

Appendix C - Report Full Council – 25 May 2022

Discretionary Policies under the Local Government Pension Scheme Regulations

The Council's Discretionary Policy Statement

The Local Government Pension Scheme Regulations 2013 and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (TP)

The Regulations require the Council to address two matters in the determination of whether to make any discretionary, early pension payment. First, whether early payment of pension should be consented to at all, and that requires the criteria of compassionate grounds to be fulfilled, see below. Second, if early payment is agreed to whether that early payment should be with the actuarial reduction waiver. The current discretionary policy statement requires redrafting to make this clearer to ensure better compliance with the Regulations.

Regulations 9 and 10 How to determine the pension contribution band to which an employee is to be allocated

Lambeth Council will determine the pension contribution band of employees based on their contractual pay plus additional payments made in the previous financial year.

For new employees the pension contribution band will be based on their contractual pay plus estimated additional payments such as overtime or additional hours.

Reviews of pension contribution bands will be made each March.

Regulation 16(2)(e) & Regulation 16(4)(d) Additional Pension Contributions (APCs)

It is Lambeth Council's policy not to establish a shared cost Additional Pension Contributions scheme.

Regulation 17 Shared Cost Additional Voluntary Contribution scheme

It is Lambeth Council's policy not to establish a shared cost Additional Voluntary Contributions (SCAVC) scheme.

Regulations 21(4)(a)(iv), 21(4)(b)(iv) and 21(5) Assumed pensionable pay

These are used when calculating the assumed pensionable pay where a member:

- is on reduced contractual pay or no pay due to sickness or injury; or,
- is absent during ordinary maternity, paternity or adoption leave or during paid additional maternity, paternity 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.

Lambeth Council will 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 that the member's employer determines there is a reasonable expectation that such a payment would be paid on a regular basis.

Evidence to support this expectation will be obtained from checking pay records for the previous 2 financial years and requesting confirmation from the relevant head of service.

Regulation 22(7) and (8) Whether to extend the 12 months' time limit within which a scheme member who has a deferred LGPS benefit in England or Wales may elect not to have these benefits aggregated with their new LGPS employment

Lambeth Council will extend the time limit from 12 to 24 months within which a scheme member who has a deferred LGPS benefit in England and Wales may elect not to have these benefits aggregated with their new LGPS employment, if any of the following apply:

- the available evidence indicates the member made an election within 12 months of joining the LGPS, but the election was not received by Lambeth Pensions, for example the election form was lost in the post.
- the available evidence indicates the member had not been informed of the 12-month time limit due to maladministration; and,
- the member has pre-1 April 2014 membership and the final pay in the former job is higher (in real terms, after adding on inflation) than in the new job.

A late election to retain separate benefits may be made up to 20 working days from the date that the member queries the aggregation of their benefits. However, if 24 months have elapsed from the date of commencing the new employment a late election will not be allowed unless maladministration has occurred.

Regulation 30(6) Flexible Retirement & TP 11(2)

Any employee, aged 55 or over, wishing to work reduced hours or at a lower grade and claim their pension benefits, must first put their request in writing to their Strategic Director who will consider the business case for the request.

Requests will only be considered if an employee is reducing the hours of their current job by at least 40 per cent (or are transferring to another job which has either 40 per cent fewer hours or is at a lower grade)."

Employees who have flexibly retired may not subsequently apply for positions that would result in either an increase in hours or being paid at a higher grade in Lambeth. Their combined income must not exceed the salary that they were receiving before they flexibly retired.

Regulation 30(8) Whether to waive in whole or in part, the actuarial reduction on benefits paid on flexible retirement

If it is agreed that an individual can take flexible retirement and there are actuarial reductions to their benefits, Lambeth Council will not waive these reductions.

Regulation 30(8) Whether to waive in whole or in part, the actuarial reduction on benefits which a member voluntarily draws before normal pension age

An ex-employee can make a request for early release of pension benefits based on whether they meet the Council's Pensions Policy criteria on compassionate grounds. First, whether early payment of pension should be consented to at all, and that requires the criteria of compassionate grounds to be fulfilled. Second, if early payment is agreed to whether that early payment should be with the actuarial reduction waiver.

The Chief Executive has delegated authority to decide, in consultation with the Strategic Director of the employing directorate, using a two-step decision-making process, 1) whether the pensions policy criteria are fulfilled on compassionate ground and therefore is consented to, and 2) whether or not waiving in whole, or in part, the actuarial reduction for members voluntarily drawing their pension benefits before normal pension age. Actuarial reductions may be waived if the member meets the criteria for compassionate grounds. Any costs to the pension fund should be paid for by the former employing service or directorate.

Successful applications need to be agreed by the Strategic Director of the employing directorate, the Section 151 Officer and the Director of HR & OD.

“Compassionate grounds” is defined as:

The need to leave employment to care for a dependant who is suffering from long term illness or incapacity. Dependant includes a partner, child, or parent. Medical evidence needs to be provided to support claims.

The dependant must:

- need constant supervision for both day and night and this should be supported by confirmation from the Benefits Agency that an Attendance Allowance at the higher rate is payable; and,
- have no recourse to alternative means of support from his /her immediate family or the financial resources to provide for independent care support. A certified statement of income and expenditure will be required.

The applicant must:

- be suffering or facing severe financial hardship, have no other significant source of income and their financial circumstances should be unlikely to improve. A certified statement of income and expenditure covering the applicant and any partner living with them will be required; and,
- have severely limited opportunities for employment due to the nature of the care duties that they are undertaking.

Regulation 31 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)

It is Lambeth Council's policy not to grant additional pension.

Regulation 100(6) Whether 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

Lambeth Council will only exercise discretion to allow a late election to transfer in previous pension rights, up to 24 months after joining the LGPS, if the following apply:

- where the pension scheme member asked for transfer investigations to start within 12 months of joining the LGPS but a quote of what the transfer value would purchase in the LGPS had not been provided to the member within 11 months of joining the fund.
- where the available evidence indicates the member made an election within 12 months of joining the LGPS, but the election was not received by Lambeth Pensions, for example, it was lost in the post; and,
- where the available evidence indicates the member had not been informed of the 12-month time limit due to maladministration.

If the pension scheme member satisfies the above criteria, they will be given 20 working days in which to make a formal election to transfer in previous pension rights. However, if 24 months have elapsed from the date of joining the Lambeth Pension Fund, a late election to transfer in previous pension rights will not be allowed unless maladministration has occurred.

TP Sch 2 para 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

Lambeth Council will consider requests for switching on the 85 Year Rule for members who voluntarily claim their pension benefits on or after age 55 and before age 60. The cost of any strain to the pension fund must be mitigated by the salary saving over a specified number of years in order for the 85 Year Rule to be switched back on in any particular case.

TP Sch 2, para 2(3) Whether to waive on compassionate grounds, the actuarial reduction applied to benefits from pre-1 April 2014 membership

Lambeth Council will only waive on compassionate grounds, the actuarial reduction applied to benefits from pre-1 April 2014 membership where the employer has “switched-on” the 85 Year Rule for a member voluntarily drawing benefits on or after age 55 and before age 60. Compassionate grounds are defined above under Regulation 30(8).

The Local Government Pension Scheme (Benefits Membership and Contributions) Regulations 2007 Regulation 30A (3) 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

Lambeth Council will consider applications for early payment of suspended tier 3 ill health pensions on or after age 55 and before age 60 if the member meets the criteria for compassionate grounds. Compassionate grounds are defined above under Regulation 30(8) of the LGPS 2014 policy statement.

The Local Government Pension Scheme Regulations 1997 Regulation 31(2) Grant application from a post 31.3.98/pre 1.4.08 leaver or from a councillor for early payment of benefits on or after age 50/ 55 and before age 60

It is not the policy of the Council to grant an application from a post 31.3.98 / pre 1.4.08 leaver or from a councillor for early payment of benefits on or after age 50/55 and before age 60, except on compassionate grounds.

The Chief Executive has delegated authority to decide, in consultation with the employing Strategic Director, about cases where early payment has been requested on “compassionate grounds” adopting a two-step decision-making process as set out under Regulation 30(8) above. Individual applications will be considered on their own merits and supported by a business case. Successful applications need to be agreed by the Strategic Director of the employing department, the Section 151 Officer, and the Director of HR & OD.

Compassionate grounds are defined above under Regulation 30(8) of the LGPS 2014 policy statement.

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 or a councillor leaver

The Council will waive the actuarial reduction applied to benefits paid early for a post 31.3.98/pre 1.4.08 leaver or a councillor leaver if the member satisfies the criteria for compassionate grounds.

Compassionate grounds are defined above under Regulation 30(8) of the LGPS 2014 policy statement.

Regulation 31(7A) Councillor optants out and pre 1.4.08 employee optants out only to get benefits paid from NRD if employer agrees

Councillor optants out and pre 1.4.08 employee optants out who continue to work for the Council will not have their pension benefits paid from their normal retirement date.

Existing policies

The Local Government Pension Scheme (Administration) Regulations 2008

Regulation 70(1) Extent to which retirement pensions should be reduced on reemployment (“abatment”)

Pensioners who are re-employed in Local Government or in a job that allows participation in the Local Government Pension Scheme may have their pension abated. This applies to benefits paid early due to redundancy or efficiency, the early release of deferred benefits and ill health retirement. It does not apply to retirement benefits paid under flexible retirement.

Abatement will apply if the new direct employment income, together with the LGPS pension, exceeds the reckonable earnings, adjusted for inflation, immediately prior to retirement.

The Local Government Pension Scheme (Benefits Membership and Contributions) Regulations 2007

Regulation 12(1) Increasing total membership for an active member

It is the Council’s policy not to award an additional period of scheme membership to an active scheme member.

Regulation 20 (8) Recovery of payments following the date of discontinuance of third tier ill health pension entitlement

It is the Council’s policy to recover all payments of pension following the date of discontinuance of third tier ill health pension entitlement.

Regulation 30(2) & (5) Payment of deferred benefits on compassionate grounds on or after age 55 and waiving an actuarial reduction to pension benefits on compassionate grounds

The Chief Executive has delegated authority to decide, in consultation with the Strategic Director of the employing directorate, about individual requests for early payment of deferred benefits on compassionate grounds on or after age 55.

For scheme members who were in employment as at 1 December 2006, any actuarial reduction to pension benefits relating to membership from 1 December 2006 onwards may be waived on compassionate grounds. Any costs to the pension fund should be paid for by the former employing department.

Successful applications need to be agreed by the Strategic Director of the former employing department, the Section 151 Officer, and the Director of Human Resources.

“Compassionate grounds” is defined as:

The need to leave employment to care for a dependant who is suffering from long term illness or incapacity. Dependant includes a partner, child, or parent.

The dependant must:

- need constant supervision for both day and night and this should be supported by confirmation from the Benefits Agency that an Attendance Allowance at the higher rate is payable; and,
- have no recourse to alternative means of support from his /her immediate family or the financial resources to provide for independent care support. A certified statement of income and expenditure will be required.

The applicant must:

- be suffering or facing severe financial hardship, have no other significant source of income and their financial circumstances should be unlikely to improve. A certified statement of income and expenditure covering the applicant and any partner living with them will be required; and,
- have severely limited opportunities for employment due to the nature of the care duties that they are undertaking.

Discretions in relation to the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006

Regulation 5 Increase to statutory redundancy payments beyond weekly limit

For calculations of the weekly pay for redundancy payments, actual pay will be used.

Regulation 6 General compensation for loss of office on the grounds of redundancy or in the interest of efficiency

It is the Council's general policy to calculate redundancy payments on the basis of actual salary with a maximum of 30 weeks' pay, in line with the statutory calculator which calculates the number of weeks using age and length of service. Lambeth Council does, however, have the discretion under the 2006 regulations to enhance the general redundancy terms. Where the council considers it appropriate to enhance the general redundancy terms this will be on a strictly time limited basis only for specified employees. Any decision to enhance the general redundancy terms will be taken in accordance with the appropriate delegated authority in existence at the time having due regard to the requirement to control expenditure and the overall financial situation of the Council at the time.

Discretions in relation to the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000

Regulation 17 – Reduction of annual compensation on re-employment (“abatement”)

This can apply where the scheme member left service before 1 October 2006. Where a person re-enters local government employment a test will be carried out to decide whether their annual compensation should be reduced or suspended. The total of the annual rate of pay in the new employment plus the LGPS annual pension and the added years' compensation must not exceed the pay the employee received in his or her old employment. All amounts are increased by inflation to the date of commencing the new employment. The suspension or reduction must continue until the new employment ceases.

Regulation 19 and 22(3) Reduction of added years due to re-employment

This can apply where the scheme member left service before 1 October 2006. When a person who was awarded added years is re-employed in local government, a test will be applied to ensure that they have no more service than if they had continued in their original LGPS employment until age 65. The added years will be permanently reduced. The reduction will apply to any dependant's compensation that may become payable on the death of the pensioner.

Regulation 21(4) Joint entitlement to spouse's compensation (polygamous marriages)

This can apply where the scheme member left service before 1 October 2006. Where a pensioner who was in receipt of annual compensatory added years dies and leaves more than one spouse; the spouse's compensation will be split on an equal share basis.

Regulation 21 (5) & (7) Suspension of spouse's compensation during a period of remarriage or cohabitation

This can apply where the scheme member left service before 1 October 2006. Spouse's compensation pensions will not be suspended if the spouse remarries or cohabitates. Any pensions that have been suspended under previous regulations will be reinstated.

Regulation 25(2) Payment and apportionment of children's compensation

This can apply where the scheme member left service before 1 October 2006. Where there is more than one child, children's compensation payments will be equally apportioned between all the children and payments will be made to guardians where appropriate.

Definitions

Additional pension contributions

These are additional pension contributions that are used to buy extra annual pension on top of normal LGPS benefits. A member can buy up to £6,500 extra annual pension.

Discretion

This is the power given by the LGPS to enable Lambeth Council to choose how they will apply the scheme in respect of certain provisions. Under the LGPS, Lambeth Council is obliged to consider how to exercise their discretion and, in respect of some (but not all) of these discretionary provisions, to have a written policy on how they will apply their discretion. They have a responsibility to act with 'prudence and propriety' in formulating their policies and must keep them under review.

Deferred benefits

These are pension benefits that are due to be paid at a future date to a member who is no longer an active member of the pension scheme.

Efficiency retirement

This occurs where the requirements of a job have changed and the employee is unable to adapt so is retired in the interests of efficiency of the service. This type of retirement can occur from age 55 onwards.

Eligible children

Eligible children are a member's children who are the member's date of death are:

- under 18 and wholly or mainly dependent on the member.
- aged 18 or over and under 23, dependent on the member, and in full-time education or undertaking vocational training (although a dependent child who commences full-time education or vocational training after the date of death may be treated as an eligible child up to age 23); or,
- in some cases, a dependent child of any age who is disabled may be classed as an eligible child.

In all cases, the children must have been born before or within a year of the member's death.

Flexible retirement

This is the ability to continue working for an employer and simultaneously draw all the pension benefits that they have built up. Pension scheme members can only take advantage of this option if their department gives approval. This type of retirement can occur from age 55 onwards.

Ill-health retirement

This occurs when a pension scheme member retires on medical grounds before their normal retirement date. In order for LGPS benefits to be paid on the grounds of ill-health, the Council's occupational health physician must certify that they meet strict criteria. This type of retirement can occur at any age.

Member

A person who has joined the LGPS and is entitled to benefits under the scheme.

Membership

This refers to a period of employment during which an individual is (or was) an active member of a pension scheme.

Normal retirement date

The date on which a member normally becomes entitled to receive unreduced retirement benefits. The normal retirement date for membership under the 2014 Scheme is linked to a member's state pension age.

Pay

This is the pay on which a pension scheme member normally pays pension contributions. It is their normal salary or wages plus shift allowance, bonuses, non-contractual overtime, maternity pay, paternity pay, adoption pay, and any other taxable benefit specified in their contract as being pensionable.

Redundancy

This is a dismissal that is wholly or mainly a result of the employer ceasing the work that the employee was employed to do. When a person aged 55 and over is made redundant and has over 2 years' pension scheme membership, their pension benefits with their current employer will be put into payment.