



**BRIGSHAW**  
LEARNING PARTNERSHIP

# Employers Discretion Statement

## *Monitoring and Review of this Document:*

**The Trust shall be responsible for reviewing this document from time to time to ensure that it meets legal requirements and reflects best practice.**

**Approved 03/23**



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## Equality Impact Statement

We will do all we can to ensure that this policy does not discriminate, directly or indirectly. We shall do this through regular monitoring and evaluation of our policies. On review we shall assess and consult relevant stakeholders on the likely impact of our policies on the promotion of all aspects of equality, as laid down in the Equality Act (2010). This will include, but not necessarily be limited to: race; gender; sexual orientation; disability; ethnicity; religion; cultural beliefs and pregnancy/maternity.



## 1. Overview

The Local Government Pension Scheme (LGPS) in England and Wales was amended from 1 April 2014. The provisions of the new LGPS, together with protections for member's benefits accrued before 1 April 2014, are now contained in the Local Government Pension Scheme Regulations 2013 (the 'LGPS Regulations 2013'), and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (the 'LGPS Transitional Regulations 2014') (as at 14<sup>th</sup> May 2018).

**Therefore, this statement now relates to the application of discretions under:**

- The LGPS Regulations 2013
- The LGPS (Transitional Provisions, Saving and Amendments) Regulations 2014 ('LGPS Transitional Regulation 2014'); and
- The Local Government Pension Scheme Regulations 1997 ('LGPS Regulations 1997') and the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 ('LGPS Benefits Regulations 2007'), which continue to have effect in so far as is necessary under Regulation 3 (Membership before 1 April 2014) of the LGPS Transitional Regulations 2014.

## 2. Introduction

Under Regulation 60 (statements of policy about exercise of discretionary functions) of the LGPS Regulations 2013 and paragraph 2(2) of Schedule 2 of the LGPS Transitional Regulations 2014, employers are required to make and publish policy statements on how they will exercise five specific mandatory discretions.

In addition, there are two further discretions relevant to employers, which relate to members who left before 1 April 2014. These are under Regulation 66 of the Local Government Pension Scheme (Administration) Regulations 2008 (in respect of leavers between 1 April 2008 and 31 March 2014) and under Regulation 106 of the LGPS Regulation 1997 (in respect of leavers between 1 April 1998 and 31 March 2008).

Any policy statements made must not limit, or 'fetter' how an employer uses any of the discretions afforded by the scheme.

## 3. General Principles Adopted in Exercising Discretions

Brigshaw Learning Partnership (the employer), in formulating the policy statement outlined below, has considered the policy adopted in the context of:

- The general principles put forward by the Department for Communities and Local Government (CLG) that the discretionary powers must:
  - be exercised reasonably
  - not be used for ulterior motive: be used with regard to all relevant factors (cost should be balanced against benefit for the employer)
  - only be used where there is a real substantial future benefit to the employer in return for incurring extra costs
  - be duly recorded when used



- include the WYPF's Actuary
- the advice of the Local Government Pensions Committee of the Employers' Organisation
- where applicable, the comments made by the Audit Commission in their report on early retirement in local government
- the comments of trade unions recognised by the employer.

The employer will, as it sees fit, review the content of the discretionary policy under the relevant Local Government Pension Scheme Regulations to meet its requirements as an employer participating in West Yorkshire Pension Fund

## 4. Scheme Employer Discretions

### Specific discretions under the LGPS Regulations 2013 and the LGPS

#### Transitional Regulations 2014

Details of the five discretions available are as follows:

#### 1. Shared Cost Additional Pension Contribution

(Shared Cost Additional Pension Contribution)- Regulation 16 (2)(e) and 16 (4)(d)

**Note:** *the specific provisions of Regulation 16 allow an active member who is paying into a main scheme to enter into an arrangement to pay additional contributions, either by regular contributions (Regulation 16(2) (e) or by a lump sum payment (Regulation 16 (4) (d)). This may be funded in whole or in part by the employer*

The employer does not consider contributions towards additional pension contributions to be an essential part of its employment strategy. However, the employer will consider applications made under these specific provisions having regard to the employer's general policy from time to time, on the employee pay strategy and the particular circumstances surrounding each case.

**It is likely that decisions will be made on the merits of each case having particular regard to factors such as:**

- the employer's ability to meet the cost of granting such a request; and/or
- the member's personal circumstances.

#### 2. Awarding Additional Pension - Regulation 31

**Note:** *Regulation 31 allows employers to grant additional pension up to the maximum allowed by the scheme rules provided that the member is active or is within 6 months of leaving for reasons of redundancy or business efficiency or whose employment was terminated by mutual consent on grounds of business efficiency.*

Employers may wish to use this Regulation as an aid to recruitment, an aid to retention or to compensate or reward an employee who is retiring.

Employers should also consider provisions of this Regulation, in particular Regulation 31(4), if they decide to exercise their power under Section 1 (general power of competence) of the Localism Act 2011.



The employer will consider applications made under this *Regulation* having regard to the particular circumstances surrounding each case. Decisions will be made on the merits of each case having particular regard to the following:

- The member's personal circumstances.
- The interests of the employer.
- The additional contributions due to the Fund by the employer in respect of the exercise of this discretion.
- Other options that are, from time to time, available under the employer's severance arrangements;
- The funding position of the employer within the Fund;
- The ability of the employer to meet the cost of granting such an award.

### **3. Flexible Retirement**

**Note:** *this provision in the Regulations allows the employer to consent for a member who has attained the age of 55 to draw all or part of their retirement benefits (both pension and lump sum) whilst continuing in employment and Fund membership provided that:*

- *there has been a reduction in hours, or*
- *a reduction in grade.*

*Employers can choose to waive any reductions that apply under Regulation 30(8).*

**The employer will consider applications made under this Regulation having regard to the particular circumstances surrounding each case. Decisions will be made on the merits of each case having particular regard to:**

- The operating requirements of the employing department.
- The employer's ability to meet the cost of granting such a request.
- Whether any demonstrable cost saving in excess of potential savings available under any severance arrangements in place from time to time can be made
- The member's personal circumstances.



#### **4. Waiving Actuarial Reductions**

**Note:** *the employer may waive the actuarial reductions applied to a member's benefits, unless 85-year rule protections exist, employers can waive:*

- *All of the reductions in respect of pre 1 April 2014 benefits but only on compassionate grounds (paragraph 2 of Schedule 2 of the LGPS Transitional Regulations 2014);*
- *All or some of the actuarial reduction in respect of post 1 April 2014 on any grounds.*

*Where 85 year rule protections exists and the member has full or tapered protection the employer can waive all of the reductions but only on compassionate grounds for the service up to the date the 85 year rule protection ends (31 March 2016 (full) or 31 March 2020 (tapered)).*

**The employer will consider applications made under this Regulation having regard to the particular circumstances surrounding each case. Decisions will be made on the merits of each case having particular regard to:**

- The employer's ability to meet the cost of granting such a request.
- Whether any demonstrable cost saving in excess of potential savings available under any severance arrangements in place from time to time can be made.
- The member's personal circumstances.

**Applications for the payment of unreduced benefits for service before 1 April 2014 on the grounds of compassion will be granted if:**

- In the employer's sole opinion, the special extenuating circumstances surrounding the application, along with the supporting evidence provided justify approval.
- The employer can meet the cost of granting such a request.

#### **5. Switching on the 85**

**Note:** *An employer can decide whether to "switch on" the 85 year rule to allow members to receive benefits either unreduced or with a smaller reduction to their 85 year rule date. The employer will be responsible for meeting any strain costs relating to benefits being paid before age 60. If the employer does not "switch on" the 85 year rule the member's benefits will be reduced to age 60 or the date they meet the 85 year rule if later.*

**The employer will consider applications made under this Regulation having regard to the particular circumstances surrounding each case. Decisions will be made on the merits of each case having particular regard to:**

- The employer's ability to meet the cost of granting such a request.
- Whether any demonstrable cost saving in excess of potential savings available under any severance arrangements in place from time to time can be made.
- The member's personal circumstances.



### **Further discretions under the LGPS Regulations**

**There are also two other mandatory discretions for employers but these relate specifically to members who left before 1 April 2014.**

Whilst the LGPS Regulations 2013 repeals the LGPS Regulations 1997 and the LGPS Benefits Regulations 2007 (in so far as they had not already been repealed), Regulation 3(1) of the LGPS Regulations 2013 allows for the LGPS Regulations 1997 and the LGPS Benefits Regulations 2007 to still have effect in so far as they relate to certain member benefits before 1 April 2014. As such, the other discretions still available for certain members only, are as follows:

#### **Early Payment of Deferred Pensions for members who left before 1<sup>st</sup> April 2014**

***Note:** This regulation allows employers to enable members who left the scheme before 1 April 2014, and who are over the age of 55, to take their benefits early. Under Regulation 30(5) employers can waive any reduction to benefits paid under that Regulation on compassionate grounds.*

**The employer will consider applications made under this Regulation having regard to the particular circumstances surrounding each case. Decisions will be made on the merits of each case having particular regard to:**

- The employer's ability to meet the cost of granting such a request.
- The member's personal circumstances.

#### **Applications for the payment of unreduced benefits on the grounds of compassion will be granted if:**

- In the employer's sole opinion, the special extenuating circumstances surrounding the application, along with the supporting evidence provided justify approval.
- The employer can meet the cost of granting such a request.

**N.B** Deferred members who left the Scheme before 1 April 2008 can still make an application for the early payment of their deferred benefits after age 50 under LGPS rules. However, under HMRC rules such payments would be classed as 'unauthorised' and would be subject to a punitive tax charge.



### **Early Payment of Deferred Pensions for members who left before 1<sup>st</sup> April 2014**

*This regulation allows employers to enable members who have ceased to be entitled to a tier 3 ill health benefit, and who are over the age of 55, to take their benefits early. Under sub paragraph 5 of Regulation 30A, employers can waive any reduction to benefits on compassionate grounds.*

**The employer will consider applications made under this Regulation having regard to *the* particular circumstance surrounding each case. Decisions will be made on the merits of each case having particular regards to:**

- The employer's ability to meet the cost of granting such a request.
- The member's personal circumstances.

**Applications for the payment of unreduced benefits on the grounds of compassion will be granted if:**

- In the employer's sole opinion, the special extenuating circumstances surrounding the application, along with the supporting evidence provided justify approval.
- The employer can meet the cost of granting such a request.