

Local Government Pension Scheme employer discretions policy

This template includes examples you may wish to adopt and is to be read in conjunction with the guidance at lgpsregs.org/resources/guidesetc.php and our guidance at derbyshirepensionfund.org.uk/discretions

Employer name					
Discretion	Regulation reference	Our guidance reference	Example Employer* discretions policy	Adopt example? Yes/No	Discretion if not adopting example (attach additional sheet if required)
Discretions relating to current contributing employees and leavers after 31/03/2014					
Whether, how much, and in what circumstances to contribute to a shared cost APC scheme	R16(2)(e) & R16(4)(d)	1.1	Example Employer* will not normally exercise this discretion but may consider it under exceptional circumstances, considering the business case and foreseeable costs to the employer.		
Whether, at full cost to the Scheme employer, to grant extra annual pension, up to the LGPS additional pension limit (reviewed annually), to an active member or within 6 months of leaving to a member whose employment was terminated on the grounds of redundancy or business efficiency	R31	1.2	Example Employer* will not normally grant any additional pension to an active member or within 6 months of ceasing to be an active member by reason of redundancy or business efficiency but may consider it under exceptional circumstances, considering the business case and foreseeable costs to the employer		
Whether to waive, in whole or in part, actuarial reduction on benefits which a member voluntarily draws before normal pension age	R30(8)	2.1	Example employer* will not normally exercise this discretion but may consider it under exceptional circumstances, considering the business case and foreseeable costs to the employer.		
Whether to waive any actuarial reduction on pre and/or post April 2014 benefits paid early on compassionate grounds	TP3(1), TPSch 2, paras 2(1)	2.2	Example Employer* will not normally exercise this discretion but may consider it under exceptional circumstances, considering the business case and foreseeable costs to the employer.		

Discretion	Regulation reference	Our guidance reference	Example Employer* discretions policy	Adopt example? Yes/No	Discretion if not adopting example (attach additional sheet if required)
Whether to “switch on” the 85 year rule for a member voluntarily drawing benefits on or after age 55 and before age 60.	TPSch 2, paras 1(2) and 2(2)	3	Example Employer* will not normally exercise this discretion but may consider it under exceptional circumstances, considering the business case and foreseeable costs to the employer.		
Whether all or some benefits can be paid if an employee over 55 reduces their hours or grade (flexible retirement)	R30(6) & TP11(2)	4	Example Employer* Policy is that all pension benefits are to be paid for cases agreed on reduction of hours or grade, See flexible retirement policy for further details.		
Whether to waive, in whole or in part, actuarial reduction on benefits paid on flexible retirement	R30(8)	4 and/or 2.1	Example employer* will not normally exercise this discretion but may consider it under exceptional circumstances, considering the business case and foreseeable costs to the employer.		
<u>Discretions relating to leavers 01/04/2008 to 31/03/2014:</u>					
Whether to waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early under B30	B30(5), TPSch 2, para 2(1)	2.2	Example Employer* will not normally exercise this discretion but may consider it under exceptional circumstances, considering the business case and foreseeable costs to the employer.		
Whether to waive, on compassionate grounds, the actuarial reduction applied to benefits paid early under B30A for a suspended tier 3 member.	B30A(5), TPSch 2, para 2(1)	2.2	Example Employer* will not normally exercise this discretion but may consider it under exceptional circumstances, considering the business case and foreseeable costs to the employer.		
Whether to “switch on” the 85 year rule for a deferred member voluntarily drawing benefits on or after age 55 and before age 60.	TPSch 2, paras 1(2) and 1(1)(c)	3	Example Employer* will not normally exercise this discretion but may consider it under exceptional circumstances, considering the business case and foreseeable costs to the employer.		
Whether to “switch on” the 85 year rule for a suspended tier 3 member voluntarily drawing benefits on or after age 55 and before age 60.	TPSch 2, paras 1(2) and 1(1)(c)	3	Example Employer* will not normally exercise this discretion but may consider it under exceptional circumstances, considering the business case and foreseeable costs to the employer.		

Discretion	Regulation reference	Our guidance reference	Example Employer* discretions policy	Adopt example? Yes/No	Discretion if not adopting example (attach additional sheet if required)
<u>Discretions relating to leavers 01/04/1998 to 31/03/2008 and councillors:</u>					
Waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early.	31(5) & TPSch 2, para 2(1)	2.2	Example Employer* will not normally exercise this discretion but may consider it under exceptional circumstances, considering the business case and foreseeable costs to the employer.		
Whether to “switch on” the 85 year rule for a deferred member voluntarily drawing benefits on or after age 55 and before age 60.	TPSch 2, para 1(2) & 1(1)(f) & R60	3	Example Employer* will not normally exercise this discretion but may consider it under exceptional circumstances, considering the business case and foreseeable costs to the employer.		
Grant application for early payment of deferred benefits on or after age 50 and before age 55.	31(2)	5	Example Employer* will consider early release on a case-by-case basis, considering the business case, HMRC unauthorised payment charges and foreseeable costs to the employer.		
Optants out only to get benefits paid from NRD if employer agrees.	31(7A)	6	Example Employer* will allow optants out to only get benefits paid from normal retirement date (NRD)		
<u>Discretions relating to leavers before 01/04/1998:</u>					
Grant application for early payment of deferred benefits on or after age 50 on compassionate grounds.	TL4, L106(1) & D11(2)(c)	5	Example Employer* will consider early release on a case-by-case basis, considering the business case, HMRC unauthorised payment charges and foreseeable costs to the employer.		
Name			Signature		
Job title			Date		

* Where an employer chooses to adopt the same discretion as “Example Employer”, it will be deemed that any decisions will be made by the relevant decision maker(s). For example, by the employer’s governing body, director(s), cabinet, committee, or appointed person(s).

Please note that where an employer does not wish to adopt “Example Employer” discretions, it is possible to have discretions to review each case on a “case-by-case basis”, however please be aware of the extra work involved in reviewing each case individually and the risk of setting precedents.

Example Employer policy for flexible retirement (routine cases)

An employer can consent to a reduction in an employee's hours or grade and consent to the release of pension benefits where the employee is aged 55 and over.

For this policy, requests for flexible retirement can be categorised as follows, however the needs of the service must be paramount and pension employer cost is not the only deciding factor:

- Nil employer pension cost - There is no pension cost to the employer. If the employee is under their State Pension age (SPa) at least some of their pension benefits will be reduced to reflect early payment.
- Employer pension cost – There may be an unavoidable employer pension cost due to rule of 85 protection and the employee being under age 60, but the cost will be less than a full shortfall cost would be for redundancy/efficiency. If the employee is under their State Pension age (SPa) at least some of their pension benefits will also be reduced to reflect early payment (part employer cost and part reduction).

In order to establish whether or not there is an unavoidable employer pension cost, an estimate of cost will need to be obtained from Derbyshire Pension Fund in cases where the employee is under age 60, by using the "Redundancy, flexible retirement and serious ill health estimate request" form on the [forms for employers page of their website](#).

For those cases that have nil employer pension cost, subject to the needs of the service our general policy is to consent to the payment of benefits from the Local Government Pension Scheme subject to a reduction of 40% (i.e. move from 5 days per week to 3 days = reduction of 2 days which is 40%) of the employee's contractual hours at the eve of their flexible retirement and/or a reduction of at least 1 grade in post.

A reduction of less than 40% of the employee's contractual hours may be considered:

- i) In exceptional circumstances, and if this would also bring an ongoing financial benefit to the employer or
- ii) Where service delivery requires whole shifts to be worked.

The Employers appointed decision maker(s), taking account of HR, legal and financial advice under the established process, makes the decision.

Where the pension benefits are reduced to reflect early payment, the employer can also agree to waive in whole or in part the reduction and pay the cost to the pension fund. It is our policy, as a rule, not to agree to this. However, the employer will consider applications; where it is considered that it would be in the employer's interests to meet this cost.

For cases where there would be a pension cost to the employer, the general policy is not to agree to the early release of pension benefits. However, where it is in the employers' interests, taking into account the business case and foreseeable costs to the employer; the employers' decision maker(s) will consider applications for flexible retirement.

Increases in hours or grade after taking flexible retirement

Where an employee has been allowed to reduce their hours or grade for the purposes of flexible retirement, they will not be allowed to increase them on a permanent basis. Where it is in our interests, a temporary increase in hours or grade for a period not exceeding six months can be permitted. The temporary increase in hours or grade must be authorised by the chief officer or decision maker(s).

An employee who has reduced their hours and taken flexible retirement must only be allowed to work additional hours or overtime at the same level that applied prior to the reduction in contractual hours. The aim is to prevent employees compensating for a reduction in contractual hours by working additional hours and overtime. The chief officer or decision maker may only approve requests for temporary increases in additional hours and overtime in advance.

Appeals

Employment appeals

Where the decision maker(s) has refused an employee's request for flexible retirement due to the needs of the service, rather than whether or not there is an employer's pension cost (e.g. decision maker unable to agree to a reduction in hours), the employee can appeal in writing within 14 days of receiving the decision to the decision maker(s).

Pension appeals

However, where the decision maker(s) has refused an employee's request for flexible retirement due to there being an unavoidable employer pension cost, the employee can appeal under the pensions application for adjudication of disagreements procedure; writing in the first instance to the "appointed adjudicator" specified by their employer.

Details of the pension application for adjudication of disagreements procedure and an appeal form can be found on Derbyshire Pension Funds Website at derbyshirepensionfund.org.uk/appeals.

Pension appeals should be made in writing stating the reasons for the appeal to the appointed adjudicator specified by the employer, details of who this is can be found by contacting the employer or Derbyshire Pension Fund.