



Employer 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 administering authority within one month of the date on which the policy is revised.

1.5 This policy sets out the Trust'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 Trust 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 Enhance Academy Trust (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 Trust (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 his or her 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 Trust's decision in all cases should be regarded as final without any (formal or informal) right of appeal.

3. Review

3.1 This policy will continue to be kept under regular review and may (as and when necessary) be adapted by the Trust to comply with 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.

Appendix – Scheme Employer Discretions

Specific discretions under the LGPS Regulations 2013 and the LGPS Transitional Regulations 2014

Details of the **five discretions** available are as follows:

Shared Cost Additional Pension Contribution (SCAPC)- Regulation 16 (2)(e) and 16 (4)(d)

Note: Where an active member pays Additional Pension Contributions by regular or lump sum contribution to purchase extra annual pension, an employer can choose to voluntarily contribute towards the cost of purchasing that extra pension through a SCAPC

The Trust does not consider contributions towards additional pension contributions to be an essential part of its employment strategy. However, **the Trust** will consider applications made under these specific provisions having regard to **the Trust's** general policy from time to time, on the employee pay strategy and the particular circumstances surrounding each case.

It is likely that decisions will be made on the merits of each case having particular regard to factors such as:

- **the Trust's** ability to meet the cost of granting such a request; and/or
- the member's personal circumstances.

Awarding Additional Pension - Regulation 31

*Note: An employer can choose 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.***

The Trust will consider applications made under this *Regulation* having regard to the particular circumstances surrounding each case. Decisions will be made on the merits of each case having particular regard to the following:

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

Flexible Retirement - Regulation 30(6)

Note: An employer can decide whether to permit 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*
- *a reduction in grade.*

An employer may agree to waive in whole or in part any actuarial reductions that would be required (see below: Regulation 30(8)) .

The Trust will consider applications made under this Regulation having regard to the particular circumstances surrounding each case. Decisions will be made on the merits of each case having particular regard to:

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

Waiving actuarial reductions - Regulation 30(8)

Note: An employer may agree to waive in whole or in part the actuarial reductions that would be required:

- *all of the reductions in respect of pre 1 April 2014 benefits 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 post 1 April 2014 on any grounds.*

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

The Trust will consider applications made under this Regulation having regard to the particular circumstances surrounding each case. Decisions will be made on the merits of each case having particular regard to:

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

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

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

Switching on the 85 rule – Schedule 2 - 1(1)(c) of the LGPS Transitional Regulations 2014

Note: An employer can decide whether to “switch on” the 85 year rule to allow members who have protections under old regulations, and who choose to voluntarily draw their benefits on or after age 55 and before age 60 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 later.

The Trust will consider applications made under this Regulation having regard to the particular circumstances surrounding each case. Decisions will be made on the merits of each case having particular regard to:

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

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

There are also two other mandatory discretions for employers but these relate specifically to members who left before 1 April 2014.

Whilst the LGPS Regulations 2013 repeals 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 (Transitional Provisions, Savings and Amendment) Regulations 2014 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:

Early Payment of Deferred Pensions for members who left before 1st April 2014 – Regulation 2 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, Regulation 30(2) and 30(5) of the LGPS Benefits Regulations 2007 & Regulation 31(2) and Regulation 31(5) of the LGPS Regulations 1997

Note: From 14 May 2018, all deferred members may voluntarily elect for early payment of their deferred benefits prior to their Normal Retirement Date. An employer can decide on compassionate grounds whether to waive any actuarial reduction to benefits-paid before age 65. An employer can decide whether to 'switch on' the 85 year rule where a member has taken voluntarily early payment of deferred benefits from age 55.

The Trust will consider applications made under this Regulation having regard to the particular circumstances surrounding each case. Decisions will be made on the merits of each case having particular regard to:

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

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

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

N.B. 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.

Early Payment of Deferred Pensions for members who left before 1st April 2014 and have ceased to be entitled to a tier 3 ill health benefit - Regulation 2 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, Regulation 30A(3) and 30A(5) of the LGPS Benefits Regulations 2007.

An employer can decide whether to grant early payment to members who have ceased to be entitled to a tier 3 ill health benefit and who are over the age of 55. An employer may on compassionate grounds agree to waive any actuarial reduction to An employer can decide whether to 'switch on' the 85 year rule where voluntary early payment of suspended tier 3 ill health pension is taken.

The Trust will consider applications made under this Regulation having regard to the particular circumstances surrounding each case. Decisions will be made on the merits of each case having particular regard to:

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

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

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