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difference

Employer Discretions

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1. STATEMENT OF INTENT

- 1.1 Wyre Council intends to manage early termination of employment to ensure that the interests of the Council, the Pension Scheme and the employees are given appropriate consideration.

2. INTRODUCTION

- 2.1 The Council has certain discretionary functions available under the Local Government Pension Scheme (LGPS) Regulations and the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011. This document is a written statement of policy in relation to the exercise of certain discretionary functions available under LGPS legislation.

This policy relates to all employees employed by the Council who are members of the Local Government Pension Scheme administered by the Lancashire County Council.

2.2 **Normal Retirement Age (NRA)**

The normal retirement age for Local Government Pension Scheme members has been aligned to the employee's individual State pension age at the time the employment is terminated (with a minimum of age 65). When a member reaches NRA an immediate pension becomes payable once the employee has left employment. An employee may retire before age NRA but may be subject to a reduction in their pension benefits.

Employees have a right to ask to continue to work beyond their normal retirement date and remain in the LGPS until 2 days before their 75th birthday. If they continue in employment beyond NRA their benefits are increased to reflect the fact that they will be paid for less time.

2.3 **Early retirement at age 55**

Under LGPS Regulations, employees who have at least 3 months membership of the LGPS can elect to receive their annual pension and lump sum on leaving employment from age 55, without the Council's consent and at no capital cost to the Council. If the employee elects to receive their benefits before their normal retirement date the benefits will be reduced to reflect the costs of the pension coming into payment early, subject to transitional protection arrangements.

2.4

Redundancy / Early retirement in the interests of the business

Employees aged 18 and over who have at least two years continuous service will receive a redundancy compensation payment.

In addition those who are aged 55 who have at least 3 months membership of the LGPS will receive immediate payment of an unreduced pension and lump sum based on their accrued contributory service at the date their employment is terminated.

2.5

Ill Health Retirement

If an employee's employment is ended due to ill health they are entitled to receive immediate payment of pension benefits regardless of age, provided that they have at least 3 months membership or have transferred pension rights from a previous scheme. A certificate must be obtained from an independent registered medical practitioner qualified in occupational health medicine before a decision can be made regarding ill health benefits. The cost of the early release of benefits in ill health retirement cases is met by the employer through the valuation process.

3. DISCRETIONS EXERCISED BY THE COUNCIL

3.1

PART A 1 - Discretions from 1 April 2014 in relation to post 31 March 2014 active members and post 31.3.14. leavers in accordance with:

- Regulation 60 of the Local Government Pension Scheme (LGPS) Regulations 2013
- Paragraph 2 (2) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014
- Regulation 66 of the Local Government Pension Scheme (Administration) Regulations 2008
- Regulation 106 of the Local Government Pension Scheme Regulations 1997

3.1.1

Discretion: Regulation R31 of the LGPS Regulations 2013. Power to grant additional pension.

An employer can grant additional pension of up to a maximum £6,822 a year (figure at 1 April 2018) to an active scheme member or within 6 months of leaving to a member whose employment was terminated on the grounds of redundancy or interest of the business. This maximum figure that can be awarded from 1 April 2018 but it will be index linked and the level increased on the 1st April each year.

Exercise of Discretion:

The Council has determined not to award additional pension.

3.1.2

Discretion: Regulation R16 (2)(e) and R 16(4)(e) of the LGPS Regulations 2013. Whether, how much, and in what circumstances to contribute to a shared cost APC scheme.

Where an active Scheme member wishes to purchase extra annual pension of up to £6,822 (figure at 1 April 2018) by making Additional Pension Contributions (APCs) an employer can voluntarily contribute towards the cost of purchasing that extra pension via a Shared Cost Additional Pension Contribution (SCAPC). That maximum figure that can be initially awarded will be index linked and the level increased on 1st April each year.

Exercise of Discretion:

The Council has determined not to make any shared cost contribution to an additional pension.

3.1.3

Discretion: Regulation R30(6) of the LGPS Regulations 2013, Regulations 3 (5), 11(2) and 11(3) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 and regulation 18(3) of the LGPS (Benefits, Membership and Contributions) Regulations 2007) - Flexible retirement.

To determine whether all or some benefits can be paid if an employee applies for flexible retirement at or after age 55. Employees opting for flexible retirement by reducing hours or moving to a lower grade can draw their pension benefits whilst continuing in employment and building up further benefits in the scheme.

Specifically where the employer consents to flexible retirement then, in addition to the benefits the member has accrued prior to 1 April 2008 (which the member must draw), the employer can also allow the member to choose to draw:

- all, part or none of the pension benefits they accrued after 31 March 2008 and before 1 April 2014,
- and / or
- all, part or none of the pension benefits they accrued after 31 March 2014.

Exercise of Discretion:

The Council will not automatically operate this discretion but each case is to be considered on its merits.

3.1.4

Discretion: Shared Cost Additional Voluntary Contributions (SCAVCs)
Regulation 17 of the LGPS Regulations 2013, Regulations 15(1)(d)
of the LGPS (Transitional Provisions, Savings and Amendment)
Regulations 2014, Regulation 25(3) of the LGPS (Administration)
Regulations 2008 and Regulation 15(3) of the LGPS (Benefits,
Membership and Contributions) Regulations 2007

An active member may elect to pay AVCs into a scheme established under contract between his appropriate administering authority and a body approved for the purposes of the Finance Act 2004.

An employer can, at its discretion, contribute to the AVC scheme and where they do the AVC scheme is known as a shared cost additional voluntary contributions arrangement (SCAVC). An employer should establish whether, how much and in what circumstances to either continue with an existing SCAVC or enter into a new SCAVC.

Exercise of Discretion:

The Council will pay SCAVC contributions where an employee has elected to pay AVCs by salary sacrifice. The amount of these employer SCAVC contributions will not exceed the amount of salary sacrificed by the employee. This is a Council discretion which is subject to the employee meeting the Council's conditions for acceptance into the salary sacrifice shared cost AVC scheme and may be withdrawn or changed at any time.

3.1.5

Discretion: Regulation R30(8) - Power to pay unreduced benefits on flexible retirement.

Determine whether or not to waive all or part of the actuarial reduction that may apply if the officer retires before age NRA.

Benefits taken on flexible retirement will be subject to a potential actuarial reduction if they are being drawn earlier than the member's normal retiring age (flexible retirement provisions may be operated for members potentially up to a member's 75th birthday). The reductions applied will be in accordance with guidance issued by the government actuary. Employers can if they choose waive, in whole or in part, any reductions that might apply.

Exercise of Discretion:

The Council will not automatically operate this discretion to waive all or part of the actuarial reductions with each case being considered on its merits. The cost of the pension strain should normally be mitigated by the salary saving over 2 years in order for consent to be given in any particular case.

3.1.6

Early retirement and waiving actuarial reductions. (Schedule 2 paragraphs 1(2), 2(1), 2(2) and Regulation 3 (1) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, Regulation 30(8) of the LGPS Regulations 2013 and regulation 30(5) and 30A(5) of the LGPS (Benefits, Membership and Contributions) Regulations 2007)

Determine whether or not to waive all or part of the actuarial reduction on benefits which a member voluntarily draws before normal pension age for both active, deferred members & suspended tier 3 ill health pensions. The employer must pay to the Pension Fund a sum representing the capital cost of waiving those reductions.

If a member leaves a local government employment before he is entitled to the immediate payment of retirement benefits, then if he is age 55 or more (or having attained age 55 and have previously been awarded deferred benefits after 01 April 2014) he may choose to receive payment of them immediately.

Any benefits payable may be reduced as appropriate in accordance with guidance issued by the Government Actuary. Appendix 1 lists the options available to the Council in terms of the level of reductions that can be waived.

Exercise of Discretion:

The Council will not automatically operate this discretion to waive the actuarial reductions with each case being considered on its merits.

3.1.7

Discretion: Regulation TP Sch. 2, 1(2) - Whether to allow the 'rule of 85' to be "switched on" for members who would normally meet the rule but who will not if they draw the benefits age 55-59.

The LGPS 2014 permits current employees and deferred members to choose to take their retirement pensions from age 55. This election is without employers consent and therefore is subject to an actuarial reduction. In such cases of voluntary retirement between the ages of 55 to 60, the Rule of 85 protections do not apply. However, the Council has discretion to waive the actuarial reduction applied to benefits paid early.

Exercise of Discretion:

The Council will not automatically operate this discretion to waive the actuarial reductions with each case being considered on its merits.

3.2

PART A2 - Discretions in relation to scheme members who ceased active membership on or after 1 April 2008 and before 1 April 2014.

3.2.1 Discretion: Regulation B30(2) B30A(3) and (5) of the LGPS (Benefits, Membership and Contributions) Regulations 2007) - Early release of deferred benefits with employer consent

Determine whether to grant application for early payment of deferred benefits on or after age 55 and before age 60 to members who have left the scheme between 1 April 2008 and 31 March 2014 with deferred benefits (or suspended tier 3 benefits).

Exercise of Discretion:

The Council will not automatically operate this discretion to waive the actuarial reductions with each case being considered on its merits.

3.2.3 Discretion: Regulation B30(5)

Whether to waive, on compassionate grounds, the actuarial reduction applied to benefits paid early under B30 and B30A

Exercise of Discretion:

The Council will not operate automatically the discretion to waive actuarial reduction on compassionate grounds and will consent to such requests where there are exceptional reasons for doing so.

3.3 PART A3: - Discretions under the Local Government Pension Scheme Regulations 1997 (as amended) in relation to members who ceased active membership on or after 1 April 1998 and before 1 April 2008.

3.3.1 Discretion: Regulation 31(2- Early release of deferred benefits with employer consent (Grant application from a post 31.3.98 / pre 1.4.08 leaver for early payment of benefits on or after age 50/55 and before age 60.)

Determine whether to grant application for early payment of deferred benefits on or after age 50 and before age 60 to members who have left the scheme between 1 April 1998 and 31 March 2008 with deferred benefits.

*It should be noted that benefits paid on or after age 50 and before age 55 would be subject to an unauthorised payments charge under the Finance Act 2004 and, where applicable, an unauthorised payments surcharge under that Act, and a Scheme sanction charge on any benefits built up after 5 April 2006.

Exercise of Discretion:

The Council will not automatically operate this discretion with each case being considered on its merits.

3.3.2

Discretion: Regulation 31(5)

Waive, on compassionate grounds, the actuarial reduction applied to benefits paid early for a post 31.3.98 / pre 1.4.08 leaver

Exercise of Discretion:

The Council will not automatically operate this discretion to waive the actuarial reductions with each case being considered on its merits.

3.3.3

Discretion: Regulation 31(7A)

Employees who opt out pre 1.4.08 will only to get benefits paid from NRD unless the employer agrees otherwise.

Exercise of Discretion:

The Council will not automatically operate this discretion with each case being considered on its merits.

3.4

PART A4:- Discretions in relation to scheme members who ceased active membership before 1 April 1998.

3.4.1

Discretion:- Regulation D11(2)(c) of the LGPS Regulations 1995)

Grant application from a pre.1.4.98 leaver for early payment of deferred benefits on or after age 50 and before age 60 on compassionate grounds. Under these rules the sole discretion is that the Council may determine on compassionate grounds that benefits are to become payable on an unreduced basis.

*It should be noted that benefits paid on or after age 50 and before age 55 would be subject to an unauthorised payments charge under the Finance Act 2004 and, where applicable, an unauthorised payments surcharge under that Act, a Scheme sanction charge will not be payable.

Exercise of Discretion:

The Council will not automatically operate this discretion with each case being considered on its merits.

3.5

PART B – Formulation of policy in accordance with further discretions under the Local Government Pension Scheme Regulations 2013

3.5.1

Discretion: Regulation R100(6) of the LGPS Regulations 2013 - Extend normal time limit for acceptance of a transfer value beyond 12 months from joining the LGPS

The LGPS Regulations enable members to transfer pension rights accrued prior to joining the scheme into the LGPS, and thereby count additional pension. This election should be made within 12 months of first joining the LGPS in the employment.

Whether, with the agreement of the Pension Fund administering authority, to permit a Scheme member to elect to transfer other pension rights into the LGPS if he / she has not made such an election within 12 months of joining the LGPS

Exercise of Discretion:

The Council will not automatically operate this discretion with each case being considered on its merits.

3.5.2

Discretion: Regulation R22 (7)(8) of the LGPS Regulations 2013 - Whether to extend the 12 month option period for a member to elect that deferred benefits should not be aggregated with a new employment.

Previous LGPS rights are automatically aggregated unless an election to keep those accrued benefits separate is received. Regulations 22 (7) and (8) allow an employer to extend the 12 month time limit within which a Scheme member who has a deferred LGPS benefit following the cessation of employment (or cessation of a concurrent employment) to elect not to have the deferred benefits aggregated with their new LGPS employment (or on-going concurrent LGPS employment) if the member has not made an election to retain separate benefits within 12 months of commencing membership of the LGPS in the new employment (or within 12 months of ceasing the concurrent membership).

Exercise of Discretion:

The Council will not automatically operate this discretion with each case being considered on its merits.

3.5.3

Discretion: Regulation R9 and 10 of the LGPS Regulations 2013 - Determine rate of employees' contributions.

An active member shall make contributions to the Scheme at the relevant contribution rate, from his pensionable pay, in each employment in which he is an active member. The contribution rate to be applied to his pensionable pay in any financial year is the rate determined by the employer with reference to the tiered contribution pay bands stated in the regulations.

Where there is a material change to a member's pensionable pay in the course of a financial year, the employer may re-determine the contribution rate to be applied.

Exercise of Discretion:

The Council will re-determine the % contribution rate applied from the date of the material change.

3.5.4

Discretion: Regulation R21(4) and(5) of the LGPS Regulations 2013**Assumed Pensionable Pay**

Whether or not, when calculating assumed pensionable pay when a member

- is on reduced contractual pay or no pay on due to sickness or injury, or
- is absent during ordinary maternity, paternity or adoption leave or during paid additional maternity, shared parental or adoption leave, or
- is absent on reserve forces service leave, or
- retires with a Tier 1 or Tier 2 ill health pension, or
- dies in service

to include in the calculation the amount of any 'regular lump sum payment' received by the member in the 12 months preceding the date the absence began or the ill health retirement or death occurred. A 'regular lump sum payment' is a payment for which the member's employer determines there is a reasonable expectation that such a payment would be paid on a regular basis.

Exercise of Discretion:

The Council will not automatically operate this discretion with each case being considered on its merits.

3.5.5

Discretion: Regulation B11(2) – Power of employing authority to determine a policy for averaging pensionable pay by way of fees.

To allow a member to select a final pay period for fees to be any 3 consecutive years ending 31st March in the 10 years prior to leaving.

Exercise of Discretion:

Provided that the financial implications are not material the Council will allow a member to select the final pay period for fees to be any 3 consecutive years ending 31st March in the 10 years prior to leaving.

3.6

PART C1: Exercise of discretions in accordance with Local Government (Early Termination of Employment) (Discretionary Compensation Amendment) Regulations 2006 (as amended.)

3.6.1

Discretion: Regulation 5 - Redundancy and Compensation Payments

The Council has the discretion to base redundancy payments on an actual week's pay where this exceeds the statutory limit.

Exercise of Discretion:

The Council has adopted the power to use the actual week's pay excluding employer's pension contribution for this calculation.

3.6.2 **Discretion: Regulation 6 - Redundancy and Compensation Payments**

These regulations provide a discretionary power to award a one-off lump sum payment of up to 2 years pay (104 weeks), inclusive of any redundancy payment made. This applies to any member whose employment is terminated on the grounds of redundancy, efficiency of service.

Exercise of Discretion:

The Council has decided not to award any compensation/enhanced payments and will use the statutory formula to calculate redundancy payments giving a maximum of 30 weeks pay.

3.7 **Part C2: Exercise of discretions in accordance with Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 (as amended)**

3.7.1 **Discretion: Regulation 17**

Whether and to what extent to reduce or suspend the member's annual compensatory added years payment during a period of re-employment in local government.

Exercise of Discretion:

A reduction or suspension of pension would take place where the amount of new earnings together with the pension payment exceeded the annual rate of pay on leaving the first employment, with appropriate adjustments made for the effects of index linking to salary and pension benefits.

3.7.2 **Discretion: Regulation 19**

How to reduce the member's annual compensatory added years payment following the cessation of a period of re-employment in local government.

Exercise of Discretion:

The member's annual compensatory added years payment following cessation of a period of re-employment in local government will be adjusted to ensure that the member has not exceeded the membership that would have been accrued in their first employment had they continued in employment until age 65.

3.7.3 **Discretion: Regulation 21 (4)**

How to apportion any surviving spouse's or civil partner's annual compensatory added years payment where the deceased person is survived by more than one spouse or civil partner.

Exercise of Discretion:

Any surviving spouse's annual compensatory added years payment will be divided equally where the deceased person is survived by more than one spouse or civil partner.

3.7.4

Discretion: Regulation 21 (7)

Whether, in respect of the spouse of a person who ceased employment before 1 April 1998 and where the spouse or civil partner remarries, enters into a new civil partnership or cohabits after 1 April 1998, the normal pension suspension rules should be dis-applied i.e. whether the spouse's or civil partner's annual compensatory added years payments should continue to be paid.

Exercise of Discretion:

The spouse's or civil partner's annual compensatory added years payments should continue to be paid in respect of the spouse or civil partner of a person who ceased employment before 1 April 1998 and where the spouse or civil partner remarries, enters into a new civil partnership or cohabits after 1 April 1998.

3.7.5

Discretion: Regulation 21 (7)

Whether, in respect of the spouse or civil partner of a person who ceased employment before 1 April 1998 and where the spouse or civil partner remarries or cohabits or enters into a civil partnership on or after 1 April 1998 with another person who is also entitled to a spouse's or civil partners annual CAY payment, the normal rule requiring one of them to forego payment whilst the period of marriage, civil partnership or co-habitation lasts, should be dis-applied i.e. whether the spouses' or civil partners' annual CAY payments should continue to be paid to both of them.

Exercise of Discretion:

The spouse's or civil partner's annual compensatory added years payments should continue to be paid to both parties and where the spouse or civil partner remarries, enters into a new civil partnership or cohabits after 1 April 1998 with another person who is also entitled to a spouse's or civil partners annual CAY payment.

3.7.6

Discretion: Regulation 25 (2)

How it will decide to whom any children's annual compensatory added years payments are to be paid where children's pensions are not payable under the LGPS (because the employee had not joined the LGPS) and, in such a case how the annual added years will be apportioned amongst any eligible children.

Exercise of Discretion:

Any annual added years will be divided equally amongst any eligible children.

4. CONSIDERATION OF REQUESTS FOR EARLY RETIREMENT (EXCLUDING ILL HEALTH RETIREMENTS).

4.1 Making a request

Formal requests for early termination of employment or flexible retirement should be made in the first instance to the employee's Director, who will make their recommendation.

4.2 Obtaining Information

Advice on early retirement / flexible retirement / voluntary redundancy etc can be obtained from the Human Resources section. All requests for estimates of benefits and pension forecasts should also be made via Human Resources.

4.3 Determination of Applications

Determination of applications for early release from any employee, except members of the Management Team, is delegated to the Chief Executive in association with the S151 Officer. In determining the application, they must be satisfied that the proposals are cost-neutral to the Council over a specified period of time in accordance with the Council's policy and Audit Commission requirements. Any proposal for the early release of a member of the Management Team must be considered by the full Council.

4.4 This policy does not override the provision of the Local Government Pension Scheme Regulations (as amended), the Local Government (Discretionary Payments) as amended, and the Employment Rights Act.

5. LOCAL GOVERNMENT (DISCRETIONARY PAYMENTS) (INJURY ALLOWANCES) REGULATIONS 2011

5.1 Exercise of discretions in accordance with Regulation 14 of the Injury Allowances in respect of leavers, deaths and reduction in pay.

5.1.1 Discretion: Regulation 3(1)

Whether to grant an injury allowance following reduction in remuneration as a result of sustaining an injury or contracting a disease in the course of carrying out duties of the job.

- 5.1.2 Discretion: Regulation 3(4) & 8**
Amount of injury allowance following reduction in remuneration as a result of sustaining an injury or contracting a disease in the course of carrying out duties of the job.
- 5.1.3 Discretion: Regulation 3(2)**
Determine whether a member continues to be entitled to an Injury Allowance awarded under regulation 3 (1).
- 5.1.4 Discretion: Regulation 4 (1)**
Whether to grant an injury allowance and determine the amount following cessation of employment as a result of permanent incapacity caused by sustaining an injury or contracting a disease in the course of carrying out the duties of the job.
- 5.1.5 Discretion: Regulation 4 (3) & 8**
Amount of injury allowance following cessation of employment as a result of permanent incapacity caused by sustaining an injury or contracting a disease in the course of carrying out the duties of the job.
- 5.1.6 Discretion: Regulation 4(2)**
Determine whether a member continues to be entitled to an Injury Allowance awarded under regulation 4 (1).
- 5.1.7 Discretion: Regulation 4 (5) Whether to Suspend or Discontinue an Injury Allowance**
Whether to suspend or discontinue the injury allowance awarded under regulation 4 (1) if the member secures paid employment for not less than 30 hours per week for a period of not less than 12 months.
- 5.1.8 Discretion: Regulation 6(1)**
Whether to grant an injury allowance following cessation of employment with entitlement to immediate LGPS pension where a regulation 3 payment was being made at date of cessation of employment but regulation 4 does not apply.
- 5.1.9 Discretion: Regulation 6(1)**
Determine the amount of any injury allowance to be paid under regulation 6(1).
- 5.1.10 Discretion: Regulation 6(2)**
Whether to cease payment of an injury allowance awarded under regulation 6(1).
- 5.1.11 Discretion: Regulation 7(1)**
Whether to grant an injury allowance to the spouse civil partner, nominated co-habiting partner or dependent of an employee who dies as a result of sustaining an injury or contracting a disease in the course of carrying out duties of the job.
- 5.1.12 Discretion: Regulation 7(2) & 8**
Determine the amount of any injury allowance to be paid under regulation 7(1).

5.1.13

Discretion: Regulation 7(3)

Determine whether and when to cease payment of an injury allowance awarded under regulation 7(1).

Exercise of Discretions

The Council has determined not to adopt its discretionary powers in respect of the injury allowance regulations described above as it cannot be satisfied that such a policy would be workable, affordable and reasonable having regard to the foreseeable cost.

Declaration

It is understood that the above discretions are applicable to all eligible members of the Scheme. In respect of the mandatory policy requirements, a written statement should be published indicating the policy which is being applied by that employer in the exercise of its functions. A copy of the scheme employer's policy decisions should be sent to Your Pension Service within one month of the date the policy is revised.

Any change to the discretions exercised under the LGPS Regulations can take immediate effect from the date the Scheme employer agrees the change.

Any change to the discretions exercised under the Discretionary Compensation Regulations 2000, the Discretionary Compensation Regulations 2006 or the Injury Allowances Regulations 2011 cannot take effect until one month after the date the Scheme employer publishes a statement of its amended policy.

The policies made above:

- i. Must have regard to the extent to which the exercise of the discretions could lead to a serious loss of confidence in the public service;
- ii. Will not be used for any ulterior motive;
- iii. Will be exercised reasonably;
- iv. Will only be used when there is a real and substantial future benefit to the employer for incurring the extra costs that may arise;
- v. Will be duly recorded when applied.

Signed on behalf of the Employing Authority:

Name in Block Capitals:

Position: