

REPORT FOR DECISION

Appeals Panel

DATE:	8 March 2018
SUBJECT:	Employer Discretions: Statement of Policy Local Government Pension Scheme (LGPS) – Amendment
REPORT FROM:	Interim Executive Director of Resources & Regulation
CONTACT OFFICER:	Tracy Murphy, Assistant Director, Resources & Regulation (HR/OD)
TYPE OF DECISION:	Committee Decision
FREEDOM OF INFORMATION/STATUS:	Within the public domain
SUMMARY:	The Local Government Pension Scheme (LGPS) contains various regulations where employer discretion has to be exercised. A report was presented to the Human Resources and Appeals Panel on 22.7.14 regarding the exercising of discretions by Bury Council. A further report was presented on 24 June 2015 with an amendment.
OPTIONS & RECOMMENDED OPTION	That subject to consideration of this report the Human Resources and Appeals Panel agrees the proposed addition to the Pension Scheme Policy Statement in Section 4.2 of the report. The alternative option would be to adopt alternative discretion decisions, which would lead to increased costs to the Council. To do nothing would not be lawful.
IMPLICATIONS:	
Corporate Aims/Policy	Do the proposals accord with the Policy

Framework:	Framework? Yes
Statement by the S151 Officer: Financial Implications and Risk Considerations:	<p>The early payment of fund benefits places a "strain" on the pension fund.</p> <p>Because there is almost always strain on the pension fund, when an employee retires early Members must consider the likely financial implications of any policy decision where the Council exercises discretion; this has been considered and incorporated into the proposals and the proposed additional wording</p>
Statement on impact on Resources:	The proposed additional wording within the discretions will contribute to minimising financial implications
Equality/Diversity implications:	<p>Yes</p> <p>The proposed discretions have been drafted to ensure compliance with the Equalities Act</p>
Considered by Monitoring Officer:	<p>Yes JH</p> <p>The Council is responsible under the Local Government Pension Regulations to ensure robust and fair processes are in place to manage employer responsibilities in respect of individuals accessing their pension benefits.</p>
Wards Affected:	None directly. However, there is a potential impact as this could affect all employees of the Council at some point during the 'employee lifecycle'
Scrutiny Interest:	Overview and Scrutiny

TRACKING/PROCESS INTERIM EXECUTIVE DIRECTOR OF RESOURCES & REGULATION: STEVE KENYON

Chief Executive/	Cabinet	Ward Members	Partners
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Strategic Leadership Team	Member/Chair		
12.2.18	1.3.18		
Scrutiny Committee	Committee	Council	
	HR & Appeals 8.3.18		

1.0 SUMMARY OF KEY ISSUES

- 1.1 The Local Government Pension Scheme is a statutory pension scheme and its rules are laid down in legislation. The Regulations provide less central control of pension arrangements and increase the scope of local decision making. They also offer improved flexibility in pension provision. This gives employers more scope to manage pension scheme benefits. These are known as discretions.
- 1.2 The LGPS 2014 rules require employers to 'formulate, publish and keep under review' a policy statement in relation to discretions. The policy statement should show the basis on which the employer would make its decisions on the various discretions.
- 1.3 This report proposes clarification to the discretions in accordance with the LGPS (Benefits, Memberships and Contributions) Regulations 2007. The clarification is around the discretion "whether all or some benefits can be paid if an employee reduces their hours or grade (flexible retirement)".

2.0 EXERCISE OF DISCRETIONARY POWERS

- 2.1 It is important that any discretionary power is exercised correctly. In formulating and reviewing its policy, an employer is required by the Regulations to:
- have regard to the extent to which the exercise of its discretionary powers, unless properly limited, could lead to a serious loss of confidence in the public service (Regulation 60(5) of the LGPS Regulations 2013)
 - to be aware of discrimination, ie age related, and to be aware of the local demographics as an employer, and
 - be satisfied that the policy is workable, affordable and reasonable having regard to foreseeable costs. It is recommended that policies are reviewed every 3 years.
- 2.2 Discretionary powers must also:
- not be used for an ulterior motive and be exercised reasonably
 - be used taking account of all relevant factors
 - only be used when there is a real and substantial future benefit to the employer in return for incurring the extra costs and

- be duly recorded when used.

3.0 ISSUES

- 3.1 In accordance with the [Local Government Pension Scheme Regulations, \(2013\)](#) we were required to formulate, agree and publish our Discretions Policy by July 2014. This requirement was met and we agreed to review the Policy every three years.
- 3.2 A description of the discretions that may be exercised by employers is listed in Section 4.0 of the report. The table in section 4.0 also includes a reference to the specific regulation and the proposed policy decision in respect of each of the listed discretions.

4.0 PROPOSALS

- 4.1 A full list of the discretions as agreed by the Human Resources and Appeals Panel in July 2014 and June 2015 is listed below. The proposed additional wording for clarification is set in bold and underlined under 4.2, relating to flexible retirement.
- 4.2 **Discretions in accordance with the [Local Government Pension Scheme Regulations 2013 \[prefix R\]](#) and the [Local Government Pension Scheme \(Transitional Provisions and Savings\) Regulations 2014 \[prefix TP\]](#):**

Discretion	Regulation	Proposal
Whether, how much, and in what circumstances to contribute to a shared cost APC scheme	R16(2)(e)* & R16(4)(d)*	<p>Bury Council reserves the right to apply this discretion in exceptional circumstances where it can be evidenced that by exercising this discretion the Council is able to recruit and/or retain employees who are considered 'business critical'. Where it is proposed to apply this discretion a business case will be developed which clearly demonstrates that it is in the Council's financial interest and/or operational efficiency to contribute to a shared cost additional pension contribution (SPAPC) scheme. The powers to approve proposals made in accordance with this regulation will lie with the Council's Human Resources and Appeals Panel.</p> <p>The discretion may be applied having due regard to the implications on the member's personal tax liability (Lifetime Allowance and Annual Allowance) and Bury Council's Pay Policy Statement.</p>
Whether all or some benefits can be paid if an employee reduces their hours or grade (flexible retirement)	R30(6)* & TP11(2)	<p>Under the terms of the Council's Flexible Retirement Policy employees are required to reduce their working hours or grade so that the flexible retirement does not result in an increase in their gross annual earnings. The combined total of their reduced annual salary plus annual pension cannot be greater than their salary at the effective date of retirement <u>based on all their pension benefits accrued until the date of the revised working pattern.</u></p>

		<p>Expressions of interest must be agreed in principle by their employing department and a business case will be prepared which demonstrates that it is in the Council's financial interest and/or in the interests of efficiency of the Council's business to agree to the request.</p> <p>The powers to approve Flexible Retirement Applications will lie with the Council's Human Resources and Appeals Panel.</p> <p>Employees who retire early under the terms of the flexible retirement scheme will not receive a redundancy payment.</p>
Whether to waive, in whole or in part, actuarial reduction on benefits paid on flexible retirement	R30(8)*	<p>Bury Council's voluntary early retirement and flexible retirement schemes use a business case to evidence that this strain on the pension fund (capital cost) will be recovered within five years of the date of retirement.</p> <p>Where applications meet the set criteria (see above) the Council will waive, in whole any actuarial reductions that might otherwise apply.</p>
Whether to waive, in whole or in part, actuarial reduction on benefits which a member voluntarily draws before normal pension age	R30(8)*	<p>Bury Council's voluntary early retirement and flexible retirement schemes use a business case to evidence that this strain on the pension fund (capital cost) will be recovered within five years of the date of retirement.</p> <p>Where applications meet the set criteria (see above) the Council will waive, in whole any actuarial reductions that might otherwise apply.</p>
Whether to "switch on" the 85 year rule for a member voluntarily drawing benefits on or after age 55 and before age 60.	TPSch 2, para 2(2)*	<p>Bury Council reserves the right to apply this discretion in exceptional circumstances. Where it is proposed to apply this discretion a business case will be developed which clearly demonstrates that it is in the Council's financial interest and/or operational efficiency to do so.</p>
Whether to waive, on compassionate grounds, the actuarial reduction applied to benefits from pre 1/4/14 membership where the employer has "switched-on" the 85 year rule for a member voluntarily drawing benefits on or after age 55 and before age 60	TPSch 2, para 2(3)*	<p>Bury Council reserves the right to apply this discretion in exceptional circumstances. Where it is proposed to apply this discretion a business case will be developed which clearly demonstrates that it is in the Council's financial interest and/or operational efficiency to do so.</p>
Whether to grant additional pension to an active member or within 6 months of ceasing to be an active member by reason of redundancy or business efficiency (by up to £6,500 p.a.)	R31*	<p>Bury Council reserves the right to apply this discretion in exceptional circumstances where it can be evidenced that by exercising this discretion the Council is able to recruit and/or retain employees who are considered 'business critical'. Where it is proposed to apply this discretion a business case will be developed which clearly demonstrates that it is in the Council's financial interest and/or operational efficiency to award additional pension payment to an active</p>

		<p>Scheme member or within 6 months of leaving to a member whose employment was terminated on the grounds of redundancy or business efficiency. The powers to approve proposals made in accordance with this regulation will lie with the Council's Human Resources and Appeals Panel.</p> <p>The discretion may be applied having due regard to the implications on the member's personal tax liability (Lifetime Allowance and Annual Allowance) and Bury Council's Pay Policy Statement.</p>
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4.3 Discretions in accordance with the [Local Government Pension Scheme \(Benefits, Membership and Contributions\) Regulations 2007](#)

Discretion	Regulation	
Whether, for a member leaving on the grounds of redundancy or business efficiency on or before 31 st March 2014, to augment membership (by up to 10 years). The resolution to do so would have to be made within 6 months of the date of leaving. Hence this discretion is spent entirely after 30 th September 2014.	B12*	Bury Council will not apply this discretion.
Whether to grant application for early payment of deferred benefits on or after age 55 and before age 60	B30(2)*	<p>The Council's policy is that applications for early payment of deferred pension benefits from former employees will be approved and that deferred benefits will be paid with an actuarial reduction where there is no cost to the Council.</p> <p>Applications for release of deferred pension benefits from current employees will be approved without actuarial reduction subject to the application being presented in accordance with the Council's Early Retirement Schemes and by demonstrating that a valid business case exists.</p>
Whether to waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early under B30	B30(5)*	<p>The Council's policy is that applications for early payment of deferred pension benefits will be approved and that deferred benefits will be paid with an actuarial reduction unless the applicant can demonstrate that they are facing serious financial hardship and that release of pension benefits without actuarial reduction would perpetuate this hardship.</p> <p>The Council may waive, on compassionate grounds, the actuarial reduction applied to deferred benefits, but in doing so will consider the strain on the pension fund and financial impact of this decision.</p>

Whether to grant an application for early payment of a suspended tier 3 ill health pension on or after age 55 and before age 60	B30A(3)*	<p>The Council's policy is that applications for early payment of a suspended tier 3 ill health pension on or after age 55 and before age 60 will be supported and that suspended benefits will be paid with an actuarial reduction.</p> <p>The powers to approve Early Retirement Applications will lie with the Council's Human Resources and Appeals Panel.</p>
Whether to waive, on compassionate grounds, the actuarial reduction applied to benefits paid early under B30A	B30A(5)*	<p>The Council's policy is that applications for early payment of a suspended tier 3 ill health pension on or after age 55 and before age 60 will be paid with an actuarial reduction unless the applicant can demonstrate that they are facing serious financial hardship and that release of pension benefits without actuarial reduction would perpetuate this hardship.</p> <p>The Council may waive, on compassionate grounds, the actuarial reduction applied to deferred benefits, but in doing so will consider the strain on the pension fund and financial impact of this decision.</p>

4.4 Discretions relating to redundancy in accordance with the [Local Government \(Early Termination of Employment\) \(Discretionary Compensation\) Regulations, 2006](#)

Discretion	Regulation	Proposal
To base redundancy payments on an actual weeks pay where this exceeds the statutory weeks pay limit.	5	<p>The Council has exercised this discretion in accordance with The Local Government (Compensation for Redundancy and Premature Retirement) Regulations 1984 (as amended) for many years.</p> <p>The Council will continue to exercise this discretion in accordance with existing regulations</p>
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.	6	Bury Council reserves the right to apply this discretion in exceptional circumstances where it can be evidenced that by exercising this discretion there are valid risk management and / or reputational considerations
To award compensatory added years to a person aged 50 or over with 5 or more years membership (or notional membership) of the LGPS in cases of redundancy, termination of employment on efficiency grounds, or cessation of a joint appointment which occurred after 30th September 2006 and before 1st April 2007 (but only if employment had commenced pre 1st	11(2)	This provision will not apply.

October 2006)		
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5.0 **CONCLUSION**

5.1 The Council has committed to review the Discretions Policy every 3 years. However, it can be reviewed at any time and members of the Human Resources and Appeals Panel are asked to approve the additional wording in 4.2 of the discretions.