

LOCAL GOVERNMENT PENSION SCHEME DISCRETIONS LOCALA CIC'S POLICY STATEMENT

OVERVIEW

The Local Government Pension Scheme (LGPS) in England and Wales was amended from 1 April 2014. The provisions of the new LGPS, together with protections for members benefits accrued before 1 April 2014, are now contained in the Local Government Pension Scheme Regulations 2013 (the '**LGPS Regulations 2013**'), the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (the '**LGPS Transitional Regulations 2014**') and the Local Government Pension Scheme (Amendment) Regulations 2018 ('**LGPS Amendment Regulations 2018**').

Therefore, this statement now relates to the application of discretions under:

- (a) the **LGPS Regulations 2013**
- (b) the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 ('**LGPS Transitional Regulations 2014**'); and
- (c) the Local Government Pension Scheme Regulations 1997 ('**LGPS Regulations 1997**') and the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 ('**LGPS Benefits Regulations 2007**'), which continue to have effect in so far as is necessary under *Regulation 3 (Membership before 1 April 2014) of the LGPS Transitional Regulations 2014*.

This pension discretion statement is applicable for employees who transferred their pension arrangements with the West Yorkshire pension fund as part of TUPE arrangements into Locala. There is no provision therefore for new new employees joining the scheme and these rules, except in any future TUPE arrangements.

This policy was developed in April 2022 and approved at Nomination & Remuneration Committee on 25th May 2022.

INTRODUCTION

Under Regulation 60 (statements of policy about exercise of discretionary functions) of the LGPS Regulations 2013 and paragraph 2(2) of Schedule 2 of the LGPS Transitional Regulations 2014, employers are required to make and publish policy statements on how they will exercise **five specific discretions**.

Following the implementation of the LGPS Amendment Regulations 2018 **two further mandatory discretions** have been introduced under regulations 24(a), 30(a), 30(c), 30(e) and 30(f).

In addition there are **two further discretions** relevant to employers, which relate to members who left before 1 April 2014. These are under *Regulation 66 of the Local Government Pension Scheme (Administration) Regulations 2008* (in respect of leavers between 1 April 2008 and 31 March 2014) and under *Regulation 106 of the LGPS Regulation 1997* (in respect of leavers between 1 April 1998 and 31 March 2008).

Any policy statements made must not limit, or 'fetter' how an employer uses any of the discretions afforded by the scheme.

The use of any discretion is likely to lead to immediate and potentially continuing increased pension costs for the employer, which could be considerable.

Locala CIC is required to keep its statement under review and make such revisions as are appropriate following a change in its policy. Following any changes in its policy **Locala CIC** must publish the revised policy and send a copy to the administering authority within one month of the date the policy is revised.

In formulating and revising the policy statements outlined below, **Locala CIC** must have regard to the extent to which the exercise of its discretionary powers could lead to a serious loss of confidence in the public service.

Details of the **five discretions** available are as follows:

1. **Shared cost Additional Pension Contributions - Regulation 16 (2) (e) and 16 (4) (d)**

Regulation 16 allows an active member who is paying into the main scheme to enter into an arrangement to pay additional contributions, either by regular contributions (Regulation 16(2) (e)) or by a lump sum payment (Regulation 16(4) (d)). This may be funded in whole or in part by **Locala CIC**.

Statement

Locala CIC does not consider contributions towards additional pension contributions to be an essential part of its employment strategy. However, **Locala CIC** will consider applications made under these specific provisions having regard to **Locala CIC's**

general policy from time to time, on the employee pay strategy and the particular circumstances surrounding each case.

It is likely that decisions will be made on the merits of each case having particular regard to factors such as:

- **Locala CIC's** ability to meet the cost of granting such a request; and/or
- the member's personal circumstances.

2. Awarding Additional Pension - Regulation 31

Regulation 31 allows Locala CIC to grant additional pension up to the maximum allowed by the scheme rules provided that the member is active **or** is within 6 months of leaving **for reasons of** redundancy **or** business efficiency **or** whose employment was terminated by mutual consent on grounds of business efficiency.

Locala CIC may use this Regulation as an aid to recruitment, an aid to retention or to compensate or reward an employee who is retiring.

Statement

Locala CIC will consider applications made under this Regulation having regard to the particular circumstances surrounding each case. Decisions will be made on the merits of each case having particular regard to the following:

- the member's personal circumstances;
- the interests of **Locala CIC**;
- the additional contributions due to the Fund by **Locala CIC** in respect of the exercise of this discretion;
- any potential benefits or savings to **Locala CIC** arising from the exercise of this discretion;
- other options that are, from time to time, available under **Locala CIC's** severance arrangements;
- the funding position of **Locala CIC** within the Fund;
- the ability of **Locala CIC** to meet the cost of granting such an award.

3. Flexible Retirement - Regulation 30(6)

Regulation 30 allows **Locala CIC** to consent for a member who has attained the age of 55 to draw all or part of their retirement benefits (both pension and lump sum) whilst continuing in employment and Fund membership provided that:

- there has been a reduction in hours, or
- a reduction in grade.

Locala CIC can choose to waive any reductions that apply under Regulation 30(8).

Statement

Locala CIC will consider applications made under this Regulation having regard to the particular circumstances surrounding each case. It is recommended that there should be a reduction in hours, or in grade, equivalent to at least an overall 20% reduction in remuneration.

Decisions will be made on the merits of each case having particular regard to:

- the operating requirements of the employing department
- **Locala CIC'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 for time to time can be made
- the member's personal circumstances.

4. Waiving actuarial reductions - Regulation 30(8)

Locala CIC may agree to waive in whole or in part the actuarial reductions that would be required:

- *all of the reductions in respect of pre 1 April 2014 benefits but only on compassionate grounds (paragraph 2 of Schedule 2 of the LGPS Transitional Regulations 2014);*
- *all or some of the actuarial reduction in respect of post 1 April 2014 on any grounds.*

Where 85 year rule protections exists and the member has full or tapered protection the employer can waive all of the reductions but only on compassionate grounds for the service up to the date the 85 year rule protection ends (31 March 2016 (full) or 31 March .2020 (tapered)).

Statement

Locala CIC, will consider applications made under this Regulation having regard to the particular circumstances surrounding each case. Decisions will be made on the merits of each case having particular regard to:

- **Locala CIC'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
- the member's personal circumstances

Applications for the payment of unreduced benefits for service before 1 April 2014 on the grounds of compassion will be granted if:

- in **Locala CIC's** sole opinion, the special extenuating circumstances surrounding the application, along with the supporting evidence provided justify approval. It is likely that only cases where the former employee is prevented from undertaking any form of paid employment due to the need to provide long term care for a dependant, will be considered, and
- **Locala CIC** can meet the cost of granting such a request.

5. Switching on the 85 rule – Schedule 2 - 1(1) (c) of the LGPS Transitional Regulations 2014

Locala CIC can decide to “switch on” the 85 year rule to allow members to receive benefits either unreduced or with a smaller reduction to their 85 year rule date. **Locala CIC** will be responsible for meeting any strain costs relating to benefits being paid before age 60. If **Locala CIC** does not “switch on” the 85 year rule the member’s benefits will be reduced to age 60 or the date they meet the 85 year rule if later.

Statement

Locala CIC, will consider applications made under this Regulation having regard to the particular circumstances surrounding each case. Decisions will be made on the merits of each case having particular regard to:

- Waiving of actuarial reductions and the application of the 85 year rule protections will be considered only where there is a clear financial or operational advantage to **Locala CIC** in doing so.
- **Locala CIC's** ability to meet the cost of granting such a request;
- the member's personal circumstances.

Discretions under the LGPS Regulations 1997 and the LGPS Benefits Regulations 2007

There are also two other discretions for employers but these relate specifically to members who left before 1 April 2014.

Whilst the LGPS Regulations 2013 repeals the LGPS Regulations 1997 and the LGPS Benefits Regulations 2007 (in so far as they had not already been repealed), Regulation 3(1) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 allows for the LGPS Regulations 1997 and the LGPS Benefits Regulations 2007 to still have effect in so far as they relate to certain member benefits before 1 April 2014. As such, the other discretions still available for certain members only, are as follows:

1. Early Payment of Deferred Pensions for members who left before 1st April 2014 – Regulation 2 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, Regulation 30(2) and 30(5) of the LGPS Benefits Regulations 2007 & Regulation 31(2) and Regulation 31(5) of the LGPS Regulations 1997

From 14 May 2018, all deferred members may voluntarily elect for early payment of their deferred benefits prior to their Normal Retirement Date. Locala CIC can decide on compassionate grounds whether to waive any actuarial reduction to benefits paid before age 65. Locala CIC can decide whether to 'switch on' the 85 year rule where a member has taken voluntarily early payment of deferred benefits from age 55.

Statement

Locala CIC, will consider applications made under this Regulation having regard to the particular circumstances surrounding each case. Decisions will be made on the merits of each case having particular regard to:

- **Locala CIC's** ability to meet the cost of granting such a request
- the member's personal circumstances

Applications for the payment of unreduced benefits on the grounds of compassion will be granted if:

- In **Locala CIC's** sole opinion, the special extenuating circumstances surrounding the application, along with the supporting evidence provided justify approval. It is likely that only cases where the former employee is prevented from undertaking any form of paid employment due to the need to provide long term care for a dependant, will be considered, and
- **Locala CIC** can meet the cost of granting such a request.

N.B. Deferred members who left the Scheme before 1 April 2008 can still make application for the early payment of their deferred benefits after age 50 under LGPS rules. However, under HMRC rules such payments would be classed as 'un-authorized' and would be subject to a punitive tax charge.

2. **Early Payment of Deferred Pensions for members who left before 1st April 2014 and have ceased to be entitled to a tier 3 ill benefit - Regulation 2 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, Regulation 30A(3) and 30A(5) of the LGPS Benefits Regulations 2007.**

Locala CIC can decide whether to grant early payment to members who have ceased to be entitled to a tier 3 ill health benefit and who are over the age of 55 An employer may on compassionate grounds agree to waive any actuarial reduction to An employer can decide whether to 'switch on' the 85 year rule where voluntary early payment of suspended tier 3 ill health pension is taken.

Statement

Locala CIC, will consider applications made under this Regulation having regard to the particular circumstances surrounding each case. Decisions will be made on the merits of each case having particular regard to:

- **Locala CIC's** ability to meet the cost of granting such a request
- the member's personal circumstances

Applications for the payment of unreduced benefits on the grounds of compassion will be granted if:

- in **Locala CIC's** sole opinion, the special extenuating circumstances surrounding the application, along with the supporting evidence provided justify approval. It is likely that only cases where the former employee is prevented from undertaking any form of paid employment due to the need to provide long term care for a dependant, will be considered, and
- **Locala CIC** can meet the cost of granting such a request.

Further discretions under the LGPS Regulations 1997 and the LGPS Benefits Regulations 2007

There are also two other mandatory discretions for employers but these relate specifically to members who left before 1 April 2014.

Whilst the LGPS Regulations 2013 repeals the LGPS Regulations 1997 and the LGPS Benefits Regulations 2007 (in so far as they had not already been repealed), Regulation 3(1) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 allows for the LGPS Regulations 1997 and the LGPS Benefits Regulations 2007 to still have effect in so far as they relate to certain member benefits before 1 April 2014. As such, the other discretions still available for certain members only, are as follows:

1. Early Payment of Deferred Pensions for members who left before 1st April 2014 – Regulation 2 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, Regulation 30(2) and 30(5) of the LGPS Benefits Regulations 2007 & Regulation 31(2) and Regulation 31(5) of the LGPS Regulations 1997

Note: From 14 May 2018, all deferred members may voluntarily elect for early payment of their deferred benefits prior to their Normal Retirement Date. An employer can decide on compassionate grounds whether to waive any actuarial reduction to benefits paid before age 65. An employer can decide whether to 'switch on' the 85 year rule where a member has taken voluntarily early payment of deferred benefits from age 55.

The employer, will consider applications made under this Regulation having regard to the particular circumstances surrounding each case. Decisions will be made on the merits of each case having particular regard to:

- **the employer's** ability to meet the cost of granting such a request
- the member's personal circumstances

Applications for the payment of unreduced benefits on the grounds of compassion will be granted if:

- in **the employer's** sole opinion, the special extenuating circumstances surrounding the application, along with the supporting evidence provided justify approval and
- **the employer** can meet the cost of granting such a request.

N.B. Deferred members who left the Scheme before 1 April 2008 can still make application for the early payment of their deferred benefits after age 50 under LGPS rules. However, under HMRC rules such payments would be classed as 'unauthorised' and would be subject to a punitive tax charge.

2. Early Payment of Deferred Pensions for members who left before 1st April 2014 and have ceased to be entitled to a tier 3 ill health benefit - Regulation 2 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, Regulation 30A(3) and 30A(5) of the LGPS Benefits Regulations 2007.

An employer can decide whether to grant early payment to members who have ceased to be entitled to a tier 3 ill health benefit and who are over the age of 55 An employer may on compassionate grounds agree to waive any actuarial reduction to An employer can decide whether to 'switch on' the 85 year rule where voluntary early payment of suspended tier 3 ill health pension is taken.

The employer, will consider applications made under this Regulation having regard to the particular circumstances surrounding each case. Decisions will be made on the merits of each case having particular regard to:

- **the employer's** ability to meet the cost of granting such a request
- the member's personal circumstances

Applications for the payment of unreduced benefits on the grounds of compassion will be granted if:

- in **the employer's** sole opinion, the special extenuating circumstances surrounding the application, along with the supporting evidence provided justify approval and
- **the employer** can meet the cost of granting such a request.

(Non-mandatory) LGPS 2013 & 2014 discretions

There is no requirement to have a written policy in respect of non-mandatory discretions. However, the following is Locala CICs recommended approach:

1. Extending the 12-month time limit for transfer of pension rights – Regulation 100 (6) LGPS Regulations 2013

Locala CIC can decide to extend the 12-month time limit to permit a member to transfer their previous pension rights from another scheme, if an election had not been made within 12 months of joining the LGPS.

Locala CIC, will only consider applications made under this Regulation in the most exceptional circumstances and if:

- evidence indicates that the Fund had not informed the member about the transfer within the 12 month time limit, or
- verifiable evidence indicates that the member made an election to transfer within 12 months of joining the LGPS, but the election form was not received by the Fund.
- That such a transfer will have not have any financial impact on Locala CIC.

2. Extending the time limit for a member to elect for a Shared Cost Additional Pension Contributions (SCAPCs) – Regulation 16 (16) LGPS Regulations 2013

Locala CIC can decide to extend the 30 day deadline for a member to purchase additional pension by SCAPCs upon return from a period of unpaid absence (other than because of illness or injury, relevant child-related leave or reserve forces leave).

The employer will exercise its discretion to allow late payment, and decide each case on its individual merits.

3. Determining and reviewing an employee’s contribution band – Regulation 9 and Regulation 10 LGPS Regulations 2013

This pension discretion statement is applicable for employees who transferred their pension arrangements with the West Yorkshire pension fund as part of TUPE arrangements into Locala. There is no provision therefore for new new employees joining the scheme and these rules, except in any future TUPE arrangements.

Locala CIC will determine and review the rate of employee contributions in accordance with Regulation 9 and Regulation 10 of the LGPS Regulations 2013.

4. Whether to include a regular lump sum payment when calculating Assumed Pensionable Pay – Regulation 21 (4)(a)(iv), Regulation 21 (4)(b)(iv), and Regulation 21 (5)

Locala CIC can when calculating Assumed Pensionable Pay decide to include 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.

Locala CIC will not include any regular lump sum payment received by the member in the 12 months preceding the date the absence began or the ill health retirement occurred.

5. Shared Cost Additional Voluntary Contributions Arrangement (SCAVC) – Regulation 17 (1) and TP 15 (2A) and A 25(3) and definition of SCAVC in R Sch1

Locala CIC can choose to pay for or contribute towards a member's Additional Voluntary Contribution through a SCAVC arrangement.

Statement

Locala CIC does not consider contributions towards a SCAVC to be an essential part of its employment strategy. However, **Locala CIC** will consider applications made under these specific provisions having regard to **Locala CIC's** general policy from time to time, on the employee pay strategy and the particular circumstances surrounding each case.

It is likely that decisions will be made on the merits of each case having particular regard to factors such as:

- **Locala CIC's** ability to meet the cost of granting such a request; and/or
- the member's personal circumstances.