

London Borough of Tower Hamlets Pension Fund

Cessation Policy

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Contents

London Borough of Tower Hamlets Pension Fund – Cessation Policy

	Page
1 Introduction	
Error! Bookmark not defined.	
2 Statement of Principles	3
3 Policies	4
4 Practicalities and Process	
Error! Bookmark not defined.0	
5 Related Policies	12

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 Pension 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 (as described in Section 3 - 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 will approach applying its discretionary powers when managing employer cessations.
- To outline the responsibilities of (and flexibilities for) exiting employers, the administering authority, the fund actuary and, where relevant, the original ceding scheme employer (usually the council or an academy).

1.2 Background

As described in Section 7 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. In accordance with the legislation, the Fund has discretion over the repayment terms of any exit payment relating to a 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) (the "Regulations") contain relevant provisions regarding employers leaving the Fund ([Regulation 64](#)) and include the following (this section summarises the legislation only, please refer to the Regulations for the full provisions):

- Regulation 64(1) – this regulation states that, where an employer ceases to be a scheme employer (including ceasing to be an admission body) or ceases to employ an active member in the Fund, the employer becomes "an exiting employer" in relation to the Fund.
- Regulation 64(2) – where an employer becomes an exiting employer, the administering authority of the Fund 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.
- 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 relevant scheme employer (e.g. the letting authority), where the exiting employer is a body that participated in the Scheme as a result of an admission agreement under paragraph (1)(d), Part 3 of Schedule 2 to the Regulations.
 - 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 the exiting employer's liabilities.
 - 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 of Schedule 2 to the Regulations and which guarantees the liabilities of the exiting employer.
 - d) Any other relevant factors.
- Regulation 64(2A), (2B) & (2C)– the administering authority may issue a written suspension notice to suspend payment of an exit payment 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. In these circumstances, the employer must continue to make such contributions to the Fund as the administering authority reasonably requires.
- Regulation 64(3) – in instances where it is not possible to obtain all or part of an exit payment from the employer leaving the Fund or from any person providing a bond/indemnity or guarantor, the contribution rate(s) for the related scheme employer or remaining fund employers may be amended, in accordance with that Regulation.
- 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, by the likely exit date, the assets are expected to be broadly equivalent to the exit payment that would otherwise 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, in accordance with the Regulations, despite having no active members.
- Regulation 64B (1) – the administering authority may set out a policy on spreading exit payments.

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”) gives 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 Ministry of Housing, Communities and Local Government (MHCLG) on preparing and maintaining policies relating to employer exits.

These regulations relate to all employers in the Fund.

2 Statement of Principles

This Statement of Principles covers the administering authority's approach to exiting employers. Each case will be treated on its own merits and in accordance with the Regulations but in general:

- It is the administering authority'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 the future towards meeting the past service liabilities of current and former employees of the exiting employer.
- The administering authority will generally require the full payment of any exit payment by way of a lump sum, as calculated by the fund actuary on the appropriate basis (as per Section 7 of the FSS and Section 3.1 below). This would extinguish any liability to the Fund by the exiting employer.
- The administering authority's key objective is to protect the interests of the members of the Fund and 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 payment.

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 Section 4.3 of the FSS.

Where there is a deficit and an exit payment calculated, the Regulations require that payment of this amount in full be sought from the exiting employer. The Fund's normal policy is that this exit payment is paid in full in a single lump sum within 28 days of the employer being notified.

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

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 using an actuarial basis determined 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 7.2 of the FSS and summarised below:

Type of employer	Cessation exit basis	Responsible parties for unpaid or future deficit emerging
Council	Low risk basis ¹	Shared between other participating employers
Colleges	Low risk basis	Shared between other participating employers
Academies	Low risk basis ²	DfE guarantee may apply in relation to the exit payment, otherwise see below
Admission bodies (TABs)	Ongoing basis ³	Letting authority / employer (where applicable), otherwise shared between other participating employers
Admission bodies (CABs)	Low risk basis	Shared between other participating employers (if no guarantor / subsuming employer exists)
Designating employers	Low risk basis	Shared between other participating employers (if no guarantor / subsuming employer exists)

¹Cessation 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 will apply.

²See below for where the Fund liabilities are subsumed by another academy or MAT in the Fund

³Where 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.

Risk-based cessation approach

The Fund uses a risk-based approach to set an employer funding strategy, including within cessation calculations. In particular, the likelihood of the Fund's assets achieving particular future investment returns is analysed.

Where appropriate, the Fund will use this approach to set an upper and lower amount (or "corridor") in order to consider the amount of assets a ceasing employer must leave behind to pay for its members' benefits.

Under this approach, an employer is deemed to have a deficit if its assets are below the lower amount and a surplus if its assets are above the higher amount (i.e. there will be no deficit or surplus if a ceasing employer's assets fall within the "corridor").

Cessation of academy trusts 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 or being taken over by 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 fund actuary will calculate a split of the assets and liabilities to be transferred from the exiting employer to the new employers. The fund actuary will use their professional judgement to determine an appropriate and fair methodology for this calculation in consultation with the administering authority.
- In the two above scenarios, in most cases a zero deficit / surplus position will be calculated in relation to any cessation valuation.
- In all other circumstances, and following payment of any exit payment or credit, section 7.5 of the FSS will apply.

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

3.2 Repayment flexibility on exit payments

Deferred spreading arrangement (DSA)

The administering authority will consider written requests from exiting employers to spread an exit 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 exiting employer's financial situation.

In this exceptional case, the administering authority's policy is:

- The agreed spread period is no more than three years, but the administering authority can use its discretion to extend this period in extreme circumstances.
- The administering authority may consider factors such as the size of the exit payment and the financial covenant of the exiting employer in determining an appropriate spreading period.
- The exiting employer may be asked to provide the administering authority with relevant financial information such as a copy of its latest accounts, sources of funding, budget forecasts, credit rating (if any) etc. to help in this determination.
- Payments due under the DSA may be subject to an interest charge.
- The administering authority will only usually consider written requests within 28 days of the exiting employer being made aware of an exit payment being due. The exiting employer would be required to provide the administering authority with detailed financial information to support its request.

- The administering authority may require security to be provided by the exiting employer and will seek actuarial, covenant and legal advice in all cases. The Fund's costs associated with this security and advice will be charged to the exiting employer.
- The administering authority will require a legal document(s), setting out the terms of the DSA, prepared by the Fund (or its legal advisers) and signed by all relevant parties prior to the DSA commencing, with the Fund's costs for this met by the exiting employer.
- The terms of the legal document should include reference to the spreading period, the annual payments due, interest rates applicable, other costs payable and the responsibilities of the exiting employer during the exit spreading period.
- Any breach of the agreed payment plan would require payment of the outstanding cessation amount immediately.
- Where appropriate, cases may be referred to the Pensions Committee for consideration and considered on their individual merit. Decisions may be made by the Chair in consultation with officers if an urgent decision is required between Committee meetings.

Deferred debt agreement (DDA)

The administering authority's preferred policy is for the spreading of payments, as detailed above, to be followed in the exceptional circumstances where an exiting employer is unable to pay the required cessation payment as a lump sum in full. However, in the event that spreading of payments will create a high risk of insolvency of the exiting employer, the administering authority may exercise its discretion to set up a deferred debt agreement as described in [Regulation 64\(7A\)](#).

Where a DDA is entered into, the employer must meet all requirements on Scheme employers and pay the secondary rate of contributions as determined by the fund actuary until the termination of the DDA.

The administering authority may consider a DDA in the following circumstances:

- The employer requests the administering authority consider a DDA.
- The employer is expected to have a material deficit if a cessation valuation was carried out at a current date.
- The employer is expected to be a going concern.
- The covenant of the employer is considered sufficient by the administering authority.

The administering authority will require:

- A legal document to be prepared, setting out the terms of the DDA required by the administering authority and signed by all relevant parties prior to the arrangement commencing (including details of the time period of the DDA and the responsibilities of the employer during the period).
- Relevant financial information for the employer such as a copy of its latest accounts, sources of funding, budget forecasts, credit rating (if any) to support its covenant assessment.
- In some cases, security be put in place by the employer in favour of the Fund.
- Seeking actuarial, covenant and legal advice in all cases with the costs for this paid by the employer.
- Regular monitoring of the contribution requirements and security requirements.
- All costs of the arrangement being met by the employer, such as the cost of advice to the Fund, ongoing monitoring or the arrangement and correspondence on any ongoing contribution and security requirements.

In accordance with the Regulations, a DDA must terminate on the first date on which one of the following events occurs:

- The employer enrolls new active fund members.
- The period specified, or as varied, under the DDA elapses.
- The take-over, amalgamation, insolvency, winding up or liquidation of the employer (unless the administering authority serves notice that it is satisfied the event would not significantly weaken the employer's ability to meet contributions under the DDA).
- The administering authority serves a notice on the employer that the administering authority is reasonably satisfied that the employer's ability to meet the contributions payable under the DDA has weakened materially or is likely to weaken materially in the next 12 months.
- The fund actuary assesses that the employer has paid sufficient secondary contributions to cover the exit payment that would have been due had the employer not entered into the DDA and become an exiting employer.
- The fund actuary assesses that the employer's value of liabilities has fallen below an agreed de minimis level and the employer becomes an exiting employer on the calculation date.
- The employer requests early termination of the agreement and settles the exit payment in full as calculated by the fund actuary on the calculation date (i.e. the employer pays their outstanding cessation debt on their cessation basis).

On the termination of a DDA, the employer will become an exiting employer and a cessation valuation will be completed in line with the Regulations and this policy.

3.3 Exit credits

The administering authority's discretion to determine whether (and in what amounts) exit credits are payable in accordance with this policy shall apply to all employers ceasing their participation in the Fund on and after 14 May 2018 (for exits prior to that date, no exit credits can be payable). The original version of this policy, therefore, was retrospectively effective from the same date as the commencement of the [Local Government Pension Scheme \(Amendment\) Regulations 2020](#). This current version of the policy is effective from the date shown on page 1.

The administering authority may determine the amount of exit credit payable to be zero, however, in making a determination (in relation to all types of exiting employers), 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, and where that employer participates in the Fund by virtue of an admission agreement, any body listed in paragraph (8)(a) to (d)(iii) of Part 3 of Schedule 2 to the Regulations.
- d) Any other relevant factors.

Admitted bodies

- i. For admissions relating to outsourcings, it is anticipated that exit credits will not normally be payable in respect of admission bodies who joined the Fund before 14 May 2018. Prior to this date, the payment of an exit credit was not permitted under the Regulations and this is likely to have been reflected in the commercial terms agreed between the admission body and the letting

authority/awarding authority/ceding employer. 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. No exit credit will normally be payable to any admission body who participates in the Fund via the Fund's pass through approach. The administering authority will consider any contractual or risk sharing agreements between the admission body and letting employer notified to it. Information relating to risk sharing, 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 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. If there is any dispute from either party with regards interpretation of contractual or risk sharing agreements, the administering authority may (subject to the requirements of the Regulations) delay making any exit credit determination until such disputes are resolved and the information is provided to the administering authority.
- iii. Where a guarantor arrangement is in place, but no formal risk-sharing arrangement exists, the administering authority 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 consideration will help inform the determination of the value of any exit credit payment (including whether the exit credit should be zero).
- iv. If the admission agreement ends early, the administering authority will consider the reason for the early termination, and whether that should have any relevance on its determination of the value of any exit credit payment (including whether it should be zero). In these cases, the administering authority will consider the differential between the exiting employers' contributions paid (including investment returns earned on these monies) and the size of any cessation surplus.
- v. The decision of the administering authority is final in interpreting how any arrangement described under iii), iv), and v) applies to the value of an exit credit payment.

Scheduled bodies and designating bodies

- i. Where a guarantor arrangement is in place, and/or a form of risk-sharing arrangement exists, the administering authority 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 consideration will help inform the determination of the value of any exit credit payment (including whether the exit credit should be zero).
- ii. Where no formal guarantor or risk-sharing arrangement exists, the administering authority 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 consideration will help inform the determination of the value of any exit credit payment.
- iii. The decision of the administering authority 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, where the "merged body" continues to participate in the Fund and has adopted the liabilities relating to the exiting employer, it is unlikely that an exit credit will be paid.

- i. The administering authority will notify the exiting employer as well as the letting employer and/or other relevant scheme employers of its exit credit determination under Regulation 64.
- ii. In addition to any risk sharing or other arrangements and factors discussed above, when determining the value of any exit credit (including whether the value should be zero) the administering authority will take into account the value of contributions paid by the employer during their participation, the assets allocated when they joined the Fund and the respective returns earned on both. The administering authority will also consider other relevant factors of which it is reasonably aware, including (but not limited to) the ongoing costs associated with administering the benefits relating to the exiting employer and the nature of the wider financial or market conditions that may have given rise, or contributed to the surplus.
- iii. The administering authority 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 administering authority's default position will be to deduct these from any exit credit payment.
- iv. The final decision on behalf of the administering authority will be made by the S151 officer with responsibility for the Fund, in conjunction with advice from the fund actuary and/or legal advisers where necessary.
- v. The administering authority 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 administering authority in these instances is final.
- vi. The guidelines above at point iv) in the 'Admitted bodies' section, and at points i) and ii) in the 'Scheduled bodies and designating bodies' section, make reference to the administering authority 'considering the approach to setting contribution rates during the employer's participation'. The different funding approaches, including the parameters used and how these can vary based on employer type, are covered in detail in Table 2 (section 2.2) in the FSS. Considering the approach taken when setting contribution rates of the exiting employer may help the administering authority to understand the extent to which the employer is responsible for funding the underlying liabilities on exit. For example, if contribution rates have always been based on ongoing assumptions then this may suggest that these are also appropriate assumptions for exit credit purposes (subject to the other considerations outlined within this policy). Equally, a shorter than usual funding time horizon or lower than usual probability of success parameter may reflect underlying commercial terms about how responsibility for pension risks is split between the employer and its guarantor. For the avoidance of doubt, each exiting employer will be considered in the round alongside the other factors mentioned above and any other relevant factors reasonably known to the administering authority.
- vii. None of the above should be considered as fettering the administering authority's discretion, instead it is an indication of how decisions are likely to be made. Each potential exit credit case will be considered by the administering authority on its own merits, and the administering authority will make its decision on that basis.

Appeals

If a party involved in the exit credit process set out in this policy wishes to dispute the administering authority's determination, this must be routed through the Fund's internal dispute resolution procedure.

If the relevant party is still unhappy with the exit credit determination, having gone through all the stages of the Fund's internal dispute resolution procedure, they may be able to take a complaint to the Pensions Ombudsman.

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 administering authority, 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 but termination can sometimes be automatic, for example, on termination of an outsourcing contract) 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 Administering Authority

The administering authority will:

- Gather information as required, including, but not limited to, the following:
 - 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, will this be due to redundancy or business efficiency etc?).
- 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.

Payment of an exit credit

- If the fund actuary determines that there is an excess of assets over the liabilities at the cessation date, the administering authority will act in accordance with the Regulations and exit credit policy above. If an exit credit is determined, the administering authority will advise the exiting employer of the amount due to be repaid and seek to make payment within six months of the exit date. However, in order to meet the six month timeframe, the administering authority requires prompt notification of an employers' exit and all data requested to be provided in a timely manner. The administering authority may be unable to make any exit credit payment until it has received all data requested.
- At the time this policy was produced, the Fund has been informed by HMRC that exit credits are not subject to tax, however all exiting employers must seek their own advice on the tax and accounting treatment of any exit credit.

4.3 Responsibilities of the 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 participating 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 7 – 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.