

Southampton City Council

Severance & Pensions Payments: Discretionary Powers Policy

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Lead officer	Janet King	Review date	January 2019
Contact	Janet.king@southampton.gov.uk		

Severance & Pension Payments: Discretionary Powers Policy

Purpose

1. To set out the Council's policy on each of the compulsory discretions available under the Regulations* and confirm the position on relevant optional discretions.
2. The policy explains the context of discretions, whether or not they will be applied and the circumstances and criteria for applying them in relation to existing staff (members) and ex-staff (deferred members).

**Regulations: The Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2006, the Local Government Pension Scheme Regulations (LGPS) 2007/2008 and 2013, and the LGPS (Transitional Provisions & Savings) Regulations 2014.*

Scope

3. The Council will approach the application of any discretions in a fair and consistent manner, in line with the Regulations, equality legislation and the specific provisions and criteria of the policies and procedures relating to pensions, organisational change, redundancy and retirement.
4. This policy is applicable to Council staff and staff in schools where the Council is the scheme employer for LGPS purposes.
5. The policy covers discretionary arrangements relating to early retirements that result from redundancy, flexible retirement, or those that are staff-led i.e. where the member of staff meets the scheme criteria to be able to choose to retire without employer consent (see Appendix A).

Roles and Responsibilities

6. In the formulation and review of this policy the Council:
 - Is satisfied that the policy is workable, affordable and reasonable, having regard to the foreseeable costs;
 - Has considered the potential for the application of its discretionary powers (unless properly limited) to lead to a loss of confidence in the public service.
7. The responsibility for payment of discretionary pension arrangements has been delegated to officers named in the Scheme of Delegation, with the exception of payments for Schools, which will continue to be decided by the Governance Committee.

Discretionary Powers – Severance

Redundancy Pay Calculations

8. A redundancy payment will be due to any member of staff with at least two years' continuous local government service at the date of dismissal that fulfils the statutory definition of redundancy. Redundancy pay (including any severance pay) under £30,000 is not taxable.
9. *Discretion:* Whether to base redundancy payments on an actual weeks' pay where this exceeds the statutory weeks' pay limit.
10. The Council/school will calculate redundancy payments on the basis of actual weeks' pay (capped at the top of Grade 13) where this exceeds the weeks' pay limit in the statutory calculation.
11. The council will calculate redundancy pay based on age, continuous local government service and actual weekly pay (capped at the top of Grade 13), up to a maximum of 30 weeks' pay, using the following formula:
 - (Age factor) x (number of complete years of continuous local government service - capped at 20 years) x (gross weekly salary capped at the top of grade 13) = Redundancy Entitlement.

The age factor is calculated as follows:

- 0.5 for each full year of service where the employee's age was under 22;
 - 1 for each full year of service where the employee's age was 22 or above, but under 41; and
 - 1.5 for each full year of service where the employee's age was 41 or above.
12. Voluntary "redundancy" payments will be an enhanced lump sum payment that applies a 1.25 multiplier to the above formula. Any pay in lieu of notice is taxable and will be funded by the employing service. All voluntary severance payments must be in line with the Council's Scheme of Delegation. The Service Director HR and OD will exercise the delegation after consulting the Council's Exits' panel which comprises the Chief Strategy Officer, Service Director Finance and Commercialisation, Service Director Legal and Governance and Service Director HR and OD (or their nominated deputies); staff who exit the Council this way will not be re-employed by the council within a two year period.
 13. Where a redundant employee commences subsequent local government employment (or employment with a body included in The Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order 1999, as amended) within a month and a day of leaving the Council, there will be no entitlement to a redundancy payment. However if an employee starts employment after a break of at least a month and a day, their continuous employment under the Modification Order will be broken and redundancy compensation is payable.

Compensations Payments

14. The 2006 Regulations allow employers to award lump sum compensation payments within certain parameters. A lump sum payment can only be granted where the employer is not making Additional Pension Contributions on behalf of a member of staff. Any redundancy payment must be offset against the lump sum compensation payment.
15. *Discretion*: Whether to award lump sum compensation of up to 104 weeks' pay in cases of redundancy, termination of employment on efficiency grounds, or cessation of a joint appointment.
16. The Council/school will calculate redundancy payments, including any separate calculations for voluntary redundancy, in line with agreed policies applicable at the time, subject to such payments not exceeding the equivalent of 104 weeks' pay.

Use of Redundancy Payment to Purchase Additional Pension

17. The Local Government Pension Scheme Regulations (LGPS) allow redundancy payment in excess of the statutory amount (e.g. where actual weekly pay is higher than the statutory maximum figure used for the calculation) to be used to buy additional pension where the employer permits this.
18. *Discretion*: Whether to allow employees to use any redundancy payment in excess of the statutory amount to be used to buy additional pension.
19. The Council/school will allow any redundancy payment in excess of the statutory amount to be used to buy additional pension. The staff member must request prior to leaving their employment. All of the non-statutory amount must be transferred to pension. It is not possible to relinquish only part of the payment.

Discretionary Powers – Pensions

20. Members of the LGPS are entitled to receive a pension at their Normal Pension Age (which will be equal to the person's State Pension Age - a minimum of age 65). Pension scheme members aged 55 and over, with a minimum of 2 years pension scheme membership, are entitled to elect to retire and receive their pension. The Council's consent is not required. The pension will be reduced to reflect the fact that it is being taken earlier than 65 (or Normal Pension Age if this differs). See Appendix A.
21. *Discretion*: Whether to agree to apply the 85 year rule to a scheme member (current or deferred beneficiary) wishing to voluntarily draw pension benefits on or after 55 and before age 60. (The protection would apply to pre 1 April 2014 accrued benefits, there is no 85 year protection on post April 2014 benefits).
22. The Council/school will not permit unreduced benefits for employees voluntarily retiring between ages 55 -59.
23. *Discretion*: Whether to waive all or some of the actuarial reduction applied to member pensions (current or deferred), who are voluntarily drawing benefits on or after age 55 and before NPA, where the 85 year rule is not applied or does not

prevent an element of actuarial reduction. Actuarial reductions can be completely waived on compassionate grounds in relation to pre-2014 benefits, and/or waived in whole, in part, or not at all on any grounds in relation to post 2014 benefits.

24. The Council/school will not waive any of the actuarial reduction applicable to an employee who retires voluntarily between ages 55 and Normal Pension Age. The Council/school will not consent to ex-staff taking deferred benefits early unless there is no cost to the employer. The 85 year rule is detailed in Appendix B.
25. Members of staff who left the Council between 31 March 2008 and 31 March 2014 and opted to defer their LGPS pension, will continue to be governed by the pension regulations and employer discretions policy in force at the date they left service, irrespective of the date their pension comes into payment.
26. *Discretion*: Whether to grant consent to deferred pension scheme members aged 55-59, who request early retirement with release of pension benefits.
27. The Council/school will consider requests for early retirement from deferred members between the ages of 55 and 59 on compassionate grounds where medical evidence is provided that the individual has to provide continuous care for a sick partner or dependant and/or where it is in the Council's interests to do so, and having regard to the Pension Fund Charge for paying benefits early being affordable in each case.
28. *Discretion*: Whether to allow early payment of pension to former members of staff, who were previously in receipt of a tier 3 ill health pension, which has subsequently been suspended.
29. Early payment of deferred pension benefits following suspension of tier three ill health pensions, will be granted provided it is in the Council's interest to do so, and having regard to the Pension Fund Charge for paying benefits early being affordable in each case.
30. *Discretion*: Whether to waive an actuarial reduction of the deferred beneficiary's pension benefits on compassionate grounds.
31. The Council/school may consider waiving actuarial reductions for deferred members on compassionate grounds where the member can provide medical evidence that they are providing continuous care for a sick partner or dependent.
32. The LGPS provides the option of flexible retirement, whereby employees with at least 2 years scheme membership can take a "step down" in responsibility or in working hours, and access their accrued pension benefits. Full details are set out in the Flexible Retirement Policy & Procedure.
33. *Discretion*: Whether to allow a member aged 55 or over to draw all of the pension benefits they have already built up whilst still continuing in employment with a reduction in hours or at a lower grade.
34. The Council/school will consider requests for flexible retirement in accordance with the criteria set out in the Flexible Retirement Policy & Procedures applicable at the time.
35. Staff in the scheme may choose to buy extra annual pension, up to a maximum of £6,500, using an Additional Pension Contribution (APC) contract. The cost of any set amount of additional pension will be determined by the member of staff's age and the amount they wish to purchase. Employers may agree to meet the cost of some or all of any additional pension purchased.

36. *Discretion*: Employer Only Additional Pension Contributions (APC) - Whether to award additional annual pension of up to £6,5001 per annum to an active member, or to individuals who have taken early retirement due to redundancy or efficiency (where granted within 6 months of the leaving date). This would be by way of a one-off payment.
37. The Council/school will not exercise its discretion to award additional pension.
38. *Discretion*: Shared Cost Additional Pension Contributions (SCAPC) - Whether to agree to voluntary funding of additional pension for an active member, via a Shared Cost Additional Pension Contribution contract; where the costs of payments to increase pension (up to a maximum of £6,500 per annum) are shared between the employee and the Council. This can be either a regular ongoing contribution or one-off lump sum.
39. The Council/school will not exercise its discretion to voluntarily fund additional pension via a shared cost additional pension contribution.
40. Where a new member of staff of the Council has a deferred pension from a previous period of local government employment, it will normally be joined to the new LGPS pension unless the member of staff opts to keep them separate.
41. *Discretion*: From 1 April 2014 members re-joining the pension scheme with pension rights from previous local government employment, will have these rights automatically aggregated with their current period of membership, unless the member opts to keep them separate within 12 months of re-joining the pension scheme. An employer may allow a period longer than 12 months.
42. The Council/school will only accept elections to combine pension rights from previous and current local government employment that are made within 12 months of re-joining the scheme.
43. *Discretion*: For members re-joining the pension scheme up to and including 31 March 2014, with pension rights from previous local government employment, they will have 12 months from re-joining the scheme to elect to combine the pension rights from the previous and current periods of membership. An employer may allow a period longer than 12 months.
44. The Council/school will only accept elections to combine pension rights from previous and current local government employment which are made within 12 months of re-joining the scheme.
45. *Discretion*: Where an active member requests to transfer previous pension rights from an external pension provider into the LGPS, the member must make a request within 12 months of becoming an active member. An employer may allow a longer period than 12 months.
46. The Council/school will only accept an election for transfer of pension rights from an external pension provider into the LGPS if this election is made within 12 months of the member joining the LGPS.
47. Previous pension benefits from an external pension provider may be transferred into the Hampshire Pension Fund at the member of staff's request. Any transfer will be subject to agreement by Hampshire County Council, as the administering authority.

General Pensions Arrangements

48. From 01 April 2014 there is no requirement for pension contributions to be made for the first 30 days of authorised unpaid absence. Instead, it is the member of staff's choice as to whether or not to cover the period of absence for pension purposes. If the staff member chooses to make up the 'lost' pension this is done via an Additional Pension Contribution. Where the election is made within 30 days of returning to work the cost of the APC is apportioned 1/3 to the staff member and 2/3 to the Council. However, if an election is made after the 30 day period, the staff member must meet the full cost of the APC contract. This is applicable to unpaid periods of maternity, paternity and adoption leave, which follow paid (statutory and contractual) leave for the same reason.
49. As the LGPS pension scheme administrating authority, Hampshire County Council publish annual contribution bands and the associated contribution rates (the percentage of pensionable pay employees pay towards their pension) and provide these to scheme employers.
50. From 01 April 2014 the rate of contributions scheme members pay is based on actual pensionable pay (rather than full time equivalent salary), with contributions also payable on non-contractual overtime. The Council's policy on the operation of contribution tier banding is as follows:
- Contribution banding will be undertaken automatically each pay period (i.e. each payroll run).
 - The earnings used to determine an employee's deduction tier rate will include basic pay and other contractual fixed payments in place at the commencement of each period.
 - Contributions are payable on honoraria payments, any payments for additional hours worked, including overtime, and any other temporary allowances; but due to their fluctuating nature these will not be included in the earnings figure used to determine employee deduction bandings.
 - Where an employee has multiple posts each post will be subject to separate review against the earnings for that post.
 - Bands will only be amended historically in the event of an error.
51. The Council will include a woman's LGPS membership between 1/4/72 and 5/4/88 in the calculation of her widower's pension at no extra charge.

Links to related topics

- Organisational Change Procedure
- Flexible Retirement Procedure

Review

52. This policy does not form part of the employee's contract of employment and the council retains the right to change the policy at any time.
53. The provisions within this policy will be reviewed on a regular basis to ensure ongoing compliance with legislation and their continuing sustainability and

affordability. Any future amendments to the policy will come into effect one month after the revised policy is published.

Appendix A

Early Retirement Categories & Pension Implications

Members of the LGPS are entitled to receive a pension at their Normal Pension Age (which will be equal to an employee's State Pension Age - a minimum of age 65).

Any retirement earlier than the Normal Pension Age (NPA) is an early retirement from the perspective of the pension scheme, and may result in a reduction to pension benefits (actuarial reduction) and/or the requirement for the Council to pay a scheme charge.

Except in certain defined cases, early retirement and discretionary payments/pension enhancements are not available as of right. Any application for voluntary early retirement, discretionary payment or pension enhancement, will be considered in the context of the stated parameters within which the Council will operate its discretions, whether it is in the interest of the Council, the financial consequences to the Council of granting any such request, and the employee's personal circumstances.

Early Retirement – Compulsory Non Voluntary Redundancy

Scheme members who are made redundant and are 55 or over, with at least 2 years membership, are automatically entitled to early release of their pension, without reduction. The LGPS Regulations do not allow for the pension to be deferred in these circumstances. The Council will be liable for scheme charges for early retirements arising from redundancy in all cases.

Scheme members who are under 55 when made redundant will have a deferred pension.

Early Retirement - Employee's Choice

Pension scheme members aged 55 and over, with a minimum of 2 years pension scheme membership, are entitled to elect to retire and receive their pension. The Council's consent is not required. The pension will be reduced to reflect the fact that it is being taken earlier than 65 (or NPA if this differs).

Employees aged 55 - 59

The employee will incur an early payment reduction on their pension. The 85 year protection rules are not applicable where an employee voluntarily decides to draw benefits on or after age 55 and before age 60.

Employees aged 60+

The employee's pension will be actuarially reduced to reflect that it is being taken prior to NPA. 85 year rule protections will automatically apply where the employee qualifies, but some element of reduction may still be applied.

Flexible Retirement

The Council will consider requests for Flexible Retirement from employees aged 55 and over with at least 2 years scheme membership, who wish to take a "step down" in responsibility or in working hours, and access their accrued pension benefits.

These will be subject to actuarial reduction unless the Council exercises its discretion to waive the reduction. The Council may incur a scheme charge in some cases for permitting Flexible Retirement.

Appendix B

The 85 Year Rule

Where the age of the member of staff when employment ends, and their total years in the pension scheme add up to 85 or more (and the individual was a scheme member prior to 1 October 2006), any early payment of pension benefits will not be actuarially reduced. (This only applies to pre 1 April 2014 accrued benefits, there is no 85 year protection on post April 2014 benefits.) 85 year protection is a very complex area which is being phased out over a period of years.

Individuals considering retirement before their Normal Retirement Age should contact HCC Pensions for clarification as to whether, and if so how, protections apply to their pension benefits. The following diagram (reproduced from the HCC Pensions website) sets out the general position:

