

LOCAL GOVERNMENT PENSION SCHEME - DISCRETIONS

Human Resources and Organisational Development



CHANGES

1 April 2008: Policy produced

November 2014: Policy reviewed and updated following introduction LGPS 2014 scheme and subsequently made by Plymouth City Council for individual discretions.

September 2022: Policy review and use of discretions in exceptional circumstances added.

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If you would like help understanding the contents of this policy, please speak to your line manager or contact the HR Consultancy Team for assistance.

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1. PURPOSE

Within the Local Government Pension Scheme Regulations 2013, the Local Government Pension Scheme (Transitional Provisions & Savings) Regulations 2014 and previous regulations, there are discretionary elements for each local authority to decide. This policy sets out the regulations and Plymouth City Council's approach to each discretionary element for each regulation, where a policy decision is either required or recommended by the Administering Authority of the scheme, Peninsula Pensions (formerly Devon Pension Services).

Central Government and Peninsula Pensions have recommended that employers should not 'fetter their discretionary powers'. In simple terms, employers should not make the policy too rigid, or restrictive, as to prevent flexibility where a possibly unanticipated situation arises.

The overarching principle applied by Plymouth City Council in exercising any discretions is that:-

- where there is a cost to the council, or an inconsistency would be created with the Teachers' Pension Scheme, the discretion is only exercised in exceptional circumstances,
- where there is no cost to Plymouth City Council, and there are administrative benefits, the discretion will be exercised.

Section 7 details the exceptional circumstances, when Plymouth City Council may consider use of these discretions, thereby avoiding fettering.

2. SCOPE

This policy sets out the specific discretions available which are applied on the following basis:

1. **Discretions exercised in relation to the 2014 regulations** – For all Plymouth City Council employees either active in or eligible to be members of scheme on or after 1 April 2014.
2. **Discretions exercised in relation to the 2008 regulations** – For members who ceased active membership of the scheme on or after 1 April 2008 and before 1 April 2014 with deferred benefits accrued.
3. **Discretions exercised in relation to the 1997 regulations** – For members who ceased active membership of the scheme on or after 1 April 1998 and before 1 April 2008 with deferred benefits accrued and active members where the 1997 regulations continue to apply (Councillor scheme members).

3. NOTIFICATION OF FUTURE CHANGES

These are by definition 'discretionary arrangements'. Should the discretions be revised under the regulations, the Council must, before the expiry of one month from the date of revision of the policy:

- a. Send a copy of the revised policy statement to the pension scheme administering authority.
- b. Publish the revised policy statement.

4. DISCRETIONS MADE UNDER LOCAL GOVERNMENT PENSION SCHEME 2013 AND TRANSITIONAL REGULATIONS 2014

4.1 Regulation 9 – Contributions payable by active members

The employer may decide on the time at which the contribution rate for active members is amended.

Plymouth City Council's rates of contribution came into effect on 1 April 2014. Subsequently where there is a change in employment, or a material change which affects the member's pensionable pay, with the contributions payable being the applicable rate dependent on the relevant earnings banding in which the member's pensionable pay falls.

4.2 Regulations 16(2)(e) and 16(4)(d) – Funding of additional pension

Where a scheme member enters into an arrangement to pay additional pension contributions to purchase additional pension either by regular contributions or by lump sum, the employer may fund in whole or in part the contributions.

This discretion is exercised only in the circumstances where an scheme member has a period of approved unpaid leave and wishes to pay additional contributions to fund the lost pension due to reduced pensionable pay, has not made the election within 30 days of returning to work, but has done so within 30 days of the notification of the option to pay. The total cost is funded by scheme member at 1/3rd of cost and employer at 2/3rd of cost.

In any other circumstances any additional pension contributions will be funded in full by scheme members.

4.3 Regulation 17(1) – Funding of shared costs additional voluntary contributions commencing from 1 April 2014

The employer may enter into an arrangement to share the cost of the contributions to an additional voluntary contribution scheme with a scheme member.

This discretion is only exercised under the terms of the Plymouth City Council's Shared Contribution Additional Voluntary Contributions (SCAVC) Scheme.

4.4 Transitional Regulation 15(1) – Funding of shared costs additional voluntary contributions commencing prior to 1 April 2014

The employer may enter into an arrangement to share the cost of the contributions to an additional voluntary contribution scheme with a scheme member.

This discretion is not exercised, and any contributions will be funded in full by scheme members.

4.5 Regulations 22(7)(c) and 22(8)(b) – Aggregation of benefits

Where a scheme member has deferred pension benefits this will automatically be aggregated with any new employment or concurrent employment, unless the scheme member elects to retain the deferred benefit separately. The regulations provide for a period of 12 months from the relevant event* for this election to be made. The employer may extend this period.

*Relevant event is either commencement of new employment or ceasing concurrent employment.

The discretion for the employer to extend the 12-month period will only be exercised, in exceptional circumstances, as detailed in Section 7.

4.6 Regulations 30(6) and Transitional Regulations 11(2) – Flexible Retirement

A scheme member, who has reached the age of 55 or over and who reduces their working hours or grade of employment, may request that the employer agrees to payment of either all or part of their accrued benefits.

Some examples of where an employee may be eligible to apply to take flexible retirement are as follows:

- Employee accepts a new job role on less hours or lower grade as part of a restructure.
- Request by employee to reduce hours or move to lower graded post approved by employer.
- Reduction in grade following job evaluation review.

To ensure consistency with the Teachers' Pension Regulations, PCC will currently only consider release of benefits where there is a reduction in employee's gross pay of at least 20% and will only normally agree where there is no cost to employer.

4.7 Regulation 30(8) – Waiving of actuarial reduction in benefits

The employer may agree to waive in whole or in part any reduction that would be applied to a scheme members benefits due to early release, where a scheme member, is aged 55 or over, has either left employment before their normal pension age, or has taken flexible retirement (see 4.6).

The discretion to waive reductions in early released benefits, is only exercised in exceptional circumstances, as detailed in Section 7.

4.8 Transitional Regulation Schedule 2 Para. 2(2 and 3) – '85-year rule' switch-on

Where a member voluntarily leaves after age 55 and before age 60, the employer may allow the 85-year rule to apply. This would result in the scheme member not suffering an actuarial reduction in benefits where the scheme member's service plus age at date of leaving total 85 years.

Where this discretion is allowed, the employer would incur additional costs.

To ensure consistency with 4.7 - Regulations 30(8) – Waiving of actuarial reduction in benefits above, this discretion is only exercised in exceptional circumstances, as detailed in Section 7.

4.9 Regulation 31 – Award of additional pension

The employer may grant additional pension of up to £7,834 per annum (This figure is correct at April 2022 and will be subject to an increase in line with the Pensions Increase in the April of each year) to an active scheme member or within 6 months of ceasing to be an active scheme member by reason of redundancy or business efficiency.

The discretion to increase the pension for eligible scheme members is only exercised in exceptional circumstances as detailed in Section 7.

4.10 Regulation 100(6) – Inward transfer of pension rights

Where a member has previous pension rights, they have 12 months from the date they became an active member in their employment to elect to transfer the value of these rights. The employer may extend this normal time limit.

To ensure consistency with the Teachers' Pension Scheme, where this discretion does not exist in that pension scheme, Plymouth City Council will only exercise this discretion in exceptional circumstances as detailed in Section 7.

5. DISCRETIONS MADE UNDER LOCAL GOVERNMENT PENSION SCHEME 2008**5.1 Benefit Regulation 11 – Final Pay: Fees**

Where a scheme member's remuneration consists of fees (e.g. Returning Officer), their remuneration may be averaged over a period of three consecutive years ending 31st March in the ten consecutive years prior to leaving.

Plymouth City Council will continue to exercise this discretion.

5.2 Benefit Regulation 30 – Early payment of pension

Under regulation 30, a scheme member who has left a local government employment before they are entitled to payment of retirement benefits under other regulations (and before 1 April 2014), may, once they have reached the age of 55, choose to receive payment of their benefits.

The LGPS Regulations were amended with effect from the 14TH May 2018, and scheme members with deferred benefits, who have reached the age of 55, no longer need the employer's consent, to bring their deferred pension benefits into payment.

There is no cost to the employer, unless the employer waives the reduction of the pension benefits.

Any reduction to these benefits may be waived by the former employer on compassionate grounds.

The discretion to waive reductions in deferred pension benefits, is only exercised in exceptional circumstances, as detailed in Section 7.

6. DISCRETIONS MADE UNDER LOCAL GOVERNMENT PENSION SCHEME 1997

6.1 Regulation 31 – Early payment of pension

Under regulation 31, a member who has left a local government employment before they are entitled to payment of retirement benefits under other regulations (and before 1 April 2008) or are a member where the 1997 regulations apply (Councillor Members), may, once they have reached the age of 50, choose to receive payment of their benefits.

6.2 Scheme Member under Age 55

However, if the scheme member is aged from 50 to 54, the benefits are only payable with the consent of their former employer.

For those aged 50 to 54 when the benefits would be paid, this discretion won't be applied as releasing benefits would result in the Authority contravening HMRC regulations which do not allow the release of benefits before age 55 and would additionally receive a financial penalty. In these circumstances the member would also receive an enhanced tax liability on their pension benefits.

6.3 Scheme Member Aged 55 or Over

The LGPS Regulations were amended with effect from the 14TH May 2018, and scheme members with deferred benefits, who have reached the age of 55, no longer need the employer's consent, to bring their deferred pension benefits into payment.

Additionally, if a scheme member who has previously opted out of scheme and continues to be employed requests for payment of pension benefits from their Normal Retirement Date (Age 65), they may only do so, with the employer's consent.

There is no cost to the employer, unless the employer waives the reduction of the pension benefits.

Any reduction to these benefits may be waived by the former employer on compassionate grounds.

The discretion to waive reductions in deferred pension benefits, is only exercised in exceptional circumstances, as detailed in Section 7.

7. PLYMOUTH CITY COUNCIL – EXERCISE OF DISCRETIONS IN EXCEPTIONAL CIRCUMSTANCES

7.1 Plymouth City Council will only consider exercising the discretions listed at 7.2 in the most exceptional circumstances having regard to the following:

- The interests of the Council.
- Any potential benefits or savings to the Council.
- The member's personal circumstances.
- The additional contributions or payments, due to the Devon County Council Pension Fund.

- The ability of the Council to meet the cost of granting such an award.
- The funding position of the Council within the Devon County Council Pension Fund.

7.2 List of Discretions that will only be exercised in Exceptional Circumstances:

- Section 4.5: Aggregation of benefits.
- Section 4.7: Waiving of actuarial reduction in benefits.
- Section 4.8: 85 Year Rule Switch On.
- Section 4.9: Award of Additional Pension.
- Section 4.10: Inward Transfer of Pension Rights.
- Section 5.2: Regulation 30 Early Payment of Pension.
- Section 6.3: Regulation 31 Early Payment of Pension.

7.3 Governance of Exercise of Discretions in Exceptional Circumstances

If Plymouth City Council decides to exercise the use of a discretion contained in Section 7.2, in exceptional circumstances, the use of the discretion should be agreed by the Service Director responsible for Human Resources, and the Council's Section 151 Officer, after taking into account the principles in Section 7.1.

7.4 Application Process

If a Plymouth City Council employee decides to ask the Authority, to consider exercising a discretion listed in Section 7.2, the employee must put the request in writing, to the Service Director for Human Resources and Organisational Development.

The Service Director will then acknowledge the application, and prepare a recommendation (taking the advice of the Delt Pensions Team and Peninsula Pensions) for the Service Director responsible for Human Resources, and the Council's Section 151 Officer, to make the final decision.

Once a decision on the exercise of the discretion has been made, the employee will be notified of the decision, and if unsuccessful, will be given a right of appeal.