

**Agenda Item No. 4 (e)**

**DERBYSHIRE COUNTY COUNCIL  
PENSIONS AND INVESTMENTS COMMITTEE**

**9 September 2020**

**Report of the Director of Finance and ICT**

**DERBYSHIRE PENSION FUND EXIT CREDITS POLICY**

**1 Purpose of the Report**

To advise the Pensions and Investments Committee (Committee) of the outcome of Derbyshire Pension Fund's consultation exercise in respect of the proposed Exit Credits Policy (the Policy) and to seek approval for the updated Policy attached as Appendix 1.

**2 Background**

**Exit Credits**

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 but were backdated to 1 April 2014.

Where 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.)

Following an MHCLG consultation exercise in May 2019, updated regulations with respect to exit credits came into force on 20 March 2020, but had effect from 14 May 2018. The new regulations required 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.

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 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 Admission, Cessation & Bulk Transfer Policy
- takes into account relevant actuarial and legal advice

### **Consultation**

Given the potential impact on participating employers of the Fund's exercise of its discretion in relation to exit credits, the Fund consulted with scheme employers, the local pension board and other stakeholders on the proposed policy.

An email was sent to the Fund's current scheme employers, to the recently ceased employers and to members of Derbyshire Pension Board to highlight the consultation. The consultation was also featured on the news page of the Fund's website. Two responses to the consultation were received, both from scheme employers.

The first response questioned whether the Fund would ever use its discretion to determine an exit credit in favour of an exiting contractor. The second response expressed concern about possible assumptions that may be made by the Fund regarding the negotiation of contracts that supported admissions to the Fund between 14 May 2018 and 20 March 2020.

The Policy is clear that the Fund will review each case on its own merits and that representations from exiting employers, and, where applicable, from any body that has acted as a guarantor for the employer's pension liabilities (in many cases this will be the letting authority) will form part of the exit credit determination.

The Director of Finance and ICT, in conjunction with the Chair of Committee, determined that no changes were necessary to the Policy that was approved on 21 July 2020 as a result of feedback to the consultation.

The Policy has, however, been revised to clarify that any costs associated with the determination of an exit credit may be deducted from any exit credit payment at the Fund's discretion. This point was raised by a member of Committee when the proposed Policy was considered at the last meeting. The proposed revision to the Policy is highlighted in blue.

#### **4 Other Considerations**

In preparing this report the relevance of the following further factors has been considered: financial, legal, human rights, human resources, equality and diversity, health, environmental, transport, property, social value and prevention of crime and disorder.

#### **5 Background Papers**

All background papers are held by the Head of Pension Fund.

#### **6 Officer's Recommendation**

That the Committee approves the proposed Exit Credits Policy attached as Appendix 1.

**Peter Handford**

**Director of Finance and ICT**

## Appendix 1

# Derbyshire Pension Fund Exit Credits Policy

### Introduction

The Local Government Pension Scheme Regulations 2013 (the 2013 Regulations) were amended in 2018 to allow exit credits to be paid for the first time. The amendment came into effect on 14 May 2018 but had retrospective effect back to 1 April 2014. Further amendment regulations came into force on 20 March 2020 which were also deemed to have effect from 14 May 2018.

If an employer becomes an exiting employer under Regulation 64 of the 2013 Regulations, it may be entitled to receive an exit credit if its pension liabilities have been overfunded at its date of exit.

### Exit Valuation

When an employer becomes an exiting employer, Derbyshire Pension Fund (the Fund) must obtain from the Fund actuary:

1. 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
2. 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)
- 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

## Determination

In accordance with Regulation 64 (2ZAB) of the 2013 Regulations (as amended), Derbyshire Pension Fund (the Fund) will determine the amount of any exit credit (which may be zero) taking into account the following factors:

- the extent to which the exiting employer's assets in the Fund are in excess of its liabilities (in relation to benefits in respect of the exiting employer's current and former employees)
- the proportion of this excess of assets which has arisen because of the value of the exiting employer's contributions
- any representations made by the exiting employer and, where the employer participates in the scheme by virtue of an admission agreement, any body that has acted as a guarantor for the employer's pension liabilities (in many cases this will be the letting authority)
- any other relevant factors

In determining whether an exit credit may be payable, Derbyshire Pension 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 an agreed fixed contribution rate throughout its participation in the Fund as in this case the pensions risk 'passes through' to the letting authority.
4. The Fund may undertake an exit credit calculation which reflects any contractual pension risk sharing provisions between the exiting employer, the letting authority/guarantor and/or any other relevant body with respect to pension risk sharing. This information, including confirmation of which party is responsible for which funding risk should be provided to the administering authority within one month of the exiting employer ceasing participation in the Fund.

5. Where a guarantor or similar arrangement is in place, but no formal risk sharing arrangement exists, the Fund will take into consideration 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 may inform the determination of the value of any exit credit.
6. 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.
7. 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.
8. 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.
9. 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.
10. The Fund will take into account whether any outstanding contributions or other payments are due to the Fund at the cessation date. Any outstanding payments will be notified to the exiting employer and will be deducted from any exit credit payment.
11. [Costs associated with the determination of an exit credit may be deducted from any exit credit payment at the Fund's discretion.](#)
12. The Fund will consider any representations made by the letting authority and/or any other relevant scheme employer regarding monies owed to them by the exiting employer in respect of the contract that is ceasing. Representations regarding any such outstanding payments should be made to the Fund within one month of the exiting employer ceasing participation in the Fund.
13. The Fund's final decision will be made by the Director of Finance & ICT with advice from the Head of Pension Fund, and where necessary with advice from the Fund's actuary, and/or legal advisors, in consideration of the guidelines set out in this policy.
14. There may be some situations which are bespoke in nature. 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.

15. The Fund will inform the exiting employer of any exit credit amount due to be paid and seek to make payment within six months of the exit date. In order to meet the six month timeframe, the Fund will require prompt notification of an employer's exit and all data and relevant information as requested. The Fund will be unable to make an exit credit payment until all the requested data and information has been received. Agreement to an extension of the timeframe will be deemed where data and information have not been provided on time.

## **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 (application for adjudication of disagreements procedure - AADP). A copy of the AADP is available here: [AADP](#)

If the relevant party is still unhappy with the exit credit determination, having gone through all the stages of the AADP, 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 valuation process or following any relevant changes in the LGPS Regulations.