regulation changes that implemented exit credits retrospectively. Subject to any representations to the contrary, it will be assumed that the employer priced the contract accordingly and that no subsequent agreements covering the ownership of exit credits have been negotiated.

2. The basis for calculating an employer’s pension liabilities to determine the level of any exit credit, will generally be as set out in the Fund’s Funding Strategy Statement.

3. No exit credit will be payable to an admission body which participates in the Fund via a mandated pass through approach, as set out in the Funding Strategy Statement.

4. Employers within a funding pool (e.g. the Town and Parish Councils pool or a Multi Academy Trust with more than one school in the Fund) will not normally receive an exit credit payment, upon leaving the Fund, provided the remaining participants of the pool take responsibility for the residual assets and liabilities after the employer has exited.

5. If an employer becomes an exiting employer under Regulation 64 of the 2013 LGPS Regulations (as amended) an exit payment may be due to the Fund. If the employer enters into an arrangement or a ‘Deferred Debt Agreement’ with the Fund, over such period of time as the Fund considers reasonable, to pay the exit payment, no exit credit will be payable at any future date in relation to that specific agreement, unless the agreement explicitly requires it.

6. The Fund may calculate an exit credit payment which reflects any contractual pension risk sharing provisions between the exiting employer and the letting authority and/or other relevant scheme employer. This information, which will include which party is responsible for which funding risk, must be presented in writing to the Fund and in clear terms. The document must be agreed by the exiting employer and the letting authority and/or other relevant scheme

employer and presented to the Fund no later than one month after the exiting employer ceases participation in the Fund. Where a variation to the original letting contract is required to facilitate any agreement containing the required information, this will be agreed between the exiting employer and the letting authority and/or other relevant scheme employer.

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

8. If an employer leaves on the ‘gilts exit basis’ as set out in the Funding Strategy Statement, any exit credit will normally be paid in full to the employer, subject to consideration of the individual circumstances.

9. If an 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.

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

11. If there is any doubt about the applicable LGPS benefit structure at the date of exit (e.g. McCloud remedy), the Fund’s actuary may include an estimate of the possible impact of any resulting benefit changes when calculating an employer’s pension liabilities to determine the level of any exit credit.

12. The Fund will take into account whether any contributions due or monies owed to the Fund remain unpaid by the exiting employer at the cessation date. If contributions or monies are due to the Fund, the Fund will notify these to the exiting employer and will deduct these from any exit credit payment.

13. Costs associated with the determination of an exit credit payment will be deducted from any exit credit payment at the Fund’s discretion.

14. The Fund will consider any representations made by the letting authority and/or other relevant scheme employer regarding monies owed to them by the exiting employer in respect of the contract/services under which the exiting employer participates in the Fund. These representations must be made in writing to the Fund in clear terms no later than one month after the exiting employer ceases participation in the Fund. Where a variation to the original letting contract is required to facilitate any agreement containing the required information, this will be agreed between the exiting employer and the letting authority and/or other relevant scheme employer.

15. The Fund’s final decision will be made by the Head of Treasury & Pensions in the first instance, in conjunction with advice from the Fund’s Actuary, and/or legal advisors and Director of Corporate Services where necessary, in consideration of the points held within this policy. Where any dispute remains

unresolved, the parties will use the internal dispute resolution procedure specified in MHCLG guidance and Regulations.

16. The Fund acknowledges that there may be some situations which are bespoke in nature and do not fall into any of the categories set out above. In these situations, the Fund will take into account the factors it considers to be relevant in determining whether an exit credit is payable, including representations from relevant parties. The Fund's decision on how to make an exit credit determination in these instances will be final.

17. The Fund will advise the exiting employer of the exit credit 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 for all data and relevant information to be provided as requested. The Fund is unable to make any exit credit determination or payment until it has received all data and information required and if the delay caused by the Fund requiring data means the 6 month date is passed, the parties will work constructively to enable the Fund to reach its decision as soon as possible thereafter.

18. If there is any dispute from either party with regards interpretation of contractual, risk sharing or guarantor agreements as outlined above, the Fund will withhold payment of any exit credit until such disputes are resolved by the letting authority and/or other relevant scheme employer and the exiting employer.

Appeals

If a party involved in the exit credit process set out in this Policy wishes to dispute the Fund's determination, this must be routed through the Fund's Internal Dispute Resolution Procedure (IDRP).

https://www.staffspf.org.uk/Employers/Internal-Dispute-Resolution-Procedure.aspx

If the relevant party is still unhappy with the exit credit determination, having gone through all the stages of the IDRP, they may be able to take a complaint to the Pensions Ombudsman.

Review

This Exit Credits Policy will be reviewed at least every three years as part of the triennial Actuarial Valuation process or following any relevant changes in the LGPS Regulations.

December 2020