EXIT CREDIT POLICY

Introduction

1. This paper provides the Committee with an update on the responses to the formal consultation of the Fund's draft exit credit policy.

Recommendation

2. The Committee is asked to:

   a) Consider and endorse the administering authority's proposed responses to the feedback to the exit credit policy consultation. (See 'next steps' below).
   b) Subject to the approval of recommendation a) endorse that the administering authority implement with immediate effect the exit credit policy as consulted with employers, with no amendments.

Background

3. The Committee endorsed via Electronic Decision Notice EDN40 a draft exit credit policy, amendments to the Funding Strategy Statement and to begin a consultation with employers. The electronic decision notice and the draft policy are attached as appendices A) and B) respectively, to this report for ease of reference.

4. The consultation closed on 31 August with two responses received. Redacted versions of which are attached as Appendix C to this report.

5. Members will note that one of the responses is supportive of the policy whilst the other raises some issues.

Next Steps

6. Due to the proximity of the consultation closure to the deadline to distribute the Committee papers and the technical nature of the issues raised, the proposed response for members' consideration will follow the distribution of these papers.

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Pension Fund Committee Decision Notice

Ref: CPF40 – 28072020

The following decision has been taken by representative members of the Pension Fund Committee

Decision Reference:	CPF40 -28072020
Decision Maker:	Pension Fund Committee
Decision Taken On:	28 July 2020
Decision in the matter of:	Exit Credit Policy
DECISION/ DELEGATION:	Endorsement of the Fund's proposed Exit Credit policy (as set out in Appendix 1) and resulting amendments to the Funding Strategy Statement and to approve a three week consultation with employers

Introduction

This paper provides the Committee with the proposed policy and principles for the Administering Authority to follow in determining whether an exit credit payment is due to an exiting employer, prior to consultation with employers.

Background

In April 2018, Government announced a change to LGPS Regulations to allow exit credits to be paid to employers for the first time.

Exit credits arise when an employer is leaving the LGPS, and an actuarial assessment shows their pension liabilities have been overfunded and there is a funding surplus at the date of exit. Prior to this change, no exit credits were payable, but employers were responsible for meeting any funding shortfall on exit.

In the months after exit credits were introduced, concerns were raised about unforeseen impacts, specifically where scheme employers had outsourced services or functions and had included specific pensions risk provisions in service agreements.

Under these agreements, the contracting authority may have shared the pensions risk with their contractors in various ways, for example by picking up the risk of contributions increasing beyond a certain amount or by picking up the risk of an exit payment arising at the end of the contract, in exchange for a lower contract price.

It became clear that service providers were becoming entitled to exit credits where this was not the intention of the parties when the services were tendered, and service agreements made.

In May 2019 MHCLG launched a further consultation on amending the exit credit provisions to enable an LGPS administering authority to consider a range of factors in determining whether an exit credit is payable, including the level of pension risk that an employer has borne.

Local Government Pension Scheme (Amendment) Regulations 2020

The Government amended the exit credit provisions by introducing the Local Government Pension Scheme (Amendment) Regulations 2020. These came into on force on 20 March 2020 but are effective retrospectively to 14 May 2018 (the date exit credits were first introduced).

They provide that administering authorities **may** determine, at their absolute discretion, the amount of any exit credit payment due (which may be zero), having regard to any “relevant considerations”.

The relevant considerations that the administering authority **must** consider are:

1. The extent to which the employer's assets are in excess of its liabilities
2. The proportion of the excess of assets which has arisen because of the value of employer's contributions
3. Any representations made by the exiting employer and its letting authority/guarantor
4. Any other relevant factors.

In addition, the period in which an exit credit, where due, has to be paid has been extended from three months to six months.

MHCLG has confirmed that any exit credits that have not been paid (even if overdue) must be dealt with under the new regulations (as their effective date has been backdated).

The Fund has not paid any exit credits prior to the Exit Credit Policy being considered by the Committee and pending the outcome of consultation with employers.

Administering authorities should adopt a 'fair and reasonable exit credits policy' which should be set out in their Funding Strategy Statement (FSS). The policy should aim to protect the interests of the members and employers as a whole and look wider than the interests of the single exiting employer in question. Administering authorities should seek actuarial and legal advice where appropriate and act consistently with the approach set out in their FSS

The full current FSS can be viewed here:
https://www.cheshirepensionfund.org/members/wp-content/uploads/sites/2/2020/04/Cheshire-Pension-Fund-Funding-Strategy-Statement-2020.pdf

The Fund's proposed exit credit policy is set out in Appendix 1. This has been shared with the actuary and with legal colleagues

The proposed amendments to the FSS to consult with employers are summarised in Appendix 2

Recommendation

Committee are asked to

- **Endorse the proposed exit credit policy**
- **Endorse the proposed amendments to the FSS**
- **Endorse a three week consultation with employers regarding amendments to the FSS**

Please sign ONE of approved or Not approved

Approved: Carol Bulman ....
(Member of Pension Fund Committee)

Or

Not Approved: ....(Member of Pension Fund Committee)

Date: 30th July 2020..

For further information or assistance please contact:

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CHESHIRE PENSION FUND

Exit Credit Policy

Introduction

The Local Government Pension Scheme (Amendment) Regulations 2020 came into force on 20 March 2020, and are 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.

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

Cheshire Pension Fund Policy

In determining whether an exit credit may be payable, Cheshire West & Chester Council as Administering Authority for the Cheshire Pension Fund will apply the following principles.

1. 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.

2. In order to protect other employers, liabilities to determine the amount of any exit credit will be calculated on a "gilts exit basis"

3. 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 exit credits upon leaving the Fund provided the remaining participants of the pool take responsibility for the residual assets and liabilities after the employer has exited.

4. No exit credit will be payable to any employer who participates in the Fund via the mandated pass through approach as set out in the Funding Strategy Statement.

5. If an employer becomes an exiting employer under Regulation 64 of the 2013 LGPS Regulations (as amended) and an exit payment is payable to the Fund over such period of time as the administering authority considers reasonable, no exit credit will be payable at any future date in relation to that specific agreement as a participating employer.

6. The Administering Authority 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 Administering Authority 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 Administering Authority 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 arrangement is in place, but no formal pension risk-sharing arrangement exists, the Administering Authority 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. The Administering Authority 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 Cheshire Pension Fund. These representations must be made in writing to the Administering Authority 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.

9. If there is any dispute from either party with regards interpretation of contractual, risk sharing or guarantor agreements as outlined above, the Administering Authority 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.

10. The Administering Authority will advise the exiting employer as well as the letting authority and/or other relevant scheme employers of its exit credit determination under Regulation 64.

11. The Administering Authority 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 Administering Authority will notify these to the exiting employer and will deduct these from any exit credit payment.

12. The Administering Authority's final decision will be made by the Pension Fund Manager in the first instance, in conjunction with advice from the Fund's Actuary, and/or legal advisors and Chief Operating Officer 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.

13. The Administering Authority accepts that there may be some situations that are bespoke in nature and do not fall into any of the categories set out above. In these situations the decision of the Administering Authority is final in interpreting how any arrangement applies to the value of an exit credit payment.

14. The Administering Authority 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 Administering Authority 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 Administering Authority to reach its decision as soon as possible thereafter.

RESPONSES TO EXIT CREDIT POLICY CONSULTATION

RESPONSE 1

Good Afternoon,

I have reviewed the Fund's draft Exit Credit Policy, following your e-mail of 10th August.

As the Council's HR Director, I have no issues to raise around the principles outlined in the Policy as the pertain to employment matters.

I have shared your communication of 10th August with my Finance colleagues and asked them to submit any comments directly should they have any to make.

Thanks,

Regards,

RESPONSES TO EXIT CREDIT POLICY CONSULTATION

RESPONSE 2

Response to consultation:

I would not support the proposed exit credit policy in its current form for the reasons set out below:

The scheme already has a contractor exit basis set out in the Funding Strategy Statement which provides for valuation on a gilts basis plus asset outperformance assumption. There is no rationale in the consultation as to why this basis is not appropriate for calculating exit credits.

The proposed gilts basis disproportionately increases the liabilities associated with an exiting employer to the detriment of that employer and the benefit of continuing participating employers in the scheme. The proposal over-protects the interests of continuing employers at the expense of the exiting employer and so may not be fair and reasonable in taking account the interests of all employers as MHCLG had set out in response to its consultation.

The proposal could more clearly reflect the requirement to have regard the proportion of excess assets which have arisen due to the employer’s contributions as set out in the amendments to the regulation. The policy does not clearly explain the position where contributions have continued where a surplus has already been reported. For example, the policy could require the scheme and the actuary to take into account and potentially refund excess contributions through an exit credit to the extent that those contributions had more than removed any exit payment which would have been due from the employer to the Fund.

The consultation does not contain an impact assessment on individual employers participating in the scheme which makes it very difficult for employers to make an informed response to the consultation. The scheme should be able to provide this information as it has the data for the full scheme valuation, and so an impact assessment could be provided to employers to allow for more meaningful consultation.