

REPORT TO HR & APPEALS PANEL



DECISION OF:	Human Resources and Appeals Panel
DATE:	22 July 2014
SUBJECT:	Employer Discretions: Statement of Policy Local Government Pension Scheme (LGPS)
REPORT FROM:	Executive Director of Resources and Regulation
CONTACT OFFICER:	Guy Berry, Assistant Director : Human Resources
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. The purpose of this report is to present recommendations on the exercising of the employer discretions by Bury Council for consideration by the Human Resources and Appeals Panel.
OPTIONS & RECOMMENDED OPTION	That subject to consideration of this report the Human Resources and Appeals Panel agrees the proposed discretions detailed in Section 3.0 of the report.
IMPLICATIONS:	
Corporate Aims/Policy Framework:	Do the proposals accord with the Policy Framework? Yes
Statement by the S151 Officer: Financial Implications and Risk Considerations:	The early payment of fund benefits places a "strain" on the pension fund. 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. The capital cost or 'strain on fund' is calculated by reference to the pension

	<p>scheme member's gender, age, pensionable earnings and period of payment prior to pensionable age.</p> <p>The current position is that Capital cost assessments have been built into the business case formulae for VER's and Flexible Retirements and they are also taken into account when Ill Health Retirements are approved. Capital cost 'spend' is also monitored on a monthly basis to ensure that the cost of premature retirement is effectively managed.</p>
Statement on impact on Resources:	<p>The proposed discretions detailed in Section 3.0 of the report have been drafted to enable the council to plan and manage reductions in the workforce and to utilise Flexible retirement in order to retain expertise and skills. Where the council proposes to utilise discretions in order to recruit and retain "business critical" personnel, some discretion has been built in.</p>
Equality/Diversity implications:	<p>Yes.</p> <p>Each of the proposed discretions in Section 3.0 of the report has been drafted to ensure compliance with the Equalities Act.</p>
Considered by Monitoring Officer:	<p>Yes. The Legal provisions are detailed in the report. [JH]</p>
Wards Affected:	<p>None directly. However, there is a potential impact as this could affect all employees of the Council at some point during the 'employee lifecycle'</p>
Scrutiny Interest:	<p>Overview and Scrutiny</p>

TRACKING/PROCESS EXECUTIVE DIRECTOR OF RESOURCES: Mike Owen

Chief Executive/ Strategic Leadership Team	Cabinet Member/Chair	Ward Members	Partners
20/06/2014			
Scrutiny Committee	Committee	Council	

1.0 SUMMARY OF KEY ISSUES

- 1.1 Since 1997, the Local Government Pension Scheme (LGPS) Regulations have required every scheme employer to issue a written policy statement explaining how it will exercise the various employer discretions provided under the scheme rules. They also required this policy statement be kept under review and be revised as necessary.
- 1.2 Subsequent LGPS regulations, including the latest LGPS 2014 rules, require employers to "formulate, publish and keep under review" a policy statement in relation to the exercise of a number of discretions under the LGPS. The policy statement should show the basis on which the employer would make its decisions on the various discretions.
- 1.3 In formulating and reviewing its policy Bury Council 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; i.e. being 'over generous' with discretions.
- 1.4 An employer needs to be seen to be spending money wisely. Policies should be affordable and the costs must be capable of being calculated. Authorities should also be satisfied that the policy is workable, affordable and reasonable having regard to foreseeable costs. The guidance states:

Workable means practical, easy, simple, transparent and straightforward.

Affordable means that as an employer you have the money to spend, it is built into your budget.

Reasonable means you might have the money to spend, but is it reasonable to do so. This is of course subjective.

Foreseeable is there to stop you having to review policies every year. We recommend that policies are reviewed every 3 years, i.e. in line with the triennial valuation. So set policies now so they are future proofed.

- 1.5 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

be duly recorded when used

- 1.6 Other things for employers to consider whilst setting policies are:

- a) Anti-discrimination laws – have regard to the Age Regulations (the age-related parts of the Equality Act 2010 and The Equality Act (age Exceptions for Pension Schemes) order 2010).
- b) Compassion - some employer discretions refer to compassionate grounds. There is no definition of compassionate grounds in the Regulations. An employer may decide to exercise discretion if a scheme member is caring for a partner, or they may decide to apply a 'means test' and consider financial hardship. To date when considering applications from deferred

members for early release of deferred pension benefits we have required applicants to provide details of assets, liabilities and income before making any recommendations to release benefits without actuarial reduction. It is proposed that we continue to apply this approach.

- 1.7 But first and foremost, the Government has advised that employers must not 'fetter their discretion'; i.e. a policy should not be so rigid or restrictive that it prevents flexibility where a (possibly unanticipated) situation requires it.

2.0 ISSUES

- 2.1 In accordance with the [Local Government Pension Scheme Regulations, \(2013\)](#) we are required to formulate, agree and publish our Discretions Policy by July 2014.
- 2.2 A description of the discretions that may be exercised by employers is listed in Section 3.0 of the report. The table in section 3.0 also includes a reference to the specific regulation and the proposed policy decision in respect of each of the listed discretions.

3.0 PROPOSALS

- 3.1 The discretions fall under four broad headings:
- Policy in respect of active pension scheme members;
 - Policy in respect of deferred pension scheme members;
 - Discretions relating to redundancy;
 - Discretions relating to early retirement on the grounds of ill health;
- 3.2 **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>

<p>Whether all or some benefits can be paid if an employee reduces their hours or grade (flexible retirement)</p>	<p>R30(6)* & TP11(2)</p>	<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.</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>
<p>Whether to waive, in whole or in part, actuarial reduction on benefits paid on flexible retirement</p>	<p>R30(8)*</p>	<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>
<p>Whether to waive, in whole or in part, actuarial reduction on benefits which a member voluntarily draws before normal pension age</p>	<p>R30(8)*</p>	<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>
<p>Whether to "switch on" the 85 year rule for a member voluntarily drawing benefits on or after age 55 and before age 60.</p>	<p>TPSch 2, para 2(2)*</p>	<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>
<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</p>	<p>TPSch 2, para 2(3)*</p>	<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>

<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.)</p>	<p>R31*</p>	<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 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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3.3 Discretions in accordance with the [Local Government Pension Scheme \(Benefits, Membership and Contributions\) Regulations 2007](#)

Discretion	Regulation	
<p>Whether, for a member leaving on the grounds of redundancy or business efficiency on or before 31st 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 30th September 2014.</p>	<p>B12*</p>	<p>Bury Council will not apply this discretion.</p>
<p>Whether to grant application for early payment of deferred benefits on or after age 55 and before age 60</p>	<p>B30(2)*</p>	<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.</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>
<p>Whether to waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early under B30</p>	<p>B30(5)*</p>	<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</p>

		<p>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>

3.4 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)	11(2)	This provision will not apply.

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 October 2006)		
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4.0 **CONCLUSION**

- 4.1 The Local Government Pension Scheme (LGPS) contains various regulations where employer discretion has to be exercised.
- 4.2 LGPS 2014 rules, require employers to “formulate, publish and keep under review” a policy statement in relation to the exercise of a number of discretions under the LGPS. The policy statement should show the basis on which the employer would make its decisions on the various discretions.
- 4.3 In formulating and reviewing its policy Bury Council 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; i.e. being ‘over generous’ with discretions.
- 4.4 The Discretions Policy outlined in Section 3.0 of the report has been drafted to take account of the written guidance and consolidates current arrangements for dealing with premature retirements with custom and practice. The proposed policy also incorporates new discretions that are integral to the latest regulations.
- 4.5 Once approved the Discretions policy will be reviewed every three years.