

Local Pension Board

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Local Government Pension Scheme Administering Authority and Employer Discretions



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Purpose of the Report

1. The purpose of this report is to advise the Board of the choices available to the administering authority and to employers under the regulations governing the Local Government Pension Scheme (LGPS), and how these are being exercised within the Pension Fund.

Background

2. Under the regulations governing the LGPS administering authorities and employing authorities have a number of separate choices in relation to benefits or options that can be made available to scheme members under those regulations. These are usually referred to as administering authority discretions and employer discretions. The two appendices to this report set out the main administering authority discretions (Appendix A) and the employer discretions (Appendix B) made by the Council, along with some of the rationale behind those policy decisions.
3. Other employing authorities within the Pension Fund are able to choose how to exercise their employer discretions under the LGPS regulations. Most employers choose to exercise their discretions in a similar way to the Council, especially in those areas that can incur a cost to the employer such as the early release of unreduced pension benefits and the awarding of additional pension.

Recommendation

4. The Board is asked to note this report and provide any comments on the way the Council exercises its discretions under the LGPS.

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Appendix A – Administering Authority Discretions

Discretion	Regulation	Council's policy	Rationale / comment
<p>Whether to require a satisfactory medical before agreeing to an application to pay an Additional Pension Contribution / Shared Cost Additional Pension Contribution</p>	<p>R16(10)</p>	<p>A medical will not be required in respect of applications to pay Shared Cost Additional Pension Contributions following authorised unpaid leave of absence. For any other Shared Cost Additional Pension Contribution applications or for any application to pay (member only) Additional Pension Contributions, a letter from the individual's GP will be required stating they are in reasonably good health for their age. This letter will not be required if the additional contributions are being paid as a one-off lump sum.</p>	<p>Pension bought through paying Additional Pension Contributions is normally paid for over a number of years. If contributions are not continued for the full contract only a pro-rated amount of pension is credited except in cases of ill-health retirement or death in service. Requiring a medical protects the Pension Fund / pension fund employers from having to meet the extra cost in cases where an individual takes out a contract already aware of their poor state of health.</p> <p>Medicals are not required in respect of shared cost additional pension contributions as these are by their nature small amounts which relate to authorised unpaid leave of absence.</p>

Discretion	Regulation	Council's policy	Rationale / comment
<p>Whether to require any strain on Fund costs to be paid "up front" by employing authority following payment of benefits under R30(6) (flexible retirement), R30(7) (redundancy / business efficiency), or the waiver (in whole or in part) under R30(8) of any actuarial reduction that would otherwise have been applied to benefits which a member voluntarily draws before normal pension age or to benefits drawn on flexible retirement</p>	<p>R68(2)</p>	<p>Employers will be required to pay these strain costs either as a one-off lump sum due from the individual's retirement date or in five annual instalments with the first instalment due on the individual's retirement date. Where payment by instalments is selected an interest element will be added to each payment.</p>	<p>Few (if any) employers choose the five instalment approach to making early retirement strain costs. This is presumably owing to the interest rate applied, which was set some years ago and was intended to reflect the return on investment the Pension Fund could expect – it equates to 8% a year compound interest.</p>
<p>Whether to require any strain on Fund costs to be paid "up front" by employing authority following flexible retirement under R30(6) or waiver of actuarial reduction under TPSch 2, para 2(1) or release of benefits before age 60 under B30 of B30A</p>	<p>TPSch 2, para 2(3)</p>	<p>Employers will be required to pay these strain costs either as a one-off lump sum due from the individual's retirement date or in five annual instalments with the first instalment due on the individual's retirement date. Where payment by instalments is selected an interest element will be added to each payment.</p>	

Discretion	Regulation	Council's policy	Rationale / comment
Decide to whom death grant is paid	TP17(5) to (8) & R40(2), R43(2) & R46(2)	Discretion to be exercised by the Pensions Manager on behalf of the Corporate Director of Resources under delegated powers to make payments in accordance with any nominations received or to anyone who would appear to be the beneficiary.	This is a practical approach, to delegate authority to officers to ensure the payment of death grants can be processed promptly.
Whether to pay death grant due to personal representatives or anyone appearing to be beneficially entitled to the estate without need for grant of probate / letters of administration where payment is less than amount specified in s6 of the Administration of Estates (Small Payments) Act 1965		The Pensions Manager on behalf of the Corporate Director of Resources will make payments under the small payments legislation under delegated powers.	
Allow transfer of pension rights into the Fund	R100(7)	To allow transfers of pension rights into the Fund (provided the time limits set out in the regulations have been adhered to)	Allows scheme members the option to transfer-in pension rights from other schemes. Relies on factors (currently provided by the Government Actuary's Department) ensuring the liabilities transferred in appropriately match the assets transferred in.
Extend normal time limit for acceptance of a transfer value beyond 12 months from joining the LGPS	R100(6)	To allow the 12 month time-limit for transfers-in to be extended, provided the relevant scheme employer has agreed to the extension	Makes accepting late transfers-in an issue for the scheme employer (as they will pick up any additional defined benefit pension risk if the transfer proceeds).

Discretion	Regulation	Council's policy	Rationale / comment
Decide to treat child as being in continuous education or vocational training despite a break	RSch 1 & TP17(9)	Exercise discretion to ignore breaks in education or vocational education if the break does not exceed one year	This allows for those receiving a child's pension because they are under age 23 and in full-time education or vocational training to continue to receive a child's pension after a break in education / vocational training of up to a year (although payment does not continue during that break). Note a scheduled school / college / university holiday does not constitute a break for these purposes.
Decide policy on abatement of pre 1 April 2014 element of pensions in payment following re-employment	TP3(13) & A70(1)* & A71(4)(c)	Abatement of pensions will not apply with the exception of the abatement of old 'added years' pensions as required under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 and 2006	In line with many other administering authorities, the Council does not apply 'abatement'. It was always difficult to administer and enforce, as well as being a concept which is difficult to reconcile with the relaxation of HMRC's restrictions (from April 2006) around drawing a pension and continuing to work, and with general modern employment practices.

Appendix B – Employer Discretions

Discretion and regulation	Council's policy	Rationale / comment
Whether to grant additional pension to a member (initially up to £6,500 a year – now (2018/19 up to) [R31]	The Council will only consider exercising this discretion where it is in the Council's financial interests to do so.	Very unlikely to be in an employer's financial interest to award additional pension, 'switch on' the rule of 85, waive actuarial reductions or pay for some or part of a scheme member's additional pension purchase when not required to do so.
Whether to allow the rule of 85 to be "switched on" for members who would normally meet the rule but who will not if they draw the benefits age 55-59 [TPSch2, para 1(1)(c)]	The Council will only consider exercising this discretion where it is in the Council's financial interests to do so.	
Waiving actuarial reduction on early retirement (age 55+) – for both active, deferred members & suspended tier 3 ill health pensions [R30(8)]	The Council will only consider exercising this discretion where it is in the Council's financial interests to do so.	
Whether to it make either a regular or lump sum Additional Pension Contribution (APC) to a member's account (part or whole funding this) [R16(2)e & R16(4)d]	The Council will only consider exercising this discretion where it is in the Council's financial interests to do so. Note: for cases where a member has a period of authorised unpaid leave of absence and chooses within 30 days of return to work to pay a Shared Cost APC to cover the amount of pension 'lost' during that period of absence, the employer must contribute 2/3rds of the cost to a Shared Cost APC; there is no discretion)	

Discretion and regulation	Council's policy	Rationale / comment
<p>Whether all or some pension benefits can be paid if an member aged 55 or over reduces their hours/grade and continues to work ("flexible retirement"), and whether to waive some or all of any actuarial reduction that applies on flexible retirement. [R30(6) & R30(8)]</p>	<p>The Council will consider applications for "flexible retirement" on an individual basis. Decisions will be made on the merits of each case, considered in the following context:</p> <ol style="list-style-type: none"> 1) The proposed reduction in hours or grade required to facilitate flexible retirement must be compatible with the requirements of the Service. 2) If a reduction in hours is proposed, it must be by a minimum of 20%. 3) A flexible retirement request which causes a cost to the Council (including any request to waive some or all of the actuarial reductions that apply) would normally be refused except in exceptional circumstances, for example <ol style="list-style-type: none"> a) where the Corporate Director, Resources deems it to be in the interests of the authority to pay the cost and there are sound financial reasons for doing so. Any recommendation must be approved by the HR Committee or b) on the grounds of compassion where in the opinion of the Corporate Director, Resources, the special factors surrounding the application, along with the appropriate supporting evidence provided, justify such a recommendation. Any such recommendation should also take into account the Council's ability to meet the cost of granting such a request. 	<p>Very occasionally flexible retirement cases that involve a cost can be considered to meet the financial criteria. For example, if an individual is reducing their hours and this is a permanent reduction in the organisation's establishment there will be a saving which can be set against the cost of early release of benefits.</p>

Discretion and regulation	Council's policy	Rationale / comment
Whether, how much, and in what circumstances to contribute to a shared-cost Additional Voluntary Contribution (SCAVC) arrangement [R17(1) & Definition of SCAVC in Schedule 1]	The County Council does not propose to establish a SCAVC arrangement at the present time. The potential introduction of such arrangements will be reviewed when the County Council element of the Pension Fund is certified by the Actuary as being fully funded i.e. that assets cover 100% of liabilities	Some employers in other LGPS funds have introduced shared cost AVCs through salary sacrifice, as a way of reducing National Insurance costs for employers and the scheme members who pay AVCs this way. This is something that could be considered in future.
Whether to extend 12-month period to separate previous LG service. [R22(8)&(9)]	The Council (as a Scheme Employer) will only allow an extension to the 12-month period to separate previous local government service in exceptional circumstances, for example where it can be reasonably shown that the member was not provided with the required information within 9 months of starting employment.	Scheme members should be made aware of their options soon after they join the scheme.
Determine rate of employees' contributions. [R9(3)]	The Council will review all employees contribution band on a monthly basis, and in addition whenever an employee's contractual hours or rate of pay changes.	The Council's approach has changed from annual to monthly reassessment of contribution bands.
Whether to extend 12-month period to allow a transfer-in of non-LG pension rights. [R100(6)]	The Council (as a Scheme Employer) will only allow an extension to the 12-month period to transfer-in non-local government pension rights in exceptional circumstances, for example where it can be reasonably shown that the member was not provided with the required information within 9 months of starting employment.	Scheme members should be made aware of their options soon after they join the scheme.

Discretion and regulation	Council's policy	Rationale / comment
<p>Whether or not, when calculating assumed pensionable pay when a member is:</p> <ul style="list-style-type: none"> • on reduced contractual pay or no pay on due to sickness or injury, or • absent during ordinary maternity, paternity or adoption leave or during paid additional maternity, paternity or adoption leave, or • absent on reserve forces service leave, or • retires with a Tier 1 or Tier 2 ill health pension, or • dies in service <p>to include in the calculation the amount of any 'regular lump sum payment' received by the member in the 12 months preceding the date the absence began or the ill health retirement or death occurred. A 'regular lump sum payment' is a payment for which the member's employer determines there is a reasonable expectation that such a payment would be paid on a regular basis</p> <p>[R21(4)(a)(iv), R21(4)(b)(iv) and R21(5)]</p>	<p>As the Council rarely makes any 'regular lump sum payments', this decision will be taken on a case by case basis.</p>	<p>The regulations have changed recently to allow further discretion for employers when determining 'assumed pensionable pay' in these cases.</p>