

# London Borough of Barnet Pension Fund

## Policy on cessations

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### 1 Introduction

The purpose of this policy is to set out the administering authority's approach to dealing with circumstances where a scheme employer leaves the fund and becomes an exiting employer (a cessation event).

It should be noted that this policy is not exhaustive. Each cessation will be treated on a case-by-case basis, however certain principles will apply as governed by the regulatory framework (see below) and the fund's discretionary policies.

#### 1.1 Aims and Objectives

The administering authority's aims and objectives related to this policy are as follows:

- To confirm the approach for the treatment and valuation of liabilities for employers leaving the fund.
- To provide information about how the fund may apply its discretionary powers when managing employer cessations.
- To outline the responsibilities of (and flexibilities for) exiting employers, the administering authority, the actuary and, where relevant, the original ceding scheme employer (usually a letting authority).

#### 1.2 Background

As described in Section 6 of the Funding Strategy Statement (FSS), a scheme employer may become an exiting employer when a cessation event is triggered e.g. when the last active member stops participating in the fund. On cessation from the fund, the administering authority will instruct the fund actuary to carry out a valuation of assets and liabilities for the exiting employer to determine whether a deficit or surplus exists. The fund has full discretion over the repayment terms of any deficit, and the extent to which any surplus results in the payment of an exit credit.

#### 1.3 Guidance and regulatory framework

The Local Government Pension Scheme Regulations 2013 (as amended) contain relevant provisions regarding employers leaving the fund ([Regulation 64](#)) and include the following:

- Regulation 64 (1) – this regulation states that, where an employing authority ceases to be a scheme employer, the administering authority is required to obtain an actuarial valuation of the liabilities of current and former employees as at the termination date. Further, it requires the Rates & Adjustments Certificate to be amended to show the revised contributions due from the exiting employer
- Regulation 64 (2) – where an employing authority ceases to be a scheme employer, the administering authority is required to obtain an actuarial valuation of the liabilities of current and former employees as at the exit date. Further, it requires the Rates & Adjustments Certificate to be amended to show the exit payment due from the exiting employer or the excess of assets over the liabilities in the fund.

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- Regulation 64 (2ZAB) – the administering authority must determine the amount of an exit credit, which may be zero, taking into account the factors specified in paragraph (2ZC) and must:
  - a) Notify its intention to make a determination to-
    - (i) The exiting employer and any other body that has provided a guarantee to the Exiting Employer
    - (ii) The scheme employer, where the exiting employer is a body that participated in the Scheme as a result of an admission agreement
  - b) Pay the amount determined to that exiting employer within six months of the exit date, or such longer time as the administering authority and the exiting employer agree.
- Regulation (2ZC) – In exercising its discretion to determine the amount of any exit credit, the administering authority must have regard to the following factors-
  - a) The extent to which there is an excess of assets in the fund relating to that employer 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 of the Regulations: and
  - d) Any other relevant factors
- Regulation 64 (2A) & (2B)– the administering authority, at its discretion, may issue a suspension notice to suspend payment of an exit amount for up to three years, where it reasonably believes the exiting employer is to have one or more active members contributing to the fund within the period specified in the suspension notice.
- Regulation 64 (3) – in instances where it is not possible to obtain additional contributions from the employer leaving the fund or from the bond/indemnity or guarantor, the contribution rate(s) for the appropriate scheme employer or remaining fund employers may be amended.
- Regulation 64 (4) – where it is believed a scheme employer may cease at some point in the future, the administering authority may obtain a certificate from the fund actuary revising the contributions for that employer, with a view to ensuring that the assets are expected to be broadly equivalent to the exit payment that will be due.
- Regulation 64 (5) – following the payment of an exit payment to the fund, no further payments are due to the fund from the exiting employer.
- Regulation 64 (7A-7G) – the administering authority may enter into a written deferred debt agreement, allowing the employer to have deferred employer status and to delay crystallisation of debt despite having no active members.
- Regulation 64B (1) – the administering authority may set out a policy on spreading exit payments.

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In addition to the 2013 Regulations summarised above, [Regulation 25A](#) of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (“the Transitional Regulations”) give the fund the ability to levy a cessation debt on employers who have ceased participation in the fund (under the previous regulations) but for whom a cessation valuation was not carried out at the time. This policy document describes how the fund expects to deal with any such cases.

This policy also reflects [statutory guidance](#) from the Department for Levelling Up, Housing and Communities on preparing and maintaining policies relating to employer exits. Interested parties may want to refer to an accompanying [guide](#) that has been produced by the Scheme Advisory Board.

These regulations relate to all employers in the fund.

## 2 Statement of Principles

This Statement of Principles covers the fund’s approach to exiting employers. Each case will be treated on its own merits but in general:

- it is the fund’s policy that the determination of any surplus or deficit on exit should aim to minimise, as far as is practicable, the risk that the remaining, unconnected employers in the fund have to make contributions in future towards meeting the past service liabilities of current and former employees of employers leaving the fund.
- the fund’s preferred approach is to request the full payment of any exit debt (an exit payment), which is calculated by the actuary on the appropriate basis (as per Section 6 of the FSS and Section 3.1 below). This would extinguish any liability to the fund by the exiting employer.
- the fund’s key objective is to protect the interests of the fund, which is aligned to protecting the interests of the remaining employers. A secondary objective is to consider the circumstances of the exiting employer in determining arrangements for the recovery of the exit debt.

## 3 Policies

On cessation, the administering authority will instruct the fund actuary to carry out a cessation valuation to determine whether there is any deficit or surplus as defined in Sections 6.3 and 6.4 of the FSS.

Where there is a deficit, payment of this amount in full would normally be sought from the exiting employer. The fund’s normal policy is that this cessation debt is paid in full in a single lump sum within 30 days of the employer being notified.

However, the fund will consider written requests from employers to spread the payment over an agreed period, in the exceptional circumstance where payment of the debt in a single immediate lump sum could be shown by the employer to be materially detrimental to the employer’s financial situation (see [3.2 Repayment flexibility on exit payments](#) below).

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In circumstances where there is a surplus, the administering authority will determine, at its sole discretion, the amount of exit credit (if any) to be paid to the exiting employer (see 3.3 [Exit credits](#) below).

### 3.1 Approach to cessation calculations

Cessation valuations are carried out on a case-by-case basis at the sole discretion of the fund depending on the exiting employer's circumstances. However, in general the following broad principles and assumptions may apply, as described in Section 6.2 of the FSS and summarised below:

Type of employer	Cessation exit basis	Responsible parties for unpaid or future deficit emerging
Local Authorities	Low risk basis <sup>1</sup>	Shared between other fund employers
Universities	Low risk basis	Shared between other fund employers
Academies and Colleges	Low risk basis	DfE guarantee expected to apply at the point of cessation – post cessation risk shared between other fund employers
Admission bodies (TABs) – non pass through	Ongoing basis <sup>2</sup>	Letting authority
Admission bodies (CABs)	Low risk basis	Shared between other fund employers (if no guarantor exists)
Designating employers	Low risk basis	Shared between other fund employers (if no guarantor exists)

<sup>1</sup>Cessation is assumed not to be generally possible, as Scheduled Bodies are legally obliged to participate in the LGPS. In the rare event of cessation occurring (e.g. machinery of Government changes), these cessation principles would apply.

<sup>2</sup>Where a TAB has taken, in the view of the administering authority, action that has been deliberately designed to bring about a cessation event (e.g. stopping future accrual of LGPS benefits), then the cessation valuation may be carried out on a low-risk basis.

#### Cessation of academies and multi-academy trusts (MATs)

A cessation event will occur if a current academy or MATs cease to exist as an entity or an employer in the fund.

The cessation treatment will depend on the circumstances:

- If the cessation event occurs due to an academy or MAT merging with another academy or MAT within the fund, all assets and liabilities from each of the merging entities will be combined and will become the responsibility of the new merged entity.
- If the MAT is split into more than one new or existing employers within the fund, the actuary will calculate a split of the assets and liabilities to be transferred from the exiting employer to the new employers. The

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actuary will use their professional judgement to determine an appropriate and fair methodology for this calculation in consultation with the administering authority.

- In all other circumstances, and following payment of any cessation debt, section 6.4 of the FSS would apply.

Further details are included in the fund's Academies Policy.

### 3.2 Repayment flexibility on exit payments

Consideration will be given as to which approach is the most appropriate in each case. A DDA may be appropriate if:

- the employer temporarily has no active members but expects it may return to active employer status in future. However, please note that if the plan is for active members to join within three years then a suspension notice may be more appropriate;
- the employer wants to minimise costs in comparison to a DSA by potentially benefitting from the upside of the pensions risks it would remain exposed to and therefore does not want to crystallise its debt by becoming an exiting employer. In this case the administering authority may be willing to defer crystallisation of the cessation debt for an appropriately period of time to be determined on a case by case basis, subject to the strength of the employer's covenant or security provided;
- initial affordability of the full exit payment is low but there is a prospect of increased affordability in the future, or the payment can only be afforded over a long period and therefore a DDA enables the position to be updated over time in light of changing funding positions; and/or
- the employer has a weak covenant but is not faced with imminent insolvency and must rely on future investment returns to fully or partially fund the exit payment. The administering authority may agree that doing so over an appropriate long period is better for the fund than risking immediate insolvency of the employer. However, the fund will also consider the potential impact of a deterioration in the employer's funding position.

On the other hand, it may be more appropriate to enter a DSA if:

- the employer does not intend to employ any more active members and therefore is not expected to resume active employer status;
- the employer wishes to crystallise its debt to the fund and therefore not be subject to any of the pension risks that could cause the amounts payable to the fund increasing (or decreasing) in future;
- the employer has ample resources to make the payment within the near future but not immediately; and/or
- the employer is deemed to have a very weak covenant and so the administering authority will want to try to recoup as much of the exit payment as possible before the employer becomes insolvent.

The administering authority has the right to refuse a DSA or DDA request if they believe it is not in the best interests of the fund or the other participating employers, for example if entering a DSA or DDA increases the risk of a deficit falling to the other employers.

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In considering each request for a DDA or DSA arrangement from an exiting employer the administering authority will take actuarial, covenant, legal and other advice as necessary. Proposed DDAs/DSAs will always be discussed with the employer, whether the arrangement was at the exiting employer's request or not.

Employers who may be party to either a DSA or a DDA are encouraged to discuss any potential impact on their accounting treatment with their auditors.

### **Managing of costs**

On receiving a request, the administering authority will make the employer aware that any costs associated with setting up the DDA or DSA will be the responsibility of the Scheme employer, regardless of whether the administering authority agrees to enter into the agreement or not. This may include the cost of actuarial advice, legal advice, administrative costs and any additional advice required in relation to a covenant assessment or any other specialist adviser costs. If costs deviate from those initially anticipated the administering authority will keep the exiting employer up to date with any increases. The administering authority will provide information on how and when payments should be made.

### **Dispute resolutions**

Whether a DDA or DSA arrangement is agreed or not is ultimately the decision of the administering authority. In the event of any dispute from an employer, the fund will seek to engage with the employer and a further 28 calendar days will be granted in which further discussions can take place to seek a resolution. If the dispute is not resolved in that period, the administering authority will make a final determination, which may be to confirm its original decision.

### **Deferred Debt Agreements (DDAs)**

Under a DDA, the exiting employer becomes a deferred employer in the fund (i.e. they remain as a Scheme employer but with no active members) and remains responsible for paying the secondary rate of contributions to fund their deficit.

### **Information required from the employer**

When making a request to enter a DDA, the employer should provide any relevant information to support their request e.g. in relation to their covenant/ability to continue to make payments to the fund on a continuing basis. Examples of information the employer may provide as evidence include the exiting employer's:

- most recent annual report and accounts
- latest management accounts
- financial forecasts
- details of position of other creditors

This is not an exhaustive list and the administering authority may request further evidence. In particular, the administering authority may commission a covenant assessment if insufficient evidence is provided.

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### Assessing the proposal

The administering authority will aim to make a decision on whether to enter into a DDA within 28 calendar days of receiving a request, but this may vary to reflect specific circumstances, for example if the administering authority chooses to request a covenant assessment then the process may take longer.

To reach a decision the administering authority will consider:

- the size of the exiting employer's residual liabilities relative to the size of the fund;
- the impact on the continuity of the employer's business of being required to immediately pay the full exit payment
- the size of the exit payment relative to the costs associated with entering into a DDA;
- whether a debt spreading agreement or suspension notice would be more appropriate (see specific circumstances below);
- any information provided by the exiting employer to support their covenant strength, including any information on a guarantor or other form of security that the employer may be able to put forward to support their covenant;
- the results of any covenant review carried out.
- the exiting employer's accounts;
- the potential impact on the other employers in the fund; and
- the opinion of the fund's advisors.

The administering authority is not obliged to accept an exiting employer's request for a DDA. For example, in the following circumstances the administering authority may consider a DDA not to be appropriate:

- the exiting employer could reasonably be expected to settle their exit payment in a single amount;
- it is known or likely that another active member will come into employment in the three years following the cessation date (in these cases a suspension notice would be considered more appropriate than a DDA); or
- the administering authority is concerned that where a DDA is entered, that the employer could not afford the impact of any negative experience which would result in an increase in the required secondary rate of contributions and an increase in the employer's overall deficit (in these cases a debt spreading agreement would be considered more appropriate as the payments are fixed throughout the term of the agreement).

Once all information has been considered the administering authority will consult with the exiting employer as required under the Regulations. If the administering authority does not wish to enter into a DDA they will explain to the exiting employer their reasoning and any alternatives (e.g. a debt spreading agreement, suspension notice or indeed require the exit payment in full). If the administering authority accepts the request to enter into a DDA, they will notify their legal advisers and Fund Actuary. If the administering authority has concerns about the level of risk arising due to the DDA, the administering authority may only accept the request subject to a one-off cash injection being made by the exiting employer or security being provided as an additional guarantee.

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### Setting up a DDA

Once agreed that a DDA is permitted, the terms of the DDA will be agreed between the administering authority and the exiting employer and will be set out in a formal legal agreement.

The administering authority and the exiting employer will negotiate an appropriate duration of the agreement which will consider the exiting employer's affordability and anticipated strength of covenant over the agreement period. If the exiting employer has sufficient reserves, the administering authority may require an immediate cash payment so that the DDA can start from an acceptably stronger funding position.

The duration of the DDA will not be expected to exceed the appropriate maximum deficit recovery period applying to the exiting employer set out in the FSS.

The Fund Actuary will calculate secondary contributions on an appropriate basis consistent with the determination of an exit payment for that employer as agreed with the administering authority, taking into account any cash payments made in advance. The secondary contributions will be reviewed at each actuarial valuation and certified as part of the fund's Rates and Adjustments Certificate until the termination of the agreement. Therefore payments throughout the agreement are not known in advance and may increase or decrease at each valuation to reflect changes in the employer's funding position.

The timeline from consultation with the exiting employer to entering into a DDA to the signing of the agreement will vary. Where possible all parties will aim to have the agreement signed within 3 calendar months, although there may be circumstances where timings may vary.

Once finalised, the employer will become a deferred employer in the fund and will have an obligation to pay their secondary contributions as certified by the Fund Actuary. The responsibilities of the deferred employer will be set out in the legal agreement and these will include the requirements to:

- comply with all the requirements on Scheme employers under the Regulations except the requirement to pay a primary rate of contributions but including any additional applicable costs, such as strain costs as a result of ill health retirements;
- adopt the relevant practices and procedures relating to the operation of the Scheme and the fund as set out in the administration strategy statement produced by the administering authority;
- comply with all applicable requirements of data protection law relating to the Scheme and with the provisions of any data-sharing protocol produced by the administering authority and provided to the deferred employer;
- promptly provide all such information that the administering authority may reasonably request in order to administer and manage the agreement; and
- give notice to the administering authority, of any actual or proposed change in its status, including take-over, change of control, reconstruction, amalgamation, insolvency, winding up, liquidation or receivership or a material change to its business or constitution.

The deferred employer should consult with their auditors about any impacts the DDA is expected to have on their accounting requirements.

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### Monitoring a DDA

A deferred debt agreement is subject to the ongoing approval of the administering authority. The administering authority reserves the right to terminate the agreement should they become concerned about a significant weakening in the deferred employer's covenant or a significant change in funding position. Conversely, if there was an improvement in the employer's circumstance then the administering authority and employer may agree to amend the terms of the agreement.

The administering authority will monitor a DDA in the following ways:

- Changing funding position

The administering authority will request regular, and at least annual, updates of the deferred employer's funding position in order to review the progress of the DDA. The costs of the regular reviews will fall to the deferred employer as part of the terms for putting in place a DDA.

If the funding position changes by more than 10% (in absolute terms) from the previous review, then the administering authority may engage with the deferred employer to discuss a possible review of the DDA.

- Changing employer covenant

The administering authority monitors the level of covenant of its Scheme employers on an ongoing basis. Once an employer enters into a DDA, the administering authority will review the employer's covenant on a regular basis and details of this will be agreed for each DDA on an individual basis. If a deferred employer's covenant deteriorates, the administering authority may issue a notice to review and possibly terminate the agreements.

In addition, if a deferred employer requests an extension to the duration of the DDA the administering authority will consider an updated covenant review, amongst other factors, in assessing the proposal.

As a condition of entering into a DDA, the deferred employer is required to engage with the administering authority to assist with monitoring the level of covenant, for example by providing information requested by the administering authority in a timely manner.

- Timeliness of payments

The agreement will set the frequency by which payments of contributions are made and the administering authority will monitor if contributions are paid on time. Successive late or in particular missing payments will influence whether a notice is issued to the deferred employer to review and possibly terminate the agreement.

- Strength of guarantee or security

If a particular funding basis has been used by the Fund Actuary on the understanding that there is a particular security in place (e.g. another employer in the fund willing to underwrite the residual deferred and pensioner liabilities when the employer formally exits) then the administering authority will check there has been no change to the security at agreed regular intervals and as a minimum at each valuation cycle. The Fund Actuary may change the funding basis used to set the deferred employer's contributions depending on the strength of the security in place.

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- Notifiable events from the deferred employer

The deferred employer has a responsibility to make the administering authority aware of any changes in their ability to make payments or of a change in circumstance (e.g. a change of the guarantee in place mentioned above). Information should be shared with the administering authority at any time throughout the agreement to enable the administering authority to consider whether a review of the agreement should be carried out.

### Terminating a DDA

As set out in Regulation 64(7E), the DDA terminates on the first of the following events:

- the deferred employer enrolls new active members;
- the duration of the agreement has elapsed;
- the take-over, amalgamation, insolvency, winding up or liquidation of the deferred employer;
- the administering authority serves a notice on the deferred employer that it is reasonably satisfied that the employer's ability to meet the contributions payable under the DDA has weakened materially (or is likely to in the next 12 months); or
- a review of the funding position of the deferred employer is carried out at an updated calculation date and the Fund Actuary assesses that the deferred employer has paid sufficient secondary contributions to cover what would be due if the deferred employer terminated at the updated calculation date; in other words the review reveals no deficit remains on the relevant calculation basis.

The deferred employer can also choose to terminate the DDA at any point. Notice should be given to the administering authority at the earliest opportunity. The Fund Actuary will calculate any outstanding contribution due from the employer.

Termination clauses will be included in the formal DDA legal agreement.

### Process of termination

Unless the deferred employer has enrolled new active members and becomes an active employer again, once a termination of the DDA has been triggered, the deferred employer becomes an exiting employer under Regulation 64(1). The administering authority will obtain from the Fund Actuary an exit valuation calculated at the date the DDA terminates, and a revised rates and adjustments certificate setting out the exit payment due from the exiting employer or the excess of assets in the fund relating to the exiting employer (which would then be subject to the fund's exit credit policy).

Once the exit payment has been made in full, the exiting employer has no further obligation to the fund.

If the termination has been triggered because the deferred employer has enrolled new active members, then the deferred employer becomes an active employer in the fund and an immediate exit payment may not be required; this may instead be incorporated in the revised rates and adjustments certificate that will be provided in respect of the active employer. The employer remains responsible for all previously accrued liabilities and the revised contributions required from the active employer will be calculated in line with the fund's FSS.

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If the termination has been triggered because a review of the funding position of the deferred employer reveals that the secondary contributions paid to date by the deferred employer are sufficient to cover what would be due if the deferred employer terminated at the updated calculation date, then the deferred employer becomes an exiting employer and no further payments are required. The exiting employer has no further obligation to the fund. Where there is a surplus, an exit credit may be payable as determined by the administering authority and in line with the fund's exit credit policy.

### **Debt Spreading Agreements (DSAs)**

Under a DSA, the cessation debt is crystallised and spread, with interest, over a period deemed reasonable by the administering authority following discussion with the exiting employer. The payments are fixed and are not reviewed at each actuarial valuation.

### **Information required from the employer**

When making a request to enter a DSA, the exiting employer should provide any relevant information to support their request e.g. in relation to their covenant/ability to continue to make payments to the fund. Examples of information the exiting employer may provide as evidence include the employer's:

- most recent annual report and accounts
- latest management accounts
- financial forecasts
- details of position of other creditors

This is not an exhaustive list and the administering authority may request further evidence. In particular, the administering authority may commission a covenant assessment if insufficient evidence is provided.

### **Assessing the proposal**

The administering authority will aim make a decision on whether to enter into a DSA within 28 calendar days of receiving a request, but this may vary to reflect specific circumstances, for example if the administering authority chooses to request a covenant assessment then the process may take longer.

To reach a decision the administering authority will consider:

- the size of the exit payment relative to the exiting employer's business cashflow;
- the impact on the continuity of the employer's business of being required to immediately pay the full exit payment
- the size of the exit payment relative to the costs associated with entering into a DSA;
- whether a deferred debt agreement or suspension notice would be more appropriate;
- any information provided by the employer to support their covenant strength;
- the results of any covenant review carried out for the fund;
- the merit of any guarantees from another source and whether this is deemed sufficient to cover the outstanding payments should the exiting employer fail;

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- the exiting employer's accounts;
- the potential impact on the other employers in the fund; and
- if appropriate, the opinion of the fund's advisors.

The administering authority is not obliged to accept an exiting employer's request for a DSA. For example, in the following circumstances the administering authority may consider a DSA not to be appropriate:

- the exiting employer could reasonably be expected to settle their exit payment in a single amount;
- there is doubt that the exiting employer can operate as a going concern during the spreading period; or
- the exiting employer cannot afford the required payments over the maximum spreading period or is requesting a spreading period longer than the maximum (see below).

The structure of the DSA is at the discretion of the administering authority having consulted with the exiting employer. The structure should protect all other employers in the fund whilst being achievable for the exiting employer. The structure of the DSA will take into consideration:

- the period that the payments will be spread. This is expected to be no more than 5 years. For longer periods it may be more appropriate to consider a deferred debt agreement, but the administering authority reserves the right to set whatever spreading period they deem appropriate provided they are satisfied with the exiting employer's ability to meet the payments over that period. The length of the spreading period will be set as to be as short as possible whilst remaining affordable for the exiting employer;
- the interest rate applicable to the spread payments. In general, this will be set with reference to the discount rate in the exiting employer's cessation valuation report;
- the regularity of the payments and when they fall due;
- other costs payable; and
- the responsibilities of the exiting employer during the spreading period (for example, to make payments on time and to notify the administering authority of a change in circumstances that could affect their ability to make payments).

Once all information has been considered the administering authority will consult with the exiting employer as required under the Regulations. If the administering authority does not wish to accept the exiting employer's request to enter into a DSA they will explain their reasoning and any alternatives (e.g. a DDA, suspension notice or indeed require the exit payment in full). If the administering authority accepts the request to enter into a DSA, they will notify their legal advisers and Fund Actuary. If the administering authority has concerns about the level of risk arising due to the DSA, the administering authority may only accept the request subject to a one-off cash injection being made by the exiting employer or security being provided as an additional guarantee.

### Setting up a DSA

The administering authority and the exiting employer will then negotiate the structure of the schedule of payments which takes into consideration the exiting employer's affordability and an appropriate period of the spreading.

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The schedule of payments will be set out in a revised rates and adjustments certificate prepared by the Fund Actuary. There may be circumstances where timings may vary, however, in general the certificate will be prepared and provided to the exiting employer within 28 calendar days of agreeing the structure of the schedule of payments with the exiting employer.

### **Monitoring a DSA**

Over the term that the cessation debt payment is spread, the administering authority will monitor the ability and willingness of the exiting employer to pay the schedule of contributions in the revised rates and adjustments certificate. While it is expected the schedule of payments would be fixed for the spreading period, the administering authority may alter the structure of the schedule at any time if there is a change in the exiting employer's circumstances or indeed, if the exiting employer wanted to pay the remaining balance. This will be agreed on a case by case basis and set out in a side agreement as required.

The administering authority will be in regular contact with the exiting employer until their obligations to the fund are removed when all payments set out in the schedule of payments are made.

Examples of factors which will be monitored are set out below. Should any of these raise any concerns with the administering authority then the DSA may be reviewed and/or terminated.

### **Changing employer covenant**

The administering authority will monitor the ability of the exiting employer to make their set payments by monitoring publicly available information such as credit ratings and/or company accounts as well as keeping in regular contact, at least annually, with the exiting employer to ensure that the payments can be met.

As a condition of entering into a DSA, the exiting employer is required to engage with the administering authority to assist with monitoring the level of covenant, for example by providing information requested by the administering authority in a timely manner.

### **Timeliness of payments**

The DSA will set out the frequency by which payments will be made and how long for, and the administering authority will monitor if contributions are paid on time. Successive late or in particular missing payments would contribute towards further interest charges or the spreading agreement may be reviewed and/or terminated.

### **Strength of guarantee or security**

If a particular schedule of payments has been agreed between the administering authority and the exiting employer on the understanding that there is a particular security in place (e.g. another employer in the fund willing to pay the remaining balance or a fixed charge on property that covers the remaining balance) then the administering authority will check there has been no change to the security regularly. The frequency of these reviews may reduce as the level of outstanding debt reduces. The administering authority may change the schedule of payments depending on the strength of the security in place. The exiting employer would be consulted prior to any changes.

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### Notifiable events from the exiting employer

The exiting employer has a responsibility to make the administering authority aware of any changes in their ability to make payments or of a change in circumstance that affects their ability to make payments. Information should be shared with the administering authority at any time throughout the agreement to enable the administering authority to consider whether a review of the agreement should be carried out.

### Terminating a DSA

On paying all the payments set out in the revised rates and adjustments certificate the exiting employer will no longer have any obligations to the fund.

In the event that the administering authority believes that the exiting employer may not be able to make any of their remaining payments, the administering authority reserves the right to review and/or terminate the DSA to ensure it is appropriate for the fund and does not adversely impact the other participating employers.

The exiting employer may also request to terminate the DSA early, in which case an immediate payment of the outstanding amounts set out in the rates and adjustment schedule should be paid.

### Process of termination

In the event of a DSA being amended or terminated the administering authority will communicate this to the exiting employer along with reasons for the decision. Before the decision is made the administering authority will consult with the exiting employer about their change in circumstances.

If the DSA has to be terminated prematurely the administering authority will seek to obtain from the exiting employer the outstanding exit payments or look at alternative arrangements such as a deferred debt agreement.

Once the exit payment has been made in full, the exiting employer has no further obligation to the fund.

### 3.3 Exit credits

The administering authority's entitlement to determine whether exit credits are payable in accordance with these provisions shall apply to all employers ceasing their participation in the fund after 14 May 2018. This provision therefore is retrospectively effective to the same extent as provisions of the [Local Government Pension Scheme \(Amendment\) Regulations 2020](#).

The administering authority may determine the amount of exit credit payable to be zero, however, in making a determination, the Administering Authority will take into account the following factors.

- a) the extent to which there is an excess of assets in the fund relating to the employer over and above the liabilities specified.
- b) the proportion of the 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, guarantor, ceding Scheme Employer (usually the Letting Authority) or by a body which owns, funds or controls the exiting employer; or in some cases, the Secretary of State.
- d) any other relevant factors

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## Policy on cessations

Any exit credit payable will be reduced where the pension risks were wholly or partly carried by a party other than the exiting employer. For example, usually no exit credit will be payable to any employer who participates in the fund via a pass-through agreement. Other relevant factors may include:

- The exiting employer did not provide a bond or guarantee required under the admission agreement.
- There are unpaid employer or employee contributions.
- The exiting employer has not provided all the data required in accordance with the Administration Strategy Statement.

### *Admitted bodies*

- i. For pre-14 May 2018 admissions, the administering authority 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. This will also apply to any pre-14 May 2018 admission which has been extended or 'rolled over' beyond the initial expiry date and on the same terms that applied on joining the fund.
- ii. For the purpose of determining exit credits payable following the cessation of an admission body who has participated in the fund as a result of having provided outsourced services, the exit credit payable will be calculated to reflect the proportion of the level of contributions paid by the contractor to the value of assets at the cessation date. This proportion will then be applied to the cessation surplus to determine the exit credit payable, prior to the further consideration being made by the Administering Authority in respect of other relevant factors.
- iii. No exit credit will normally be payable to any admission body who participates in the fund via the mandated pass through approach. For the avoidance of doubt, whether an exit credit is payable to any admission body who participates in the fund via the "Letting employer retains pre-contract risks" route is subject to its risk sharing arrangement, as per paragraph iii) below.
- iv. The fund will make an exit credit payment 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/awarding authority/ceding employer and within one month (or such longer time as may be agreed with the administering authority) of the admission body ceasing participation in the fund.
- v. In the absence of this information or if there is any dispute from either party with regards interpretation of contractual or risk sharing agreements as outlined in iv), the fund will withhold payment of the exit credit until such disputes are resolved and the information is provided to the administering authority.

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- vi. Where a guarantor 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.
- vii. 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.
- viii. The decision of the fund is final in interpreting how any arrangement described under iv), vi), and vii) applies to the value of an exit credit payment.

### *Scheduled bodies and designating bodies*

- i. Where a guarantor 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.
- ii. 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.
- iii. The decision of the fund is final in interpreting how any arrangement described under i) and ii) applies to the value of an exit credit payment.
- iv. If a scheduled body or designating body becomes an exiting employer due to a reorganisation, merger or take-over, then no exit credit will be paid.

### *General*

- i. 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.
- ii. The fund will also factor in if any contributions due or monies owed to the fund remain unpaid by the employer at the cessation date. If this is the case, the fund's default position will be to deduct these from any exit credit payment.
- iii. 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.
- iv. If there is any doubt about the applicable LGPS benefit structure at the date of exit (e.g. McCloud remedy), the Fund 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.

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## Policy on cessations

- v. None of the above should be considered as fettering the fund's discretionary decision, instead it is an indication of how decisions are likely to be made. However, it is important to bear in mind that each and every potential exit credit case will be considered by the administering authority on its own merits, and the administering authority will make its discretionary decision on that basis.
- vi. The exiting employer will be advised of the exit credit amount due to be repaid and the fund will seek to make the payment within six months of the exit date. Meeting the six-month timeframe requires prompt notification of an employer's exit and for all data and relevant information to be provided as requested. The administering authority is unable to make any exit credit determination or payment until the fund 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 a decision to be reached as soon as possible thereafter.
- vii. All exiting employers must seek their own advice on the tax and accounting treatment of any exit credit.

### Disputes

In the event of any dispute or disagreement on the amount of any exit credit paid and the process by which that has been considered, the appeals and adjudication provisions contained in Regulations 74-78 of the LGPS Regulations 2013 would apply.

## 4 Practicalities and process

### 4.1 Responsibilities of ceasing employers

An employer which is aware that its participation in the fund is likely to come to an end must:

- advise the fund, in writing, of the likely ending of its participation (either within the terms of the admission agreement in respect of an admission body (typically a 3 month notice period is required) or otherwise as required by the Regulations for all other scheme employers). It should be noted that this includes closed employers where the last employee member is leaving (whether due to retirement, death or otherwise leaving employment).
- provide any relevant information on the reason for leaving the fund and, where appropriate, contact information in the case of a take-over, merger or insolvency.
- provide all other information and data requirements as requested by the Administering Authority which are relevant, including in particular any changes to the membership which could affect the liabilities (e.g. salary increases and early retirements) and an indication of what will happen to current employee members on cessation (e.g. will they transfer to another fund employer, will they cease to accrue benefits within the fund, etc.).

### 4.2 Responsibilities of the Administering Authority

The administering authority will:

- gather information as required, including, but not limited to, the following:

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- details of the cessation - the reason the employer is leaving the fund (i.e. end of contract, insolvency, merger, machinery of government changes, etc.) and any supporting documentation that may have an effect on the cessation.
  - complete membership data for the outgoing employer and identify changes since the previous formal valuation.
  - the likely outcome for any remaining employee members (e.g. will they be transferred to a new employer, or will they cease to accrue liabilities in the fund).
- identify the party that will be responsible for the employer's deficit on cessation (i.e. the employer itself, an insurance company, a receiver, another fund employer, guarantor, etc.).
  - commission the fund actuary to carry out a cessation valuation under the appropriate regulation.
  - where applicable, discuss with the employer the possibility of paying adjusted contribution rates that target a 100% funding level by the date of cessation through increased contributions in the case of a deficit on the cessation basis or reduced contributions in respect of a surplus.
  - where applicable, liaise with the original ceding employer or guarantor and ensure it is aware of its responsibilities, in particular for any residual liabilities or risk associated with the outgoing employer's membership.
  - having taken actuarial advice, notify the employer and other relevant parties in writing of the payment required in respect of any deficit on cessation and pursue payment.

### 4.3 Responsibilities of the Fund Actuary

Following commission of a cessation valuation by the administering authority, the Fund Actuary will:

- calculate the surplus or deficit attributable to the outgoing employer on an appropriate basis, taking into account the principles set out in this policy.
- provide actuarial advice to the administering authority on how any cessation deficit should be recovered, giving consideration to the circumstances of the employer and any information collected to date in respect to the cessation.
- where appropriate, advise on the implications of the employer leaving on the remaining fund employers, including any residual effects to be considered as part of triennial valuations.

## 5 Related Policies

The fund's approach to exiting employers is set out in the FSS, specifically "Section 6 – What happens when an employer leaves the fund?"

The approach taken to set the actuarial assumptions for cessation valuations is set out in Appendix E of the FSS.