

London Borough of Croydon Pension Fund
Policy for Employers Leaving the Fund
December 2021

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Introduction

This is the policy of the London Borough of Croydon Pension Fund (“the Fund”) as regards the treatment of employers leaving the Fund. It has been prepared by the Administering Authority to the Fund, Croydon Council, in collaboration with the Fund’s actuary, Hymans Robertson LLP.

When considering any circumstances where cessation occurs, the Administering Authority will always ensure adherence to any overriding requirements set out in the Local Government Pension Scheme Regulations and/or any supplementary or statutory guidance (e.g. the Best Value Staff Transfers (Pensions) Direction 2007) and non-statutory New Fair Deal requirements.

This policy details the methodology for calculation and payment of any deficit or refund of surplus on leaving the Fund, which supplements the Funding Strategy Statement (“FSS”). It applies independently from any risk-sharing which has been agreed between a Scheme Employer and an Admission Body.

This policy applies to all past, current and future employers participating in the Fund and is effective from DD/MM/YYYY. In exceptional circumstances, the Fund reserves the right to differ from the contents of this policy if the particular circumstances of an Exiting Employer mean that the application of this policy is not appropriate or goes against the spirit of the principles applied here.

This policy has been approved by the London Borough of Croydon Pension Fund Committee on DD/MM/YYYY.

1.1 Terminology

The following terms all have the same meaning as defined in the Local Government Pension Scheme Regulations 2013 (“the 2013 Regulations”), as amended from time to time: Scheme Employer, Administering Authority, Exiting Employer, Exit Credit, Exit Date, Rates and Adjustments Certificate and Related Employer.

1.2 Aims

The aim of this Policy is to set out:

- the approach for the treatment and valuation of liabilities for employers leaving the Fund; and
- to outline the responsibilities of Exiting Employers, the Administering Authority, the Actuary and, where relevant, the original outsourcing Scheme Employer.

1.3 Regulatory Framework

The Local Government Pension Scheme Regulations 2013 as amended (“the 2013 Regulations”) outline the general framework for employees and employers participating in the Local Government Pension Scheme in England and Wales. The regulations that are relevant to employers leaving the Fund are as follows;

- 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 and 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 and 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 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.

In addition to the 2013 Regulations summarised above, the 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.

These regulations relate to all employers in the Fund.

1.4 Reviews of Policy

This policy will be reviewed at least every three years following triennial valuations or following changes in the Regulations pertaining to employers leaving the Fund.

It should be noted that this statement is not exhaustive and individual circumstances may be taken into consideration where appropriate.

2 Principles

2.1 Overriding Principles

The Policy has been prepared on the basis of the following key principles:

- it is the Fund’s policy that the determination of any surplus or deficit on termination 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 (Exit Payment), which is calculated by the Actuary on the basis set out in the Funding Strategy Statement (“FSS”). 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.

2.2 Interaction with Funding Policy

It is the Fund's policy that each employer is responsible for the funding of all Fund benefits of its own members, including current and previous employees. The FSS sets this out in more detail and addresses the issue of cross-subsidies between employers. While employer contributions may be pooled in the interests of stability and administrative ease for the purpose of Formal Funding Valuations, the individual funding position for each employer is tracked by the Actuary. Any cessation valuation will be carried out using assets and liabilities allocated to the employer at the last triennial valuation as a starting point. This position will be updated to allow for membership movements and market conditions as at the cessation date. The cessation valuation for any employer leaving a pool will be based on the funding position of the pool as a whole at the cessation date.

Note (j) of section 3.3 of the Funding Strategy Statement sets out funding policy for admission bodies leaving the Fund.

2.3 Principles for Determining Payment

The Administering Authority will determine the deficit / surplus attributable to the employer on cessation having taken actuarial advice.

If the Exiting Employer has an excess of assets over the liabilities, according to Scheme regulations, an Exit Credit may be payable to the employer. Any Exit Credit payable will take account of the Regulations noted in Section 1.3 and the Fund's Exit Credit Policy (included within note (j) of the FSS).

In each of the following scenarios, the cessation amount is crystallised. This means that once the Exit Debt or Exit Credit has been determined, this amount will not be reviewed in future to allow for future events such as market movements or demographic changes.

The funding bases currently in use for calculating cessation valuations are set out in the Pension Fund's Funding Strategy Statement. These bases may be updated or withdrawn at the discretion of the Administering Authority on the advice of the Actuary. They will be reviewed, as a minimum, at each Formal Valuation of the Pension Fund as part of the review of the FSS. The Administering Authority, on advice from the Actuary, will determine the most appropriate cessation basis for each case.

Contractors participating in the Fund under an admission agreement (previously referred to as Transferee Admission Bodies)

The Fund's policy is to carry out the cessation valuation for all admitted bodies ceasing participation in the Fund, in this situation, in line with the 'Contractor Exit Basis' from the most recent Formal Valuation of the Fund (updated for market conditions at the Exit Date). The Fund's default position is that pass-through* provision will not be enabled.

If, in exceptional circumstances, a ceasing employer wishes to enter into discussions around pass-through provision, staff time involved on the Fund side will be charged at the rate defined within the Administration Strategy Statement. Additionally any agreement on this will be at the discretion of the administering authority and will need to be authorised by the relevant

person as laid down in the scheme of delegation detailed in the governance and compliance statement as required under regulation 55.

The contribution rate for the Scheme Employer who awarded the original contract may be amended on termination should there be any outstanding Exit Debt. This may occur if the certified Exit Debt due from the ceased employer has not been paid or any amount received from any bond in place has not been sufficient to meet the full Exit Debt.

In this case, the original Scheme Employer is the ultimate 'guarantor' for any legacy liabilities in respect of the Exiting Employer's liabilities.

If the admission agreement is terminated earlier than the contract period set out in the agreement, then the Administering Authority reserves the right to perform the cessation valuation on an alternative basis as agreed with the original Scheme Employer.

All other employers (including Scheme Employers, Designated Bodies and other Admission Bodies)

a) No Guarantor Exists

In the case of an Exiting Employer where no guarantor exists, since the Regulations suggest that any unfunded liabilities (at the point of cessation or after the cessation date) should be met via increased contributions from all other employers in the Fund, the Administering Authority wishes to protect the interests of the other unconnected employers.

The cessation valuation in such a case will be carried out in line with the "Low Risk Exit Basis" (i.e. with an investment return assumption based on long term government bond yields with no allowance for outperformance on the Fund's assets, and with an increased allowance for future mortality improvements above those adopted for the ongoing participation basis at the last actuarial valuation).

b) Exiting employer has a guarantor

If a Scheme Employer guarantor exists or if the Exiting Employer is able to obtain a legally binding guarantee from a Scheme Employer on cessation which states the guarantor is prepared to absorb the Exiting Employer's responsibilities on an Ongoing Participation Basis, then the Actuary will calculate the cessation valuation using the Ongoing Participation Basis adopted at the last actuarial valuation (updated for market conditions). This approach is subject to the guarantor Scheme Employer being deemed by the Administering Authority to be sufficiently large and financially secure that the Exit Debt for the Exiting Employer is not material to the ongoing funding position of the guarantor Scheme Employer.

c) Treatment of employers admitted with a fixed rate arrangement.

If an employer enters into an arrangement regarding risk-sharing or pass-through with another Scheme Employer that is not reflected in the employer admission agreement,

then a cessation amount will be calculated according to (a) or (b) above and charged to or credited to the Exiting Employer. The Exiting Employer will be entirely responsible for claiming from the other Scheme Employer any monies to which the Exiting Employer is entitled as a result of arrangements not reflected in the admission agreement.

3 Cessation Events

3.1 Current Cessations

An employer's participation in the Fund ceases when one of the following occur:

a) *Contractors participating in the Fund under an admission agreement (previously referred to as Transferee Admission Bodies ("TABs"))*.

- A cessation event will occur when either a contract comes to a pre-arranged end date (the period of which will be defined in the admission agreement), a contract is terminated early, or the employer has no remaining active members in the Fund.
- Action will be taken by the Fund to determine the level of any Exit Debt owed by, or Exit Credit owed to, the Exiting Employer. The Fund will then seek to recover any Exit Debt from the Exiting Employer, bond holder or guarantor in place, or at its absolute discretion, fully or partially, pay out an Exit Credit.
- Regardless of the success of recovering any Exit Debt in respect of the Exiting Employer, or the amount of any Exit Credit refunded, all active, deferred and pensioner liabilities of the contractor will automatically transfer back to the letting employer, along with the notional value of assets held by the Exiting Employer.
- If the contract is re-let, a new admission agreement will be set-up between the letting employer and the new employer which may lead to some or all the original active members transferring from the letting employer to the new employer.

b) *Academies and Multi-Academy Trusts (MATs)*

- A cessation event will occur if a current Academy or Multi-Academy Trust ceases to exist as an entity or as an employer with the Fund.
- If the cessation event occurs due to an academy or MAT merging with or being taken over by another academy or MAT within the London Borough of Croydon Pension Fund, all active, deferred and pensioner liabilities from each of the merging entities will be combined, along with the notional value of assets held by the bodies concerned, and the responsibility for the payment of all current and future liabilities will become the responsibility of the newly merged entity. In these circumstances the Actuary, in consultation with the Fund, will determine the revised contribution rate relating to the newly merged entity.
- If the academy or MAT is split into more than one either new or existing employers within the London Borough of Croydon Pension Fund then the Actuary will split the notional assets and liabilities relating to all active, deferred and pensioner liabilities of the Exiting Employer between the employers which are inheriting responsibility for the ceasing academy or MAT. In consultation with the Administering Authority, the

Actuary will use their professional judgement to determine an appropriate and fair methodology for undertaking this split. Furthermore, the Actuary, in consultation with the Fund, will determine if payment of an Exit Debt or Exit Credit is required (notwithstanding the Administering Authority's absolute discretion on Exit Credits) or if these variations should be addressed as part of future employers' contributions.

- If the Fund is unable to recover any Exit Debt from an Academy or MAT then it will seek to recover the debt from the Department for Education (DfE) as outlined in the DfE's parliamentary minute from 2 July 2013.
- In all other circumstances, following the payment of any Exit Debt or the receipt of any Exit Credit, responsibility for all the remaining deferred and pensioner liabilities will be ring-fenced until the final liability ceases and then any residual surplus/deficit will be apportioned amongst all remaining active employers in the Fund, unless another Scheme Employer (or group of employers) provides a guarantee that requires them to inherit responsibility for the Exiting Employer's notional assets and liabilities.

c) *All other employers*

- A cessation event will typically occur due to an employer having no remaining active members in the Fund.
- Following payment of any Exit Debt or receipt of any Exit Credit, responsibility for all remaining deferred and pensioner liabilities will be shared amongst all remaining active employers in the Fund, unless another Scheme Employer (or group of employers) provides a guarantee that requires them to inherit responsibility for the Exiting Employer's notional assets and liabilities.

3.2 Suspending payment of exit amounts

At the absolute discretion of the Administering Authority, a suspension notice may be awarded to an Exiting Employer. This may be for a period of up to three years after the cessation event (the maximum period permitted by the Regulations). Any application for the Administering Authority to grant a suspension notice will normally only be considered if the following criteria apply;

- The employer can provide evidence that it is likely to admit one or more new active members to the Fund within the period of the suspension notice.
- The employer is not a closed Admitted Body, as under the existing admission agreement no new active members would be permitted to join the Fund.
- Any application for the Administering Authority to grant a suspension notice is made within three months of the cessation event.

The Administering Authority reserves the right to withdraw a suspension notice if it is of the opinion that the terms of any agreement to award a suspension notice are not being upheld by the employer.

If a suspension notice is awarded, the cessation valuation will be deferred until the earlier of 1) the end of suspension period or 2) the point at which the suspension notice is withdrawn (for any reason). If one or more new active members are admitted to the Fund, the

employer's full participation in the Fund will resume, including the ongoing responsibility for historic liabilities. If no new active members are admitted to the Fund it will seek to recover any cessation debt as per 3.1.

During the period of any suspension notice, the employer must continue to make such contributions to the Fund as certified in the Rates and Adjustments certificate.

3.3 Future Cessations

If an employer is aware that it will be leaving the Fund in the future, it should alert the Administering Authority and request an indicative cessation valuation. This valuation report is chargeable to the employer.

If this valuation indicates that a surplus position is likely, then the Actuary will be able to advise the Administering Authority whether a contribution reduction (before the employer ceases) is appropriate. Alternatively, if this calculation indicates a deficit position is likely then the Actuary will be able to advise of any required increase in contributions over the remaining period of membership. In either case, the Administering Authority has discretion over the funding basis to be used for this calculation.

If an employer participates in a pool, it should review the relevant pooling policy to determine action required in respect of leaving the pool.

3.4 Historic cessations

As required under Regulation 25A of the Transitional Regulations, the Administering Authority reserve the right to levy a cessation debt on employers who have ceased participation in the Fund under previous LGPS regulations, but for whom a cessation valuation was not carried out at the time. In such circumstances, the appropriate approach would be taken in line with the contents of this policy document depending on the relevant circumstances of each case.

4 Payment of any Exit Debt

If the actuary determines that there is a deficit at the cessation date, the Exiting Employer is required to make an Exit Debt payment to the Pension Fund. The Administering Authority will advise the Exiting Employer of the amount required and payment arrangements. The Fund's policy is for any Exit Debt on cessation to be recovered through a single lump sum payment to the Fund, where possible. If the Fund fails to recover the payment of the deficit from the Exiting Employer, the Administering Authority will pursue any bond, indemnity provider or guarantor for payment where appropriate.

Generally, the outgoing employer will not be exposed to interest rate, investment or other funding risks after the cessation date. The final Exit Debt may be calculated by the addition of interest at the level of the base rate between the cessation date and the final payment date(s). Exceptions to this may be made where the Fund is not advised in a timely manner of the cessation date of the Exiting Employer.

The Administering Authority may consider permitting an Exiting Employer to spread the payment over an agreed period, where it considers that this does not pose a material risk to the solvency of the Fund. In addition, in some circumstances, the Administering Authority may consider a Deferred Debt Agreement (DDA) rather than crystallising an Exit Debt. Details of the Fund's policies on spreading an exit debt and DDAs are contained within the Funding Strategy Statement.

5 Payment of Exit Credit

If the 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 Exit Credit Policy (included within note (j) of the Funding Strategy Statement).. If payment is required, the Administering Authority will advise the Exiting Employer of the amount due to be repaid. 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 is 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.

6 Ongoing Management of Liabilities after Settlement of Cessation Debts

It is the policy of the Fund to avoid 'orphaned' liabilities and assets which can occur in the following situations:

- a) The Exiting Employer no longer exists; or
- b) The Exiting Employer still exists, but they have paid off a cessation valuation in full, so there is no further recourse to them.

In these situations, the issue remains of where the former employer's liabilities (which don't cease until the last pensioner dies) and assets reside within the Fund's unitised structure. The approach for dealing with this is as follows:

- a) Where there is a guarantor which is also an employer within the Fund, it is the Fund's policy that they will be pooled with the legacy (deferred and pensioner) liabilities and assets for the purposes of future actuarial valuations. This can also be a way of spreading the cost of any remaining deficit that the guarantor may be picking up, because the liabilities (and assets) become merged with the guarantor's existing liabilities/assets for valuation and contribution rate purposes.
- b) Where there is no guarantor, another existing employer within the Fund, such as the original ceding employer (in the case of old Community Admission Bodies) or some other organisation with close links to the former employer will be sought to similarly absorb the legacy (deferred and pensioner) liabilities and assets.
- c) If no other employer within the Fund has links to the former employer, the former employer's assets will be ring-fenced until the last pensioner dies and any emerging

deficit or surplus will be allocated across all current employers in the Fund at that date in proportion to their liabilities.

7 Process

7.1 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; and
- provide all other information and data requirements as requested by the Administering Authority which is 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.).

7.2 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; and
 - 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; and
- 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.

7.3 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; and
- 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.