

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

<b>Title of paper:</b>	Revisions to the Local Government Pension Scheme (“LGPS”) - Employer Discretions Statement of Policy	
<b>Director(s)/ Corporate Director(s):</b>	Richard Henderson Director, HR and EDI	<b>Wards affected:</b> All
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<b>Other colleagues who have provided input:</b>	Daljit Singh Nijran, Organisational HR Manager Joanne Worster, Finance Team Leader Strategic Finance Aman Patel, Solicitor	
<b>Date of consultation with Portfolio Holder(s) (if relevant)</b>	Councillor Sam Webster, Portfolio Holder for Finance and Resources consulted on 25.06.2021	
<b>Relevant Council Plan Key Theme:</b>		
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"/>
<b>Summary of issues (including benefits to citizens/service users):</b>		
<p>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.</p> <p>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).</p>		
<b>Recommendation(s):</b>		
<b>1</b>	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 1<sup>st</sup> 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 1<sup>st</sup> April 2014 also retained the link to final salary benefits for service before 1<sup>st</sup> 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.