Leicestershire Pension Fund

Employer Discretions Guide

Contents

Introduction

The Local Government Pension Scheme regulations include numerous areas where scheme employers have discretionary powers and it is mandatory for every employer to have a discretions policy in place. Setting a policy as a scheme employer gives you flexibility in managing issues relating to LGPS benefits for both your current and former employees.

There are four main categories where it is a statutory requirement to have a published policy. Additionally, there are some areas where it is recommended, but not mandatory to have a policy.

Exercising these discretions usually involves immediate costs for the employer.

This brief guide has been written to assist you with setting or reviewing your discretions policy. It focusses on the mandatory areas along with three non-mandatory areas where it is recommended that you hold a policy.

A template for completion is attached which includes sample policies that could be adopted if felt suitable for your employer requirements. Alternatively, you can add your own wording.

When formulating your discretions policy, as a starting point, refer to your existing policy document (if you have one). There is no need for changes if you are happy with what is currently in place. If you decide to update your policies, or are looking at them for the first time:

- Ensure the policies are workable, affordable and reasonable, especially with regard to foreseeable costs.
- Ensure that the policies are non-discriminatory (for example, age).
- Avoid blanket or fettered (overly restrictive) policies.
- Ensure your employees and former employees can access the policy. Most employers will publish it on their website.
- Provide a copy of your policy to the Fund, sent to pensionsemployerliaison@leics.gov.uk
- Keep the policies under regular review (ideally every 3 years).

Please ensure that your policies are approved at the appropriate level before publishing and returning to the Pensions Section. The approver could be Head of HR / Assistant Director / Employment Committee or similar.

You may also like to know that the Local Government Association have produced a detailed technical guide to discretionary policies that is available on their website.

Mandatory Employer Discretions

The principal, mandatory discretions fall into four categories:

- Additional Pension
- Waiving of Early Retirement Reductions
- Switching on the ‘Rule of 85’
- Flexible Retirement

Additional Pension

The LGPS includes an option for scheme members to purchase additional pension by using Additional Pension Contributions (APCs). They allow scheme members to boost their pension benefits at retirement. Alternatively, APCs can be used to buy back lost pension following industrial action, unpaid leave (except when due to illness or injury) or unpaid additional child-related leave.

There is a maximum amount of pension that can be purchased, which from 1st April 2023 is £7,579. The limit increases annually in line with the cost of living.

<u>Discretion 1</u>

1. **Whether, how much, and in what circumstances to contribute to a shared cost APC scheme.**

Employers can decide whether to help scheme members who are buying additional pension by sharing the cost with them. However, this does not relate to members who are using an APC to buy back lost pension, as in some circumstances employers are obliged to contribute two-thirds of the cost.

If you wish to adopt this policy, you will need to consider in what circumstances you would share the cost.

<u>Discretion 2</u>

2. **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.**

Employers can decide whether to grant their scheme members an additional amount of pension. You will need to consider in what circumstances you would grant this extra pension.

Waiving of Early Retirement Reductions

When scheme members elect to take their pension before their Normal Pension Age (usually their state pension age but in some circumstances age 65), the pension will be in payment for longer than planned so the pension is reduced, based on factors issued by the Government Actuary Department.

Employers can, in a number of circumstances, decide whether to waive these reductions in part or in full. There are five discretionary areas where employers are required to have a policy; three relate to waiving on compassionate grounds and two relate to waiving on any grounds. We have therefore grouped these together, but you may decide to adopt different policies for each discretion. Upon request, the Pensions Section will be able to provide the cost of waiving reductions.

Discretions 3 – 7

3. **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).**

4. **Whether to waive, in whole or part, actuarial reduction on benefits paid on flexible retirement (active members and leavers since 1st April 2014).**

5. **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).**

6. **Whether to waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early (leavers between 01/04/2008 – 31/03/2014).**

7. **Waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early (leavers between 01/04/1998 – 31/03/2008 and councillors).**

Switching on the 'Rule of 85'

The Rule of 85 (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.

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.

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.

R85 can be switched on by the employer for:

a) Current employees retiring.
b) Ex-employees with deferred benefits retiring.
c) Ex-employees who had been awarded a tier 3 ill health pension that was subsequently suspended.

There are three areas of the scheme regulations where this discretion applies and we have therefore grouped these together.

<u>Discretions 8 – 10</u>

8. **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).**

9. **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).**

10. **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).**

Flexible Retirement

If an employee aged 55 or over reduces their hours or moves to a less senior position, and providing the employer gives their permission, they may be able to start receiving their pension, even though they are still working. The arrangement is called flexible retirement and is designed to:

- Help the employee ease into retirement.
- Allow the employer to retain the knowledge and skills of experienced staff.
- Assist the employer in its succession planning.

Employees can still build up further pension benefits in their ongoing job on either lower hours or in a less senior role.

It is important to note that:

- Taking flexible retirement before state pension age, means that the employees' pension benefits will normally be reduced as if they were retiring early.
- R85 is always switched on for flexible retirements and cannot be switched off. Therefore, granting flexible retirement for someone under age 60 may result in an unavoidable employer shortfall cost.
- You will need to obtain details of the cost of the flexible retirement before it can be approved, which requires you to submit an FR1 form. Further information about the process can be found on our Advice for employers webpages.

Discretion 11

11. Whether all or some benefits can be paid if an employee over 55 reduces their hours or grade (flexible retirement).

While essentially this is a relatively straight-forward discretion, in deciding whether to allow someone to take flexible retirement, there are a number of consequences to be aware of:

- Without a clear written policy, staff may have unrealistic expectations of being approved for flexible retirement.

- Some cases under age 60 may have unavoidable employer shortfall costs, due to R85 being automatically switched on.

- The possibility of waiving reductions.

- Consideration will need to be given when writing the policy as to the possibility of causing a serious loss of confidence in the public service (e.g. allowing a reduction of 1 hour for chief executive to take flexible retirement with the result that they earn more from the lower salary PLUS pension).

- How much of a reduction in hours is acceptable.

- Whether to allow an increase in hours or grade after taking flexible retirement.

Miscellaneous Recommended Discretions

Non-Mandatory Discretions

Whilst it is not mandatory for employers to have a policy on the following three discretions, for reasons of openness and good governance the Pensions Section recommend that employers approve a policy for each.

<u>Discretions 12 and 13</u>

12. **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.**

13. **Whether to extend the 12-month limit a member has in which to elect not to aggregate their deferred benefits with their new LGPS employment.**

LGPS rules allow for a standard 12-month limit for members to elect whether to transfer other public service pension rights into the LGPS. The 12-month limit also applies to the decision to keep a separation between their new benefits and previous benefits held in the fund.

However, from time to time it may be that the member’s written election was posted but not received by the fund, or even that the member was unaware of the deadline. Where this is the case and verifying evidence exists, employers may wish to agree to an extension of these deadlines. They must also be mindful that in the event of a possible redundancy situation, it could be in the member’s interest to aggregate membership, resulting in early unreduced pension benefits being paid. For the employer, the result would be an increased cost of approving the redundancy. In such circumstances the employer may wish to consider whether it would be prudent to extend the deadline.

Discretion 14

14. 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.

LGPS rules state "an active member must pay contributions…at the contribution rate applicable to the annual pensionable pay that the member is receiving in the pay period in which 1st April falls for that employment" (or in the case of a member whose membership commences after 1st April in any year, on the annual pensionable pay the member receives at the start of that membership).

However, where as a result of a contractual change or pay award, a member begins to receive a level of pay that exceeds the contribution band to which the member originally belonged at the start of the year, it would seem reasonable to increase contribution rates from that point. Therefore, a published policy stating this fact should be considered.

If you have any enquiries on the content of this document, please contact Stuart Wells by telephone:0116 305 6944 or email stuart.wells@leics.gov.uk