

# **Pensions Policy Discretions Procedure 2022**



## **1. PURPOSE**

1.1 This procedure sets out the process for the consideration of requests by employees for the Council to exercise a discretion under its Pensions Policy Statement ("Statement"). This procedure should be read in conjunction with the Pensions Policy Statement which details the relevant discretions in Appendix 1.

## **2. REGULATIONS**

2.1 The Local Government Pension Scheme ("LGPS") in England and Wales was amended from 1 April 2014. The new LGPS rules, together with protections for members benefits accrued before 1 April 2014, are now contained in the Local Government Pension Scheme Regulations 2013 and the Local Government Pension Scheme (Transitional provisions, Savings and Amendment) Regulations 2014. ("Regulations").

2.2 Under the Regulations, employers are required to formulate an employer discretions policy in respect of certain Regulations where a decision made by such employer will or may incur a financial cost to the employer. This paper seeks to underpin the Council's Pensions Policy Statement by setting criteria which could be considered and inform the Council's decision on such employer discretions in respect of member benefits under the LGPS.

## **3. GENERAL APPROACH**

3.1 The approach to exercising a discretion under the Statement is to allow the Council to make a reasonable decision in individual cases but also to be clear as to the factors it will take into account in making a decision.

Generally, the discretionary powers will be exercised reasonably and

- will be exercised in the public interest
- will take into account all relevant circumstances (costs being balanced against benefit to the Employer)
- will exclude any irrelevant circumstances
- will only be used where there is a real and substantial benefit to the Council in return for incurring extra costs

3.2 None of the criteria set out in this paper will be taken into account in such a way as to limit or fetter the discretion of an employer under the Regulations in breach of the law

3.3 Requests for the exercising of a discretion under the Statement will be considered by a panel comprising the relevant Assistant Director and Director in conjunction with the Assistant Director of Finance, and Monitoring Officer (the Panel) Or any other process which the Council requires in accordance with the Council's Constitution or legislation. Any reference to the Panel in this procedure will include any other procedure from time to time put in place to carry out the function of the Panel.

#### **4. FLEXIBLE RETIREMENT – REGULATION 30 (6)**

4.1 The Council will consider requests to exercise the discretion to waive the actuarial reduction for flexible retirement under Regulation 30 (8) where it can be demonstrated there is a business case for the request taking account of:

- the Council's ability to meet the cost of granting such a request
- the potential for financial savings to be delivered over time
- the operating requirements of the organisation existing, and reasonably foreseeable at the time of the request
- the need to retain key skills/expertise
- the potential impact on the delivery of key projects or initiatives
- the employee's personal circumstances.

4.2 As a general principle the Council requires a reduction in working hours or a significant reduction in grade for an efficiency to be considered material in flexible retirement requests as set out in the Pensions Policy Statement.

4.3 Other factors that should be taken into consideration include:

- the need to retain the employee (and their skills) where they might otherwise have left and taken up employment elsewhere
- any planned structural changes and the need for greater flexibility in managing workforce planning decisions enabling better succession planning and mentoring (skills transfers, etc)
- improving employee wellbeing and/or enabling the employee to have a smoother transition into retirement
- whether the employee is willing to commit to a reduction for a minimum period of time or remain in employment for a minimum period
- the additional costs associated with recruiting and training a replacement for the "residual hours" of the post and/or the potential inability to reorganise the residual work amongst existing staff
- any detrimental effect on the Council's ability to meet customer demand and/or on the quality or performance of the service in question
- insufficiency of work during the periods the employee proposes to work

4.4 If the request is to move to a lower graded post, this would be subject to an appropriate vacancy arising and the operation of the Council's normal recruitment procedures in filling the post.

4.5 If the request is for a reduction of hours, agreement to the scheduling of the remaining hours to be worked must take account of the operational requirements/pressures of the service being delivered.

4.6 Employees who have flexibly retired under Regulation 30(6) may not subsequently apply for positions that would result in either an increase in hours or being paid at a higher grade.

## **5. WAIVING OF ACTUARIAL REDUCTION ON EARLY RETIREMENT – REGULATION 30 (8)**

5.1 The Pensions Policy Statement defines the term "compassionate" in terms of qualifying for consideration for waiver of an actuarial reduction on early retirement.

5.2 If an active member of the LGPS is allowed to retire early in circumstances which are not related to compassionate grounds, the cost of any strain must be mitigated by the salary saving over three years in order for consent to be given in any case. This will not apply to any decision relating to a deferred member.

5.3 Relevant criteria that should be taken into consideration include:

- the Council's ability to meet the cost of granting such a request
- whether any demonstrable cost saving in excess of potential savings available under any severance arrangements in place from time to time can be made
- if relevant, the employee's personal circumstances.

5.4 The Council will in applying its criteria for early retirement ensure that there is no direct or indirect age or other discrimination and that the criteria fall within the exceptions provided by the age regulations.

## **6. FUNDING OF ADDITIONAL PENSION AND AWARDED ADDITIONAL PENSION**

6.1 Where requests are received in accordance with Regulations 16(2) (e) and 16(4) (d) for the Council to fund additional pension contributions or grant additional pension, the following criteria should be considered in making a decision:

- other options available under the Council's severance arrangements
- the potential benefit to the Council (including any potential savings)
- the interests of the Council
- the funding position of the Council within the fund
- the Council's ability to meet the cost of granting such a request

## **7. PROCEDURE FOR REQUESTING DISCRETION**

7.1 The employee should make an application in writing to the HR Manager, detailing the reasons for their request, together with any supporting documentation. The application will be acknowledged by the Council's HR team within ten working days with an indicated timeline and procedure so the employee is aware of what will be involved, when he or she may receive a decision, and what the contact details are.

7.2 The response will also set out the appeals procedure. The HR team will at an early stage decide what information is needed to enable a pack to be put together to assist the Panel in its deliberations. If it appears that the timescale will not be met, the employee will be informed of this in writing and a new timescale disclosed.

7.3 The Panel will meet to consider the employee's request in accordance with the indicated timeline. The decision reached by the Panel will be notified to the employee within five working days of the meeting. This will be in writing and will include details of the appeals process.

7.4 If the employee wishes to appeal against the decision they should submit their appeal in writing to HR, detailing the reasons for their appeal.

7.5 The appeal will be acknowledged by the Council's HR team within ten working days with an indicated timeline and procedure so the employee is aware of what will be involved, when he or she may receive a decision, and what the contact details are.

7.6 The appeal will be considered by the Council's designated adjudicator and his/her decision will be notified to the employee within five days of the decision being made.

7.6 The Chief Finance Officer is designated as the Council's adjudicator for appeals against retirement decisions. The Council reserves the right to nominate

another Director or senior manager or such other procedure determined by the Council to act as adjudicator to cover for absence and to ensure the fair consideration of any appeal.