



LUTON BOROUGH COUNCIL

LOCAL GOVERNMENT PENSION SCHEME

PAYMENT OF DISCRETIONARY COMPENSATION TO EMPLOYEES

POLICY ON EXERCISE OF EMPLOYER DISCRETIONS

Luton Borough Council (“the council”) as an employer is under a legal duty to prepare and publish a written statement of its policy relating to certain discretionary powers under the Regulations which apply to the Local Government Pension Scheme (“the LGPS”).

This document is intended to comply with this duty and, in the following table, sets out the discretionary powers concerned, identifies the relevant Regulation that gives the council the discretion and describes how the discretion will be exercised.

The policy set out in this document will not be departed from except following a variation to the policy approved by Administration and Regulation Committee.

This statement is not a definitive statement of the law and is subject to the provisions of the relevant Regulations.

The Regulations that apply to the LGPS are:

- 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”

In the table below:

- (1) “The Scheme” or “the Pension Scheme” means the LGPS and “the Fund” or “the Pension Fund” means the fund maintained under the LGPS;
- (2) “Member” means a member of the LGPS;

- (3) "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 Pensions Regulations.
- (4) 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 Pensions Regulations on 1 April 2014.
- (5) 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.

This statement was approved by Administration and Regulation Committee on 25.06.2014, and subsequently updated on 29.08.2018 and 05.11.2019 and is intended to comply with the council's duties under Regulation 60 of the Pensions Regulations.

No.	Area	Regulation	Discretion	Policy Summary	Explanation
1	Funding of Additional Pension Contributions (APC)	Regulations 16(2)(e) and 16(4)(d) Pensions Regulations,	<p>To fund, in whole or in part, additional pension contributions on behalf of an employee where these are to be paid by regular contributions (Regulation 16(2)(e)) or by lump sum (Regulation 16(4)(d))</p> <p>Note: The amount of additional pension that may be credited to an active member's pension accounts may not exceed the additional pension limit of £6,500 (uplifted annually)</p>	The council will contribute to a shared cost Additional Pension Contribution contract where there is statutory duty to do so or an Administrative Body requirement to do so. The council will not exercise any employers discretion to contribute to a Shared Cost APC scheme	This means the council can pay additional pension contributions of behalf of current employees. The council will not exercise this discretion.
2	Absence Contribution Time Limit	Regulations 16(2)(e) and 16(4)(d) Pensions Regulations,	A request to pay voluntary pension contributions has to be made within 30 days of returning to work (or within 30 days of their last day of service if they don't return). Employer has the discretion to extend the 30 days time limit.	The council notes this discretion and will permit an extended period of time as long as it is reasonable.	A member who has been away from work as a result of maternity, paternity or adoption leave, industrial action or unpaid leave of absence, has the right to pay voluntary pension contributions to prevent any gap in membership.
3	Shared Cost Additional Voluntary Contributions (SCAVC)3	Regulation 17(1) & definition of SCAVC in RSch 1	Whether, how much, and in what circumstances to contribute to SCAVC arrangements	The Council will pay SCAVC contributions where an employee has elected to pay AVCs by salary sacrifice. The	This means that each employee will be dealt with in accordance with the scheme criteria taking into account any financial

				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.	implications i.e. provided that the SCAVC contributions plus other salary sacrifice arrangements do not reduce the employee's salary to below the National Living Wage.
4	Flexible Retirement	Regulation 30(6), Pensions Regulations	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 by the council.	Under it's Flexible Retirement Policy the council may allow an employee aged 55 or over with a minimum of 2 years pensionable service, to reduce their working hours or grade, and receive payment of pension benefits subject to the main pension scheme regulations being met. Agreement to flexible retirement before Normal Pensionable Age will only be given where the business case has merit and no additional	This means the council can agree to an employee aged 55 or over drawing their pension whilst they continue to work for the council on reduced pay / hours or grade. However, consent will only be given if there will be no strain on the pension fund costs that will fall to the council.

				cost will fall to the council.	
5	Waiving of Actuarial Reduction to Pensions	Regulation 30(5) and 30(8), Pensions Regulations	<p>To agree to waive, in whole or in part, any reduction that would otherwise be made on the:</p> <p>(1) early payment of a pension to a former employee aged 55 or over on compassionate grounds or</p> <p>(2) the pension paid to an employee allowed to take flexible retirement under Regulation 30(6) of the Pensions Regulations</p>	<p>(1)The council will only agree to waive actuarial reductions to a former employee aged 55 or over in cases of exceptional compassionate grounds</p> <p>(2) It is not the policy of the council to waive actuarial reductions on flexible retirement.</p>	<p>(1) This means the council can agree to waive any reductions to an individual's pension where they have left employment. The council will however only do this on exceptional compassionate grounds. Such grounds will normally be limited to cases where an individual is unable to work due to being the sole carer of a person certified by a doctor as needing long term care due to a terminal condition. The decision in each case, would be delegated to the Head of HR & Monitoring Officer and Head of Finance, and must be supported by a business case.</p> <p>(2) The council will not agree to fund the pension strain costs when a current employee takes flexible retirement. In both circumstances, this does</p>

					not prevent pension scheme members opting to take early retirement between the ages of 55 and normal pension age with a reduced pension.
6	Award of Additional Pension	Regulation 31, Pensions Regulations	<p>To award additional pension to:</p> <p>(1) an active member; or</p> <p>(2) a former active member who was dismissed by reason of redundancy or business efficiency, or whose employment was terminated by mutual consent on grounds of business efficiency</p> <p>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 £6,500 (uplifted annually).</p> <p>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>	It is not the policy of the council to award additional pension.	This means the council has power to award additional pension to either a current employee in the LGPS or an employee who has left by way of redundancy or business efficiency. The policy of the council is not to do this.
7	Aggregation of Benefits: Concurrent Employments	Regulation 22 (7)(b),	To allow an active member with concurrent employments, who ceases an	The council requires any request to aggregate	This means the council can allow individuals with

		Pensions Regulations	employment with an entitlement to a deferred pension, a longer period than 12 months in which to elect not to have the benefits in their deferred member's pension account aggregated with the benefits in their active member's pension account.	LGPS membership to be made within the twelve months' time limit.	more than 1 pension under different employment contracts longer than the usual 12 month deadline to choose not to combine the pensions. This discretion will not be exercised.
8	Aggregation of Benefits: Deferred Member becoming Active Member	Regulation 22 (8)(b), Pensions Regulations	To allow a deferred member who again becomes an active member a longer period than 12 months in which to elect not to have the benefits in their deferred member's pension account aggregated with the benefits in their active member's pension account.	The council requires any request to aggregate LGPS membership to be made within the twelve months' time limit.	This means the council can agree to an employee who has ceased to be an active member of the LGPS who again becomes an active member, longer than the usual 12 month deadline to choose not to combine the pensions. The council will not exercise this discretion.
9	Early Payment of Pension in cases of Members with Transitional Protection	Schedule 2, Transitional Regulations	To agree to that the transitional protections set out in Paragraph 1(3) of Schedule 2 to the Transitional Regulations should apply. This affects members with transitional protection who choose to retire between the ages of 55 and 60. The transitional protections offer complete or partial protection from actuarial reductions depending on the circumstances.	It is not the council's policy to agree to the application of Paragraph 1 (3) of Schedule 2 to the Transitional Regulations, which means that the council will not agree to the payment of unreduced retirement benefits to a member with transitional protection who meets the	This means the council will not agree to the payment of unreduced pension benefits to a pension scheme member who is covered by the transitional protections who meets the '85 year rule' until they are aged 60.

				85 year rule until they are aged 60.	
10	Waiver of Actuarial Reductions to Pension in cases of Members with Transitional Protection	Schedule 2, Transitional Regulations	To waive on compassionate grounds, any Reduction that would otherwise be made to a member's pension payable on early retirement.	<p>The council will only agree to waive actuarial reductions in the following circumstances:</p> <p>(1) There would be no cost to the council;</p> <p>(2) In cases of exceptional compassionate grounds</p>	<p>This means the council can agree to waive any reductions to an individual's pension where they have left employment. The council will however only do this where there is no cost to the council or on exceptional compassionate grounds. The decision in each case, would be delegated to the Service Director, Human Resources & Monitoring Officer and Service Director, Finance & Audit, Section 151 Officer, and must be supported by a business case.</p>
11	Inward Transfer of Pension Rights	Regulation 100, Pensions Regulations	<p>To allow a person more than 12 months beginning with the date when they first became an active member in an employment to request the acceptance of a transfer value for certain accrued pension rights.</p> <p>Note: Regulation 100 of the Pensions</p>	The council requires any request to aggregate LGPS membership to be made within the twelve months' time limit.	<p>This means the council can agree to allow an individual who has been employed for more than 12 months to transfer previous pension funds into the LGPS fund. The council will not exercise this discretion.</p>

			Regulations requires that a request must be made within 12 months beginning with the date on which the member became an active member in an employment or such longer period as the employer and the Administering Authority may allow. The discretion is, therefore, exercisable concurrently by the Administering Authority.		
12	Forfeiture Certificates	Regulation 91, Pensions Regulations	<p>To apply to the Secretary of State for the issue of a forfeiture certificate.</p> <p>Note: A forfeiture certificate may be applied for where a member has been convicted of an offence committed in connection with the member's employment and because of which the member has left that employment. A forfeiture certificate is a certificate, issued by the Secretary of State that the offence was gravely injurious to the State or is liable to lead to serious loss of confidence in the public service.</p> <p>To direct, where a forfeiture certificate has been issued, that any rights under the Pensions Regulations be forfeited.</p> <p>Note: If the former employer has suffered loss as a direct consequence of the offence, a</p>	The council will consider each case on its merits, both in relation to applying for a forfeiture certificate and in relation to the giving of a direction, where a forfeiture certificate has been issued, that pension benefits be forfeited.	This means the council can apply for a certificate from the secretary of state which permits withholding pension from an individual who has been convicted of certain offences.

			<p>direction may only be given if the loss cannot be recovered except after an unreasonable time or at disproportionate cost.</p> <p>A direction may only be given if the application for a forfeiture certificate was made within a period of three months beginning with the date of the conviction</p>		
13	Recovery of Money Owed as a result of Misconduct	Regulation 93, Pensions Regulations	<p>To recover money owing to the former employer where a person has left employment as a result of grave misconduct or of a criminal, negligent or fraudulent act or omission in relation to that employment and owes money to the employer arising out of such that misconduct, act or omission.</p> <p>Note: If there is a dispute about the amount owed the council may only recover the money from the employee's pension benefits under a court order or the award of an arbitrator.</p>	The council will normally seek to recover any money owing as a result of a former employee's grave misconduct, or criminal, negligent or fraudulent acts or omissions from the employee's pension benefits.	This means the council can look to recover money from an ex-employee where they have left employment as a result of grave misconduct or of a criminal, negligent or fraudulent act or omission in relation to that employment.
14	Increase Total Membership of Active Scheme Members	Regulation 12, Benefit Regulations	To augment membership of an active member.	The council notes this discretion to increase a scheme member's total membership but has no intention of making use of this discretion on the basis of cost.	An employer may resolve to increase the total membership of an active member (to a maximum of ten years)

15	Ill Health Retirement for Leavers & Deferred Beneficiaries.	Regulations 20 & 31, Benefit Regulations	The council can determine, with reference to its Occupational Health Doctor, from a range of three tiers, which ill health tier a leaver falls into.	The council will seek a certificate from an independent and approved medical practitioner qualified in OH medicine	The council can determine from a range of three tiers, which ill health tier an employee meets. In addition the council can determine whether the deferred beneficiary meets permanent ill health criteria.
16	Internal Disputes Resolution Procedure.	Regulation R76(4) & R79(2), Transitional Regulations	Notification of Disputes, known as the Internal Disputes Resolution Procedure (IDRP)	The specified officer is: Service Director, Human Resources & Monitoring Officer, Luton Borough Council Apex House 30 – 34 Upper George Street Luton LU1 2RD	The complaints procedure within the LGPS is known as the IDRP. Determinations under the first stage of the IDRP rest with a “specified person” appointed by the employer.