

## **Local Government Pension Scheme (LGPS) Employer Discretions**

### 1. Purpose

1.1 This document outlines Flintshire County Council's policy on the application of all mandatory and some non-mandatory discretions which we have the power to exercise in relation to members of the Local Government Pension Scheme (LGPS).

### 2. Scope

2.1 The various discretions noted apply to specific groups of members of the Scheme based on their date of entry into the Scheme. This is outlined in the relevant section of the policy.

### 3. What are Discretions?

- Discretions are powers that enable employers to choose how to apply the rules of the Scheme in respect of certain provisions.
- There are many employer discretions in the current Scheme regulations and several more still existing from previous Schemes; however, only a small number of employer discretions must be published.
- Discretions fall into two categories:
  - i. Those which must be formulated and published (mandatory discretions).
  - ii. Those which do not need to be formulated and published (non-mandatory discretions)
- A summary of the mandatory discretions applied by Flintshire County Council ("the Council") are detailed in Section 5. Some of these discretions are referred to in relevant HR policies or guidance, for example the Flexible Retirement policy and Early Retirement Policy.

This policy will be published on the Councils website at [www.flintshire.gov.uk](http://www.flintshire.gov.uk)

### 4. Responsibilities

- 4.1 The regulations of the LGPS require every employer to
- (i) issue a written policy statement on how it will exercise the various discretions provided by the scheme,
  - (ii) keep it under review and
  - (iii) revise it as necessary.

This document meets these requirements stating the regulation requirement and the organisation decision on these.

These discretions are subject to change, either in line with any change in regulations or by due consideration by Flintshire County Council. These provisions do not confer any contractual rights.

The Regulations referred to are:

- R:** The Local Government Pension Scheme Regulations 2013 (as amended)
- TP:** The LGPS (Transitional Provision and Savings) Regulations 2014
- A:** The Local Government Pension Scheme (**Administration**) Regulations 2008 (as amended)
- B:** The Local Government Pension Scheme (**Benefits, Membership and Contributions**) Regulations 2007 (as amended)
- G** The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (as amended)
- T :** The Local Government Pension Scheme (**Transitional Provisions**) Regulations 2008
- L:** The Local Government Pension Scheme Regulations 1997 (as amended)

4.2 In applying this policy, the Council will ensure that:

- It applies the discretions reasonably, after taking account of all relevant factors, for example the cost to the Council balanced against the benefit to scheme member.
- Its discretions are not fettered, i.e., being used in such a way that individual circumstances cannot be considered; and
- That all discretionary decisions are recorded.

## 5.0 Application of Discretions

### 2013 Regulations and Transitional 2014 Regulations

Employer Discretion	Regulation	FCC Policy
Shared Cost APC's	Whether, how much, and in what circumstances to contribute to a shared cost APC scheme	R16(2)(e) & R16(4)(d)
Extension to Shared Cost APC's	Whether, how much, and in what circumstances to contribute to shared cost Additional Voluntary	R16(16)
Shared AVC's	Whether, how much, and in what circumstances to contribute to shared cost Additional Voluntary	R17(1) & definition of SCAVC in RSch 1

	Contributions (AVC's) arrangements		<b>shared cost salary sacrifice additional voluntary contribution scheme.</b>
Right to Return of contributions in cases of fraud or grave misconduct.	No right to return of contributions where a member left their employment due to offence of a fraudulent character or grave misconduct in connection with that employment, unless Employer directs a total or partial refund is to be made	R19 (2)	<b>It is not the policy of Flintshire County Council to refund contributions to the member.</b>
Flexible Retirement	Whether all or some benefits can be paid if an employee reduces their hours or grade (flexible retirement)	R30(6) & TP11(2)	<p><b>The Council have a policy on Flexible Retirement which requires a minimum reduction of 20% in hours/salary with no backfill arrangements.</b></p> <p><b>An employee, aged 55 and over may request flexible retirement and each case will be considered on its own merits following full consideration of any compelling compassionate reasons and all financial and service delivery implications via a retirement panel.</b></p> <p><b>This does not preclude younger employees, under 55 years of age requesting flexible working but without the payment of their retirement benefits.</b></p> <p><b>Please refer to the full Flexible Retirement Policy</b></p> <p><b>The Council may review its policy at any time.</b></p>
	Whether to waive, in whole or in part, actuarial reduction on benefits paid on flexible retirement	R30(8)	<b>It is not the policy of Flintshire County Council to waive, in whole or in part any actuarial reduction resulting from Flexible Retirement unless the actuarial reduction (arising from the pension strain) is of a de minimis amount and the request meets all other policy criteria.</b>

<p>Early Retirement Waive Actuarial Reduction</p>	<p>Whether to waive, in whole or in part, actuarial reduction on benefits which a member voluntarily draws before normal pension age other than on the grounds of flexible retirement (where the member only has post 31 March 2014 membership)</p>	<p>R30(8)</p>	<p><b>The Council have a policy on Early Retirement. Any employee from their 55th birthday can voluntarily retire and access their benefits with an actuarial reduction.</b></p> <p><b>An employee may request that Flintshire County Council waive in full or in part their reduction on compelling compassionate grounds only. Each case will be considered on its own merits following full consideration of all financial and service delivery implications via a retirement panel.</b></p> <p><b>The Council may review its policy at any time</b></p>
<p>85 Year Rule</p>	<p>Whether to 'switch on' the 85-year rule for a member voluntarily drawing benefits on or after age 55 and before age 60 (other than on the grounds of flexible retirement)</p>	<p>TPSch 2, para 1(2) &amp; 1(1c)</p>	<p><b>Employees can request that the Council 'switch on' the 85-year rule, if they are eligible.</b></p> <p><b>To be eligible, the employee's LGPS Service (all service) and their age must equal 85 years or more, and they must have joined the pension scheme before 1st October 2006.</b></p> <p><b>Deferred members from the age of 55 can access their deferred pension benefits early without employers' consent, however the pension income will reduce after the actuarial reduction is applied.</b></p> <p><b>The Council may review its policy at any time.</b></p>
<p>Waiving Actuarial Reduction</p>	<p>Whether to waive any actuarial reduction for a member voluntarily drawing benefits before normal pension age other than on the grounds of flexible retirement (where the member has both pre 1</p>	<p>TP3(1), TPSch 2, para (2)1, B30(5) &amp; B30A (5)</p>	<p><b>If it is agreed to apply the '85-year rule', Flintshire County Council may waive the actuarial reduction in full or in part following careful consideration of the financial implications and affordability.</b></p>

	<p>April 2014 and post 31 March 2014 membership):</p> <p>a) on compassionate grounds (pre 1 April 2014 membership) and in whole or in part on any grounds (post 31 March 2014 membership) if the member was not in the Scheme before 1 October 2006,</p> <p>b) on compassionate grounds (pre 1 April 2014 membership) and in whole or in part on any grounds (post 31 March 2014 membership) if the member was in the Scheme before 1 October 2006, will not be 60 by 31 March 2016 and will not attain 60 between 1 April 2016 and 31 March 2020 inclusive,</p> <p>c) on compassionate grounds (pre 1 April 2016 membership) and in whole or in part on any grounds (post 31 March 2016 membership) if the member was in the Scheme before 1 October 2006 and will be 60 by 31 March 2016,</p> <p>d) on compassionate grounds (pre 1 April 2020 membership) and in whole or in part on any grounds (post 31 March 2020 membership) if the member was in the Scheme before 1 October 2006, will not be 60 by 31 March 2016 and will attain 60 between 1 April 2016 and 31 March 2020 inclusive</p>		<p><b>Each case will be considered on its own merits including any compelling compassionate reasons and following full consideration of all financial and service delivery implications via a retirement panel.</b></p> <p><b>The Council may review its policy at any time.</b></p>
Grant Additional Pension	Whether to grant additional pension to an active member or within 6 months of ceasing to be an active	R31	<b>It is not the policy of Flintshire County Council to award additional pension</b>

	member by reason of redundancy or business efficiency (by up to £6,500 p.a. on 1 April 2014 - this figure is inflation proofed annually)		
Transferring in non LGPS pension rights	Extend normal time limit for acceptance of a transfer value beyond 12 months from joining the LGPS	R100(6)	<b>It is not the policy of Flintshire County Council to consider extending the time limit for a transfer in of previous pension rights to proceed after twelve months.</b>
Employee Contribution Rate	Determine rate of employees' contributions and review the pension contribution band to which an employee has been allocated following a material change which affects the member's pensionable pa	R9(1) & R9(3)	<b>The tiered contribution rate for each employee will be based on the pensionable pay elements. Basic salary is assessed at the full-time equivalent rate, in each post an employee holds on 1 April. The contribution rate will be re-assessed annually on implementation/application (regardless of when the award is made) of the annual pay award. Re-assessment will take place at any point in the year where there is a material change for example: - Promotion, demotion, incremental progression.</b>

### 2018 Amended Regulations

Employer Discretion		Regulation	FCC Policy
Deferred Benefits	Whether to grant applications for the early payment of pension benefits on or after age 50 and before age 55.	R31(2) of the LGPS Regulations 1997].	<b>It is not the policy of the Council to allow deferred benefit applications on or after age 50 and before age 55.</b>

### 2008 Scheme (Administration) Regulations and 2007 Regulations

Employer Discretion		Regulation	FCC Policy
Deferred Benefits	Whether to waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early under B30 (member)	B30(5), TPSch 2, para 2(1)	<b>Ordinarily The Council will not waive any actuarial reduction for deferred members on compassionate grounds.</b>

	Whether to 'switch on' the 85-year rule for a pensioner member with deferred benefits voluntarily drawing benefits on or after age 55 and before age 60	TPSch 2, para 1(2) & 1 (1c)	<b>The Council will not "switch on" the 85-year rule.</b>
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### 1997 and 1995 Scheme Regulations

Employer Discretion		Regulation	FCC Policy
Deferred Benefits	Whether to grant applications for the early payment of deferred pension benefits on or after age 50 and before NRD on compassionate grounds.	TP3 (5A) (vi)TL4, L106(1) & D11(2c)	<b>It is not the policy of the Council to allow deferred benefit applications on or after age 50 and before age 55.</b>

### The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (as amended)

Employer Discretion		Regulation	FCC Policy
Redundancy	Whether to base redundancy payments on an actual week's pay where this exceeds the statutory week's pay limit	G5	<b>It is the policy of the Council to base redundancy payments on an actual week's pay where this exceeds the statutory week's pay limit.</b>

The policy in respect of each employer discretion is set out above, however, the council may give further consideration where there are exceptional circumstances and clear merit, or where the cost is not considered to be significant or material.