

Bath & North East Somerset Council

MEETING:	AVON PENSION FUND COMMITTEE	
MEETING DATE:	12 DECEMBER 2014	AGENDA ITEM NUMBER
TITLE:	REQUEST BY ADMISSION BODY TO EXIT SCHEME	
WARD:	ALL	
AN OPEN PUBLIC ITEM		
List of attachments to this report: Appendix 1 – Paper from Admitted Body		

1 THE ISSUE

- 1.1 A community admission body, has approached the Fund requesting that they exit the scheme. This means that the existing members will cease to accrue pension benefits within the Fund.
- 1.2 The Fund's Termination Policy manages the risk arising from employing bodies exiting the scheme. It has an overriding objective to protect the remaining employers within the Fund from material financial risk.
- 1.3 As the admission agreement between the body and the Fund does not include provision for admission bodies to stop accruals for eligible members, any amendment to the admission agreement to stop accruals for eligible members will require the agreement of the Fund. The Fund will consider any requests in line with its Exit and Termination Policies. **The admission body has been invited to the meeting to explain their request to the Committee.** Officers consider the proposal complies with the Fund's policies.
- 1.4 In relation to the Fund's Termination Policy, the Committee requested assurance about the seniority of an admission body's pension debt once they have exited the Fund and an deficit payment plan is in place. The advice from the actuary and lawyer is set out in Section 5 of this report.

2 RECOMMENDATION

The Committee:

- 2.1 Agrees the proposal from the admission body meets the terms of the Exit and Termination Policies, subject to:
 - (a) payment of the outstanding deficit in full on exit;
 - (b) the Committee being satisfied that the admission body has effectively managed the employment issues relating to their exit from the scheme.
- 2.2 Notes the advice regarding the seniority of an admission body's pension debt once a deficit payment plan is agreed on exiting the scheme.

3 FINANCIAL IMPLICATIONS

- 3.1 When an employer leaves the Fund, there is no further recourse to that body if the accumulated assets notionally allocated to that body at the exit date prove to be inadequate in meeting future benefit payments. As the body supporting these liabilities will have no ongoing responsibility in respect of these liabilities once they have left the Fund, the residual liabilities will then become the responsibility of any existing guarantor in the Fund or by the Fund as a whole (i.e. all participating employers), in which case they become known as “orphan liabilities”.
- 3.2 Therefore an exit contribution payment will be requested from the outgoing employer (unless the deficit passes to the guarantor within the Fund). The exit payment is assessed on the exit or termination basis which values the liabilities using corporate bond yields. This more prudent basis is used to provide protection to the other scheme employers from adverse movements in the financial markets after the employer exits the Fund.

4 REQUEST TO EXIT THE FUND

- 4.1 This section sets out the Fund’s policies for employers exiting the Fund. Any request to exit must comply with these policies.
- 4.2 The admission body was admitted to the scheme in 2000 prior to Fair Deal and the 2007 Directive. The employer joined the fund as a community admission body.
- 4.3 The LGPS regulations do not prevent a community admission body from closing the scheme to new accruals. The admission agreement between the employer and the Fund does not include provision for admission bodies to stop accruals for eligible members nor do they have a provision allowing termination in those circumstances. Therefore any amendment to the admission agreement to stop accruals for eligible members will require the agreement of the Fund.
- 4.4 The Fund’s **Exit Policy**, agreed by Committee on 28 March 2014, for allowing admitted bodies to stop accruals for eligible members and leave the scheme is as follows:

The Committee’s decision to allow an admitted body to exit the scheme, in circumstances not set out in the admission agreement, will be determined in accordance with the best interest of the Fund as a whole. The Committee will also consider whether the employer has conducted the process in line with employment law and their contractual obligations.

- 4.5 The LGPS Regulations 2013 (as amended) stipulate that termination is triggered for any employer when the last active member leaves.
- 4.6 The Fund’s **Termination Policy**, agreed at September 2014 Committee meeting, is as follows:
- i. The default position is for exit payments to be paid immediately in full.*
 - ii. Instalment plans over a defined period will only be agreed when there are issues of affordability that risk the financial viability of the organisation and the ability of the Fund to recover the debt.*
 - iii. On exit the liabilities are assessed using the Corporate Bond funding basis.*
 - iv. The assumption for longevity is adjusted to use a 2% p.a. long term rate for longevity improvement, subject to review by the Chair and Vice Chair on a case by case basis and on-going review by the Committee.*

- 4.7 At the 2013 valuation the admission body had a deficit of £7.5m, assets of £23.5m and liabilities of £31m assessed on the on-going basis. This accounted for 0.9% of the Fund's overall deficit. The actual deficit will be assessed in line with the Fund's policies at the date of exit.
- 4.8 The admission body has confirmed to officers that it will pay the outstanding deficit in full on exit.
- 4.9 Officers have met the admission body on a number of occasions to discuss the issue, specifically to set out the Fund's policies for exiting the scheme and termination calculations. From these discussions, officers are assured the proposal complies with the Fund's Exit and Termination Policies. In addition for the Committee, the admission body has been asked to outline the process it has undertaken in a paper it will present to the Committee. This paper is attached as Appendix 1.

5 SENIORITY OF PENSION DEBT

- 5.1 The Fund's Termination Policy, in line with the LGPS Regulations 2013 (as amended) allow deficit payment plans to be agreed when an employer leaves the scheme. At its meeting in September, the Committee asked for advice as to whether the existence of a payment plan could impact the seniority of the debt, and therefore affect the probability of repayment in the event of insolvency after the plan is agreed.
- 5.2 Advice has been obtained from the Fund's lawyer, Osborne Clarke and actuary, Mercer. Both confirmed that the payment plan would not affect the seniority of any debt outstanding. Pension fund creditors, including LGPS funds, are unsecured creditors who rank behind secured creditors even with a payment plan in place as there will be nothing in the termination payment agreement that changes this. To ensure that the pension debt ranks above the debt owed to the other unsecured creditors on insolvency, the Fund would have to have some form of security in place e.g. a charge on assets to make the Fund a secured creditor. Even in this event, if there is more than one secured creditor, the normal rule on the priority of security over the same asset or assets is that security granted first in time ranks prior.
- 5.3 In addition, the actuary has advised that a Letter of Undertaking forms part of the Deficit Repayment Plan agreed with the outgoing employer. This will assist the Fund in monitoring the financial situation and taking appropriate action if the employer's actions are to the detriment of the Fund.
- 5.4 Under the terms of the Letter of Undertaking the outgoing Employer agrees to following during the period covered by the Deficit Repayment Schedule:
- i. Negative pledges – i.e. actions which cannot be carried out by the employer without the prior agreement of the administering authority. These actions are those where there is a significant probability that the employer's ability to pay the termination payment could directly be affected.
 - ii. Notifications – i.e. events that the employer agrees that they will notify the administering authority about. These are events that may indirectly affect the amount of termination payment recoverable.

Where the Employer does not adhere to the terms in the agreement, the Administering Authority reserves the right to request full settlement of the outstanding value of the remaining payments on the Repayment Schedule as advised by the Fund Actuary.

5.5 The Committee is asked to note the advice from the lawyer and actuary regarding the seniority of debt where deficit payment plans have been agreed.

6 RISK MANAGEMENT

6.1 A key risk to the Fund is the inability of an individual employer to meet its liabilities, especially when it ceases to be an employing body within the Fund. The assessment of termination liabilities that is equitable to all scheme employers is crucial part of the risk management process. Ongoing assessment of the strength of an employing body’s covenant is another component in managing the potential risk of default to the Fund. Within the Investments Team there are officers with responsibility for monitoring the employers’ financial position and to support the Investments Manager in managing the financial and liability risks, both on-going and at termination.

7 EQUALITIES

7.1 Not relevant.

8 CONSULTATION

8.1 Not relevant as regarding the implementation of agreed policy.

9 ISSUES TO CONSIDER IN REACHING THE DECISION

9.1 The relevant information is set out in the report.

10 ADVICE SOUGHT

10.1 The Council's Monitoring Officer (Divisional Director – Legal and Democratic Services) and Section 151 Officer (Divisional Director – Business Support) have had the opportunity to input to this report and have cleared it for publication.

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Background papers	Correspondence with legal advisor and actuary
Please contact the report author if you need to access this report in an alternative format	