



Nottingham City Council Appointments and Conditions of Service Committee

Date: Tuesday, 6 July 2021

Time: 2.00 pm

Place: LB 41 - Loxley House, Station Street, Nottingham, NG2 3NG

Due to current building limitations, any non-Nottingham City Council attendees are asked to arrive 15 minutes before the meeting start time to allow time to be taken to the meeting room.

Please see information at the bottom of this agenda front sheet about requirements for ensuring Covid-safety.

Councillors are requested to attend the above meeting to transact the following business

Director for Legal and Governance

Governance Officer: Kate Morris

Direct Dial: 0115 8764353

- 1 Apologies for Absence**
- 2 Declarations of Interests**
- 3 Minutes** 3 - 4
To confirm the minutes of the meeting held on 21 May 2021
- 4 Revisions to the Local Government Pension Scheme - Employer Discretions Statement of Policy** 5 - 18
Report of the Director, Human Resources and Equality, Diversity and Inclusion.

If you need any advice on declaring an interest in any item on the agenda, please contact the Governance Officer shown above, if possible before the day of the meeting

Citizens attending meetings are asked to arrive at least 15 minutes before the start of the meeting to be issued with visitor badges

Citizens are advised that this meeting may be recorded by members of the public. Any recording or reporting on this meeting should take place in accordance with the Council's policy on recording and reporting on public meetings, which is available at www.nottinghamcity.gov.uk. Individuals intending to record the meeting are asked to notify the Governance Officer shown above in advance.

In order to hold this meeting in as Covid-safe a way as possible, all attendees are asked to follow current Government guidance and:

- remain seated and maintain distancing between seats through the meeting. Please also remember to maintain distancing while entering and leaving the room.
- wear face coverings throughout the meeting.
- make use of the hand sanitiser available and, when moving about the building follow signs about traffic flows, lift capacities etc
- comply with Test and Trace requirements by scanning the QR code at the entrance to the building and/or giving name and contact details to the Governance Officer at the meeting

Nottingham City Council

Appointments and Conditions of Service Committee

Minutes of the meeting held at the Council House, Old Market Square, NG1 2DT, on 21 May 2021 from 9.00 am - 3.10 pm

Membership

Present

Councillor Hassan Ahmed (Vice Chair)
Councillor Eunice Campbell-Clark
Councillor Kevin Clarke
Councillor Sally Longford
Councillor David Mellen
Councillor Sam Webster
Councillor Toby Neal

Absent

Councillor Dave Liversidge
Councillor Rebecca Langton

(substitute for Councillor Liversidge)

Colleagues, partners and others in attendance:

Mel Barrett - Chief Executive
Richard Henderson - Director for HR, Equality, Diversity and Inclusion
Mark Leavesley - Governance Officer

19 Chair

In the absence of Councillor Liversidge, the meeting was Chaired by Councillor Ahmed (Vice-Chair).

20 Apologies for absence

Councillor Langton – no reason given
Councillor Liversidge - personal

21 Declarations of interests

None.

22 Minutes

The Committee agreed the minutes of the meeting held on 04 May 2021 as a correct record and they were signed by the Chair presiding at the meeting.

23 Exclusion of the public

Resolved to exclude the public from the meeting during consideration of the remaining item in accordance with Section 100A(4) of the Local Government Act 1972 on the basis that, having regard to all the circumstances, the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

24 Corporate Director for Growth and City Development

Resolved that, following an interview process, the successful candidate be appointed to the post of Corporate Director for Growth and City Development.

This page is intentionally left blank

**Appointments and Conditions of Service Committee
6 July 2021**

Title of paper:	Revisions to the Local Government Pension Scheme (“LGPS”) - Employer Discretions Statement of Policy	
Director(s)/ Corporate Director(s):	Richard Henderson Director, HR and EDI	Wards affected: All
Report author(s) and contact details:	Jo Hill, Employee Relations Specialist Tel: 0115 87 62712, Email: jo.hill@nottinghamcity.gov.uk Arnie Gardner, Pensions Team Leader Tel: 0115 87 64058, Email: arnie.gardner@nottinghamcity.gov.uk	
Other colleagues who have provided input:	Daljit Singh Nijran, Organisational HR Manager Joanne Worster, Finance Team Leader Strategic Finance Aman Patel, Solicitor	
Date of consultation with Portfolio Holder(s) (if relevant)	Councillor Sam Webster, Portfolio Holder for Finance and Resources consulted on 25.06.2021	
Relevant Council Plan Key Theme:		
Nottingham People		<input type="checkbox"/>
Living in Nottingham		<input type="checkbox"/>
Growing Nottingham		<input type="checkbox"/>
Respect for Nottingham		<input type="checkbox"/>
Serving Nottingham Better		<input checked="" type="checkbox"/>
Summary of issues (including benefits to citizens/service users):		
Under Regulation 60 of the Local Government Pension Scheme (LGPS) Regulations 2013, (as amended), each scheme employer must publish and keep under review a statement of policy outlining discretions allowed under the pension regulations and how it will apply these discretions to members of the pension scheme.		
This report sets out proposed amendments to the statement of policy to enable the City Council to administer its employer discretions under the Local Government Pension Scheme (LGPS).		
Recommendation(s):		
1	To consider and agree the amendments to the LGPS employer discretions statement of policy, as set out in Appendix A.	

1 Background (including outcomes of consultation)

- 1.1 The Local Government Pension Scheme (LGPS) is a statutory scheme in that its rules are laid down under an Act of Parliament. However, scheme regulations allow an employer certain discretions to enhance members’ benefits.
- 1.2 Under Regulation 60 of the LGPS, employers participating in the scheme, have to formulate, publish and keep under review a ‘statement of policy’ on certain employer discretions which they have the power to exercise in relation to members of the pension scheme.
- 1.3 On 1st April 2014, new LGPS arrangements came into effect introducing a significant change to pension benefits for existing members in service on a Career Average

Revalued Earnings (CARE) basis. Members with service before 1st April 2014 also retained the link to final salary benefits for service before 1st April 2014.

2 Reasons for recommendations

- 2.1 The LGPS Regulations require that an employer has a written policy statement, confirming how they will exercise discretions. A number of discretions are subject to publication, and there are others where there is no requirement for a written policy but where they may be an element of choice. It is a requirement of the regulations that any change to the discretions need to be published one month before implementation.
- 2.2 The introduction of a new HR and payroll system 'Oracle Fusion' in August 2021 has provided an opportunity to review the frequency with which an individual's pension contribution band is determined. Contribution band is determined by pay, and currently reviewed periodically, this can lead to periods of under or over payment of pension contributions where salary has changed. A change to monthly banding is being recommended to improve the process, allowing for timely and accurately calculated contributions. Allocation of pension banding forms a key part of the pension discretions.
- 2.3 Alongside the proposed change to pension contribution banding, the Council's current policy statement is in need of a general update to reflect practice and address gaps where new discretions have become available.
- 2.4 While a number of discretions are active, they have not been applied since 2014. It is, therefore, recommended that revisions be made to the employer discretions to support Council practice and clear any ambiguity on the application of these discretions.
- 2.5 In formulating the policy statement, employers should consider costs to ensure any policy is affordable. The policy has therefore been reviewed with the Recovery and Improvement Plan and ongoing budgetary constraints in mind. The need to minimise the Council's exposure to potential costs arising from the exercise of employer discretions is advised. The proposals will help to provide controls and certainty and ensure that any cost to the Council is reduced as much as possible.
- 2.6 This report proposes the following revisions to the policy statement, a full description is provided in appendix A:

1) Power of employing authority to award additional pension at whole cost to the employer.

An employer may resolve to award a member additional pension of no more than £7,316 per annum, (figure as at 1 April 2021) within 6 months of leaving where employment is terminated on grounds of redundancy or business efficiency.

This discretion, while active since 2014, has not been applied. If this discretion is exercised, costs will be incurred that have not been budgeted for. It is, therefore, proposed that Nottingham City Council will not exercise this discretion.

2) Shared Cost Additional Pension Scheme (SCAPC)

An active member can voluntarily choose to make Additional Pension Contributions. There is an option for the employer to share this cost under SCAPC. Such costs may be funded in whole or in part by the member's scheme employer.

This discretion, while active since 2014, has not been applied. If this discretion is exercised, costs will be incurred that have not been budgeted for. It is, therefore, proposed that Nottingham City Council will not exercise this discretion.

3) Flexible Retirement

An active member who has attained the age of 55 or over who reduces working hours or grade of an employment may, with employer's consent, elect to receive immediate payment of all or part of the retirement pension.

This discretion is active and has been applied, requests for flexible retirement are generally only supported where there is no pension strain cost to the employer. Flexible retirement with cost may be supported in very limited circumstances, for example, where the cost of supporting is less than in a redundancy scenario. It is, therefore, proposed that there is no change and this discretion will continue to be exercised in line with the Flexible Retirement policy.

4) Switching on the rule of 85

Where a scheme member retires and elects to draw their benefits at age 55 or over those benefits will be actuarially reduced unless the City Council agrees to meet the full or part cost of those reductions. To avoid the member suffering the full reduction to their benefits the City Council can "switch on" the 85 year rule protections thereby allowing the member to receive fully or partially unreduced benefits but subject to the City Council paying the pension strain (capital) cost to the Pensions Fund.

If this discretion is exercised, costs will be incurred that have not been budgeted for. It is, therefore, proposed that Nottingham City Council will not exercise this discretion.

5) Transitional Provisions, Savings and Amendment: Waiving of actuarial reduction on compassionate grounds.

An employer has the discretion, under a number of retirement scenarios, to waive actuarial reductions on compassionate grounds. "Compassionate grounds" are not defined in the regulations, the cost of which would fall upon the employer.

If this discretion is exercised, costs will be incurred that have not been budgeted for. It is, therefore, proposed that Nottingham City Council will not exercise this discretion.

6) Waiving actuarial reduction (members with CARE only benefits).

A Scheme Employer has the discretion, under a number of retirement scenarios, to waive actuarial reductions for a member who has only post 31/3/2014 membership, the cost of which falls to the employer.

If this discretion is exercised, costs will be incurred that have not been budgeted for. It is, therefore, proposed that Nottingham City Council will not exercise this discretion.

7) Shared Cost Additional Voluntary Contribution Facility

This discretion allows the Employer to maintain and contribute to an employee's Additional Voluntary Contribution Scheme. A current policy does not exist for this discretion.

It is proposed that Nottingham City Council will only operate this discretion as part of an additional voluntary contribution salary sacrifice scheme and, will not contribute to costs.

8) Election to transfer within 12 months

This discretion allows the Employer to extend the 12 month limit, from the start of employment, a member has in which to elect to transfer other pension rights into the LGPS.

The City Council's current policy is to accept transfers applied for outside the period of 12 months, provided that, at the time the transfer is being considered, there is no cost to the Council.

A 12 month time limit is seen as adequate time for a member to consider if they wish to transfer pension rights. Should the Council continue with the discretion to extend, it leaves itself open to potentially higher liabilities, and while there is no cost upfront, additional pension membership may increase costs such as pension strain resulting from a redundancy scenario. It is proposed that Nottingham City Council will not extend the 12 month time limit and will not exercise this discretion in its entirety.

9) Election to aggregate any deferred pension within a 12 month time limit

This discretion allows the Employer to extend the 12 month time limit a member has within which they must elect not to have deferred benefits from another LGPS employer aggregated with their new LGPS employment with Nottingham City Council.

A 12 month time limit is seen as adequate. It is proposed that Nottingham City Council will not extend the 12 month time limit and will not exercise this discretion in its entirety.

10) Allocation of pension contribution band

This discretion allows the Employer to determine which contribution band is allocated; contribution bands are determined by the annual salary the employee earns.

The Council currently decides the pension contribution rate a member is liable to pay on first joining the scheme, on 1 April each year with a review on 1 October each year, and on each contractual change. This can lead to periods of underpayment or overpayment.

It is proposed that monthly banding be introduced upon the implementation of the new Oracle Fusion payroll system. This will allow for timely and more accurately calculated contributions.

11) Assumed pensionable pay

This discretion allows the Employer to determine whether to include in the calculation of assumed pensionable pay, the amount of any regular lump sum payment.

Assumed pensionable pay is a notional figure used to ensure an individual's pension is not affected by a reduction in pay, for example in maternity and sickness absence scenarios. A lump sum payment might include a one off bonus paid to the individual. In order that it does

not distort assumed pensionable pay, the average 12 weeks of pay before absence, which include regular payments such as market supplements and pay protection would be used for the calculation and protection of assumed pensionable pay.

A current policy does not exist for this discretion.

In order to protect the pension of individuals who move to reduced or no pay, and ensure assumed pay is an accurate representation of normal salary, it is proposed that lump sum payments are excluded from the calculation of assumed pay and that Nottingham City Council will not exercise this discretion.

3 Other options considered in making recommendations

A. Leave the discretions as they are and do nothing: The current discretions are not reflective of the current practice of the Council. There is no budget allocation to operate these discretions and, if used, will create budget pressures. The current discretions have led to complaints and pensions Internal Dispute Resolution Procedure (IDRP) appeals as a result of unclear policy.

B. Allow each discretion to be considered on an individual case by case basis: This approach may permit for a difference in treatment amongst employees which will be difficult to objectively justify, especially where employees have a particular protected characteristic.

4 Finance colleague comments (including implications and value for money/VAT)

4.1 Allocation of pension contribution banding is the key area of change within this report and the proposed change doesn't impact on the employers' pension contribution costs. Proposed clarifications on other pensions discretions will help to limit potential exposure to unexpected costs going forward. Consequently there is no financial impact to the Council's costs or budget as a result of this report.

Jo Worster, Finance Team Leader, 17 June 2021

5 Legal and Procurement colleague comments (including risk management issues, and legal, Crime and Disorder Act and procurement implications)

5.1 It is confirmed that the position as laid out in this report and Appendix A reflects the statutory position as detailed in the Local Government Pension Scheme Regulations 2013 and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014.

Aman Patel, Solicitor, 16 June 2021

6 Equality Impact Assessment (EIA)

6.1 Has the equality impact of the proposals in this report been assessed?

No



The pension policy discretions that are recommended require that each case is considered on its own merits, in line with employer policy and ensuring that this can be objectively justified and full consideration given to potential discrimination.

7 List of background papers other than published works or those disclosing confidential or exempt information

7.1 None

8 Published documents referred to in compiling this report

8.1 The LGPS Regulations 2013.
The LGPS (Transitional Provisions and Savings) Regulations 2014.

LGPS Scheme Employer: Nottingham City Council**Local Government Pension Scheme, (LGPS), Regulations Policy statement on all eligible employees**

Under Regulation 60 of the LGPS Regulations 2013, (as amended), each scheme employer must publish and keep under review a Statement of Policy to explain how it will apply certain discretions allowed under the Pensions Regulations.

This statement is applicable to all employees of Nottingham City Council who are eligible to be members of the LGPS

There is a requirement to publish the following eleven policies.

Discretion	Description	Current Policy	Proposed Policy
1. LGPS Regulations 2013 - Regulation 31: Power of employer to award additional pension	An employer may resolve to award a member additional pension of not more than £7316 per annum, (figure as at 1 April 2021) within 6 months of leaving to a member whose employment was terminated on the grounds of redundancy or business efficiency.	Decisions on whether to award additional pension below second tier level will be delegated to the Chief Executive supported by a business case. Decisions to award additional pension for first and second tier officer shall be made at the discretion of the Appointments and Conditions of Service committee supported by a business case.	Nottingham City Council will not exercise this discretion.
2. LGPS Regulations 2013 - Regulation 16(2)(e) and 16(4)(d) : Funding of additional pension contributions (shared cost):	An active member in the main section of the scheme who is paying contributions may enter into arrangements to pay additional pension contributions (APCs) by regular contributions or a lump sum.	From 1 April 2014. Colleagues can voluntarily choose to make Additional Pension Contributions; there is the option for the employer to share this cost under the Shared Cost Additional Pensions Contributions (SCAPC)	Nottingham City Council will not exercise this discretion with the following exception: This does not relate to cases where a member has a period of authorised unpaid leave of

	<p>Such costs may be funded in whole or in part by the member's Scheme employer.</p> <p>The employer will need to determine a policy on whether it will make a contribution towards the purchase of extra pension.</p> <p>This does not relate to cases where a member has a period of authorised unpaid leave of absence and elects within 30 days of return to work to pay a shared cost APC to cover the amount of pension "lost" during that period of absence. In these cases the employer <u>MUST</u> contribute 2/3rds of the cost (Regulation 15(5) of the LGPS Regulations)</p>	<p>The City Council will consider awarding additional pension by way of a business case to the Appointments and Conditions of Service Committee.</p>	<p>absence and elects within 30 days of return to work to pay a shared cost APC to cover the amount of pension "lost" during that period of absence. In these cases the employer <u>MUST</u> contribute 2/3rds of the cost (Regulation 15(5) of the LGPS Regulations)</p> <p>or, for the purposes of purchasing "lost" pension as a result of purchasing additional holiday leave in line with the employer policy.</p>
<p>3. LGPS Regulations 2013 - Regulation 30 (6) & (8): Flexible Retirement</p>	<p>An active member who has attained the age of 55 or over who reduces working hours or grade of an employment may, with the Scheme employer's consent, elect to receive immediate payment of all or part of the retirement pension to which that member would be entitled in respect of that employment if that member were not an employee in local government service on the date</p>	<p>This discretion was first adopted under the 2008 Regulations and is subject to the relevant policy contained within the People Management Hand Book</p>	<p>No change This discretion will continue to be exercised in line with employer policy.</p>

	<p>of the reduction in hours or grade, adjusted by the amount shown as appropriate in actuarial guidance issued by the Secretary of State.</p> <p>And the Scheme employer may agree to waive in whole or part any actuarial reduction that may apply.</p> <p>As an employer you need to determine the conditions under which you would approve a flexible retirement taking place.</p>		
<p>4. LGPS Regulations 2013 - Regulation (paragraph 1(1)(c) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014): Switching on rule of 85</p>	<p>A member who has not attained normal pension age but who has attained the age of 55 or over, may elect to receive immediate payment of a retirement pension in relation to an employment if that member is not an employee in local government service in that employment, reduced by the amount shown as appropriate in actuarial guidance issued by the Secretary of State. In these circumstances (other than flexible retirement) the 85 year rule does not automatically apply to members who would otherwise be subject to it who choose to voluntarily draw their benefits on or after age 55 and</p>	<p>Where a scheme member retires (leaves employment) and elects to draw their benefits at or after age 55 and before age 60 those benefits will be actuarially reduced unless the City Council agrees to meet the full or part cost of those reductions as a result of the member otherwise being protected under the 85 year rule as set out in previous regulations.</p> <p>To avoid the member suffering the full reduction to their benefits the City Council can “switch on” the 85 year rule protections thereby allowing the member to receive fully or partially</p>	<p>Nottingham City Council will not exercise this discretion.</p>

	<p>before 60.</p> <p>The employer has the discretion to “switch on” the 85 year rule for such member (paragraph 1(1)(c) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014.</p> <p>If the employer does agree to switch back on the rule of 85, the cost of any strain on the fund resulting from the payment of benefits before age 60 would have to be met by the employer.</p>	<p>unreduced benefits but subject to the City Council paying the pensions strain (capital) cost to the Pensions Fund.</p> <p>Decisions on whether to agree to this for employees below second tier would be delegated to the Chief Executive supported by a business case although it is unlikely that the City Council would ordinarily agree to “switch on” the rule of 85 in such instances.</p>	
<p>5. LGPS Regulations 2007 Regulation B30A(5) & LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 Reg 3 (1) & Schedule 2 paras 2(1) & (2): Waiving of actuarial reduction</p>	<p>An employer has the discretion, under a number of retirement scenarios, to waive actuarial reductions on compassionate grounds.</p> <p>The cost of which would fall upon the employer.</p> <p>n.b. “compassionate grounds” is not defined in the regulations.</p>	<p>The City Council is unlikely to ignore actuarial reductions. Decisions on whether to waive the actuarial reduction would be delegated to the Chief Executive supported by a business case.</p>	<p>Nottingham City Council will not exercise this discretion.</p>
<p>6. LGPS Regulations 2013 - Regulation 30 (8): Waiving actuarial reduction (members with CARE only benefits).</p>	<p>A Scheme Employer has the discretion, under a number of retirement scenarios, to waive actuarial reductions for a member who has only post 31/3/2014 membership.</p> <p>The cost of which would fall upon the employer.</p>	<p>The City Council is unlikely to ignore actuarial reductions. Decisions on whether to waive the actuarial reduction would be delegated to the Chief Executive supported by a business case.</p>	<p>Nottingham City Council will not exercise this discretion.</p>

7. LGPS Regulations 2013 – Regulation 17 - Shared Cost Additional Voluntary Contribution Scheme	This discretion allows the Employer to maintain and contribute to an employee's Additional Voluntary Contribution Scheme.	No current policy.	Nottingham City Council will only operate this discretion through a salary sacrifice scheme and will not contribute to this. This will be administered only for salary sacrifice purposes.
8. LGPS Regulations 2013 - Regulation 100 (6) – election to transfer within 12 months	This discretion allows the Employer to extend the 12 month limit a member has in which to elect to transfer other pension rights into the LGPS. This has to be with the agreement of the Administering Authority.	<p>A request for a transfer of previous pension rights from another scheme or previous service within the LGPS or arrangement into the LGPS must be made within 12 months of joining/re-joining the scheme.</p> <p>The City Council's policy is to accept transfers if applied for outside the period of 12 months, provided that, at the time the transfer is being considered, there is no cost to the Council.</p>	Nottingham City Council will not exercise this discretion.
9. LGPS Regulations 2013 - Regulation 22 (7) and (8) – election to aggregate within 12 months of commencement	This discretion allows the Employer to extend the 12 month time limit a member has within which they must elect not to have deferred benefits aggregated with their new LGPS employment.	The City Council's policy is to accept requests applied for outside the period of 12 months, provided that, at the time the transfer is being considered, there is no cost to the Council.	Nottingham City Council will not exercise this discretion.
10. LGPS Regulations 2013 - Regulation 9 – allocation of contribution band	This discretion allows the Employer to determine which contribution band is allocated on joining the scheme and at each April. It also determines the	The City Council will decide any question about what contribution rate a member is liable to pay on first joining the scheme, on 1 April each year with a	The City Council will decide any question about what contribution rate a member is liable to pay on first joining the scheme and banded monthly thereafter, and

	circumstances when an employee's band may be reviewed.	review on 1 October each year to ensure the band is as expected. Upon each subsequent contractual change in pay. Upon a change of hours either reducing or increasing.	upon any contractual change in pay or hours either reducing or increasing.
11. LGPS Regulations 2013 - Regulation 21 – assumed pensionable pay	<p>This discretion allows the Employer to determine whether to include in the calculation of assumed pensionable pay the amount of any “regular lump sum payment”.</p> <p>This is in cases where an employee's pay needs to be calculated where their pay has been reduced due to certain absences in order that they are not unduly advantaged or disadvantaged.</p>	No current policy.	Nottingham City Council will not exercise this discretion. Lump sums are excluded from any assumed pensionable pay calculation.

I confirm that should any of the decisions change in the future the Pensions Section will be notified immediately.

I have read the attached statements and certify that they are correct on behalf of:

Employer's Name: Nottingham City Council

Print Name:

Position:

Signed:

Date:

Please sign and copy. Keep one for reference and return the other to Nottinghamshire County Council LGPS Pensions Office.

This page is intentionally left blank