

North East Derbyshire District Council

Cabinet

11 June 2014

Urgent Business

Local Government Pension Scheme Discretions 2014

**Report of No: NB/05/14/TM of Councillor N Barker, Portfolio Holder with
Responsibility for Human Resources, Training and Member Development**

This report is public

Purpose of the Report

- To consider the proposed policy on those discretions which the Council has to make, publish and keep under review under the Local Government Pension Scheme following new Regulations.
- To consider delegating the authority to vary the general policy where individual circumstances dictate that considering a variation to the standard policy may be appropriate.
- To consult on the approach where consideration to vary the standard policy is appropriate.
- To consider the approach where a decision to vary the standard policy may be appropriate.

Reason for Urgency

The Council is required to have the scheme in place by the 30th June. Unfortunately this has proved to be a complex matter and it has taken some time to put together the scheme. Nonetheless it remains necessary to have the scheme in place by the due date and this Cabinet meeting is the only opportunity to have the arrangements formally agreed. It is urgent therefore.

1 Report Details

- 1.1 A new Local Government Pension Scheme (LGPS) has been introduced and changes to the pension arrangements have taken place with effect from 1 April 2014. Employees have received separate notification about the changes and how they will be affected.
- 1.2 Under the LGPS regulations, employers are required to formulate, publish and keep under review a policy statement in relation to the exercise of a number of discretions that are available.

- 1.3 In addition to producing a new Policy Statement in respect of certain discretions available under the 2014 Scheme, it is necessary to draw up a new separate list of discretions which may still apply in respect of leavers after 31 March 2008 and before April 2014.
- 1.4 Some discretions available prior to 2014 have been removed and others have been replaced and this will necessitate updating the Council's Policy Statement on discretions.
- 1.5 The Council's existing discretions relating to the compensation regulations are not affected by this report.
- 1.6 The Council Policy statement has to be made within three months of 1 April 2014.
- 1.7 Whilst the common aspect in the Council's current LGPS discretionary policies is that generally the discretion will not apply, it is necessary to allow for this general approach to be varied should the circumstances of a particular case make this stance inappropriate. When making such decisions, each case will be considered on its own merits and full reasons will be given for the outcome. The initial application will need to be directed to the Chief Financial Officer who is the named person with respect to the pension fund. In a situation where the Chief Financial Officer takes the view that it is appropriate to consider a discretionary award they will take a report to Cabinet recommending that a corresponding budgetary provision is established. In a position where the Chief Financial Officer did not support such an application then no such report will be taken with the individual submitting the application notified to that effect. Where the individual making the application is not satisfied with the decision of the Chief Financial Officer they may appeal to the Cabinet for a review of that decision. Such an Appeal should be made in the first instance to the Chief Executive who will arrange for a report to be taken to Cabinet. The employee / former employee concerned will be allowed to submit a written statement of case while the Chief Financial Officer will provide a written statement setting out the reasons why the application should be rejected.
- 1.8 Attached at Appendix 1 is the list of discretions for which employers must consider in a policy statement under the 2014 Scheme. The Council's proposed position is based on the discretions approved by Derbyshire County Council.

2 Conclusions and Reasons for Recommendation

- 2.1 Because of ongoing strains on the Pension Fund, and continuing wider budgetary pressures upon all local authorities, the position of this Council has been – and continues to be – that discretions will only be applied where this does not involve additional strain on the pension fund or additional cost to the Council. The LGPS guidance advises that policies should not lead to “a loss of public confidence in the public service and therefore be affordable.
- 2.2 The Council's policy is generally in line with that adopted by Derbyshire County Council, while our overall approach is consistent with that of other local authorities.
- 2.3 Whilst the general approach is not to exercise any discretion where there is a cost to the Council, there may be some circumstances where this approach is too restrictive and the discretionary powers need further consideration. Whenever such

circumstances arise, the case would firstly be considered by the Chief Financial Officer and if appropriate budgetary provision would be recommended to Cabinet . Where the decision is not to vary the standard policy the individual would have a right to appeal to Cabinet.

3 Consultation and Equality Impact

- 3.1 Owing to the time scales involved relating to the receipt of final information, guidance and the meetings schedule, it was not possible to submit this report to a full meeting of Council JCG for consultation purposes. Instead JCG set up a small working group to consider the detail. That working group has now met and agreed to the approach detailed in this document, and in the interests of completeness a copy of this report will be submitted to the next JCG for noting.

4 Alternative Options and Reasons for Rejection

- 4.1 Given that all of the alternatives would potentially entail significant additional costs to the Council it is not considered appropriate to exercise any discretions as a matter of policy as this is considered to be an unfair burden on local taxpayers. The Council will, however, where requested review individual cases on their merits.

5 Implications

5.1 Finance and Risk Implications

- 5.1.1 All of the proposed responses to the discretions under the LGPS 2014 are made on the basis of no additional costs being incurred. The financial impact of any exercise of discretions in individual cases will be considered as such cases arise.

5.2 Legal Implications including Data Protection

- 5.2.1 None arising directly from this report.

5.3 Human Resources Implications

- 5.3.1 None other than those included within the report.

6 Recommendations

- 6.1 That Cabinet consider and approve the report and proposals, and agree to the publication of the Council's position in respect of its discretions under the LGPS.
- 6.2 That Cabinet authorise the Chief Financial Officer to make an assessment in respect of applications to vary the general approach to the discretions, and to report to Cabinet for approval of budgetary provision if appropriate.

7 Decision Information

Is the decision a Key Decision? (A Key Decision is one which results in income or expenditure to the Council of £50,000 or more or which has a significant impact on two or more District wards)	N/A
District Wards Affected	N/A
Links to Corporate Plan priorities or Policy Framework	

8 Document Information

Appendix No	Title
1	Local Government Pension Scheme 2014 Employer Discretions
2	Local Government Pension Scheme Employer Discretions for leavers from 31 March 2008 to 1 April 2014
Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
LGPS HR Guide to the 2014 Scheme	
Derbyshire Pension Fund Local Government Pension Scheme Employers' Newsletter Number 119 and 123 which refers to Derbyshire County Councils' policy	
Report Author	Contact Number
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Local Government Pension Scheme 2014 – **Employer Discretions Bolsover District Council For post 31 March 2014 active members (excluding councillor members) and post 31 March 2014 leavers (excluding councillor members)**

Discretion	Recommendation
Additional Pension Contributions Regulation 16(2) (e) and 16(4)(d) of the LGPS Regulations 2013 Whether, how much, and in what circumstances to contribute to a shared cost Additional Pension Contribution (APC) scheme. An APC is payment of pension contributions to cover a break in pensionable service. If the break in service is an authorised break, for example, the no pay period of maternity leave and the person opts to pay for the break within 30 days from the end of the break, the shared costs APC automatically applies. The shared cost is split two thirds employer, one third scheme member. The Council needs to consider a shared cost APC in exceptional circumstances, where a person opts to pay for the break after 30 days up to a period of 12 months, from the end of the break.	If the person opts to pay an APC to buy extra pension after 30 days and within one year of the break the shared cost option does not apply.
Flexible Retirement – Regulation 30 (6) and Transitional Provision Regulations 2014 Regulation 11(2) Whether all or some benefits can be paid if an employee reduces their hours or grade (flexible retirement)	That in accordance with the Council’s existing policy on flexible retirement, this discretion would normally be awarded only in cases where there is no additional cost to the Council.

Local Government Pension Scheme 2014 – **Employer Discretions Bolsover District Council For post 31 March 2014 active members (excluding councillor members) and post 31 March 2014 leavers (excluding councillor members)**

Discretion	Recommendation
<i>Flexible Retirement (Routine Cases) – Regulation 30 (8) of the LGPS Regulations 2013</i> Whether to waive, in whole or in part actuarial reduction on benefits on flexible retirement.	That the Council has a general policy that any flexible retirement must normally be at no cost to the Council. Where there is no cost to the Council approval of flexible retirement requests are delegated to the Chief Executive Officer, with a right of appeal to the Council's Elected Member Appeal Panel, should a flexible retirement request be refused. However, where the Council is seeking volunteers for flexible retirement as a way to avoid compulsory redundancies etc., the Council may consider bearing the cost to ensure there is no reduction in the employee's pension in order to secure the financial benefits arising from reducing employee numbers. In these exceptional cases, a report will be submitted to Cabinet for its consideration.

Local Government Pension Scheme 2014 – **Employer Discretions Bolsover District Council For post 31 March 2014 active members (excluding councillor members) and post 31 March 2014 leavers (excluding councillor members)**

Discretion	Recommendation
Policy for Flexible Retirement (Routine Cases) - Regulation 30 (8) of the LGPS Regulations 2013 An employer can consent to a reduction in an employee's hours or grade and consent to the release of pension benefits where the employee is aged 55 and over. For the purpose of this policy, requests for flexible retirement can be categorised as follows: • Category one - Employee is age 60 or over - There is no cost to the council as the employee is at or past their earliest retirement date. If they do not meet the Rule of 85 (*1) their pension benefits will be reduced to reflect early payment. • Category two - Employee is age 55 or over but less than 60 and does not meet the Rule of 85 until on or after their 60th birthday. In this case the regulations allow for the cost of the early payment of pension benefits to be borne by the employee so as to avoid a pension fund shortfall. The benefits are actuarially reduced to reflect the fact that they are paid early. • Category three - Employee is age 55 or over but less than 60 and does meet the Rule of 85 either at the date of flexible retirement or at a later date that is before their 60th birthday. In this case we would have to meet the Pension	That the Council has a general policy that any flexible retirement for category one and category two cases must normally be at no cost to the Council. Where there is no cost to the Council approval of flexible retirement requests are delegated to the Chief Executive Officer, with a right of appeal to the Council's Elected Member Appeal Panel, should a flexible retirement request be refused. However, where the Council is seeking volunteers for flexible retirement as a way to avoid compulsory redundancies etc., the Council may consider bearing the cost to ensure there is no reduction in the employee's pension in order to secure the financial benefits arising from reducing employee numbers. In these exceptional cases, a report will be submitted to Cabinet for its consideration. The initial application will need to be directed to the Chief Financial Officer who is the named person with respect to the pension fund. In a situation where the Chief Financial Officer takes the view that it is appropriate to consider a discretionary award they will take a report to Cabinet

Local Government Pension Scheme 2014 – **Employer Discretions Bolsover District Council For post 31 March 2014 active members (excluding councillor members) and post 31 March 2014 leavers (excluding councillor members)**

Discretion	Recommendation
Fund shortfall arising from the early payment of pension benefits from the date when the Rule of 85 is met. (*1 The Rule of 85 is where the sum of the scheme member's age plus period of membership in the Pension Scheme (both in whole years) is 85 or greater).	recommending that a corresponding budgetary provision is established. In a position where the Chief Financial Officer did not support such an application then no such report will be taken with the individual submitting the application notified to that effect. Where the individual making the application is not satisfied with the decision of the Chief Financial Officer they may appeal to Cabinet for a review of that decision. Such an appeal should be made in the first instance to the Chief Executive who will arrange for a report to be taken to Cabinet. The employee/former employee concerned will be allowed to submit a written statement of case while the Chief Financial Officer will provide a written statement setting out the reasons why the application should be rejected.
NOTE Increases in hours after taking flexible retirement	Where an employee has been allowed to reduce their hours for the purposes of flexible retirement they will not be allowed to increase them on a permanent basis. Where it is in our interests, a temporary increase in hours for a period not exceeding six months can be permitted. The temporary increase in hours must be authorised by the chief officer. An employee who has reduced their hours and taken flexible retirement must only be allowed to work additional hours or overtime at the same level that applied prior to the reduction in contractual hours. The aim is to prevent employees compensating for a reduction in contractual hours by working additional hours and overtime. The chief officer must approve requests for temporary increases in additional hours and overtime in advance.

Local Government Pension Scheme 2014 – **Employer Discretions Bolsover District Council For post 31 March 2014 active members (excluding councillor members) and post 31 March 2014 leavers (excluding councillor members)**

Discretion	Recommendation
Retirement at age 55 - Regulation 30(8) of the LGPS Regulations 2013 Whether to waive, in whole or in part, actuarial reduction on benefits which a member voluntarily draws before normal pension age.	That the Council has a general policy not to agree to waive, in whole or in part, actuarial reduction on benefits which a member voluntarily draws before normal pension age. The initial application will need to be directed to the Chief Financial Officer who is the named person with respect to the pension fund. In a situation where the Chief Financial Officer takes the view that it is appropriate to consider a discretionary award they will take a report to Cabinet recommending that a corresponding budgetary provision is established. In a position where the Chief Financial Officer did not support such an application then no such report will be taken with the individual submitting the application notified to that effect. Where the individual making the application is not satisfied with the decision of the Chief Financial Officer they may appeal to Cabinet for a review of that decision. The employee/former employee will be allowed to submit a written statement of case while the Chief Financial Officer will provide a written statement setting out the reasons why the application should be rejected.
Additional Pension - Regulation 31 of the LGPS Regulations 2013 Whether to grant additional pension to an active member or within six months of ceasing to be an active member by reason of redundancy or business efficiency (by up to £6,500	That the Council has a general policy not to agree to grant additional pension to an active member or within six months of ceasing to be an active member by reason of redundancy or business efficiency (by up to £6,500 p.a.)

Local Government Pension Scheme 2014 – Employer Discretions Bolsover District Council For post 31 March 2014 active members (excluding councillor members) and post 31 March 2014 leavers (excluding councillor members)

Discretion	Recommendation
p.a.)	The initial application will need to be directed to the Chief Financial Officer who is the named person with respect to the pension fund. In a situation where the Chief Financial Officer takes the view that it is appropriate to consider a discretionary award they will take a report to Cabinet recommending that a corresponding budgetary provision is established. In a position where the Chief Financial Officer did not support such an application then no such report will be taken with the individual submitting the application notified to that effect. Where the individual making the application is not satisfied with the decision of the Chief Financial Officer they may appeal to Cabinet for a review of that decision. The employee/former employee will be allowed to submit a written statement of case while the Chief Financial Officer will provide a written statement setting out the reasons why the application should be rejected.
Switching on the Rule of 85 - Transitional Provision Schedule 2, paragraph 2(2) of the Transitional Provision Regulations 2014 Whether to 'switch on' the 85 year rule for a member voluntarily drawing benefits on or after age 55 and before age 60.	That the Council has a general policy not to agree to switch on the 85 year rule for a member voluntarily drawing benefits on or after age 55 and before age 60. The initial application will need to be directed to the Chief Financial Officer who is the named person with respect to the pension fund. In a situation where the Chief Financial Officer takes the view that it is appropriate to consider a discretionary award they will take a report to Cabinet

Local Government Pension Scheme 2014 – **Employer Discretions Bolsover District Council For post 31 March 2014 active members (excluding councillor members) and post 31 March 2014 leavers (excluding councillor members)**

Discretion	Recommendation
	recommending that a corresponding budgetary provision is established. In a position where the Chief Financial Officer did not support such an application then no such report will be taken with the individual submitting the application notified to that effect. Where the individual making the application is not satisfied with the decision of the Chief Financial Officer they may appeal to Cabinet for a review of that decision. The employee/former employee will be allowed to submit a written statement of case while the Chief Financial Officer will provide a written statement setting out the reasons why the application should be rejected.
Compassionate Grounds - Transitional Provision 3(1), Transitional Provision Schedule 2, paragraph 2(1) and 2(2), of the Transitional Provision Regulations 2014 and Regulations B30(5) and B30A(5) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 Decide whether to waive any actuarial reduction on pre and/or post April 2014 benefits paid early on compassionate grounds.	That the Council has a general policy not to waive any actuarial reduction on pre and/or post April 2014 benefits paid early on compassionate grounds. The initial application will need to be directed to the Chief Financial Officer who is the named person with respect to the pension fund. In a situation where the Chief Financial Officer takes the view that it is appropriate to consider a discretionary award they will take a report to Cabinet recommending that a corresponding budgetary provision is established. In a position where the Chief Financial Officer did not support such an application then no such report will be taken with the individual submitting the application notified to that effect. Where the individual making the application is not satisfied with the decision of the Chief Financial Officer they may appeal to Cabinet for a review of that decision. The employee/former employee will be allowed to submit a written statement of case while the Chief Financial Officer will provide a written statement setting out the reasons why the application should be rejected.

Local Government Pension Scheme 2008 – Discretions in relation to scheme members (excluding councillor members) who ceased active membership on or after 1 April 2008 and before 1 April 2014	
Discretion	Recommendation
Augmented Pension - Regulation B12 of the LGPS (Benefits, Membership and Contributions) Regulations 2007 Whether, for a member leaving on the grounds of redundancy or business efficiency on or before 31st March 2014, to augment membership (by up to 10 Years). The resolution to do so would have to be made within 6 months of the date of leaving. Hence this discretion is spent entirely after 30th September 2014.	That the Council has a general policy not to agree to augment membership (by up to 10 Years) for a member leaving on the grounds of redundancy or business efficiency on or before 31st March 2014. The initial application will need to be directed to the Chief Financial Officer who is the named person with respect to the pension fund. In a situation where the Chief Financial Officer takes the view that it is appropriate to consider a discretionary award they will take a report to Cabinet recommending that a corresponding budgetary provision is established. In a position where the Chief Financial Officer did not support such an application then no such report will be taken with the individual submitting the application notified to that effect. Where the individual making the application is not satisfied with the decision of the Chief Financial Officer they may appeal to Cabinet for a review of that decision. The employee/former employee will be allowed to submit a written statement of case while the Chief Financial Officer will provide a written statement setting out the reasons why the application should be rejected. The resolution to do so would have to be made within 6 months of the date of leaving. Hence this discretion is spent entirely after 30th September 2014.

Local Government Pension Scheme 2008 – Discretions in relation to scheme members (excluding councillor members) who ceased active membership on or after 1 April 2008 and before 1 April 2014

Discretion	Recommendation
Early Payment of Deferred Benefits - Regulation B30(2) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 Whether to grant an application for the early payment of deferred benefits on or after age 55 and before age 60.	That the Council has a general policy not to grant application for the early payment of deferred benefits on or after age 55 and before age 60 where there is a cost to the council. The initial application will need to be directed to the Chief Financial Officer who is the named person with respect to the pension fund. In a situation where the Chief Financial Officer takes the view that it is appropriate to consider a discretionary award they will take a report to Cabinet recommending that a corresponding budgetary provision is established. In a position where the Chief Financial Officer did not support such an application then no such report will be taken with the individual submitting the application notified to that effect. Where the individual making the application is not satisfied with the decision of the Chief Financial Officer they may appeal to Cabinet for a review of that decision. The employee/former employee will be allowed to submit a written statement of case while the Chief Financial Officer will provide a written statement setting out the reasons why the application should be rejected.
Compassionate Grounds - Regulation 30(5) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 Whether to waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early under B30	That the Council has a general policy not to waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early under B30. The initial application will need to be directed to the Chief Financial Officer who is the named person with respect to the pension fund. In a situation where the Chief Financial Officer takes the view that it is appropriate to consider a discretionary award they will take a report to Cabinet recommending that a corresponding budgetary provision is established. In a position where the Chief Financial Officer did not support such an application then no such report will be taken with the

Local Government Pension Scheme 2008 – Discretions in relation to scheme members (excluding councillor members) who ceased active membership on or after 1 April 2008 and before 1 April 2014	
Discretion	Recommendation
	individual submitting the application notified to that effect. Where the individual making the application is not satisfied with the decision of the Chief Financial Officer they may appeal to Cabinet for a review of that decision. The employee/former employee will be allowed to submit a written statement of case while the Chief Financial Officer will provide a written statement setting out the reasons why the application should be rejected.
Suspended Tier 3 Ill Health – Regulation 30A (3) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 Whether to grant an application for reinstatement of a suspended tier 3 ill health pension on or after age 55 and before age 60. (i.e. if an employer has discontinued the ill health retirement benefits where an ex employee is in gainful employment or is capable of being in such employment, the ex employee may, on reaching age 55, choose to receive the retirement pension immediately)	That the Council would grant an application for early payment of a suspended tier three ill health pension on or after age 55 and before age 60, where there is no cost to the council.
Compassionate Grounds - Regulation 30A(5) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 Whether to waive, on compassionate grounds, the actuarial reduction applied to benefits paid early under B30A.	That the Council has a general policy not to waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early under B30A. The initial application will need to be directed to the Chief Financial Officer who is the named person with respect to the pension fund. In a situation where the Chief Financial Officer takes the view that it is appropriate to consider a discretionary award they will take a report to Cabinet recommending that a corresponding budgetary provision is

Local Government Pension Scheme 2008 – Discretions in relation to scheme members (excluding councillor members) who ceased active membership on or after 1 April 2008 and before 1 April 2014	
Discretion	Recommendation
	established. In a position where the Chief Financial Officer did not support such an application then no such report will be taken with the individual submitting the application notified to that effect. Where the individual making the application is not satisfied with the decision of the Chief Financial Officer they may appeal to Cabinet for a review of that decision. The employee/former employee will be allowed to submit a written statement of case while the Chief Financial Officer will provide a written statement setting out the reasons why the application should be rejected.

Local Government Pension Scheme 1997 –Discretions in relation to active councillor members and councillor members who ceased active membership on or after 1 April 1998 and any other scheme members who ceased active membership on or after 1 April 1998 and before 1 April 2008	
Discretion	Recommendation
Early Payment - Regulation 31(2) of the LGPS Regulations 1997 Whether to grant application from a post 31 March 1998/pre 1 April 2008 leaver or from a councillor for early payment of benefits on or after age 50/55 and before age 60.	That the Council approve granting an application from a post 31 March 1998/pre 1 April 2008 leaver or from a councillor for early payment of benefits on or after age 50/55 and before age 60, where there is no cost to the council.
Compassionate Grounds - Regulation 31(5) of the LGPS	That the Council has a general policy not to waive, on compassionate grounds, the actuarial reduction applied to benefits paid early for a

Local Government Pension Scheme 1997 –Discretions in relation to active councillor members and councillor members who ceased active membership on or after 1 April 1998 and any other scheme members who ceased active membership on or after 1 April 1998 and before 1 April 2008	
Discretion	Recommendation
Regulations 1997 Whether to waive, on compassionate grounds, the actuarial reduction applied to benefits paid early for a post 31 March 1998/pre 1 April 2008 leaver or councillor leaver.	post 31 March 1998/pre 1 April 2008 leaver or councillor leaver. The initial application will need to be directed to the Chief Financial Officer who is the named person with respect to the pension fund. In a situation where the Chief Financial Officer takes the view that it is appropriate to consider a discretionary award they will take a report to Cabinet recommending that a corresponding budgetary provision is established. In a position where the Chief Financial Officer did not support such an application then no such report will be taken with the individual submitting the application notified to that effect. Where the individual making the application is not satisfied with the decision of the Chief Financial Officer they may appeal to Cabinet for a review of that decision. The employee/former employee/councillor will be allowed to submit a written statement of case while the Chief Financial Officer will provide a written statement setting out the reasons why the application should be rejected.
Optant Out Payments - Regulation 31(7) of the LGPS Regulations 1997 Decide whether councillor optants out and pre 1 April 2008 employee optant outs only get benefits paid from normal retirement date (NRD) if employer agrees.	That councillor optants out and pre 1 April 2008 employee optant outs will only be allowed to get benefits paid from normal retirement date (NRD).