

## Local Government Pension Scheme Discretions Employer – London Borough of Barnet

### OVERVIEW

The Local Government Pension Scheme (LGPS) in England and Wales was amended from 1 April 2014. The provisions of the new LGPS, together with protections for members benefits accrued before 1 April 2014, are now contained in the Local Government Pension Scheme Regulations 2013 (the '**LGPS Regulations 2013**'), the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (the '**LGPS Transitional Regulations 2014**') and the Local Government Pension Scheme (Amendment) Regulations 2018 ('**LGPS Amendment Regulations 2018**').

Therefore, this statement now relates to the application of discretions under:

- (a) the LGPS Regulations 2013 and the LGPS Amendment Regulations 2018;
- (b) the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 ('LGPS Transitional Regulations 2014'); and
- (c) the Local Government Pension Scheme Regulations 1997 ('**LGPS Regulations 1997**') and the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 ('**LGPS Benefits Regulations 2007**'), which continue to have effect in so far as is necessary under Regulation 3 (*Membership before 1 April 2014*) of the LGPS Transitional Regulations 2014.

### INTRODUCTION

Under Regulation 60 (statements of policy about exercise of discretionary functions) of the LGPS Regulations 2013 and paragraph 2(2) of Schedule 2 of the LGPS Transitional Regulations 2014, "**the employer**" (the "*London Borough of Barnet*") is required to make and publish policy statements on how it will exercise five **specific** discretions.

Following the implementation of the LGPS Amendment Regulations 2018 two further mandatory discretions have been introduced under regulations 24(a), 30(a), 30(c), 30(e) and 30(f).

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In addition, there are two further discretions which relate to members who left before *1 April 2014*. These are under Regulation 66 of the Local Government Pension Scheme (Administration) Regulations 2008 (*relating to leavers between 1 April 2008 and 31 March 2014*) and under Regulation 106 of the LGPS Regulation 1997 (*relating to leavers between 1 April 1998 and 31 March 2008*).

### **WHO MAKES THE DECISIONS?**

Unless otherwise stated, the term “Council” within the Policy Decisions, shall mean either the Director of Resources (section 151 Officer) or the Head of Pensions.

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### Mandatory LGPS 2013 & 2014 discretions

Discretionary policies from 1 April 2014 in relation to post 31 March 2014 active members and post 31 March 2014 leavers.

<b>Shared Cost Additional Pension Contribution</b> (Regulation 16(2)(e) & Reg 16(4)(d))	<b>Policy Decision:</b>
<p>Where an active member wishes to purchase extra annual pension by making additional pension contributions (APCs)*, the employer can choose to voluntarily contribute towards the cost of purchasing that extra pension through a Shared Cost Additional Pension Contribution (SCAPC).</p> <p><i>*the maximum additional pension purchase limit is increased each April by Pensions Increase Orders. The maximum additional pension purchase limit is £7,579 from 1 April 2023.</i></p>	<p>The Council does not consider contributions towards additional pension contributions to be an essential part of its employment strategy.</p> <p>However, the Council will consider applications made under these specific provisions having regard to the employer's general policy from time to time, on the employee pay strategy and the circumstances surrounding each case.</p>
<b>Power of employer to grant additional pension (Reg 31)</b>	<b>Policy Decision:</b>
<p>The employer can choose to grant extra annual pension* (at full cost to themselves) to:</p> <ul style="list-style-type: none"><li>• an active member; or</li><li>• to a member, within 6 months of leaving, whose employment was terminated on the grounds of redundancy or business efficiency</li></ul> <p><i>*the maximum additional pension purchase limit is increased each April by Pensions Increase Orders. The maximum additional pension purchase limit is £7,579 from 1 April 2023.</i></p>	<p>The Council will consider applications made under this Regulation having regard to the circumstances surrounding each case.</p>

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### **‘Switch on’ the 85-year rule**

TP Sch 2, para 1(2) & 1(1)(c)

The 85-year rule does not automatically fully apply to members who would have had the protection under old regulations, and who choose to voluntarily draw their benefits on or after age 55 and before age 60. The employer can decide to switch the 85-year rule back on in full for such members.

Where the employer does not switch back on the 85-year rule, the member’s benefits will be actuarially reduced. However, the employer can exercise a discretion to waive any actuarial reductions.

### **Flexible Retirement (R30(6), R30(8) & TP11(2))**

The employer can decide whether to permit flexible retirement for staff aged 55 or over who reduce their working hours and/or grade and wish to access their pension benefits.

In such cases, pension benefits may be reduced in accordance with actuarial tables unless the employer waives reduction on compassionate grounds.

### **Policy Decision:**

The Council will consider applications made under this Regulation having regard to the circumstances surrounding each case.

### **Policy Decision:**

The Council will allow flexible retirement, provided the member is taking a permanent reduction in hours by at least 40%. The decision will be on a case by case basis giving due regard to the needs of the business and the financial implications to the Council.

The Council will not waive the actuarial reduction (in whole or part) applied to members’ benefits paid on the grounds of flexible retirement before normal retirement age.

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### **Waive actuarial reductions to members benefits**

TP3(1) & TP3(5), TPSch 2 (para 2(1), 3(1), 3(2) & 9) B30(5) & B30A(5)

The employer can decide whether to waive in whole or in part any actuarial reduction for a member voluntarily drawing benefits before normal pension age other than on the grounds of flexible retirement.

This applies to:

- active members voluntarily retiring on or after age 55 and before Normal Pension Age, who elect to immediately draw benefits, and
- deferred members and suspended tier 3 ill health pensioners who elect to draw benefits (other than on ill health grounds) on or after age 55 and before Normal Pension Age.

### **Policy Decision:**

The Council will consider applications made under these Regulations having regard to the circumstances surrounding each case.

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### Discretions under the LGPS Regulations 1997 and the LGPS Benefits Regulations 2007

There are also two other 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 1 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

The employer can allow members who left the Fund before 1 April 2014 and who are over the age of 55 to take their benefits early.

The employer can also waive any reduction to benefits on compassionate grounds. Additionally, employers can elect to 'switch on' the 85 year rule where a member has taken voluntarily early payment of deferred benefits from age 55.

#### **Policy Decision:**

The Council has decided not to adopt this discretion.

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**Early Payment of Deferred Pensions for members who left before 1st April 2014 and have ceased to be entitled to a tier 3 ill 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.

The employer can permit members who have ceased to be entitled to a tier 3 ill health benefit and who are over the age of 55 to take their benefits early.

The employer can also waive any reduction to benefits paid on compassionate grounds.

Alternatively, the employer can elect to 'switch on' the 85 year rule where voluntary early payment of a suspended tier 3 ill health pension is taken.

### Policy Decision:

The Council will consider applications made under these Regulations having regard to the circumstances surrounding each case.

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**Additional Discretions**

**Whether to extend the 12 month time limit for a member to elect not to aggregate Post 31 March 2014 (or combinations of Pre April 2014 & Post March 2014) deferred benefits**  
Regulations 22(7) and (8) of the LGPS Regulations 2013

The employer can agree to extend the 12 month option period for a member to elect to join deferred benefits to their current employment/membership

The election to keep separate pension benefits must be made within 12 months of becoming an active member, who must be active at the date of election.

**Whether to extend the 12 month time limit for a member to elect to transfer pension rights from another registered pension scheme into the Fund**  
Regulation 100(6) of the LGPS Regulations 2013

The employer can agree to extend normal time limit for acceptance of a transfer value beyond 12 months from joining the LGPS.

Where an active member requests to transfer previous pension rights into the LGPS, the member must make a request within 12 months of becoming an active member

**Policy Decision:**

The Pensions Manager will decide on whether to extend the time period.

**Policy Decision:**

The Pensions Manager will decide on whether to extend the time period.



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**Extension to the time limit for a member to elect to purchase additional pension by way of a shared cost additional pension contribution (SCAPC) upon return from a period of absence**  
Regulation 16(16) of the LGPS Regulations 2013

The employer can decide whether to extend the 30 day deadline for member to elect for a SCAPC upon return from a period of absence from work with permission with no pensionable pay (otherwise than because of illness or injury, relevant child-related leave or reserve forces service leave).

**To decide how an employee's contribution band will be initially determined and thereafter reviewed**  
Regulations 9 and 10 of the LGPS Regulations 2013

The employer can decide how the pension contribution band to which a member is to be allocated on joining the Scheme, and at each subsequent April, will be determined and the circumstances in which the employer will, in addition to the review each April, review the pension contribution band to which a member has been allocated following a material change which affects the member's pensionable pay in the course of a Scheme year (1 April to 31 March).

**Policy Decision:**

The Council will consider applications made under these Regulations having regard to the circumstances surrounding each case.

**Policy Decision:**

The Council has decided that the member's contribution band will be determined on the pay they receive at date of joining the Fund and each month and the actual pay they receive each month.

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**The employer can decide whether to include a regular lump sum payment when calculating assumed pensionable pay (APP)**  
Regulations 21(4)(a)(iv), 21(4)(b)(iv) and 21(5) of the LGPS Regulations 2013

The employer can decide whether, when calculating assumed pensionable pay when a member is:

- on reduced contractual pay or no pay on due to sickness or injury, or
- absent during ordinary maternity, paternity or adoption leave, or paid shared parental leave, or during paid additional maternity or adoption leave, or
- absent on reserve forces service leave, or
- retires with a Tier 1 or Tier 2 ill health pension, or
- dies in service

to include in the calculation the amount of any ‘regular lump sum payment’ received by the member in the 12 months preceding the date the absence began or the ill health retirement or death occurred.

A ‘regular lump sum payment’ is a payment for which the employer determines there is a reasonable expectation that such a payment would be paid on a regular basis.

### **Policy Decision:**

The Council will consider applications made under these Regulations having regard to the circumstances surrounding each case.

## Local Government Pension Scheme Discretions Employer – London Borough of Barnet

### **The employer can decide whether, subject to qualification, to substitute a higher level of pensionable pay when calculating assumed pensionable pay (APP)**

Regulations 21(5A) and 21(5B) of the LGPS Regulations 2013 & Regulation 7 of the LGPS (Amendment) Regulations 2018

The employer can decide when a member is:

- on reduced contractual pay or no pay due to sickness or injury, or
- absent during ordinary maternity, paternity or adoption leave, or paid shared
- parental leave, or during paid additional maternity or adoption leave, or
- absent on reserve forces service leave, or
- retires with a Tier 1 or Tier 2 ill health pension, or
- dies in service

if, in the employer's opinion, the pensionable pay received in relation to an employment (adjusted to reflect any lump sum payments) in the 3 months (or 12 weeks if not paid monthly) preceding the commencement of Assumed Pensionable Pay (APP), is materially lower than the level of pensionable pay the member would have normally received, decide whether to substitute a higher level of pensionable pay when calculating APP, having had regard to the level of pensionable pay received by the member in the previous 12 months. This discretion is backdated to 1 April 2014.

### **Policy Decision:**

The Council will consider applications made under these Regulations having regard to the circumstances surrounding each case.

**Local Government Pension Scheme Discretions  
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**Whether to return contributions if a member left due to offence of a fraudulent character or grave misconduct unless employer directs a total or partial refund is to be made**

Regulation 192) of the LGPS Regulations 2013

The employer can decide to a total, partial or no return of contributions to a member who left after committing an offence of a fraudulent character or grave misconduct.

**To determine in the member's contract what other payments or benefits, other than those specified in the Regulations are to be pensionable**

R20(1)(a) and not otherwise precluded by R20(2) of the LGPS Regulations 2013

The employer can specify in a member's contract what other payments or benefits, are to be pensionable.

**Policy Decision:**

The Council will not return contributions in the circumstances outlined in this Regulation.

**Policy Decision:**

The HR Department to decide when appointing an employee to a role with the Council, after considering the Regulations.

**Local Government Pension Scheme Discretions  
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**To determine whether a member in receipt of Tier 3 ill health pension has started gainful employment and whether to recover any overpaid Tier 3 pension following commencement of gainful employment**

R37(3) and (4) of the LGPS Regulations 2013

The employer can decide what is regarded as “gainful employment” for a Tier 3 ill health pensioner and whether to reclaim any overpaid pension should a member enter such employment.

**To decide whether deferred member meets criteria of being permanently incapable of former job because of ill health and is unlikely to be capable of undertaking gainful employment before normal pension age or for at least three years, whichever is the sooner.**

R38(3) of the LGPS Regulations 2013

The employer can decide whether a deferred member is unlikely to be able to undertake gainful employment due to ill health.

**Policy Decision:**

The Pensions Manager will decide on whether a Tier 3 ill health member has started gainful employment and whether to recover any overpaid pension, if a member has started such employment.

**Policy Decision:**

The Council will decide, after receiving medical evidence from an Independent Registered Medical Practitioner (IRMP), on whether a deferred member is unfit to undertake gainful employment before their normal retirement age and therefore agree to an ill health pension to be paid.

## Local Government Pension Scheme Discretions Employer – London Borough of Barnet

### **Whether to apply to Secretary of State for a forfeiture certificate (where member is convicted of a relevant offence)**

R91(1) and (8) of the LGPS Regulations 2013

If a member is convicted of a relevant offence, the employer may apply to the Secretary of State for Housing, Communities & Local Government to issue a forfeiture certificate.

A relevant offence is an offence committed in connection with an employment in which the person convicted is a member, and because of which the member left the employment.

### **Policy Decision:**

The Council has adopted this discretion. To be determined on a case by case basis by the disciplinary panel that decides on the employee's dismissal, under advice from both the Barnet Pensions & Human Resources Teams.

### **Where a forfeiture certificate is issued, whether to direct that benefits are to be forfeited (other than rights to GMP, subject to Regulation 95 of the LGPS Regulations 2013).**

R91(4) of the LGPS Regulations 2013

Where a forfeiture certificate is issued, the member's former employer may direct that any of the member's rights under these Regulations are forfeited.

### **Policy Decision:**

The Council has adopted this discretion. To be determined on a case by case basis by the disciplinary panel that decides on the employee's dismissal, under advice from both the Barnet Pensions & Human Resources Teams.

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**Where forfeiture certificate is issued, whether to direct interim payments out of the Fund until decision is taken to either apply the certificate or to pay benefits.**

R92(1) and (2) of the LGPS Regulations 2013

If:

- (a) a member of the Fund leaves employment because of an offence in connection with that employment; and
- (b) a forfeiture certificate has been issued under Regulation 91(1) in respect of that offence,

the employer may give an interim payments direction to the appropriate administering authority.

However, the employer may not give such a direction if it has-

- (a) notified the person of a decision under Regulation 72 (on any question as to entitlement to benefit; or
- (b) given any direction under Regulation 91(4)

**Policy Decision:**

The Council has adopted this discretion. To be determined on a case by case basis by the disciplinary panel that decides on the employee's dismissal, under advice from both the Barnet Pensions & Human Resources Teams.

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**Whether to recover from the Fund any monetary obligation or, if less, the value of the member's benefits (other than benefits from transferred in pension rights or APCs or AVCs or, subject to Regulation 95 of the LGPS Regulations 2013, in respect of any GMP) where the obligation was incurred as a result of a grave misconduct or a criminal, negligent or fraudulent act or omission in connection with the employment and as a result of which the person has left employment.**

R93(2) of the LGPS Regulations 2013

The employer may recover from the Fund the lesser of-

- (a) the amount of the monetary obligation; or
- (b) the value at the time of recovery of all benefits in respect of the former employee with respect to that person's previous membership (as determined by an actuary, except where the benefit is a refund of contributions).

**Policy Decision:**

The Council has adopted this discretion. To be determined on a case by case basis by the disciplinary panel that decides on the employee's dismissal, under advice from both the Barnet Pensions & Human Resources Teams.



## Local Government Pension Scheme Discretions Employer – London Borough of Barnet

**Whether, if the member has committed treason or been imprisoned for at least 10 years for one or more offences under the Official Secrets Acts, forfeiture under R91 or recovery of a monetary obligation under R93 should deprive the member or the member's surviving spouse or civil partner of any GMP entitlement.**

R95 of the LGPS Regulations 2013

The power to direct forfeiture of benefits under Regulation 91 or to recover or retain amounts under Regulation 93 may not be exercised so as to deprive a person of the Guaranteed Minimum Pension (GMP) or any widow's, widower's or surviving civil partner's (GMP).

But the employer may exercise such a power if the person is convicted:

- (a) of the offence of treason; or
- (b) of one or more offences under the Official Secrets Acts 1911 to 1989 for which the person has been sentenced on the same occasion:
  - (i) to a term of imprisonment of at least 10 years, or
  - (ii) to two or more consecutive terms amounting in the aggregate to at least 10 years.

### Policy Decision:

The Council has adopted this discretion. To be determined on a case by case basis by the Pensions Manager in consultation with the Assistant Director – Human Resources & Organisational Development.

## Local Government Pension Scheme Discretions Employer – London Borough of Barnet

**Whether to allow a member's final pay period to be the average of any three consecutive years ending 31st March in the 10 years prior to leaving.**

Final Pay (for benefits earned before 1 April 2014) is usually the pay in respect of the members final year of scheme membership on which they pay contributions, or one of the previous two years if this is higher.

The employer can decide whether to allow a member to choose for their final pay to be the average of any three consecutive years ending in the 31<sup>st</sup> March in the 10 years prior to leaving.

**Policy Decision:**

The Council will consider applications made under these Regulations having regard to the circumstances surrounding each case.

## Local Government Pension Scheme Discretions Employer – London Borough of Barnet

**For a member in receipt of a pension from the Fund, whether to abate their pension should they enter into further local government employment.**

Abatement is a technical term regarding the reduction or suspension of an LGPS pension where a pension recipient entered further local government employment.

If the annual salary in a further local government employment plus the pension in payment exceeds the value of the annual salary at the initial retirement, the pension can be reduced or potentially suspended for the duration of the further local government employment.

Until 31 March 1998 abatement was mandatory, but from April 1998 to March 2014 was discretionary. With effect from 1 April 2014 abatement ceased. Accordingly, member who only has LGPS membership from 1 April 2014 will not be subject to abatement.

The employer can decide whether to abate members pensions that came into payment prior to 1 April 2014, if applicable.

**Policy Decision:**

The Council has decided that abatement will only apply for any compensatory added years element included in a pension in payment.

## Local Government Pension Scheme Discretions Employer – London Borough of Barnet

The London Borough of Barnet will keep under review this discretions policy and make such changes as are appropriate. Within one month of any such changes, the London Borough of Barnet will publish the revised statement.

Members will be notified when and where the revised policy is held.

A copy of this policy has been sent to the Fund administrators West Yorkshire Pension Fund (WYPF) at:

West Yorkshire Pension Fund  
PO Box 67  
Bradford  
BD1 1UP

A copy can be found on the WYPF website at:

<https://www.wypf.org.uk/policy/barnet-pension-fund-policy-statements/>

**Authorised Signatory**



Pensions Manager

**Date**

6 April 2023