



PENSIONS COMMITTEE 23 September 2014	REPORT

Subject Heading:	Local Government Pension Scheme Regulations Administering Authority's Policies 2014
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Policy context:	The Local Government Pension Scheme Regulations
Financial summary:	There may be some avoidance of costs, savings or additional costs arising from the application of the discretions but until they arise they are not quantifiable

The subject matter of this report deals with the following Council Objectives

Clean, safe and green borough	<input type="checkbox"/>
Excellence in education and learning	<input type="checkbox"/>
Opportunities for all through economic, social and cultural activity	<input type="checkbox"/>
Value and enhance the life of every individual	<input type="checkbox"/>
High customer satisfaction and a stable council tax	<input checked="" type="checkbox"/>

SUMMARY

The Local Government Pension Scheme (LGPS) regulations give some responsibilities and discretions to the London Borough of Havering as the administering authority of the Havering Pension Fund. Some of these discretions were last reviewed in March 2010 and have now been updated following the regulations introduced with the LGPS 2014 scheme. A complete review of all the required Administrative Authority discretion decisions and policies has also been undertaken with support for the Fund Actuaries. This paper sets out the updated discretionary requirements for approval.

RECOMMENDATIONS

It is recommended that the Pensions Committee:

- 1 Approve the revised and reviewed Administering Authority's Statement of Policies following the introduction of the Local Government Pension Scheme 2014 (attached at Appendix 1)
- 2 Approve the delegations contained with the Administering Authority's Policy document and discretionary decisions.
- 3 Note that any major discretionary decisions made by the delegated persons will be reported to the Committee for information on a regular basis.
- 4 Note that the discretions will be brought to Committee for review following the next triennial valuation, or earlier dependent upon further regulatory changes.
- 5 Approve the delegation of revisions to the discretions between the three yearly review to the Pension Panel where there are regulatory or legislative changes.

REPORT DETAIL

1. Introduction

- 1.1. The regulatory requirements of the Local Government Pension Scheme (LGPS) are set out in the LGPS and associated regulations.
- 1.2. The LGPS Regulations 2013 were made on 12 September 2013 and laid before Parliament on 19 September 2013. These regulations came into force on 1 April 2014 and are deemed to have been made under the Public Service Pensions Act 2013.
- 1.3. The Transitional Regulations 2014 set out how scheme members transferred from the 2008 scheme to the 2014 scheme, along with details of how any proposed protections of rights and entitlements worked.
- 1.4. Due to the Local Government Elections 2014, the lateness of the publication of the Transitional Regulations 2014 (10th March 2014), awaiting the new scheme detailed guidance from the Government and the Government Actuary, and developing the employer discretion policies for the London Borough of Havering it was not possible to bring a report to Committee regarding the Administrative Authority's discretions until September 2014.
- 1.5. The Regulations require the administering authority, and the employers, to make decisions in relation to the exercise of their discretionary powers. Not all

decisions need to be published, but it is the intention to report back at quarterly frequency to the Committee on the exercise of LGPS discretions.

- 1.6. The last review of an Administrative Authority discretionary policy was brought to Committee on the 16 March 2010 and related to the abatement of pension where a scheme member in receipt of a pension from the Council's Fund entered local government employment and were again eligible to join the scheme (then then Regulation 109). The abatement policy will be discussed further in the paper below.

2. Review of Discretions

- 2.1. The new scheme has been operational from 1 April 2014 and there is a regulatory requirement under the LGPS 2013 (Regulation 60) and Transitional Regulations 2014 (Schedule 2, Paragraph 2) to agree the new and revised discretion decisions and a Policy Statement before the 1st July 2014. It is also understood that where the 1st July was not achievable the Pension Regulator would only seek assurance that the employer or Administrative Authority were working towards completing the review of the Policy Statement and discretions.
- 2.2. An in-depth review of the of the discretion decision requirements in following regulations has been carried out:
 - Local Government Pension Scheme Regulations 2013;
 - The Local Government Pension Scheme (Transitional Provisions and Savings) Regulations 2014 (The Transitional Regulations);
 - The Local Government Pension Scheme (Administration) Regulations 2008 (The Administration Regulations);
 - The Local Government Pension Scheme (Benefits Membership and Contributions) Regulations 2007 (The Benefits Regulations);
 - The Local Government Pension Scheme (Transitional Provisions) Regulations 2008;
 - The Local Government Pension Scheme Regulations 1997;
 - The Local Government Pension Scheme Regulations 1995.
- 2.3. Discretion is taken to include where the Administering Authority is required to carry out a task but an element of choice is seen to exist as to how the task is completed.
- 2.4. A number of the discretions are subject to the formulation and publication of a written policy, but there are many more where there is no requirement for a written policy but where there may be an element of choice. The proposed discretion statement includes those discretions which require a written policy and those were there may be an element of choice. The proposed policy statement is attached at Appendix 1.
- 2.5. It should be noted that not all discretions need to be published; however, it is the intention, for reasons of transparency, to publish the decisions taken in relation to all the available discretions. If the discretion decisions and policies as set out at Appendix 1 are approved, the discretions will be published on the

Havering Pension Fund's website and will be circulated to Employer's participating in the Fund.

3. Key Discretions

- 3.1. The following discretion areas are brought to your attention, abatement, where the participating employer has become defunct, and Additional Pension Contributions,
- 3.2. Abatement
 - 3.2.1. There is a regulatory change to a previously written discretion relating to the policy to abate (reduce) pensions following re-employment, this is now Regulation 3(13), The Transitional Regulations and was previously Regulation 109 of the Local Government Pension Scheme Regulations 1997 and regulation 70(1) of the 2008 Administration Regulations.
 - 3.2.2. Previously the Council Policy was to abate the retirement pension when a scheme member who was in receipt of a pension from the Council's Fund entered a local government employment where they were eligible to join the scheme.
 - 3.2.3. Abatement of pensions upon reemployment has been removed from the 2013 Regulations in respect of membership accrued from 1 April 2014.
 - 3.2.4. The abatement policy is still applicable to members (and Councillors if relevant) who left the Scheme before 1 April 2014. Furthermore, the 2014 Transitional Regulations still require a policy on the abatement of the pre 1 April 2014 element of a pension in payment following re-employment.
 - 3.2.5. Abatement could be seen as a protection mechanism for the fund in order to prevent an abuse of early retirement policies (efficiency of service redundancy) in circumstances where those individuals might be re-employed soon afterwards, performing similar roles and responsibilities within the organisation. However, many such redundancies may have been to address real budgetary restraints, but that drops in service levels then required the employers to recruit former staff to realise service improvements and use experience. Abatement is also seen as a disincentive for suitable skilled individuals returning to local government employment, denying employers access to the widest pool of available skilled human resources. Furthermore, with the introduction of flexible retirement into the LGPS, where abatement does not apply, it can also be argued that someone who would be subject to abatement (because they retired outright) is being disadvantaged compared to someone who was able to retire flexibly. Lastly, pension benefits paid under the new LGPS 2014 Regulations are not subject to abatement.
 - 3.2.6. It is recommended, therefore, subject to meeting the requirement to consult with the other scheme employers participating in the Havering Fund, that the policy be amended to:

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From 1 April 2014 the revised policy is to not abate or reduce the pensions of former members who become re-employed with regard to any period of membership before that date. Abatement of pension payable should continue in respect of any pensioner member who gained further employment covered by the LGPS before 1 April 2014.

3.3. Participating Scheme Employer has become Defunct

3.3.1. The regulations require an administering authority to exercise its discretion for some of the employing authority discretions where the participating employer has become defunct. These discretions, in general, deal with the early release of pension benefits and therefore each case should be considered on its individual merits; however, where this would result in a cost for early release, a business case would have to be approved justifying that cost. However, where there is a cost, this cost will have to be spread across all employers.

3.4. Additional Pension Contributions

3.4.1. Additional Pension Contributions (APC) or Shared Cost Additional Pension Contributions (SCAPC) are used in the new regulations to cover a number of situations where a member, and/or the employer will make payments to cover a shortfall in contributions. These shortfalls can arise from a variety of situations such as maternity leave, paternity leave, adoption leave, unpaid leave and reserve forces leave.

3.4.2. Regulation 16(1) gives the Administering Authority the discretion to refuse to request to pay an APC over a period of time where it is impractical to do so. The discretion decision recommends that this decision is delegated to officers, who will be able to assess any such requests.

3.4.3. APCs will also replace the previous options, known as Added Years and Additional Regular Contributions, allowing members to buy additional membership or pension respectively.

3.4.4. Under the previous regulations where a member has asked to purchase additional membership or pension any application has been subject to receipt of a medical report, confirming the members is in good health. This is because once a contract has started if the member then has to retire on grounds of ill-health, or the member dies, the contract is deemed to be fully paid up. It is therefore recommended that Committee approve the need for a GPs declaration that the member is in reasonable good health before any such contract is agreed. However, if payment was due to be made in one lump sum no GP declaration would be required since the contract would not be valid unless the payment had been received by the Fund.

3.5. Regulation 17(12) introduces a new discretion for the Administering Authority to determine where Additional Voluntary Contributions (AVC) monies should be paid on the death of a member. This is further extending the current provision where the Administering Authority is required to decide to whom a death grant is paid. In order to make timely decisions and payment to beneficiaries it is

recommended that the new provision is delegated to officers unless it is a contentious case, which is then referred to the Pension Panel.

3.6. General Issues

3.6.1. Whilst the list of discretions sets out the general position, the Council must consider every application on its merits. Where there are extraordinary or justifiable circumstances, a departure from the general discretion approach listed may be appropriate.

3.6.2. In reviewing the discretions and making recommendations for the application of the discretions by the Administering Authority, the Fund Actuaries have ensured that each discretion is exercised in a manner that does not 'fetter' the discretion, and ensures decisions taken would review the individual circumstances of each particular case as necessary.

3.7. The recommendations also ensure that the discretions are carried out:

- In a fair and reasonable manner;
- Without knee jerk reactions;
- With consistency;
- With flexibility for any peculiar circumstances;
- With potential for review to allow consideration of changes.

3.8. The discretions will be reviewed every three years in line with the triennial valuation, to coincide and take account of the results of the valuation. Where there are regulatory and legislative changes that impact on discretions, a review would be carried out on those between valuations under delegation to the Pension Panel.

IMPLICATIONS AND RISKS

Financial implications and risks:

The majority of pension benefits payable are set in legislation and calculated on a prescribed formulae but it is not possible to know if the discretions determined on a case by case basis will produce savings or additional costs.

Any financial risk to the fund should be identified and managed. As mentioned in Paragraph 1.5 it is intended to produce a quarterly report to the committee which lists the decisions taken in relation to all the available discretions. It would be useful to include the costs associated with authorising those discretions so that any future review can consider any cost implications.

Legal implications and risks:

Under the LGPS Regulations, the Council, as Administering Authority is required to formulate and keep under review the policies that apply in respect of exercising the discretions referred to in this report. The Council must publish written statements of the policies and if the Council decides to make any amendments, a statement of the amended policy must be published within one month of the determination.

The ambit of the areas of discretion is relatively limited, the major elements of the LGPS being fixed by legislation. In determining the policy on individual discretions a key element will be the possible impact on the pension fund from any particular discretion.

The setting of a policy on discretions creates the starting point or 'standard' response to a decision on the exercise of a discretion, but on each occasion there is the possibility that the particular circumstances of the case will justify a departure from the policy. However in practice it will probably be comparatively rare that there is evidence that justifies a departure from the policy.

Human Resources implications and risks:

There are no direct Human Resource implications arising from this report.

Equalities implications and risks:

The report provides information on the changes on Pensions Regulations with effect from 1st April 2014 and asks for Pensions Committee approval for the delegation of decision making of the above listed pension discretions. There is no direct impact on the pension or pension entitlement for individuals or groups with protected characteristics arising from this report.

However, in drafting any policy, whether it be an "each case on its merits" policy, one that applies a standard approach, or even one that utilises either approach depending on the circumstances, Employers will need to have due regard to the Employment Equality (Age) Regulations 2006 and the Public Sector Equality Duty, as set out in the Equality Act 2010.

The policy should be informed by an equality impact assessment to understand the impact on affected staff groups with protected characteristics. If any age-related criteria or criteria that could be directly or indirectly age discriminatory are applied, the Employer must be able to demonstrate that their decision is based on objective justification and that it is a 'proportionate' means of achieving a 'legitimate' aim.

The benefits payable from the London Borough of Havering Pension Fund are almost exclusively determined by the Department for Communities and Local Government (through the Local Government Pension Scheme Regulations) or in a small number of cases, by the scheme member's employer. The benefits package is rarely, if ever, within the control of the Fund to adjust. All eligible employees working for employers in the pension scheme are automatically admitted as a member of the Scheme unless they choose to opt-out. Each employer is responsible for informing the London

Borough of Havering of new eligible employees joining the Scheme and those who later decide to leave.

DCLG has published an equality statement, assessing the [equality impact of the Local Government Pension Scheme reforms \(2014 Scheme\)](#) using the current, 2008 Scheme as a baseline. The equality statement considers the impacts, both positive and negative, of the reforms on groups with protected characteristics. Decision-makers are advised to refer to the above equality analysis for further information of the impact on people with protected characteristics.

BACKGROUND PAPERS

The Local Government Pension Scheme Regulations (various) and the Guidance notes issued with them.

Previous reports to the Pensions Committee regarding the changes to the Local Government Pension Scheme can be viewed on the Council's website (<http://www.havering.gov.uk/Pages/Category/Council-and-democracy.aspx>).

Hymans Robertson LLP detailed review 'Administering Authority Discretions in the Local Government Pension Scheme Regulations'