

PULBOROUGH PARISH COUNCIL

LOCAL GOVERNMENT PENSION SCHEME EMPLOYER DISCRETIONS POLICY

Background

The Local Government Pension Scheme (LGPS) in England and Wales was amended from 1st April 2014 so that benefits accruing for service after 31 March 2014 accrue on a Career Average Re-valued Earnings (CARE) basis, rather than on a final salary basis. The provisions of the CARE scheme, together with the protections for members' accrued pre 1 April 2014 final salary pension, are contained in the Local Government Pension Scheme Regulations 2013 and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014.

The rules of the Scheme set out in these Regulations can only be changed with new or amending Regulations, however there are some provisions within the LGPS which are discretionary. Discretionary powers allow the Council to choose how, or if, they apply certain provisions.

As a result of the changes, scheme employers participating in the LGPS in England or Wales **are required** to formulate, publish and keep under review a Statement Policy on certain discretions which they have the power to exercise in relation to their members.

There is a requirement on all Scheme employers to provide a copy of their updated discretions policy to West Sussex County Council, as the Administering Authority. These policies within the overall policy include those that will prevail when granting applications for early retirements, granting extra membership, granting extra pension and whether to agree flexible retirements, for example.

The Local Government Association (LGA) website has now published guidance for employers to consider when publishing their own policy. The documents 'Discretions Policies' and 'Discretions List' can be found at this link: <http://www.lgpsregs.org/index.php/guides/administration-guides-to-the-2014-scheme>

Once adopted, the policy must then be published one month before it can be used and a copy must be provided to WSCC/Capita by 31st August 2016.

Aim

This document aims to summarise the discretions Pulborough Parish Council (PPC) exercises as an employer in relation to the Local Government Pension Scheme and has been updated to reflect the new regulations from 1st April 2014 and as amended.

Scope

This policy applies to all employees of PPC who are in, or are eligible to join, or have been a member of the Local Government Pension Scheme.

During your employment with PPC

Does PPC have a shared cost Additional Voluntary Contribution (AVC) arrangement?

(Establishment of a Shared Cost AVC (SCAVC) facility - *Regulation 17(1) of the LGPS regulations 2013*).

No, a shared cost AVC scheme is where PPC contributes AVCs as well as yourself. PPC does not intend to exercise this discretion.

Does PPC have a shared cost Additional Pension Contribution (APC) arrangement?

(Establishment of a Shared Cost APC (SCAPC) facility – *Regulation 16(2)(e) & (4)(d) of the LGPS regulations 2013*)

No, a shared cost APC scheme is where PPC contributes APCs as well as yourself, when you have chosen to pay additional monies to increase your pension benefits. PPC does not intend to exercise this discretion.

The LGPS operates an APC scheme where you can purchase extra pension for your retirement (but PPC will not share the cost of this). If you are in the main section of the scheme, you can pay more in contributions to purchase up to £6,675 per annum of extra pension. Any extra pension you purchase is payable each year in retirement and is payable on top of your normal LGPS benefits.

Any extra regular contributions are taken from your pay, which you will receive tax relief on. You can also pay APCs by a one off lump sum.

Leaving your employment with PPC

Can I receive a refund of my contributions?

(Contribution Equivalent Premium (CEP) in excess of the Certified Amount (CA) recovered from a refund of contributions can be recovered from the Pension Fund – Regulation 92 of the LGPS Regulations 1997 and Regulation A49(1) & (2) of the Administration Regulations 2007).

If you are entitled under the scheme to receive a refund of contributions, this will be subject to deduction of fund tax and a Contribution Equivalent Premium (CEP) which is the payment to reinstate you into the state scheme as if you had never paid into the LGPS.

This is due to you paying a lower rate of tax and National Insurance contributions whilst paying into the LGPS.

Can I convert scheme AVC's into membership credit?

(Regulation 15(1) (b) of the LGPS (Transitional Provisions and Savings) Regulations 2014 and Regulation 66(9) (b) of the 1997 Regulations).

In certain circumstances you can use your AVC fund to buy membership in the pension scheme. An application should be made within 30 days of leaving. However PPC will consider an extension on a case by case basis if it is clear there was no fault on your part for not being able to meet the normal time period.

Flexible Retirement

Can I request to take partial/flexible retirement?

(Whether all or some benefits can be paid if an employee reduces their hours or grade Regulation 30(6) of the LGPS Regulations 2013 and Regulation 11(2) of the (Transitional Provisions and Savings) Regulations 2014 and Flexible retirement and waiving of any actuarial reduction -Regulation 30(8) of the LGPS Regulations 2013).

You can request to take partial/flexible retirement. PPC will consider your request on a case by case basis. PPC has a flexible retirement policy to help you phase into your retirement. Partial/flexible retirement lets you continue working on a reduced hours, or reduced grade basis and, depending on when your membership of the LGPS commenced, draw all, part or none of your accrued pension benefits subject to certain qualifying criteria.

To be eligible to make a request for Flexible Retirement under the LGPS regulations, you must:

- Be actively making contributions to the LGPS.
- Be aged 55 or over.
- Have two years or more membership in the local government pension scheme.
- Be taking at least a 20% reduction in your hours and/or your salary.

Can I retire early without my employers consent?

(Whether to 'switch on' the 85 Year Rule for a member voluntarily drawing benefits on or after age 55 and before age 60- Schedule 2, para 2(2) of the (Transitional Provisions and Savings) Regulations 2014) and Whether to waive, on compassionate grounds, the actuarial reduction applied to benefits pre 1st April 2014 membership where the employer has 'switched-on' the 85 Year Rule – Schedule 2, para 2(3).

The scheme now allows you to retire from age 55 without the need for our consent. However if you retire between 55 and 60 and had protection under what is called the "85 year rule" (i.e. if you add your age and length of service in whole years and this equates to 85) this will not automatically apply in full and your benefits might therefore be subject to actuarial reduction as you will be receiving them earlier than you would have done. The regulations allow us as your employer to 'switch on' the 85 year rule. Your benefits may still be subject to an actuarial reduction, however it may be less than if the 85 year rule was not 'switched on'.

If you chose to retire between age 55 and 60, it will only consider doing so if there are exceptional or compassionate grounds for doing so.

If PPC chooses to switch on the 85 year rule in your case it then has the discretion on compassionate grounds (as defined in the new regulations) to waive the pre 1st April 2014 reduction.

Redundancy and Business Efficiency

If I am made redundant what payments will I be entitled to?

Regulation 5, 6 – Discretion under the local Government (Early Termination of Employment) (Discretionary Payments) (England & Wales) Regulations 2006

If you are made redundant aged 55 and over, and have at least two years' service you will be entitled to receive immediate payment of your LGPS retirement benefits. These benefits will be made without reduction. If you are aged below 55 when you are made redundant, you cannot receive the immediate payment of your LGPS benefits. They will instead be deferred and will be increased annually in line with the cost of living increase and will become payable from your scheme's normal retirement age (State Retirement Age with a minimum age of 65).

Can I receive additional pension?

(Whether to grant additional pension to an active member or within 6 months of ceasing to be an active member by reason of redundancy or business efficiency - Regulation 31 of the LGPS Regulations 2013).

Awarding additional pension may be used in exceptional circumstances and only where there are likely to be significant benefits to PPC.

PPC can choose to award you an additional pension up to the value of £6,675.

Adjustments to your pension following ill health

If your employment is being terminated for reasons of ill health and you are in the pension scheme, we must decide whether or not you are entitled to an ill health retirement pension. To help us decide this we need to obtain a certificate from an independent registered medical practitioner who will assess whether "as a result of "ill health or infirmity of mind or body", you are permanently incapable of "discharging efficiently the duties of the employment you were engaged in" and, if so, whether you are not "as a result of ill health or infirmity of mind or body", immediately capable of undertaking any "gainful employment" (see definition below).

The LGPS has 3 tiers of ill-health provision.

- **Tier 1:** If you are unlikely to be capable of undertaking gainful employment before your Normal Pension Age. (State Retirement Age with a minimum age of 65)
- **Tier 2:** A) If you are not entitled to Tier 1 benefits. B) Are unlikely to be capable of undertaking any gainful employment within three years of leaving your employment; but c) are likely to be able to undertake gainful employment before reaching Normal Pension Age.
- **Tier 3:** If you are likely to be capable of undertaking gainful employment within three years of leaving their employment, or before Normal Pension Age.

The following discretions relate to the LGPS ill-health provisions.

What happens if I am able to work again or the medical advisor deems me fit to work?

(Determine whether a person in receipt of a Tier 3 ill health pension has started gainful employment – Regulation 37(3) & (4) of the LGPS Regulations 2013 and Recovery of payments following commencement of gainful employment - Regulation 37(3) of the LGPS Regulations 2013).

If you have received an award under tier 3 PPC has to review your award after 18 months. We cannot continue to pay you a tier 3 award for more than 3 years, (provided you are not in “gainful employment”, or considered capable of undertaking such employment).

You must inform PPC immediately if you obtain ‘gainful employment’ at any time between your tier 3 ill health pension award commencing and the expiry of the three years.

For the purposes of a tier 3 award, “gainful employment” is considered to be paid employment for at least 30 hours each week for a contract period of at least 12 months.

As part of a review of a tier 3 ill health award, PPC may cease payment of the award from the date you gain obtained gainful employment, or were considered by an independent medical adviser as capable of undertaking gainful employment.

Additionally if you are still receiving your tier 3 ill health pension after you have obtained gainful employment, or where a medical advisor has determined you as capable of undertaking gainful employment, PPC will seek to recover any overpayment made to you.

What if my condition has not improved or has deteriorated?

(Determine whether a person in receipt of Tier 3 ill health pension following review is unlikely to be capable of undertaking gainful employment before normal pension age because of ill health – Regulation 38(3) of the LGPS Regulations 2013).

If you are have a tier 3 ill health pension and your condition has not improved, or has deteriorated, PPC will decide whether you have an entitlement to a tier 2 ill health pension. A decision to convert your tier three award to a tier two award can be taken at any time and must be no later than 3 years of the date that payment of your benefits under tier 3 has stopped, or before you reach your normal retirement age.

Can I receive my pension benefit early?

(Determine whether a tier 3 member is permanently incapable of undertaking any gainful employment - B31(7) of the Benefits Regulations 2007 and Choice of payment of pension: pensioner member with deferred benefits-B30A(3) of the Benefits Regulations 2007 and Whether to waive, on compassionate grounds, the actuarial reduction applied to benefits paid under B30A – Regulation B30A (5) of the Benefit Regulations 2007).

This only applies if you stopped paying into the pension scheme on or after 1st April 2008 but before 1st April 2014.

If your tier 3 ill health pension has been stopped you can ask to receive payment of your benefits on or after age 55. PPC will not normally agree to the early payment of your pension, unless there is a significant financial or business reasons to do so, or on compassionate grounds.

PPC may choose to waive, on compassionate grounds, the actuarial reduction applied to benefits payable where your tier 3 ill health pension was stopped, and you have applied for early access and your request has been approved.

Early Payment of Deferred Benefits

Can I receive my deferred pension early?

(Whether to grant pre 1st April 1998 leavers early payment of their deferred benefits on or after age 50 on compassionate grounds – Regulation D11(2)(C) of the LGPS Regulations 1995) and Regulation 31(2) of the LGPS Regulations 1997 and (Whether to grant application for early payment of deferred benefits on or after age 55 and before age 60 – Regulation 30(2) & (5) of the Benefit Regulations 2007 and 30(8) of the LGPS Regulations 2013).

Pre 31st March 2014 leavers

PPC will not automatically agree to bring your deferred benefits into pay early, except in exceptional or compelling compassionate grounds, following consideration of a fully costed business case.

If PPC agrees to early payment of your deferred benefits under the LGPS Regulations 1995 and 1997, you should note that this will only be from age 55 or date of application (if later than 55), as you and PPC would otherwise have to pay unauthorised payment charges under the Finance Act 2006 for any payment made before the minimum pension age of 55.

Post 31st March 2014 leavers

Your deferred benefits are normally payable from your normal retirement age which is linked to your state retirement age, with a minimum age of 65.

You can choose to take early payment of your deferred benefits from age 55 without your former employer's consent. However you must be aware that your benefits will normally be reduced to take into account early payment.

PPC may choose to waive, on compassionate grounds, the actuarial reduction applied to benefits payable.

Each case will be considered fairly based on the circumstances and merits of the case.

Can I receive my deferred pension early due to my poor health?

(Decide whether a deferred beneficiary meets permanent ill health and reduced likelihood of gainful employment criteria – Regulation 31(4) of the Benefits Regulations 2007 and 38(3) of the LGPS Regulations 2013).

PPC will decide whether or not you can receive your deferred pension early. To help make this decision PPC has to obtain a certificate from an independent registered medical practitioner to determine:

Pre 31st March 2014 leavers

Whether you are suffering from a condition that renders you “permanently incapable of discharging efficiently the duties of the relevant employment because of ill-health or infirmity of mind or body”.

and, if so,

Whether as a result of that condition you have “a reduced likelihood of being capable of undertaking any gainful employment” before reaching normal retirement age, or for at least three years, whichever is the sooner.

Post 31st March 2014 leavers

Whether you are suffering from a condition that renders you “permanently incapable of discharging efficiently the duties of their former employment because of ill-health or infirmity of mind or body”.

and, if so,

Whether as a result of that condition you are “unlikely to be capable of undertaking any gainful employment “before reaching normal pension age, or for at least three years, whichever is the sooner.

Notes

Where the engagement of an independent medical practitioner is required, PPC agrees to abide by the requirement and, should engagement be necessary, to engage one from a neighbouring authority and that a statement shall be obtained confirming that the medical practitioner has not previously advised or given an opinion or otherwise been involved in relation to the case and/or is not acting and has not at any time acted as the representative of the employee, employer or any other party in relation to the case.

Non-Mandatory Policies

These policies will not be published in this policy, however, PPC will give consideration to these at the appropriate times, having regard to a fully costed business case, the specific circumstances in each case and any previous decisions.

All pension discretions will be reviewed at least on a 4 yearly basis, or as and when circumstances change.

Recommended by F&P Committee: 26th October 2017

Ratified by Full Council: 23rd November 2017