

West Yorkshire Pension Fund Discretions Policy



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1. Introduction

- 1.1 It is a requirement of the Local Government Pension Scheme (hereinafter referred to as LGPS) Regulations 2013 and the LGPS Transitional Regulations 2014 that employers make and publish policy statements on how they will exercise **five specific discretions**.
- 1.2 In addition to this there are **two further discretions** relevant to employers **which relate only to members who left before 1 April 2014**. These are under Regulation 66 of the LGPS (Administration) Regulations 2008 (in respect of leavers between 1 April 2008 and 31 March 2014) and under Regulation 106 of the LGPS Regulation 1997 (in respect of leavers between 1 April 1998 and 31 March 2008).
- 1.3 The policy statements must not, however, limit or 'fetter' how an employer uses any of the discretions afforded by the scheme.
- 1.4 The employer is required to keep its statement under review and make such revisions as are appropriate following a change in its policy. Following any changes in its policy the employer must publish the revised policy and send a copy to the relevant pension fund within one month of the date on which the policy is revised.
- 1.5 This policy sets out the academy's approach to the exercising of those key discretions in relation to the pension fund operated on behalf of its employees by West Yorkshire Pension Fund (WYPF).
- 1.6 It should be noted that this policy is applicable only to those individuals who are (or who have previously been) employed by the academy as support staff and who have contributed to WYPF during such employment.

2. Purpose and scope

- 2.1 The following paragraphs are designed to inform both the academy (as the employer) and all support staff contracted to WYPF (as their pension provider) as to the legal discretions which may be applied to their respective contributions.
- 2.2 The policy sets out a framework by which both parties are clear as to both the principles according to which such discretions may be applied and the circumstances in which this may or may not be found appropriate.
- 2.3 It is recognised that the use of any discretion is likely to lead to increased pension costs for the employer (both immediate and (potentially) ongoing) which could be considerable.
- 2.4 It should therefore be emphasised from the outset that all such discretions, the purpose of which is to vary the terms on which a member of WYPF may access their pension entitlement, are (by definition) entirely dependent on the employing body agreeing **at its absolute discretion** to permit a variation to allow the employee to gain such access in an irregular (although entirely legal) manner.
- 2.5 In accordance with the preceding clause it therefore follows that the employer's decision in all cases should be regarded as final without any (formal or informal) right of appeal.

3. Guiding principles

- 3.1 Throughout this policy the governing body (as the employer) has been guided in its deliberations by due reference and adherence to recommendations issued by the

Department for Communities and Local Government (DCLG), although this body has since been superseded by the Department for Levelling Up, Housing and Communities (DLUHC).

- 3.2 These recommendations state that discretionary powers must in all cases be exercised reasonably and with due regard to all relevant factors, including cost/benefit analysis in respect of the employer (and, in return for extra costs being incurred initially, must only be deployed where real and substantial future benefit accrues to the employer).
- 3.3 These recommendations further specify that discretionary powers must never be deployed to ulterior motive and that full documentation of the decisions taken, and the underlying rationale for these, must always be placed on record.
- 3.4 The governing body has also taken due regard of input and advice from:
 - the Actuary of WYPF
 - the Local Government Pensions Committee of the Employers' Organisation
 - the Audit Commission (particularly with reference to their report on early retirement from employment in local government)
 - relevant trade unions recognised by the employer.
- 3.5 The governing body undertakes, in addition to the above, to exercise such policy discretions as it deems proper in full accordance with its obligations under the academy's Equality Policy to ensure that no discrimination (whether intentional or unintentional) shall occur as a consequence of its decisions.
- 3.6 This policy will continue to be kept under regular review and may (as and when necessary) be adapted by the governing body to comply with their legal responsibilities and requirements as participating employers of WYPF in accordance with the LGPS Regulations 2013 and the LGPS Transitional Regulations 2014 and all subsequent legislation of relevance.

4. Specific discretions

4.1 Details of the five discretions available to employers are as follows.

4.2 Shared cost additional pension contributions

4.2.1 Regulation 16 (2) (e) and 16 (4) (d)

Note: the specific provisions of Regulation 16 allow an active member who is paying into the main scheme to enter into an arrangement to pay additional contributions, either by regular contributions (Regulation 16 (2) (e)) or by a lump sum payment (Regulation 16 (4) (d)). This may be funded in whole or in part by the employer.

- 4.2.2 The academy does not consider contribution towards additional pension contributions to be an essential part of its employment strategy. However, the academy will consider applications made under these specific provisions having regard to the following:
- the academy's general policy from time to time
 - the employee pay strategy
 - the circumstances of each individual case.

- 4.2.3 It is likely that decisions will be made on the merits of all applications having taken appropriate account of factors such as the academy's ability to meet the cost of granting such a request and the employee's personal circumstances.

4.3 Awarding additional pension

4.3.1 Regulation 31

*Note: Regulation 31 allows employers to grant additional pension up to the maximum allowed by the scheme rules provided that the member is active **or** is within 6 months of leaving for reasons of redundancy or business efficiency **or** whose employment was terminated by mutual consent on grounds of business efficiency.*

Employers may wish to use this Regulation as an aid to recruitment, an aid to retention or to compensate or reward an employee who is retiring.

Employers should also consider provisions of this Regulation, in particular Regulation 31 (4), if they decide to exercise their power under Section 1 (general power of competence) of the Localism Act 2011.

- 4.3.2 The academy will consider applications made under this regulation having regard to the circumstances of each individual case. Decisions will be made on the merits of the case having taken appropriate account of the following factors:

- the member's personal circumstances
- the interests of the academy
- the additional contributions due to the pensions fund from the academy arising from the exercise of this discretion
- any potential benefits or savings to the academy arising from the exercise of this discretion
- other options that are, from time to time, available under the academy's severance arrangements
- the funding position of the academy within the pensions fund
- the ability of the academy to meet the cost of granting such an award.

4.4 Flexible Retirement

4.4.1 Regulation 30 (6)

Note: this provision in the Regulations allows the employer to consent for a member who has attained the age of 55 to draw all or part of their retirement benefits (both pension and lump sum) whilst continuing in employment and Fund membership provided that:

- *there has been a reduction in hours; **or***
- *there has been a reduction in grade.*

Employers can choose to waive any reductions that apply under Regulation 30 (8).

- 4.4.2 The academy will consider applications made under this Regulation having regard to the circumstances of each individual case. Decisions will be made on the merits of the case having taken appropriate account of the following factors:

- the operating requirements of the employing department
- the academy's ability to meet the cost of granting such a request

- whether any demonstrable cost saving can be made in excess of potential savings available under any severance arrangements in place from time to time
- the member's personal circumstances.

4.5 Waiving actuarial reductions

4.5.1 Regulation 30 (8)

Note: the employer may waive the actuarial reductions applied to a member's benefits. Unless 85-year rule protections exist, employers can waive:

- *all of the actuarial reductions in respect of benefits in place prior to 1 April 2014 but only on compassionate grounds (paragraph 2 of Schedule 2 of the LGPS Transitional Regulations 2014)*
- *all or some of the actuarial reduction in respect of benefits in place subsequent to 1 April 2014 on any grounds.*

Where 85-year rule protections do exist, and the member has full or tapered protection, the employer can waive all the reductions but only on compassionate grounds for the service up to the date the 85-year rule protection ended (31 March 2016 for full protection or 31 March 2020 for tapered protection).

4.5.2 The academy will consider applications made under this Regulation having regard to the circumstances of each individual case. Decisions will be made on the merits of the case having taken appropriate account of the following factors:

- the academy's ability to meet the cost of granting such a request
- whether any demonstrable cost saving can be made in excess of potential savings available under any severance arrangements in place from time to time
- the member's personal circumstances.

4.5.3 Applications for the payment of unreduced benefits for service before 1 April 2014 on the grounds of compassion will be granted if:

- in the academy's sole opinion, the special extenuating circumstances surrounding the application, along with the supporting evidence provided justify approval; **and**
- the academy can meet the cost of granting such a request.

4.6 Switching on the 85-year rule

4.6.1 Regulation 1 (1) (c) of the LGPS Transitional Regulations 2014

Note: the employer can decide to 'switch on' the 85-year rule to allow members to receive benefits either unreduced or with a smaller reduction to their 85-year rule date. The employer will be responsible for meeting any strain costs relating to benefits being paid before age 60. If the employer does not 'switch on' the 85-year rule the member's benefits will be reduced to age 60 (or the date they meet the 85-year rule if this is later than 60).

4.6.2 The academy will consider applications made under this Regulation having regard to the circumstances of each individual case. Decisions will be made on the merits of the case having taken appropriate account of the following factors:

- the academy's ability to meet the cost of granting such a request

- whether any demonstrable cost saving can be made in excess of potential savings available under any severance arrangements in place from time to time
- the member's personal circumstances.

5. Further discretions under the LGPS Regulations 1997 and the LGPS Benefits Regulations 2007

5.1 There are also **two other discretions** for employers which relate specifically to members who left employment **before** 1 April 2014.

5.2 Whilst the LGPS Regulations 2013 repeal the LGPS Regulations 1997 and the LGPS Benefits Regulations 2007 (in so far as they had not already been repealed), Regulation 3 (1) of the LGPS Regulations 2013 allows for the LGPS Regulations 1997 and the LGPS Benefits Regulations 2007 to still have effect in so far as they relate to certain member benefits before 1 April 2014. As such, the other discretions **still available for certain members only** are as follows.

5.3 Early Payment of Deferred Pensions for members who left before 1 April 2014

5.3.1 Regulation 30 (2) and 30 (5) of the LGPS Benefits Regulations 2007 and Regulation 31 (2) and Regulation 31 (5) of the LGPS Regulations 1997

Note: these regulations allow employers to enable members who left the scheme before 1 April 2014, and who are over the age of 55, to take their benefits early. Under Regulation 30 (5) employers can waive any reduction to benefits paid under that Regulation on compassionate grounds.

5.3.2 The academy will consider applications made under this Regulation having regard to the circumstances of each individual case. Decisions will be made on the merits of the case having taken appropriate account of the following factors:

- the academy's ability to meet the cost of granting such a request
- the member's personal circumstances.

5.3.3 Applications for the payment of unreduced benefits on the grounds of compassion will be granted if:

- in the academy's sole opinion, the special extenuating circumstances surrounding the application, along with the supporting evidence provided, justify approval; **and**
- the academy can meet the cost of granting such a request.

Note: deferred members who left the Scheme before 1 April 2008 can still make application for the early payment of their deferred benefits after age 50 under LGPS rules. However, under HMRC rules such payments would be classed as 'unauthorised' and would be subject to a punitive tax charge.

5.4 Early Payment of Deferred Pensions for members who left before 1 April 2014 and who have ceased to be entitled to a Tier 3 ill-health benefit

5.4.1 Regulation 30 A (3) and 30 A (5) of the LGPS Benefits Regulations 2007

Note: this regulation allows employers to enable members who have ceased to be entitled to a Tier 3 ill-health benefit, and who are over the age of 55, to take their benefits early. Under sub-paragraph 5 of Regulation 30 A employers can

waive any reduction to benefits paid under that Regulation on compassionate grounds.

5.4.2 The academy will consider applications made under this Regulation having regard to the circumstances of each individual case. Decisions will be made on the merits of the case having taken appropriate account of the following factors:

- the academy's ability to meet the cost of granting such a request
- the member's personal circumstances.

5.4.3 Applications for the payment of unreduced benefits on the grounds of compassion will be granted if:

- in the academy's sole opinion, the special extenuating circumstances surrounding the application along with the supporting evidence provided justify approval; **and**
- the academy can meet the cost of granting such a request.

6. Other policies and procedures

6.1 This policy will be supported by the following policies and procedures:

- Equality Policy