

**EMPLOYMENT COMMITTEE – 26 SEPTEMBER 2024**

**REVIEW OF EMPLOYER DISCRETIONS - PENSION REGULATIONS**

**REPORT OF THE DIRECTOR OF CORPORATE RESOURCES**

**Purpose**

1. This report seeks the Committee's agreement to the policy decisions afforded to the County Council as a scheme employer under the provisions of the Local Government Pension Scheme (LGPS).

**Background**

2. The pension regulations require the County Council to formulate, publish and keep under review its policies in respect of certain areas of the Scheme where it may exercise its discretion. There are numerous mandatory discretions but they fall under four main areas:
  - (i) Additional pension;
  - (ii) Flexible retirement;
  - (iii) Switching on Rule of 85 (R85); and
  - (iv) Waiving of Early Retirement Reductions actuarial reduction.
3. Details of the discretions and the Council's current policy in relation to how they are exercised are set out in Appendix 1. These were agreed by the Committee at its meeting on 13 September 2018, and it is returning to Employment Committee following a review against the update and publication of the Leicestershire Pension Fund – Employers Discretions Guide (Appendix 2).
5. Whilst there is no requirement to have a written policy on all discretions, the report sets out a review of further three regulations (Appendix 3) which the Council has agreed, in order to provide clarity for LGPS members. These were also highlighted in the report to the Committee in 2018, and no changes are proposed in relation to:
  - (i) Election to transfer and aggregate pension within 12 months;
  - (ii) Allocation of contribution pension band and review period;
  - (iii) Assumed pensionable pay.
6. In addition to the review of the mandatory and non mandatory discretions, there is a position statement around the County Council's operational approach to pension (Appendix 4). It is not classed as a requiring the Employment

Committee's approval, the Committee is asked to note that they are occasionally used in the spirit of being open and transparent around the operational use of LGPS Regulations. This specifically relates to:

- (i) Dismissal on the grounds of business efficiency

### **Recommendation**

7. The Committee is asked to:
  - a) Note that a review has been undertaken with regard to pensions discretions.
  - b) Approve the mandatory discretion under LGPS Regulations as set out in Appendix 1 to this report;
  - c) Approve the non mandatory discretion under LGPS Regulations as set out in Appendix 3 to this report;
  - d) Note the County Council's operational approach to Pensions Regulations as set out in Appendix 4 to this report.

### **Background Papers**

8. LGPS Discretions Paper - 13 September 2018  
<https://democracy.leics.gov.uk/ieListDocuments.aspx?CId=212&MId=5566&Ver=4>

### **Circulation under Local Issues Alert Procedures**

9. None.

### **Officer to Contact**

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### **Equality and Human Rights Implications**

10. There are no equality or human rights implications as a result of agreeing these pensions discretions.

### **Appendices**

Appendix 1 – Local Government Pension Scheme Regulations Policy statement on all eligible employees

Appendix 2 – Leicestershire Pension Fund Employer Discretions Guide

Appendix 3 – Non-Mandatory discretion under LGPS Regulations

Appendix 4 - LCC operational approach to Pensions Regulations

## Appendix 1 – Mandatory discretion under LGPS Regulations

As per LGPS Regulations Policy statement on all eligible employees. This statement is applicable to all employees of Leicestershire County Council who are eligible to be members of the LGPS.

There is a requirement to publish the following mandatory discretion under LGPS Regulations.

Requirement	Explanation	Employer's Policy
<b>Additional pension</b>	<p>An employer may resolve to award a member additional pension of not more than £8,344 as at 1 April 2024 (The limit increases annually in line with the cost of living) a year within 6 months of leaving to a member whose employment was terminated on the grounds of redundancy or business efficiency.</p> <p>Discretions are:</p> <ul style="list-style-type: none"> <li>• Whether, how much, and in what circumstances to contribute to a shared cost APC scheme.</li> </ul>	<p>The Council previously agreed there are no normal circumstances in which the Council would contribute to a Shared Cost APC scheme</p> <p><b>No change to LCC discretions</b></p>
<b>Additional pension</b>	<p>An employer may resolve to award a member additional pension of not more than £8,344 as at 1 April 2024 (The limit increases annually in line with the cost of living) a year within 6 months of leaving to a member whose employment was terminated on the grounds of redundancy or business efficiency.</p> <p>Discretions are:</p> <ul style="list-style-type: none"> <li>• Whether, at full cost to the Scheme employer, to grant extra annual pension, up to the LGPS additional pension limit (reviewed annually) to an active member, or within 6 months of leaving to a member whose employment was terminated on the grounds of redundancy or business efficiency.</li> </ul>	<p>The Council will not normally grant any additional pension.</p> <p>Exceptions may be considered where</p> <ul style="list-style-type: none"> <li>• there is a cost or waive reduction in a potential redundancy situation</li> <li>• where a reduction may occur through redeployment; or</li> <li>• in other exceptional circumstances supported by a business case.</li> </ul> <p><b>No change to LCC discretions</b></p>

Requirement	Explanation	Employer's Policy
<b>Flexible Retirement</b>	<p>An active member who has attained the age of 55 or over who reduces working hours or grade of an employment may, with the Scheme employer's consent, elect to receive immediate payment of all or part of the retirement pension to which that member would be entitled in respect of that employment if that member were not an employee in local government service on the date of the reduction in hours or grade, adjusted by the amount shown as appropriate in actuarial guidance issued by the Secretary of State.</p> <p>As an employer you need to determine the conditions under which you would approve a flexible retirement taking place.</p> <p>Discretions are:</p> <ul style="list-style-type: none"> <li>• Whether all or some benefits can be paid if an employee over 55 reduces their hours or grade (flexible retirement).</li> </ul>	<p>The Council has previously agreed to release pension where there is no cost and not to waive any reduction.</p> <p>Members must reduce their hours by a minimum of 40% and/or reduce their grade</p> <p><b>No change to LCC discretions</b></p>

Requirement	Explanation	Employer's Policy
<p><b>Switching on "Rule of 85" (R85)</b></p>	<p>R85 is a complex protection for scheme members who were in the LGPS before 1st October 2006. A member will satisfy R85 when their age plus length of LGPS membership (in whole years) adds up to 85.</p> <p>For most scheme members R85 only protects pension benefits accrued from their membership before 1st April 2008. Ordinarily where a member has met R85 and is retiring and drawing their pension after 60, it applies automatically.</p> <p>However, where a member has met R85 and is retiring and drawing their pension between age 55 and 60, the employer has the power to "switch on" R85 at a cost.</p> <p>Discretions are:</p> <ul style="list-style-type: none"> <li>• Whether to "switch on" the 85 year rule for a member voluntarily drawing benefits on or after age 55 and before age 60 (active members and leavers since 1st April 2014).</li> <li>• Whether to "switch on" the 85 year rule for a deferred member voluntarily drawing benefits on or after age 55 and before age 60 (leavers between 1st April 2008 and 31st March 2014).</li> <li>• Whether to "switch on" the 85 year rule for a deferred member voluntarily drawing benefits on or after age 55 and before age 60 (leavers between 1st April 1998 and 31st March 2008 plus councillors).</li> </ul>	<p>The Council has previously not adopted this discretion.</p> <p><b>No change to LCC discretions</b></p>

Requirement	Explanation	Employer's Policy
<p><b>Waiving of Early Retirement Reductions</b> (Actuarial reduction)</p>	<p>An employer has the discretion, under a number of retirement scenarios, to waive actuarial reductions on compassionate grounds. The cost of which would fall upon the employer.</p> <ul style="list-style-type: none"> <li>• Whether to waive, in whole or in part, actuarial reduction on benefits which a member voluntarily draws before normal pension age (active members and leavers since 1st April 2014).</li> <li>• Whether to waive, in whole or part, actuarial reduction on benefits paid on flexible retirement (active members and leavers since 1st April 2014).</li> <li>• Whether to waive any actuarial reduction on pre and/or post April 2014 benefits paid early on compassionate grounds (active members and leavers since 1st April 2014).</li> <li>• Whether to waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early (leavers between 01/04/2008 – 31/03/2014).</li> <li>• Waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early (leavers between 01/04/1998 – 31/03/2008 and councillors).</li> </ul>	<p>The Council previously agreed there are no normal circumstances in which to waive early retirement reductions</p> <p>Exceptional circumstances require the Employment Committee and the Director involved will consider any cases and will decide whether the actuarial reductions should be waived. In all cases the financial position of the County Council must be considered.</p> <p><b>No change to LCC discretions</b></p>

## **Appendix 2 – Leicestershire Pension Fund Employer Discretions Guide**

<https://www.leicestershire.gov.uk/sites/default/files/2024-01/Leicestershire-pension-fund-employer-discretions-guide.pdf>



### Appendix 3 – Non-Mandatory discretion under LGPS Regulations

There is a recommendation to publish the following non-mandatory discretion under LGPS Regulations.

Requirement	Explanation	Employer's Policy
<p><b>Election to transfer or aggregate within 12 months</b></p>	<p>This discretion allows the Employer extend the 12 month limit a member has in which to elect to transfer other pension rights into the LGPS. This has to be with the agreement of the Administering Authority.</p> <p>Discretions are:</p> <ul style="list-style-type: none"> <li>• Whether to extend the 12-month limit a member has in which to elect to transfer other pension rights into the LGPS. This must be with the agreement of the Administering Authority.</li> </ul>	<p>The Council as the Administering Authority will not normally allow an extension of the 12 month limit.</p> <p>Extenuating circumstances may apply where evidence exists that</p> <ul style="list-style-type: none"> <li>• an election was made within 12 months but his was not received by the administering authority</li> <li>• the member was not aware of the 12 month limit due to maladministration</li> </ul> <p><b>No change to LCC discretions</b></p>
<p><b>Allocation of contribution pension band and review period</b></p>	<p>This discretion allows the Employer to determine which contribution band is allocated on joining the scheme and at each April. It also determines the circumstances when an employee's band may be reviewed.</p> <p>Discretions are:</p> <ul style="list-style-type: none"> <li>• Whether to determine which contribution band is allocated on joining the scheme and at each April. It also determines the circumstances when an employee's band may be reviewed.</li> </ul>	<p>The Council previously agreed this would be based on</p> <ul style="list-style-type: none"> <li>• Base pay on actual pay in April plus previous years overtime</li> <li>• Run an exercise half yearly as a check and re-band up or down where necessary</li> <li>• Re-band on all contractual changes, but not ad hoc hours changes and re-band upon a pay award.</li> </ul> <p><b>No change to LCC discretions</b></p>

<p><b>Assumed pensionable pay</b></p>	<p>This discretion allows the Employer to determine whether to include in the calculation of assumed pensionable pay the amount of any “regular lump sum payment”.</p> <p>This is in cases where an employee’s pay needs to be calculated where their pay has been reduced due to certain absences in order that they are not unduly advantaged or disadvantaged.</p> <p>In practice such decisions are made by the pensions team as part of the processing of an individual case.</p>	<p>The Council previously agreed this would be based on</p> <ul style="list-style-type: none"> <li>• individual cases where necessary to establish in a fair, equitable and justifiable way what the members likely pay would have been but for the absence, and</li> <li>• cases where this pay is to be used for future enhancements whether that level of pay would have been received every year to normal retirement age.</li> </ul> <p><b>No change to LCC discretions</b></p>
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## Appendix 4 - LCC operational approach to Pensions Regulations

In addition we have are the following position statements around LCC operational approach to pensions. They are not classed as a requiring the Employment Committee’s approval, the Committee is asked to note that they are occasionally used. As per previous Employment Committee reports theses are published in the context of being open and transparent around our operational use of LGPS Regulations.

Requirement	Explanation	Employer’s Policy
<p><b>Dismissal on the grounds of business efficiency</b></p>	<p>Where an active member who has attained the age of 55 or over is dismissed from an employment by reason of redundancy or business efficiency, or whose employment is terminated by mutual consent on grounds of business efficiency, that member is entitled to, and must take immediate payment of -</p> <ul style="list-style-type: none"> <li>a) retirement pension relating to that employment payable under regulation 16 (additional pension contributions), adjusted by the amount shown as appropriate in actuarial guidance issued by the Secretary of State; and</li> <li>b) any other retirement pension relating to that active member's pension account payable under these Regulations, without reduction.</li> </ul>	<p>The Council will not normally retire someone who is dismissed on the grounds of business efficiency.</p> <p>Exceptional circumstances may apply where:</p> <ul style="list-style-type: none"> <li>• there is an agreed business case</li> <li>• termination is on the grounds of business efficiency</li> <li>• there is mutual consent of termination on the grounds of business efficiency.</li> <li>• any cost for the release of early payment must be paid in full by the Council.</li> </ul> <p><b>No change to LCC discretions</b></p>

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