Employer Discretions Policy

Version 1.1

Approved by the Corporate Director Finance August 2022

POLICY STATEMENT

This document sets out the scheme employer's policy on the operation of each of the mandatory discretions (and optional discretions where chosen) available under the Local Government Pension Scheme Regulations (LGPS) 2013 and the LGPS (Transitional Provisions, Savings and Amendment Regulations 2014).

The aim of this policy is to provide guidance on permitted discretions, the circumstances, and criteria for applying them.

The following discretions apply to members who were actively paying into the scheme from 1 April 2014 onward.

PART A - Mandatory Discretions

Power to Award Additional Pension (Regulation 31)
At the full cost to the Scheme employer, the employer may, in exceptional circumstances grant extra annual pension to an active member or within 6 months of leaving to a member whose employment was terminated on the grounds of redundancy or business efficiency. The maximum increase to an active member's pension will be in accordance with current and relevant regulations.
Employer Policy Decision
• Any increase to a member's pension will only be considered in exceptional cases, where the employee has demonstrated an outstanding contribution to the Council's plans. • The member is eligible to retire at no cost to the Council. • Cases will only be considered where the employee has completed at least 15years service with the London Borough of Hillingdon. • The maximum increase to a member's pension will be in accordance with current and relevant regulations. • Operation of the scheme must be justified through a business case, setting out the exceptional circumstances. • Only cases approved by both the Chief Executive and Leader of the Council will be considered.

Shared Cost Additional Pension Contributions (Regulation 16(2e) (4d))
Where an active scheme member has decided to make Additional Pension Contributions (APCs) to purchase extra pension benefits up to a maximum as set out in current and relevant regulations; the employer can resolve to *voluntarily* contribute towards the cost of this. Note: This does not include instances where the employee is paying for *lost* pension via an APC where the election was made in the first 30 days (or longer if the employer allows) – in this circumstance the employer *must* pay two-thirds of the cost of such purchase
Employer Policy Decision
The Council will consider such applications and it is likely that decisions will be made on the merits of each case having regard to factors such as the cost of granting such a request and the member's personal circumstances NB: The above discretion does not apply to cases where a member has had a period of authorised unpaid absence and elects within 30 days of return to work to pay a SCAPC to cover the amount of pension 'lost' during that period of absence. In such cases, the employer must contribute 2/3rds of the cost to a SCAPC; there is no discretion [regulation 15(5) of the LGPS Regulations 2013]. The Council will not establish a Shared Cost Additional Pension Contribution scheme for any of its employees unless there is clear operational or financial benefits of doing so.

Flexible Retirement - (Regulation 30 (6)) & TP11(2) & R30(8)
Whether to allow flexible retirement for staff aged 55 or over who, with the agreement of the Scheme employer, reduce their working hours or grade [regulation 30(6) of the LGPS Regulations 2013] and, if so, as part of the agreement to allow flexible retirement: • whether, in addition to the benefits the member has built up prior to 1 April 2008 (which the member must draw), to allow the member to choose to draw - all, part, or none of the pension benefits they have built up after 31 March 2008 and before 1 April 2014, and / or - all, part, or none of the pension benefits they built up after 31 March 2014 [regulations 11(2) and 11(3) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014], and - whether to waive, in whole or in part, any actuarial reduction which would otherwise be applied to the benefits taken on flexible retirement before Normal Pension Age (NPA).
Employers may allow a member from age 55 onwards to draw all or part of the pension benefits already built up while continuing in their employment, providing the employer agrees the member either reduces their hours or moves to a lower grade role.

In such cases, pension benefits will be reduced in accordance with actuarial tables unless the employer waives the reduction either fully or in part or a member has protected rights.

There is no option to switch off the 85-year rule in cases where a member who retires under flexible retirement meets the 85-year rule between the ages of 55 and 60. As such this may incur additional cost to the employer.

Employer Policy Decision

Flexible retirement will only be authorised in very exceptional circumstances. The manager must detail the business case for granting flexible retirement on the appropriate form.

This form must be approved by the Corporate Director of Finance. The Pensions administrator will supply an estimate of the level of pension benefits payable to the employee on request

Members are required to take 100% of the pension benefits built up by them, up after 31 March 2008 and before 1 April 2014 and 100% of the pension benefits built up by them after 31 March 2014.

Benefits will be actuarially reduced, and the employee must have the long-term effects of such a reduction explained to them.

Switching on the 85-year rule [paragraph 1(1)(c) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014]

Active members are now able to voluntarily retire between ages 55 and 60. If they were a member of the LGPS on 30 September 2006 then some of their benefits could be protected from reductions applied to early payment under the 85-year rule.

This rule only applies automatically to members voluntarily retiring from age 60 but the employer has the discretion to "switch it on" for voluntary retirements between age 55 and 60. This discretion does not apply to flexible retirement (see Regulation 30(6)) whereby the 85 year rule is always switched on.

Where the employer does not choose to "switch on" the rule, then benefits built up would be subject to reduction in accordance with actuarial guidance issued by the Secretary of State regardless of whether a member meets the rule or not If the employer does agree to "switch on" the 85 year rule, the employer will have to meet the cost of any strain on fund resulting from the payment of benefits before age 60 i.e. where the member has already met the 85 year rule or will meet it before age 60.

Employer Policy Decision

The Council has resolved not to consider use of this provision.

Waiving of actuarial reductions - Regulation 30(8), TP3(1), TPSch 2, para 2(1), B30(5) and B30A(5)

Whether to waive, in whole or in part, any actuarial reductions on benefits which a member voluntarily draws before normal pension age (other than on the grounds of flexible retirement).

Employers can agree to waive any actuarial reductions due in the case of employees retiring any time after age 55.

Employers should also note that the strain cost of any such retirements would need to be met by the employer and paid into the Pension Fund at the appropriate time.

There are 4 member groups covering the circumstances in which reductions could be waived and the benefits to which these would apply:

Group 1 - Members that joined before 1 October 2006 and who reached 60 before 1 April 2016

- To waive on compassionate grounds, any actuarial reductions applied to benefits built up before 1 April 2016
- To waive on any grounds, actuarial reductions applied to benefits built up after 1 April 2016

Group 2 - Members that joined before 1 October 2006 and who reach age 60 between 1 April 2016 and 31 March 2020 and, also meet their critical retirement age before 1 April 2020 (date member meets the 85-year rule)

- To waive on compassionate grounds, any actuarial reductions applied to benefits built up before 1 April 2020
- To waive on any grounds, actuarial reductions applied to benefits built up after 1 April 2020

Group 3 - Were members of the LGPS before 1 October 2006 and who will reach age 60 after 31 March 2020 (or who would reach age 60 between 1 April 2016 and 31 March 2020 inclusive, but who would not meet their Critical Retirement Age (CRA) before 1 April 2020 - in this instance CRA is the earlier of the date upon which the member would meet the 85 year rule or age 65)

- To waive on compassionate grounds, any actuarial reductions applied to benefits built up before 1 April 2014
- To waive on any grounds, actuarial reductions applied to benefits built up after 1 April 2014

Group 4 - Members that joined after 1 October 2006

- To waive on compassionate grounds, any actuarial reductions applied to benefits built up before 1 April 2014
- To waive on any grounds, actuarial reductions applied to benefits built up after 1 April 2014

Employer Policy Decision
The Council normally does not agree to waive the costs of actuarial reduction, meaning that pension and lump sum will be reduced, as the member would receive pension early. However, exceptional or compassionate grounds may justify the Council waiving the actuarial reduction. Each case will be considered fairly based on the circumstances and merits that justify a departure from this policy and is subject to approval in line with statutory guidance on the making and disclosure of Special Severance Payments by local authorities in England. Where an employer has allowed a member to retire early through redundancy or efficiency, the employer must meet the additional charge on the fund resulting from that decision. Where an employer has exercised their discretion to waive a reduction that would otherwise apply to a member's benefits, the employer must meet the additional charge on the fund resulting from that decision. In all cases full payment is required within one month of the member's retirement.

The following discretions apply to members who left the scheme between 1 April 2008 and before 1 April 2014

Whether to "switch on" the 85-year rule for a member with deferred benefits voluntarily drawing benefits on or after age 55 and before age 60 – [paragraph 1(1)(c) & 1(2) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014]
A member with a deferred benefit who left the scheme voluntarily between 1 April 2008 – 31 March 2014 and who has subsequently become a deferred pensioner may now claim their benefits from age 55 without their employer's consent. However, these benefits will be reduced for early payment. Where a member has reached the 85-year rule at the point of retirement, an employer can consent to switching on the 85-year rule. Any 'strain' to the Fund will be payable immediately by the Scheme employer.
Employer Policy Decision
The Council will not 'switch' on the 85- year rule where an ex-employee draws their benefits voluntarily between age 55 and 60.

Whether to waive upon the voluntary early payment of deferred benefits or suspended tier 3 ill health pension, any actuarial reduction on compassionate grounds? [regulation 30(5) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 and paragraph 2(1) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014]
A member with a deferred benefit who left the scheme voluntarily between 1 April 2008 – 31 March 2014 or, who was awarded a Tier 3 ill health pension under the 2007 Regulations and who has subsequently become a deferred pensioner may now claim their benefits from age 55 without their employer's consent. These benefits will be reduced for early payment. An employer can consent to waiving any reductions, on compassionate grounds, which may be applied to deferred benefits or suspended tier 3 ill health pension paid early.
Employer Policy Decision
The Council will not waive any actuarial reductions which may occur on deferred benefits claimed between ages 55-60 or for a suspended Tier 3 ill health for leavers between 1 April 2008 and 31 March 2014.

The following discretions apply to members who left the scheme between 1 April 1998 and before 1 April 2008

Whether to 'switch on' the 85-year rule upon the voluntary early payment of deferred benefits [paragraph 1 (1) (f) & 1 (2) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) regulations 2014]
Deferred members who left the scheme after 1 April 1998 are now able to voluntarily retire between ages 55 and 60. If they were a member of the LGPS on 30 September 2006 then some of their benefits could be protected from reductions applied to early payment under the 85-year rule. This rule only applies automatically to members voluntarily retiring from age 60 but the ceding employer has the discretion to "switch it on" for voluntary retirements between age 55 and 60. Where the employer does not choose to "switch on" the rule, benefits built up would be subject to a reduction in accordance with actuarial guidance issued by the Secretary of State regardless of whether a member meets the rule or not If the employer does agree to "switch on" the 85-year rule, the employer will have to meet the cost of any strain on fund resulting from the payment of benefits before age 60 i.e., where the member has already met the 85-year rule or will meet it before age 60.
Employer Policy Decision
The Council will not 'switch' back on the 85-year rule where an ex-employee draws their benefits voluntarily between age 55 and 60.

Whether to grant applications for the early payment of pension benefits on or after age 50 and before age 55 [regulation 31(2) of the LGPS Regulations 1997].
A member with a deferred benefit who left the scheme between 1 April 1998 – 31 March 2008 can claim their benefits from age 50 with their employer's consent. However, these benefits may be reduced for early payment and/or be subject to an unauthorised payment charge under the Finance Act 2004.
Employer Policy Decision
The Council will not consent to the early payment of deferred benefits to individuals benefits between ages 50 and 55 unless there is no cost to the Council.

Whether, on compassionate grounds, to waive any actuarial reduction that would normally be applied to benefits which are paid before age 65 [regulation 31(5) of the LGPS Regulations 1997 and paragraph 2(1) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014].
Employers can agree to waive any actuarial reductions on compassionate grounds in the case of employees who ceased active membership between 1 April 1998 and 31 March 2008. Employers should note that the strain cost of any such retirements would need to be met by the employer and paid into the Pension Fund at the appropriate time.
Employer Policy Decision
The Council will not waive any actuarial reductions on compassionate grounds in the case of employees who ceased active membership between 1 April 1998 and 31 March 2008 and are paid pension before age 65.

The following discretions apply to members who ceased active membership before 1 April 1998

Whether to grant applications for the early payment of deferred pension benefits on or after age 50 and before NRD on compassionate grounds [regulation D11(2)(c) of the LGPS Regulations 1995].
An employer can grant application for early payment of deferred benefits on or after age 50 on compassionate grounds.

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However, these benefits may be reduced for early payment and/or be subject to an unauthorised payment charge under the Finance Act 2004.
Employer Policy Decision
The Council will not consent to the early payment of deferred benefits on compassionate grounds to individuals between age 50 and NRD, unless there is no cost to the Council.

PART B - Optional Discretions (The two detailed are the most frequently used Regulations, but remain optional – see LGA Discretions for the full list of optional employer discretions)
1 Membership Aggregation Regulation 22 (7)(b), (8)(b)
Whether to extend the 12-month option period for a member to elect to join deferred benefits to their current employment/membership The election to keep separate pension benefits must be made within 12 months of becoming an active member, active at the date of election. An employer may allow a period longer than 12 months.
Employer Policy Decision
The Council will decline any request to extend the 12-month deadline for non-aggregation of deferred pensions into a concurrent or new LGPS employment unless: • there is evidence that the process has commenced within the 12-month limit, • maladministration has occurred because the affected employee has been given insufficient details.

2 Transfers of Pension Rights Regulation 100(6)
Extend normal time limit for acceptance of a transfer value beyond 12 months from joining the LGPS Where an active member requests to transfer previous pension rights into the LGPS, the member must make a request within in 12 months of becoming an active member. An employer may allow a longer period than 12 months.
Employer Policy Decision
The Council will only extend the time limit where it is determined that maladministration has occurred because the affected employee was not given sufficient details (if at all) of the pension scheme of transfer option.

3 Whether, subject to qualification, to substitute a higher level of pensionable pay when calculating assumed pensionable pay (APP) [regulations 21(5A) and 21(5B) of the LGPS Regulations 2013] regulation 7 of the LGPS (Amendment) Regulations 2018
If, in the Scheme employer's opinion, the pensionable pay received in relation to an employment (adjusted to reflect any lump sum payments) in the 3 months (or 12 weeks if not paid monthly) preceding the commencement of Assumed Pensionable Pay (APP), is materially lower than the level of pensionable pay the member would have normally received, decide whether to substitute a higher level of pensionable pay when calculating APP, having had regard to the level of pensionable pay received by the member in the previous 12 months.
Employer Policy Decision
The Council will substitute a higher level of pensionable pay when calculating assumed pensionable pay (APP), if in their opinion, the pensionable pay received in relation to an employment in the 3 months preceding the commencement of APP, is materially lower than the level of pensionable pay the member would have normally received.

4 Whether to extend 30-day deadline for member to elect for a shared cost APC Regulation 16(16)
Whether to extend 30-day deadline for member to elect for a shared cost APC when returning from a period of authorised absence from work with no pensionable pay (for reasons other than illness or injury, relevant child-related leave, or reserve force service leave).
Employer Policy Decision
A decision on whether to extend the 30-day deadline will only be made in cases where the member can demonstrate that they had not been made aware of that deadline, and the election is made no more than 3 months after the member returns from the period of leave of absence or such longer period as Hillingdon Council may deem reasonable in any individual case. A decision on whether a member meets the above criteria will be taken by the Corporate Director of Finance.

5 Shared Cost Additional Voluntary Contribution arrangement (regulation 17 of the LGPS Regulations 2013 and regulation 15(2A) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014)
• Whether to allow a Shared Cost Additional Voluntary Contribution (SCAVC) arrangement. • To determine how much will be allowed to be contributed to the SCAVC arrangement. • To define in what circumstances contribution to a SCAVC arrangement will be allowed.
Employer Policy Decision
The Council will only enter into a shared cost AVC scheme as part of a salary sacrifice plan and where there is no cost to the Council.
London Borough of Hillingdon **03 August 2022**

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