

**DERBYSHIRE COUNTY COUNCIL**  
**PENSIONS AND INVESTMENTS COMMITTEE**

**8 May 2019**

**Report of the Director of Finance & ICT**

**To provide details of the Employer discretions in the Local Government Pension Scheme (LGPS) Regulations 2013**

**1. Purpose of the Report**

To review and update the Council's Local Government Pension Scheme (LGPS) mandatory discretions policies for publication by 14 May 2019.

**2. Background Information**

Following the introduction of the LGPS (Amended) Regulations 2018 which came into force on 14 May 2018 there are several employer discretions that require employers to publish their policy.

Employers are required to prepare, publish and keep under review a policy statement in relation to a number of mandatory scheme discretions. The Council's discretion policy statement is available on the Derbyshire County Council's website, however it must be reviewed and updated and be re-published by 14 May 2019. The report outlines changes to the currently published discretions policy.

**Changes to the published discretions**

The proposed LGPS discretions policy document has been updated to reflect the new and amended pension discretions and is attached at appendix 1. A summary of the changes are outlined below and summary table attached at appendix 2 which highlights the proposed changes in red for ease.

Discretion Reference No: 1, 2, 3, 5 & 15

No changes applied

Discretion Reference No: 4, 7, 8, 9 & 12

An update to the wording to clarify who is required to consider whether an actuarial reduction is appropriate. This now reflects that these decisions should be considered by the Director of Finance and ICT in consultation with the Director of Organisation,

Development & Policy and Director of  
Legal and Democratic Services.

Discretion Reference No: 6 & 7

Wording amended slightly to clarify that employees application for flexible retirement must first be supported, and subject to this, the policy remains unchanged i.e. that all pension benefits must be paid.

Discretion Reference No: 10, 11 & 13

Publication of new pension discretions regarding whether to switch on Rule of 85 (R85) before 60. Further detail is provided below relating to these discretions.

The R85 is a complex protection for employees (and ex-employees) who were in the LGPS before 1 October 2006, and is the point when their age plus the time of their LGPS membership (in whole years) totals 85.

For most scheme members R85 only protects their pension benefits in respect of their membership before 1 April 2008 (i.e. 80<sup>th</sup>s under the final salary arrangements), and is automatically applied at age 60 if the member met R85 before then.

Where a member has met R85 and is retiring and drawing their pension **after age 60**, R85 applies in full.

However, where a member has met the rule of 85 and is retiring and drawing their pension **between age 55 and 60**, the employer can 'switch on' the R85 at a cost.

The R85 can be 'switched on' by the employer for:

- Current employees retiring
- Ex-employees with deferred benefits, retiring
- Ex-employees who had been awarded a tier ill health pension that was subsequently suspended.

The Council has previously published a discretion (reference No 5) in relation to R85 for a member voluntarily drawing benefits on or after age 55 and before age 60 for current contributing employees and leavers after 31/03/2014. As 'switching on' the R85 would incur a cost the Council's policy is not to 'switch on' the R85.

Under the amended regulations the Council is now required to publish its policy for deferred members and suspended tier 3 members voluntarily drawing benefits on or after age 55 and before age 60 for leavers (appendix 1, Discretion reference 10,11 &13). As 'switching on' the R85 would also incur a cost to the Council it is proposed that the Councils policy is not to "switch on" the R85.

Discretion Reference No: 14 & 16

Additional wording included to ensure members are aware of the HMRC rules.

HMRC rules relating to the earliest that someone can voluntarily retire and receive their pension changed in April 2010 from being age 50 to age 55, however some regulations in place before the change are still in force.

Due to this, the Council can grant a member aged over 50 and under 55 access to their pension, but it would be classed as an “unauthorised payment” for HMRC purposes and as such the individual would be subject to penal unauthorised payment charges of up to 55% but there is no cost to the Council for exercising this discretion.

### **3. Recommendation**

That the Pensions and Investments Committee approve the relevant changes to Derbyshire County Council’s discretions.

PETER HANDFORD

Director of Finance & ICT

## **Derbyshire County Council Local Government Pension Scheme employer discretions**

*Please find below the policy statements for Derbyshire County Council as a Local Government Pension Scheme employer for non-school based staff. The position for school-based staff may be different from the position here. If you have enquiries regarding policies for school-based staff, please email Children Services HR at [cayahr.enquiries@derbyshire.gov.uk](mailto:cayahr.enquiries@derbyshire.gov.uk)*

### **Discretions relating to current contributing employees and leavers after 31/03/2014**

#### **Ref 1**

#### **Additional Pension Contribution - Regulation 16(2)(e) and 16(4)(d)**

Whether, how much, and in what circumstances to contribute to a shared cost Additional Pension Contribution (APC) scheme purchase of Extra Pension.

Policy is not to contribute to a Shared Cost APC. If the person opts to pay an APC to buy extra pension the shared cost option does not apply and the full cost is met by the member.

#### **Ref 2**

#### **Additional Pension - Regulation 31**

Whether, at full cost to Derbyshire County Council, to grant extra pension of up to £7,026 (as at 01/04/19) to an active member or within six months of ceasing to be an active member whose employment was terminated on the grounds of redundancy or business efficiency.

Policy is to not to grant any additional pension to an active member or within six months of ceasing to be an active member by reason of redundancy or business efficiency.

#### **Ref 3**

#### **Retirement at age 55 – Regulation 30(8)**

Whether to waive, in whole or in part, actuarial reduction on benefits which a member voluntarily draws before normal pension age.

Policy is not to waive any actuarial reduction on benefits which a member voluntarily draws before normal pension age.

#### **Ref 4**

#### **Compassionate Grounds - Transitional Provision 3(1), Transitional Provision Schedule 2, paragraph 2(1)**

Whether to waive any actuarial reduction on pre and/or post April 2014 benefits paid early on compassionate grounds.

Policy is to take cases to the Director of Finance and ICT in consultation with the Director of Organisation, Development & Policy and the Director of Legal and Democratic Services in order for it to consider whether an actuarial reduction is appropriate.

**Ref 5****Switching on the Rule of 85 - Transitional Provision Schedule 2, paragraph 1(2) and 2(2)**

Whether, to "switch on" the 85 year rule for a member voluntarily drawing benefits on or after age 55 and before age 60.

Policy is to not to switch on the 85 year rule for a member voluntarily drawing benefits on or after age 55 and before age 60.

**Ref 6****Flexible Retirement - Regulation 30(6) and Transitional Provision Regulation 11(2)**

Whether all or some pension benefits can be paid if an employee over 55 reduces their hours or grade on flexible retirement.

If employees are supported by Derbyshire County Council for flexible retirement, Policy is that all pension benefits must be paid.

**Ref 7****Flexible Retirement (Routine Cases) - Regulation 30(8)**

Whether to waive, in whole or in part, actuarial reduction on pension benefits which a member voluntarily draws before normal pension age.

Policy is to not to waive any actuarial reduction for routine flexible retirement Category 1 and Category 2 cases. Category 3 and non-routine cases will be taken to the Director of Finance and ICT in consultation with the Director of Organisation, Development & Policy and the Director of Legal and Democratic Services for consideration.

*Flexible Retirement Policy – please see APPENDIX 1 page 7*

**Discretions relating to leavers 01/04/2008 to 31/03/2014****Ref 8****Compassionate Grounds - Regulation 30(5), Transitional Provision Schedule 2, paragraph 2(1)**

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

Policy is to take cases to the Director of Finance and ICT in consultation with the Director of Organisation, Development & Policy and the Director of Legal and Democratic Services in order for it to consider whether an actuarial reduction is appropriate.

**Ref 9****Suspended Tier 3 Ill Health - Regulation 30A(5), Transitional Provision Schedule 2, paragraph 2(1)**

Whether to waive, on compassionate grounds, the actuarial reduction applied to benefits paid early under B30A for a suspended tier 3 member ill health award (up to 3 years).

Policy is to take cases to the Director of Finance and ICT in consultation with the Director of Organisation, Development & Policy and the Director of Legal and Democratic Services in order for it to consider whether an actuarial reduction is appropriate.

**Ref 10****Switching on the Rule of 85 - Transitional Provision Schedule 2, paragraph 1(2) and 1(1)c**

Whether, to "switch on" the 85 year rule for a deferred member voluntarily drawing benefits on or after age 55 and before age 60. With pre 2008 service.

Policy is to not to switch on the 85 year rule for a member voluntarily drawing benefits on or after age 55 and before age 60.

**Ref 11****Switching on the Rule of 85 - Transitional Provision Schedule 2, paragraph 1(2) and 1(1)c**

Whether, to "switch on" the 85 year rule for a suspended tier 3 member voluntarily drawing benefits on or after age 55 and before age 60. With pre 2008 service.

Policy is to not to switch on the 85 year rule for a member voluntarily drawing benefits on or after age 55 and before age 60.

**Discretions relating to leavers 01/04/1998 to 31/03/2008 and Councillors****Ref 12****Compassionate Grounds - Regulation 31(5) & Transitional Provision Schedule 2, paragraph 2(1)**

Whether to waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early.

Policy is to take cases to the Director of Finance and ICT in consultation with the Director of Organisation, Development & Policy and the Director of Legal and Democratic Services in order for it to consider whether an actuarial reduction is appropriate.

**Ref 13****Switching on the Rule of 85 - Transitional Provision Schedule 2, paragraph 1(2) and 1(1)f & Regulation 60**

Whether to "switch on" the 85 year rule for a deferred member voluntary drawing benefits on or after age 55 and before age 60.

Policy is to not to switch on the 85 year rule for a deferred member voluntarily drawing benefits on or after age 55 and before age 60.

#### **Ref 14** **Early Payment - Regulation 31(2)**

Whether to grant application for early payment of deferred benefits on or after age 50 and before age 55.

Policy is to grant an application for early payment of benefits on or after age 50 and before age 55, where there is no cost to the council.

***NB: Payment of benefits would be classed as an “unauthorised payment” for HMRC purposes and as such a member would be subject to penal unauthorised payment charges of up to 55%.***

#### **Ref 15** **Optant Out Payments - Regulation 31(7A)**

Decide whether optants out only to get benefits paid from normal retirement date (NRD) if employer agrees.

Policy is to allow optant outs to only get benefits paid from normal retirement date (NRD).

### **Discretions relating to leavers before 01/04/1998**

#### **Ref 16** **Compassionate Grounds Early Payment – TL4, L106 (1) & D11 (2)c**

Whether to grant application for early payment of deferred benefits on or after age 50 on compassionate grounds.

Policy is to grant an application for early payment of benefits on or after age 50 on compassionate grounds, where there is no cost to the council.

***NB: Payment of benefits would be classed as an “unauthorised payment” for HMRC purposes and as such a member would be subject to penal unauthorised payment charges of up to 55%.***

## APPENDIX 1

### **Policies for Voluntary Early Retirement (VER), Voluntary Redundancy (VR), Flexible Retirement (Routine Cases), Flexible Retirement (Workforce Reduction)**

The policies for VER, VR and Flexible retirements were approved in January 2011 and these have been subsequently reviewed by the Pensions and Investment Committee in June 2014.

#### **VER**

1. The VER Scheme will only be applied to those areas of employment where the Council wishes to reduce its workforce. Application of the Scheme shall be solely at the Council's discretion and confers no rights or entitlements.
2. Employees must be aged 55 or over at the date of leaving, have at least two years' service for pension purposes and contribute to the Local Government Pension Scheme.
3. All applications will be subject to the approval of the Council.
4. The Council may amend or withdraw the Scheme at any time after giving 1 months' notice.
5. An employee whose application for VER is accepted by the Council will be required to enter into a consensual agreement with the Council which will include mutual agreement as to the date of retirement. Retirement will be on the grounds of business efficiency. The date of leaving must not be later than the date the employee would have left had a period of contractual notice been applicable.
6. The annual leave entitlement for the year is limited to that earned up to the date of leaving and must be taken before leaving.
7. The Scheme provides for the immediate payment of an unreduced pension and lump sum from the Local Government Pension Scheme. The cost of the early payment (ie the Pension Fund shortfall) will be met by the Council.
8. The Council will not make compensation payments under the VER Scheme.
9. There is no right of appeal against the Strategic Director's decision not to allow an employee to take VER or the amounts payable under the terms of the Scheme.

#### **VR**

1. The VR Scheme will only be applied to those areas of employment where the Council wishes to reduce its workforce. Application of the Scheme shall be solely at the Council's discretion and confers no rights or entitlements.
2. All applications will be subject to the approval of the Council.
3. The Council may amend or withdraw the Scheme at any time after giving 1 months' notice.



4. An employee whose application for VR is accepted by the Council will be entitled to their contractual period of notice although this can be waived at the employee's request. The reason for leaving will be redundancy.

5. The annual leave entitlement for the year is limited to that earned up to the date of leaving and must be taken before leaving.

6. Redundancy & Compensation payments

6(i) To qualify for a redundancy payment, employees must have been continuously employed for at least two years in local government or with an employer covered by The Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order 1999, as amended.

6(ii) There is no entitlement to a payment under paragraph 6(iii) if, prior to leaving, the employee receives an offer of employment in local government or with a body included in the Modification Order, which commences within four weeks of the last day of employment.

6(iii) Subject to the provisions of paragraph 6(ii), the payments are:

(a) A statutory redundancy payment and, if applicable,

(b) In accordance with this policy an amount of compensation not exceeding the difference between the amount of the statutory redundancy payment and the amount that would have been payable, but for the imposition of the maximum weekly pay figure.

The total of these amounts is equivalent to a redundancy payment calculated on the employee's weekly rate of pay for normal working hours. The maximum payment is 30 weeks' pay and the amount will depend on age, period of continuous service and pay.

6(iv) The Council will not make discretionary compensation payments under the VR Scheme.

7. Pension benefits –

7(i) Employees aged 55 or over: Those aged 55 or over at the date of leaving who contribute to the LGPS and have at least two years' membership will receive the immediate payment of an unreduced pension and lump sum.

7(ii) Employees under age 55: Pension benefits can either be preserved in the LGPS or transferred to another pension scheme. Under normal circumstances preserved benefits can be paid from age 60 although they may be reduced to reflect early payment.

8. There is no right of appeal against the Strategic Director's decision not to allow an employee to take VR or the amounts payable under the terms of the Scheme.

Cabinet has decided to restrict the availability of the VR scheme and this is not currently available to those in the Local Government Pension Scheme age 55 to 59.

## Flexible Retirement (Routine Cases)

An employer can consent to a reduction in an employee's hours or grade and consent to the release of pension benefits where the employee is aged 55 and over.

For the purpose of this policy, requests for flexible retirement can be categorised as follows:

- **Category one** - Employee is age 60 or over - There is no cost to the council as the employee is at or past their earliest retirement date. If they do not meet the Rule of 85 (\*1) their pension benefits will be reduced to reflect early payment.
- **Category two** - Employee is age 55 or over but less than 60 and does not meet the Rule of 85 until on or after their 60th birthday. In this case the regulations allow for the cost of the early payment of pension benefits to be borne by the employee so as to avoid a pension fund shortfall. The benefits are actuarially reduced to reflect the fact that they are paid early.
- **Category three** - Employee is age 55 or over but less than 60 and does meet the Rule of 85 either at the date of flexible retirement or at a later date that is before their 60th birthday. In this case we would have to meet the Pension Fund shortfall arising from the early payment of pension benefits from the date when the Rule of 85 is met.

For those cases that fall within categories one and two above, our general policy is to consent to the payment of benefits from the Local Government Pension Scheme subject to a reduction of half of the employee's contractual hours.

A reduction of less than half of the employee's contractual hours may be considered:

- i) in exceptional circumstances, and provided that this would also bring an ongoing financial benefit to the council or
- ii) where service delivery requires whole shifts to be worked.

The Strategic Director, taking account of HR, legal and financial advice under the established process, makes the decision.

Where the benefits payable are reduced to reflect early payment the employer can agree to waive in whole or in part the reduction and pay the cost to the pension fund. It is our policy, as a general rule, not to agree to this. However, the Director of Finance and ICT in consultation with the Director of Organisation, Development & Policy and the Director of Legal and Democratic Services will consider applications from departments where it is considered that it would be in our interests to meet this cost.

For category three cases, as there would be a cost to us, the general policy is not to agree to the early release of pension benefits. However, where it is considered to be in our interests, taking into account all the relevant factors including the cost, the Director of Finance and ICT in consultation with the Director of Organisation, Development & Policy and the Director of Legal and Democratic Services will consider applications for flexible retirement.

In every case the needs of the service must be paramount.

For a reduction in grade - the current policy does not provide for flexible retirement in this situation. Further guidance will be formulated if the policy needs to be extended to include this.

## Appeals

**Categories one and two** - an employee who is dissatisfied with the Chief Officer/Service Directors decision in response to a request for flexible retirement can appeal in writing within 14 days of receiving the decision to the Strategic Director with overall responsibility for that department.

In category three - where the chief officer has refused an employee's request to reduce the hours they work for the purposes of flexible retirement, the person can appeal in writing within 14 days of receiving the decision to the Strategic Director.

**Category three** - where the Chief Officer/Service Directors has approved a reduction in hours but the application for the payment of pension benefits on flexible retirement is refused by the Director of Finance and ICT in consultation with the Director of Organisation, Development & Policy and the Director of Legal and Democratic Services, a dissatisfied employee can appeal under the Pension Fund's internal dispute resolution procedure writing in the first instance to Kay Riley, Assistant Director of Legal Services as the "appointed adjudicator".

Details of the internal dispute resolution procedure can be found at [www.derbyshirepensionfund.org.uk](http://www.derbyshirepensionfund.org.uk)

Appeals should be made in writing stating the reasons for the appeal to:

Strategic Director  
Derbyshire County Council  
PO Box 2  
County Hall  
Matlock  
Derbyshire DE4 3AG

Kay Riley  
Assistant Director of Legal Services  
Derbyshire County Council  
PO Box 2  
County Hall  
Matlock  
Derbyshire DE4 3AG

(\*1 The Rule of 85 is where the sum of the scheme member's age plus period of membership in the Pension Scheme (both in whole years) is 85 or greater).

## Increases in hours after taking flexible retirement

Where an employee has been allowed to reduce their hours for the purposes of flexible retirement they will not be allowed to increase them on a permanent basis. Where it is in our interests, a temporary increase in hours for a period not exceeding six months can be permitted.

The temporary increase in hours must be authorised by the Strategic Director.

An employee who has reduced their hours and taken flexible retirement must only be allowed to work additional hours or overtime at the same level that applied prior to the reduction in contractual hours. The aim is to prevent employees compensating for a reduction in contractual

hours by working additional hours and overtime. The Strategic Director must approve requests for temporary increases in additional hours and overtime in advance.

### **Appeals**

There is no right to appeal against a request for a reduction in hours so as to secure Flexible Retirement under the workforce reductions Scheme.

Cabinet has decided to restrict the availability of flexible retirement (workforce reduction) and this is currently not available.

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Discretion	Regulation Reference	Derbyshire County Council (DCC) Discretion Policy
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Reference	DPF Reference	Discretions relating to current contributing employees and leavers after 31/03/2014		
1	1.1	Whether, how much, and in what circumstances to contribute to a shared cost Additional Pension Contribution (APC) scheme Purchase of Extra Pension	R16(2)(e) & R16(4)(d)	Policy is not to contribute to a Shared Cost APC. If the person applies for an APC to buy extra pension, the shared cost option does not apply and the full cost is met by the member.
2	1.2	Whether, at full cost to Derbyshire County Council, to grant extra pension of up to £7,026 (as at 01/04/19) to an active member or within 6 months of ceasing to be an active member whose employment was terminated on the grounds of redundancy or business efficiency.	R31	Policy is to not to grant any additional pension to an active member or within six months of ceasing to be an active member by reason of redundancy or business efficiency.
3	2.1	Whether to waive, in whole or in part, actuarial reduction on benefits which a member voluntarily draws before normal pension age	R30(8)	Policy is to not to waive any actuarial reduction on benefits which a member voluntarily draws before normal pension age.
4	2.2	Whether to waive any actuarial reduction on pre and/or post April 2014 benefits paid early on compassionate grounds	TP3(1), TPSch 2, paras 2(1)	Policy is to take cases to the <b>Director of Finance and ICT in consultation with the Director of Organisation, Development &amp; Policy and the Director of Legal and Democratic Services</b> in order for it to consider whether an actuarial reduction is appropriate.
5	3	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)	Policy is to not to switch on the 85 year rule for a member voluntarily drawing benefits on or after age 55 and before age 60.
6	4	Whether all or some benefits can be paid if an employee over 55 reduces their hours or grade (flexible retirement)	R30(6) & TP11(2)	<b>If employees are supported by Derbyshire County Council for flexible retirement</b> , Policy is that all pension benefits must be paid.
7	4 &/or 2.1	Whether to waive, in whole or in part, actuarial reduction on pension benefits which a member voluntarily draws before normal pension age.	R30(8)	Policy is to not waive the actuarial reduction for routine flexible retirements <b>Category 1 and Category 2 cases. Category 3 and non-routine cases will be taken to the Director of Finance and ICT in consultation with the Director of Organisation, Development &amp; Policy and the Director of Legal Services for consideration.</b>