

STATEMENT OF POLICY

Discretions under Local Government Pension Scheme (LGPS) Regulations

Policy Statement by:

Harlow Council

Date March 2022

Under the LGPS Regulations 2013 effective from 1 April 2014, all employers participating in the LGPS are required to prepare and publish a written statement on how it will exercise the various discretions provided by LGPS 2014, LGPS 2008, LGPS 1997, Compensation and Injury Allowances Regulations

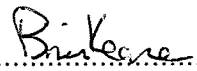
This document includes discretionary policies for LGPS Regulations 2013 as required by regulation 60, LGPS (Administration) Regulations 2008 as required by regulation 66 and 1997 LGPS Regulations as required by regulation 106 (for pre-1 April 2008 leavers and/or Councillor members as applicable).

Exceptional compassionate grounds

Financial hardship alone is not deemed sufficient grounds to apply the discretion for early release of pension benefit. For the purposes of this policy, exceptional compassionate grounds are where an ex-member of the pension scheme has had to give up paid employment to be the sole carer for a severely disabled or seriously ill dependent, and where reasonable additional support is not available.

Such policy decisions are to be kept under review.

Print NameBrian Keane.....

Signed.....

Position ...Chief Executive, Head of Paid Service.....

Date ...24 March 2022.....

1 Employer Discretions - Local Government Pension Scheme Regulations 2013

A written policy statement is required concerning the following: -

	Discretion	Regulation	Employer Policy
1a	Whether, how much, and in what circumstances to contribute to a shared cost Additional Pension Contract (APC) scheme.	R16(2)(e) & R16(4)(d)	Harlow Council will not consider contributing to a shared cost APC scheme. (Excluding where a member chooses, within 30 days of their return to work, to purchase pension related to a period of authorised leave of absence).
1b	Whether all or some benefits can be paid if an employee reduces their hours or grade (flexible retirement).	R30(6) & TP11(2)	Harlow Council will consent to the payment of relevant pension benefits if a member, age 55 or over, reduces his or her hours and/or grade in accordance with the criteria set out within the Council's Flexible Retirement policy which requires a business case to be approved in each case
1c	Whether to waive, in whole or in part, actuarial reduction on benefits paid on flexible retirement.	R30(8)	Harlow Council will not waive the percentage reduction applied to the early payment of benefits.
1d	Whether to waive, in whole or in part, actuarial reduction on benefits which a member voluntarily draws before normal pension age.	R30(8)	Harlow Council will not waive any actuarial reduction on retirement before normal pension age.
1e	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, paras 1(2) and 2(2)	Harlow Council will not consider 'switching on' the 85-year rule for a member voluntarily drawing benefits on or after 55 and before age 60.

1f	Whether to waive, any actuarial reduction on pre and/or post April 2014 benefits	TP3(1), TPSch 2, paras 2(1) and 2(2), B30(5) and B30A(5)	Harlow Council will not consider waiving actuarial reductions on pre or post 2014 benefits.
1g	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 £6,500.00 p. a.).	R31	Harlow Council will not award additional pension to any member.

2 Additional Employer Discretions – Local Government Pension Scheme Regulations 2013

Additional policy statements for which the Employer chooses to document: -

	Discretion	Regulation	Employer Policy
2a	Determine rate of employee's contributions	R9(1)7 R9 (3)	Harlow Council will allocate employees to a contribution band based on pensionable pay as assessed on 1 st April and each subsequent 1 st April. The council reserves the right to reassess bands during a pension year following a significant in year change in the contract of employment.
2b	Whether, how much, and in what circumstances to contribute to shared cost Additional Voluntary Contribution (AVC) arrangements entered into on or after 1.4.14	R17 (1) & definition of SCAVC in RSch1	Harlow Council will not contribute to a shared cost AVC arrangement
2c	Whether, how much, and in what circumstances to continue to contribute to a shared cost AVC arrangement entered into before 1.4.14	TP15(1) (d) & A 25 (3)	Harlow Council does not contribute to a shared cost AVC arrangement

	Discretion	Regulation	Employer Policy
2d	Allow late application to convert Scheme AVC's into membership credit i.e. allow application more than 30 days after cessation of active membership (where AVC arrangement was entered into before 13.11.01)	Tp15 (1) (b) & L66 (8) & former L66 (9) (b)	Harlow Council will not allow late membership to convert an AVC to scheme membership
2e	In determining Assumed Pensionable Pay (APP), whether a lump sum payment made in the previous 12 months is a 'regular lump sum'	R21 (5)	Harlow Council will determine that a bonus paid in a previous year is not a regular payment for the purposes of calculating AAP
2f	Whether to extend the 12-month option period for a member to elect that deferred benefits should not be aggregated with a new employment.	R22 (8) (b)	Harlow Council will not extend the time limit for election for acceptance of request not to aggregate previous deferred benefits to be aggregated with a new employment beyond 12 months from an employee joining the LGPS other than in exceptional circumstances.
2g	Whether to extend the 12-month option period for a member to elect that deferred benefits should not be aggregated with an ongoing concurrent employment	R22 (7) (b)	Harlow Council will not extend the time limit for election for deferred benefits to be aggregated with an ongoing concurrent employment beyond 12 months from an employee joining the LGPS other than in exceptional circumstances.
2h	Whether to recover any overpaid Tier 3 pension following commencement of gainful employment	R37 (3) & (4)	Harlow Council will recover any overpaid Tier 3 pension benefits following commencement of gainful employment – as determined by the Head of Paid Service - and if the ex-employee has failed to disclose this information to the Council.

2i	Extend normal time limit for acceptance of a transfer value beyond 12 months from joining the LGPS	R 100 (68)	Harlow Council will not extend the time limit for acceptance of a transfer value, other than in exceptional circumstances where the processing of the election was delayed, other than by the employee.
2j	Ill health		Pension benefits will be released in accordance with the provisions of the scheme and in line with the medical assessment as detailed on the ill health certificate process set by Essex Pensions.
2k	Whether to use a certificate produced by an independent registered medical practitioner under the 2008 scheme for the purposes of making an ill health determination under the 2014 scheme.	TP12 (6)	The Council will apply this discretion to allow the use of a certificate produced by an independent registered medical practitioner under the 2008 scheme for the purposes of making an ill health determination under the 2014 scheme. The Council will also require the medical report to support the certification or otherwise. Any Appeal (Regulation 57(5)c) against the level of award will need to be referred to a different, independent, and approved OH practitioner.
2l	Business efficiency or redundancy Employment terminated by mutual consent on the ground of business efficiency or redundancy		Pension benefits will be released in accordance with the provisions of the scheme and in accordance with Council policy

2m	Whether to recover from the Pension Fund any monetary obligation or, if less, the value of the member's benefits (other than benefits from transferred-in pension rights or Additional Pension Contributions or Additional Voluntary Contributions) where the obligation was incurred as a result of a grave misconduct or a criminal, negligent or fraudulent act or omission in connection with the employment and as a result of which the person has left employment.	R 93 (2)	The council will make such recovery unless there are compelling business reasons not to. This will be determined by the Head of Paid Service.
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3 Employer Discretions - Local Government Pension Scheme (Administration) Regulations 2008

A written policy statement is required concerning the following: -

	Discretion	Regulation	Employer Policy
3a	Whether to grant application for early payment of deferred benefits on or after age 55 and before age 60.	B30(2)	Harlow Council will not consent to the application for early payment of deferred benefits on or after age 55 and before age 60 other than in exceptional circumstances where there has been thorough consideration of financial impact and that the detriment suffered by the Council will not have an unreasonable adverse effect on budgets particularly those relating to current staffing. No case will be considered where the employee had been dismissed by the council for conduct reasons.
3b	Whether to waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early under B30.	B30(5)	Harlow Council will not waive any actuarial reduction applied to the early payment of benefits

	Discretion	Regulation	Employer Policy
3c	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)	The Council will not consent to applications for early payment of a suspended tier 3 ill health pension on or after age 55 and before age 60 other than on exceptional compassionate grounds where there has been thorough consideration of financial impact and that the detriment suffered by the Council will not have an unreasonable adverse effect on budgets particularly those relating to current staffing. No case will be considered where the employee had been dismissed by the council for conduct reasons.
3d	Whether to waive, on compassionate grounds, the actuarial reduction applied to benefits paid early under B30(A)	B30A(5)	Harlow Council will not waive any actuarial reduction applied to the early payment of benefits, where in exceptional circumstances, the Council has given its consent.
3e	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	Harlow Council will not increase the years of membership of a member.

4 Employer Discretions – Local Government Pension Scheme Regulations 1997 (as amended) in relation to pre-1 April 2008 leavers

	Discretion	Regulation	Employer Policy
4a	Grant application from a post 31 st March 1998 / pre-1st April 2008 leaver for early payment of benefits on or after age 50/55 and before age 60. See note below.	31(2)	Harlow Council will not consent to applications for early payment of deferred benefits from age 55+ other than in exceptional circumstances. Applications for those age 50 – 54 will not be considered due to the HMRC ruling that such payments are unauthorised
4b	Waive, on compassionate grounds, the actuarial reduction applied to benefits paid early for a post 31 st March 1998 / pre-1st April 2008. Leaver.	31(5)	Harlow Council will not waive on compassionate grounds the actuarial reduction applied to the early payment of benefits.

Note regarding 1997 discretionary regulation 31(2)

Benefits paid on or after age 50 and before age 55 are subject to an unauthorised payment charge and, where applicable, an unauthorised payments surcharge under the Finance Act 2006. Also, any part of the benefits which had accrued after 5th April 2006 would generate a scheme sanction charge.

5 Employer Discretions – Local Government Pension Scheme Regulations 1995 (as amended) in relation to pre-1 April 1998 leavers

	Discretion	Regulation	Employer Policy
5a	Grant applications for early payment of deferred pension benefits on or before age 50 and before age 65 on compassionate grounds.	D11(2)(c)	Harlow Council will not consent to applications for early payment of deferred benefits from age 55+ other than in exceptional circumstances. Applications for those aged 50-54 will not be considered due to the HMRC ruling that such payments are unauthorised.

6 Employer Discretions under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (as amended)

	Discretion	Regulation	
6a	To base redundancy payments on an actual week pay where this exceeds the statutory week's pay limit.	5	Harlow Council will base redundancy payments on actual week's pay where this exceeds the statutory pay limit which is calculated by dividing annual salary by 52.14
6b	To award lump sum compensation of up to 104 week's pay in cases of redundancy.	6	Harlow Council will award lump sum compensation (which includes the statutory redundancy payment due) based on the statutory formula and up to a maximum of 45 week's pay which is calculated using a multiplier of 1½ times the statutory entitlement.
6c	To award lump sum compensation of up to 104 week's pay in cases of termination of employment on efficiency grounds	6	Harlow Council will award lump sum compensation based on the statutory formula for redundancy up to a maximum of 45 week's pay which is calculated using a multiplier of 1½ times the statutory entitlement
6d	To award lump sum compensation of up to 104 week's pay on cessation of a joint appointment	6	Harlow Council will not award lump sum compensation in cases of cessation of a joint appointment.

Employer Discretions under the Local Government (Discretionary Payments) (Injury Allowance) Regulations 2011

	Discretion	Regulation	
9a	Whether to grant an injury allowance following a reduction in remuneration as a result of sustaining an injury or contracting a disease in the course of carrying out duties.	3 (1)	Harlow Council Policy is not to set up an Injury Allowance Scheme at this time.
9b	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.	3(4) and 8	Harlow Council Policy is not to set up an Injury Allowance Scheme at this time.
9c	Determine whether person continues to be entitled to an injury allowance awarded under regulation 3(1).	3(2)	Harlow Council Policy is not to set up an Injury Allowance Scheme at this time.
9d	Whether to grant an 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 duties if the job.	4(1)	Harlow Council Policy is not to set up an Injury Allowance Scheme at this time.
9e	Amount of injury allowance following cessation as a result of permanent incapacity caused by sustaining an injury or contracting a disease in the course of carrying out duties of the job.	4(3) and 8	Harlow Council Policy is not to set up an Injury Allowance Scheme at this time.
9f	Determine whether person continues to be entitled to an injury allowance awarded under regulation 4(1).	4(2)	Harlow Council Policy is not to set up an Injury Allowance Scheme at this time.

	Discretion	Regulation	
9g	Whether to suspend or discontinue injury allowance awarded under regulation 4(1) if person secures paid employment for not less than 30 hours per week for a period of not less than 12 months.	4(5)	Harlow Council Policy is not to set up an Injury Allowance Scheme at this time.
9h	Whether to grant an injury allowance following cessation of employment with entitlement to immediate LGPS pension where a reg 3 payment was being made at date of cessation of employment but reg 4 does not apply.	6(1)	Harlow Council Policy is not to set up an Injury Allowance Scheme at this time.
9i	Determine whether and when to cease payment of an injury allowance payable under regulation 6(1)	6(2)	Harlow Council Policy is not to set up an Injury Allowance Scheme at this time.
9j	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	7(1)	Harlow Council Policy is not to set up an Injury Allowance Scheme at this time.
9k	Determine amount of any injury allowance to be paid under regulation 7(1)	7(2) and 8	Harlow Council Policy is not to set up an Injury Allowance Scheme at this time.
9l	Determine whether and when to cease payment of an injury allowance payable under regulation (7)1	7(3)	Harlow Council Policy is not to set up an Injury Allowance Scheme at this time.

Appendix to Discretionary Decisions Statements – Definition of pensionable pay under the LGPS 2013 Regulations.

The definition of pensionable pay in the 2014 Scheme is, basically, the same as in the 2008 Scheme – i.e. all payments in respect of the job apart from those listed in Regulations as exclusions

From 1st April 2014, non-contractual overtime becomes pensionable as does all additional plain time hours worked. An employee's pensionable pay is the total of:

- ☐ all the salary, wages, fees and other payments paid to the employee, including PRP bonus, market supplement and
- ☐ any benefit specified in the employee's contract of employment as being a pensionable emolument

But an employee's pensionable pay does not include:

- ☐ any sum which has not had income tax liability determined on it;
- ☐ any travelling, subsistence or other allowance paid in respect of expenses incurred in relation to the employment;
- ☐ any payment in consideration of loss of holidays;
- ☐ any payment in lieu of notice to terminate a contract of employment;
- ☐ any payment as an inducement not to terminate employment before the payment is made;
- ☐ any amount treated as the money value to the employee of the provision of a motor vehicle or any amount paid in lieu of such provision;
- ☐ any payment in consideration of loss of future pensionable payments or benefits;
- ☐ any award of compensation (excluding any sum representing arrears of pay) for the purpose of achieving equal pay in relation to other employees;
- ☐ any payment made by the Scheme employer to a member on reserve forces service leave;
- ☐ returning officer, or acting returning officer fees other than fees paid in respect of—
 - o local government elections,
 - o elections for the National Assembly for Wales,
 - o Parliamentary elections, or
 - o European Parliamentary elections.

For discretions available under LGPS Regulations not covered in the above tables (discretions not requiring mandatory policy) the default position of the council is that each case is considered on its own merit by the Head of Paid Service for determination and that decisions to positively apply any discretion are only made following thorough consideration of financial impact and evidence that there is an overriding business need to support such a decision.