



CARDIFF COUNCIL

**LOCAL GOVERNMENT PENSION SCHEME
DISCRETIONS POLICY**

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SECTION 1 - INTRODUCTION, ROLES, RESPONSIBILITIES and DEFINITIONS

INTRODUCTION

- 1.1 Cardiff Council has a legal duty to prepare and publish a written statement of its policy relating to certain discretionary powers under Regulations which apply to the Local Government Pension Scheme (the **LGPS**).
- 1.2 The Council is required to formulate, publish and keep under review the policy that the Council applies in the exercise of discretionary powers relating to the payment of compensation to employees whose employment is terminated as a result of redundancy or certain other reasons (the Discretions Policy).
- 1.3 This policy is intended to comply with these duties and sets out how the discretions will be exercised. It replaces Appendix A of the Council's Voluntary Early Retirement/Flexible Retirement and Voluntary Redundancy Policy and Procedure dated April 2015, which set out how the Council would exercise its discretions.
- 1.4 There is no requirement to publish the Council's application of non mandatory discretions however, for completeness they are included in this policy.
- 1.5 The Council will not depart from this policy without a variation to the policy agreed by Cabinet. This statement is not a definitive statement of the law and is subject to the provisions of the relevant LGPS and other Regulations as follows:
 - The Local Government Pension Scheme Regulations 2013 (these are referred to as the "Pensions Regulations")
 - The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (referred to as the "Transitional Regulations")
 - The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 applied to the LGPS before 1 April 2014, are preserved in part on a transitional basis by the Transitional Regulations and are referred to as the "Benefits Regulations"
- 1.6 The Regulations which apply to the payment of compensation to employees whose employment is terminated as a result of redundancy or other specified reasons are:

- The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (referred to as the “Compensation Regulations”).

1.7 As a result of the introduction of this Discretions Policy the Council’s Voluntary Early Retirement/Flexible Retirement and Voluntary Redundancy Policy and Procedure dated April 2015 has been updated to remove the discretions. It has been renamed the Voluntary Early Retirement and Voluntary Redundancy Policy and Procedure as the Council has a separate Flexible Retirement Policy and Procedure.

1.8 This policy has been written to include, so far as is reasonable, preventative procedures in relation to Corporate Criminal Offence, pursuant to section 45(2) of the Criminal Finances Act 2017.

ROLES AND RESPONSIBILITIES

1.9 It is important that everyone clearly understands their roles and responsibilities within this process.

1.10 Manager’s must ensure the Council’s agreed Discretions within the policy are adhered to without any deviation.

1.11 HR People Services will monitor the consistent application of this policy in line with the appropriate discretions within.

1.12 The Local Government Pension Team will carry out the necessary administration for employees to access their pension as well as provide necessary updates on relevant legislation.

DEFINITIONS

1.13 The following definitions apply throughout this policy:

- The **Scheme** means the Local Government Pension Scheme (LGPS)
- The **Fund**, means the fund maintained under the LGPS
- A **Member**, means a member of the LGPS
- An **Active Member**, means a member in employment and paying, or treated as paying, contributions to the LGPS, or absent from employment for a reason mentioned in Regulation 11 of the Pension Regulations)

- References to a Member with transitional protection are those who can count membership accrued before 1 October 2006 and who have statutory transitional protection under the Transitional Regulations, wholly or partly, from changes that would otherwise be made to their pension entitlements and/or from actuarial reductions that would otherwise be applied to their pension benefits as a result of the coming into force of the Pension Regulations on 1 April 2014.
- References to a Member meeting “the 85 year rule” are those Members whose age in whole years when added to the Member’s total membership in whole years is 85 years or more.

1.13 This statement was approved by Cardiff Council and is intended to comply with the duties under Regulation 60 of the Pensions Regulations and Regulation 7 of the Compensation Regulations.

SECTION 2 - THE DISCRETIONS

MANDATORY DISCRETIONS

2.1 In accordance with the Local Government Pension Scheme regulations, Appendix A sets out how the Council will apply the following LGPS mandatory Discretions:

2.1.1 SCHEDULE 1

Discretions from 01.04.2014 in relation to post 31.03.2014 leavers. Active members (excluding councillor members) and post 31.3.2014 leavers (excluding councillor members), being discretions under:

- the Local Government Pension Scheme Regulations 2013
- the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014
- the Local Government Pension Scheme (Administration) Regulations 2008
- the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (as amended). These regulations are now repealed. They were revoked by SI 2009/1025, reg 2 as from 1 April 2009 and by SI 2014/15, reg 2(1), Sch. 1 as from 1 April 2014
- the Local Government Pensions Scheme (Transitional Provisions) Regulations 2008

- the Local Government Pension Scheme Regulations 199 (as amended)

2.1.2 SCHEDULE 2

Discretions in relation to LGPS members in relation to LGPS members (excluding Councillor members) who ceased active membership on or 01.04.2008 and before 01.04.2014, being under:

- the Local Government Pension Scheme (Administration) Regulations 2008 - These Regulations were revoked by SI 2014/525, reg 2(1), Sch. 1 as from 1 April 2014
- the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (as amended)
- the Local Government Pension Scheme (Transitional Provisions) Regulations 2008 - These Regulations were revoked by SI 2014/525, reg 2(1), Sch as from 1 April 2014
- the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014
- the Local Government Pension Scheme Regulations 2013
- the Local Government Pension Scheme Regulations 1997 (as amended)

2.1.3 SCHEDULE 3

Discretions under the LGPS Regulations 2007 (as amended) in relation to:

- active councillor members, and
- councillor members who ceased active membership on or after 1.4.98., and
- any other scheme members who ceased active membership on or after 1.4.1998 and before 1.4.2008

2.1.4 SCHEDULE 4

Discretionary policies in relation to scheme members who ceased active membership before 01.04.1998:

- LGPS Regulations 1995 [SI 1995/1019]
- The Local Government Pension Scheme (Transitional Provisions) Regulations 1997 [SI 1997/1613]

- The Local Government Pension Scheme Regulations 1997 [SI 1997/1612] (as amended)
- The Local Government Pension Scheme (Administration) Regulations 2008 [SI 2008/239]
- The Local Government Pension Scheme (Transitional Provisions and Amendment) Regulations 2014 [SI 2014/525]
- The Local Government Pension Scheme Regulations 2013 [SI 2013/2356]

NON MANDATORY DISCRETIONS

2.2 The Local Government Pension Scheme recommends including decisions on the application of the LGPS non mandatory discretions in its Discretions Policy. There are no changes to decisions taken by the Council on the LGPS non mandatory discretions which are set out in Appendix B.

SECTION 3- STATEMENT OF INTENT

3.1 The Council will formulate, publish and keep under review this policy. Any amendments to the policy will be sent to the Pensions Team (Cardiff and Vale of Glamorgan Pension Fund) within one month of the date of the decision to amend the policy.

3.2 In formulating and reviewing this policy, the Council is required by the Regulations to have regard to the extent to which the exercise of the discretionary powers could lead to a serious loss of confidence in the public service.

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APPLICATION OF THE LGPS MANDATORY DISCRETIONS

SCHEDULE 1

DISCRETIONS FROM 01.04.2014 IN RELATION TO POST 31.03.2014 LEAVERS, ACTIVE MEMBERS (EXCLUDING CONCILLOR MEMBERS) AND POST 31.3.2014 LEAVES (EXCLUDING COUNCILLOR MEMBERS)		
Discretion Number and Description	Regulation	Council Position
<p>1. <u>a) Funding Additional Pension Contributions (APC)</u> Whether, how much, and in what circumstances, the Council will contribute to a shared cost APC scheme, funding additional contributions on behalf of an employee where these contributions are to be made on a regular basis, subject to a current maximum annual value of £7352 (uplifted annually).</p> <p><u>b) Additional Voluntary Contributions (AVCs)</u> Whether, how much, and in what circumstances, the Council will contribute to a shared cost AVC scheme, funding additional contributions on behalf of an employee where these contributions are to be made on a regular basis.</p>	Regulation 16(2)(e) and 16(4)(d) Local Government Pension Scheme Regs 2013 (LGPS Regs)	<p>a) The Council will not fund APCs</p> <p>b) The Council will enter into Shared Cost AVCs where an employee has elected to pay AVCs by salary sacrifice. The Council will not incur any costs as a result of the SCAVC. The application of this Council discretion is also subject to the employee meeting the Council's conditions for acceptance into the SCAVC scheme and may be withdrawn or changed at any time.</p>
<p>2. Flexible Retirement To agree to an employee aged 55 or over reducing their hours of work or grade so that they may receive all or some of their retirement pension while still employed. This is provided the employer agrees to the member either reducing their hours or moving to a position on a lower grade.</p>	Regulation 30(6) of LGPS Regs and 11(2) LGPS (Transitional Provisions, savings and Amendment) Regs 2014 (Transitional Regs)	In line with the Council's Flexible Retirement Policy, requests for flexible retirement are considered on a case by case basis where there is a sound business case to do so, and where approval is given to a flexible retirement application.
<p>3. Waiver of Reduction to Pension on Flexible Retirement Whether to waive, in whole or in part, any reduction that would otherwise be made on the early payment of a pension to a former</p>	Regulation 30(8) LGPS Regs	

<p>employee aged 55, or to the pension paid to an employee allowed to take flexible retirement.</p>		<p>The Council would not normally waive a pension reduction but may do so in exceptional circumstances, for example on exceptional compassionate grounds.</p>
<p><u>4. On Request or Employer's Consent Retirement</u> Whether to waive, in whole or in part, any actuarial reduction on benefits which a member voluntarily draws before their normal retirement age, where the member only has post 31.03.2014 LGPS membership, or has both pre 01.04.2014 and post 31.3.2014 membership.</p>	<p>Regulation 30(8) LGPS Regs</p>	<p>The Council would not normally waive a pension reduction but may do so in exceptional circumstances, for example on exceptional compassionate grounds.</p>
<p><u>5. The '85 year' Rule</u> Whether to 'switch on' the '85 year' rule for a member voluntarily drawing down their pension on or after the age of 55 but before age 60, whether or not it is on the grounds of flexible retirement.</p>	<p>Sch. 2 paras 1(2) & 1(1)(c) Transitional Regs</p>	<p>The Council will not 'switch on' the '85 year' rule where a member voluntarily takes their benefits before age 60, (other than on flexible retirement).</p>
<p><u>6. Granting Additional Pension</u> To award additional pension to: (1) an active member; or (2) a former active member who was dismissed by reason of redundancy or business efficiency. Note: Any additional pension awarded (including any additional pension purchased by the employer under Regulation 16 of the Pensions Regulations (see above) may not exceed the additional pension limit of £7352 (uplifted annually). Additionally, in the case of a former active member falling within (2) above, the resolution to award additional pension must be made within 6 months from the date on which the employment ended.</p>	<p>Regulation 31 LGPS Regs</p>	<p>The Council will not grant additional pension</p>

SCHEDULE 2

DISCRETIONS IN RELATION TO LGPS MEMBERS (EXCLUDING COUNCILLOR MEMBERS) WHO CEASED ACTIVE MEMBERSHIP ON OR AFTER 01.04.2008 AND BEFORE 01.04.2014

Discretion Number and Description	Regulation	Council Position
<p><u>1. The '85 year' Rule</u> Whether to 'switch on' the '85 year' rule for a member voluntarily drawing down their pension on or after the age of 55 but before age 60, whether or not it is on the grounds of flexible retirement.</p>	Sch. 2 paras 1(2) & 1(1)(c) Transitional Regs	The Council will not switch on the '85 year' rule.
<p><u>2. Waiver of Reduction to Pension</u> Whether to waive, on compassionate grounds the actuarial reduction applied to deferred benefits paid early to a member who retires after the age of 55.</p>	Regulation 30(5) LGPS (Benefits, Membership and Contributions) Regulations 2007 (2007 BMC Regs)	The Council will not normally waive a pension reduction but may do so in exceptional circumstances, for example on exceptional compassionate grounds
<p><u>3. The '85 year' Rule</u> Whether to 'switch on' the '85 year' rule for a pensioner member with deferred benefits voluntarily drawing benefits on or after the age of 55 but before the age of 60.</p>	Sch. 2 paras 1(2) & 1(1)(c) Transitional Regs	The Council will not switch on the '85 year' rule.
<p><u>4. Waiver of Reduction to Pension</u> Whether to waive, on compassionate grounds the actuarial reduction applied to benefits paid early to a pension member with deferred benefits</p>	Reg 30A 2007 Regs and Sch. 2 para 2(1) Transitional Regs	The Council will not normally waive a pension reduction but may do so in exceptional circumstances, for example on exceptional compassionate grounds.

SCHEDULE 3

DISCRETIONS UNDER THE LGPS REGULATIONS 2007 (AS AMENDED)

Discretion Number and Description	Regulation	Council Position
<p><u>1. Application for Payment of Early Benefits</u> Whether or not to grant an application from a post 31.03.1998 or pre 01.04.2008 leaver or from a councillor for early payment of benefits on or after the age of 50/55 and before the age of 60.</p>	Regulation 31(2) LGPS Regs 2007	The Council will not grant an application for early payment of benefits.
<p><u>2. Waiver of Reduction to Pension</u> Whether to waive on compassionate grounds, the actuarial reduction applied to benefits paid early for a post 31.03.1998 or pre 01.04.2008 leaver or a councillor leaver.</p>	Regulation 31(5) LGPS Regs 207	The Council will not normally exercise this discretion but may consider it under exceptional circumstances on compassionate grounds.
<p><u>3. Optants (those who have opted out)</u> Councillor optants and pre 01.04.2008 employee optants only to receive benefits paid from the normal retirement date on the agreement of the Council.</p>	Regulation 31(7A) LGPS Regs 2007	Councillor optants and pre 01.04.2008 employee optants who continue to work for the Council will not have their pension benefits paid from their normal retirement date.

SCHEDULE 4

DISCRETIONARY POLICIES IN RELATION TO SCHEME MEMBERS WHO CEASED ACTIVE MEMBERSHIP BEFORE 01.04.1998

Discretion Number and Description	Regulation	Council Position
<p><u>1. Early Payment of Benefits</u> Whether or not to grant the application for early payment of deferred benefits on or after age 50, on compassionate grounds.</p>	Regulation 3(5A) Transitional Regs	The Council will not grant an application for early payment of benefits.

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APPLICATION OF THE LGPS NON MANDATORY DISCRETIONS

Discretion Number and Description	Council Position
<p>1. Leave of Absence without Pay. Where an employee has a period of absence on reduced or no pay they may pay standard contributions on the pay that would have been received provided they apply within 30 days of returning to work or the date that employment ceases. The employer has the discretion to increase this application period.</p>	<p>The application period for employees to request that they should be allowed to pay standard contributions for breaks is 3 months.</p>
<p>2. Selection of the appropriate ill-health tiers for employees who are determined to be permanently incapable of discharging efficiently the duties of their normal occupation by reason of ill health or infirmity of mind or body: Level 1 - There is no reasonable prospect of this employee being capable of other gainful employment* before age 65 Level 2 - This employee is likely to be capable of other gainful employment* before age 65 but after a period of 3 years Level 3 - This employee is capable of other gainful employment* within a period of 3 years. *Gainful employment means paid employment for not less than 30 hours a week for at least a year.</p>	<p>The Chief HR Officer will select the appropriate level after taking into account the certification provided by an independent registered medical practitioner.</p>
<p>3. Whether to extend the 12 month option period for non aggregation of deferred benefits</p>	<p>The Council does not extend the time limit to choose not to aggregate service. However, the Council will agree to extend the time limit where there is a clear indication of an error or omission by either the employer or the scheme administrator.</p>
<p>4. How to determine the rate of employees' contributions.</p>	<p>The Council's Pay Policy Statement, which is published each year at 31st March sets out the rates for the rate of employee contributions.</p>

	<p>Contribution rates are calculated by taking the salary payable at the 1st April and adding the value of any fixed pensionable additions to pay, plus the value of any variable pensionable additions to pay from the previous year. If the pay rate changes during the year the policy is to make any required changes only from the 1st April following the change in the rate of pay. However any changes backdated to 1st April such as a pay award, will require re-assessment and will be effective from the date of the award. There is an appeals procedure for any employees who feel that they have been allocated to the wrong contribution band for their whole-time equivalent salary.</p> <p>The discretion to re-assess the contribution rate during the financial year will be applied in exceptional circumstances, e.g. a significant rise or drop in pay.</p>
<p>5. To award lump sum compensation of up to 104 weeks pay in cases of redundancy, termination of employment on efficiency grounds, or cessation of a joint appointment.. The Council has the discretion to pay up to maximum of 104 weeks pay to eligible employees.</p>	<p>The Council uses the Statutory lump compensation calculator which determines up to 30 weeks payment and applies a multiplier of 1.5 therefore enabling a payment of up to 45 weeks.</p>
<p>6. The power to Increase a Statutory Redundancy Payment. The council has the discretion to increase a statutory redundancy payment by applying up to an actual week's wage instead of restricting it to the statutory limit.</p>	<p>The Council calculates lump sum compensation payments using the statutory weekly rate determined by government, or the employees' actual weekly pay if less. The maximum figure is reviewed in line with the statutory limit on a week's pay for calculating redundancy payments.</p>

