

# Notice of Meeting

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## Personnel Committee

**Wednesday, 28th May, 2014 at 2.30 pm**  
in Committee Room 2 Council Offices  
Market Street Newbury

Date of despatch of Agenda: Monday, 19 May 2014

For further information about this Agenda, or to inspect any background documents referred to in Part I reports, please contact Moira Fraser on (01635) 519045  
e-mail: [mfraser@westberks.gov.uk](mailto:mfraser@westberks.gov.uk)

Further information and Minutes are also available on the Council's website at  
[www.westberks.gov.uk](http://www.westberks.gov.uk)



**To:** Councillors Peter Argyle, Adrian Edwards, Tony Linden, Mollie Lock (Vice-Chairman), Andrew Rowles and Quentin Webb (Chairman)

**Substitutes:** Councillors David Allen, Jeff Brooks, Paul Bryant and Tim Metcalfe

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# Agenda

## Part I

Page No.

1. **Apologies for Absence**  
To receive apologies for inability to attend the meeting (if any).
2. **Minutes** 1 - 2  
To approve as a correct record the Minutes of the meeting of the Committee held on 4<sup>th</sup> February 2014 and the 15 May 2014.
3. **Declarations of Interest**  
To remind Members of the need to record the existence and nature of any Personal, Disclosable Pecuniary or other interests in items on the agenda, in accordance with the Members' [Code of Conduct](#).
4. **Recognising Continuous Service with Academy Schools (PC2774)** 3 - 10  
*Purpose: To propose a reversal of the current policy of the Council not to recognise continuous service with academy schools for the purpose of occupational benefits.*
5. **Local Government Pension Scheme 2014 Policies (PC2826)** 11 - 58  
*Purpose: To agree a set of policies and discretions applicable to the 2014 Pension Scheme.*
6. **Personal Relationships at Work Policy (PC2811)** 59 - 70  
*Purpose: To propose the adoption of a policy which sets out how the Council will deal with close personal relationships at work which might involve, or be perceived to involve, conflicts of interest.*
7. **Date of Next Meeting**

Andy Day  
Head of Strategic Support

If you require this information in a different format or translation, please contact Moira Fraser on telephone (01635) 519045.

**Note: These Minutes will remain DRAFT until approved at the next meeting of the Committee**

**PERSONNEL COMMITTEE**

**MINUTES OF THE MEETING HELD ON  
TUESDAY, 4 FEBRUARY 2014**

**Councillors Present:** David Allen (Substitute) (In place of Mollie Lock), Peter Argyle, Tony Linden, Andrew Rowles and Quentin Webb (Chairman)

**Also Present:** Robert O' Reilly (Head of HR), Councillor Adrian Edwards and Moira Fraser (Democratic and Electoral Services Manager)

**Apologies for inability to attend the meeting:** Councillor Mollie Lock

**PART I**

**10. Minutes**

The Minutes of the meeting held on 30 October 2013 were approved as a true and correct record and signed by the Chairman subject to the correction of a typographical error in **Item 6 Whistleblowing Policy and Procedure**, third paragraph item 6 where 'concealment' should be spelt as 'concealment' .

**11. Declarations of Interest**

There were no declarations of interest received.

**12. Statutory Pay Policy Statement (C2656)**

The Committee considered a report (Agenda Item 4) concerning the Council's Pay Policy Statement which it was required to publish by the 01<sup>st</sup> April 2014. Robert O' Reilly in introducing the report explained that the Council produced the report in order to comply with the requirements of S38 of the Localism Act 2011 and the Code of Practice (the Code) for Local Authorities on Data Transparency.

The Head of HR explained that the Localism Act 2011 required local authorities to publish an annual pay policy statement from 2012. The Code included a requirement to publish a set of data relating to the remuneration and responsibilities of senior officers. Officers felt that it would be useful to combine the information into a single document which would be presented to full Council in accordance with the requirements.

Robert O' Reilly noted that much of the information in the policy was the same as the previous year. Discussions were however underway about linking pay to performance and this would be reflected in subsequent iterations of the policy should the proposals be approved. It was also noted that the Council was still well within the pay ratios set out in the Hutton Review of Fair Pay in the Public Sector. The Review stated that the ratio of highest paid to lowest paid should not exceed 20:1. West Berkshire Council's ration was currently at 10.7:1.

Officers explained that Appendix A to the policy set out the salaries and other income (car allowance, National Insurance, honoraria etc) for all senior managers (Chief Executive, Corporate Directors and Heads of Service), Appendix B set out the budget and staffing responsibilities for these senior managers, Appendix C set out the responsibilities (extracted from their Job Descriptions) of the Chief Executive and Corporate Directors and Appendix D set out all the pay scales for Council employees.

**PERSONNEL COMMITTEE - 4 FEBRUARY 2014 - MINUTES**

Members asked for the following minor amendments to be made to the document prior to it being referred to Council for approval:

- The Pay Policy Statement to be referred to as Appendix 1 (with the appendices to that document being listed as A, B, C and D);
- Explanatory text as to what a 'mean salary' and 'median salary' was.

Members also requested that a note explaining why Mark Evans had received an honorarium payment of £1100 be circulated to the committee outside of the meeting.

RESOLVED that the Pay Policy Statement be referred to full Council for approval subject to the inclusion of the amendments set out above.

**13. Date of Next Meeting**

Dates for the next meeting would be circulated outside of the meeting.

*(The meeting commenced at 10.30 am and closed at 10.46 am)*

**CHAIRMAN** .....

**Date of Signature** .....

# Agenda Item 4.

<b>Title of Report:</b>	<b>Recognising Continuous Service with Academy Schools</b>
<b>Report to be considered by:</b>	Personnel
<b>Date of Meeting:</b>	28 <sup>th</sup> May 2014
<b>Forward Plan Ref:</b>	PC2774

**Purpose of Report:** To propose a reversal of the current policy of the Council not to recognise continuous service with academy schools for the purpose of occupational benefits.

**Recommended Action:** Personnel Committee is recommended to change the policy to allow recognition of service in academy schools for occupational benefits.

**Reason for decision to be taken:** To respond to the views of the trade unions and head teachers who wish to see the policy reversed. This paper is returning to Management Board with further information on the financial implications and views from head teachers.

**Other options considered:** to leave the policy unchanged

**Key background documentation:** None

The proposals will also help achieve the following Council Strategy principle:

**CSP8 - Doing what's important well**

The proposals contained in this report will help to achieve the above Council Strategy priorities and principles by:

Ensuring that schools continue to be able to recruit staff from both maintained and academy schools without the perceived barrier of losing some employment benefits based on continuous service.

Portfolio Member Details	
<b>Name &amp; Telephone No.:</b>	Councillor Alan Law - Tel (01491) 873614
<b>E-mail Address:</b>	alaw@westberks.gov.uk
<b>Date Portfolio Member agreed report:</b>	2 <sup>nd</sup> April 2014

Contact Officer Details	
<b>Name:</b>	Jane Milone
<b>Job Title:</b>	HR Manager
<b>Tel. No.:</b>	01635 519238
<b>E-mail Address:</b>	jmilone@westberks.gov.uk

## Implications

- Policy:** n/a
- Financial:** There are no direct financial implications for the Council arising from the proposed change in policy. There may be some small financial implications for individual schools as a result of certain individuals qualifying for the right to maternity or adoption pay who would otherwise have had to wait until they had achieved a year in employment, or for a longer period of paid sick leave due to increased service being taken into account. These costs will be met from schools' delegated budgets. The implications are discussed further in paragraph 5 of the main report.
- Personnel:** this report proposes a change to an HR policy
- Legal/Procurement:** none
- Property:** none
- Risk Management:** none

Is this item relevant to equality?	Please tick relevant boxes	Yes	No
Does the policy affect service users, employees or the wider community and:			
• Is it likely to affect people with particular protected characteristics differently?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Is it a major policy, significantly affecting how functions are delivered?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Will the policy have a significant impact on how other organisations operate in terms of equality?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Does the policy relate to functions that engagement has identified as being important to people with particular protected characteristics?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Does the policy relate to an area with known inequalities?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Outcome</b> (Where one or more 'Yes' boxes are ticked, the item is relevant to equality)			
Relevant to equality - Complete an EIA available at <a href="http://www.westberks.gov.uk/eia">www.westberks.gov.uk/eia</a>			<input type="checkbox"/>
Not relevant to equality			<input checked="" type="checkbox"/>

Is this item subject to call-in?	Yes: <input checked="" type="checkbox"/>	No: <input type="checkbox"/>
If not subject to call-in please put a cross in the appropriate box:		
The item is due to be referred to Council for final approval	<input type="checkbox"/>	
Delays in implementation could have serious financial implications for the Council	<input type="checkbox"/>	
Delays in implementation could compromise the Council's position	<input type="checkbox"/>	
Considered or reviewed by Overview and Scrutiny Management Commission or associated Task Groups within preceding six months	<input type="checkbox"/>	
Item is Urgent Key Decision	<input type="checkbox"/>	
Report is to note only	<input type="checkbox"/>	

## **Executive Summary**

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### **1. Introduction**

- 1.1 In 2011 Personnel Committee approved a policy that the Council would not recognise continuous service in academy schools for the purpose of calculating entitlement to occupational benefits such as sick pay, maternity/paternity/adoption pay and leave, and annual leave.
- 1.2 The trade unions asked for a review of this policy on the basis that they believed that WBC was out of step with neighbouring authorities in its policy, and that it was a barrier to recruitment into our maintained schools.
- 1.3 Research shows that neighbouring authorities take a mixed approach with some recognising academy service and some not. Head teachers on EMAB support a policy of recognising academy service.

### **2. Proposals**

- 2.1 It is proposed that the Council reverses its policy to allow the recognition of continuous service with academy schools in calculating entitlement to occupational benefits such as sick pay, maternity/paternity/adoption leave and pay and enhanced annual leave.

### **3. Equalities Impact Assessment Outcomes**

- 3.1 This item is not relevant to equality.

### **4. Conclusion**

- 4.1 Adopting a policy that allows for the recognition of continuous service in academy schools for the purpose of entitlement to occupational benefits will enable schools and the authority to remain competitive in the market for school teaching and support staff, with no direct financial impact on the Council and minimal financial impact on schools' delegated budgets.

# Executive Report

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## 1. Introduction

- 1.1 Staff who transfer to the employment of an academy as a result of a change in the school's status during their employment have protected employment rights under TUPE. Therefore, when schools convert to academy status, teachers and support staff retain their current contractual rights. This TUPE protection is lost if the employee subsequently voluntarily transfers to local authority employment (in a maintained school or directly with the Council).
- 1.2 It is important to note that continuous service for the purpose of calculating a redundancy payment is preserved under the 'Modification Order', as academies are covered by these regulations. The Council therefore has no discretion in this particular matter. In addition, entitlements to statutory maternity, paternity, adoption and sickness pay based on service with the current employer cannot be preserved between different employers. The Council therefore has no discretion over these entitlements.
- 1.3 Academy employment is not service in local government for the purpose of entitlements to occupational schemes for sick pay, annual leave and maternity/adoption pay and leave. However, the Council has the discretion to choose to recognise academy service for this purpose when new employees transfer directly from academies.
- 1.4 Maintained schools in the local authority are required to adopt the terms and conditions of employment that are in place for directly employed staff. The Council, therefore, needs to have a clear policy on whether or not it will recognise employment service with academies for occupational scheme benefits so that prospective employees in academies can be fully informed about the implications of transferring into a West Berkshire Council school, or to direct employment with the Council.

## 2. Current policy in WBC

- 2.1 In December 2011 Personnel Committee approved a policy as follows:
  - (1) Service with academy schools will not be counted for the purpose of continuous service for employment rights, or entitlement to WBC occupational benefits (such as sick pay, annual leave and maternity/adoption benefits for support employees) which are dependent on continuous local government service.
  - (2) Where an employee transfers, without a break, from another local authority which has recognised previous continuous service with an academy for occupational benefits, the date of continuous service will be the date on which that authority deemed continuous service to start.
- 2.2 Because of the differences in teachers' conditions of service and support employees' conditions of service, the impact of this policy is thus;



Entitlement	Teachers	Support staff
Occupational sick pay entitlement	Based on cumulative service as a teacher in a LA maintained school	Based on continuous service from date of this appointment to WBC*
Annual leave entitlement	n/a	Based on continuous service from date of this appointment to WBC*
Occupational maternity leave and pay	Based on continuous service from date of this appointment to WBC	Based on continuous service from date of this appointment to WBC*

2.3 Support employees who voluntarily transfer to WBC or one of its schools from employment in an academy to which they were transferred under TUPE, without a break between employments, will have all previous continuous service recognised for the purposes of calculation of entitlements to annual leave, occupational maternity leave/pay and occupational sick pay. This is subject to the return to service being within five years of the original transfer.

### 3. Request to review policy and consultation

3.1 In August 2013 the trade unions requested that Personnel Committee review the policy for the following reasons;

- (1) They believe that neighbouring authorities have chosen to recognise academy school service and we are therefore out of step with them.
- (2) The policy is preventing schools from recruiting the best people who are put off by the fact that they will not have their service recognised for certain occupational benefits.

3.2 When the policy was originally approved, other local authorities appeared to also be choosing not to recognise continuous academy service. Research with neighbouring authorities in October 2013 reveals that four out of five of the other Berkshires have chosen not to recognise academy service. Hampshire CC does recognise it. Thus we are not out of line at the moment, but nor would be out of line with neighbouring authorities if we chose to reverse the policy.

3.3 We also anticipated that academies would start to move away from national conditions of service and that it would be harder to justify recognising service that was on different terms and conditions. In fact, academies have been slow to implement local conditions of service and none within West Berkshire appear to have done so.

3.4 Consultation with head teachers at the Education Management Advisory Board (EMAB) in November 2013 indicated strong support for a policy that enabled schools to recognise academy service. They perceived it as important when recruiting to remove this potential barrier. Whilst there is, as yet, no quantifiable evidence that the current policy is a barrier to recruitment, it is the professional opinion of the head teachers in the consultative group that there is enough anecdotal evidence that the policy influences decisions that academy school staff make about returning to work in maintained schools in WBC.

#### 4. Proposal

- 4.1 It is proposed that the Council reverses its policy to allow the recognition of continuous service with academy schools in calculating entitlement to occupational benefits such as sick pay, maternity/adoption leave and pay and enhanced annual leave.
- 4.2 Recognising continuous service with academies would have the following impact:

Entitlement	Teachers	Support staff
Occupational sick pay entitlement	Based on cumulative service as a teacher in LA maintained schools and any academy employment that is continuous with this service	Based on continuous service from date of appointment to local government and/or academy employment
Annual leave entitlement	n/a	Based on continuous service from date of appointment to local government and/or academy employment
Occupational maternity leave and pay	Based on continuous service from date of appointment to local government and/or academy employment	Based on continuous service from date of appointment to local government and/or academy employment

- 4.3 There are two options for recognition of academy service:
- (1) Recognise service in WB academies only; or
  - (2) Recognise all academy service.
- 4.4 Option (2) above is the preferred option. It is simpler to administer and preserves all the benefits to recruitment that this policy is seeking to achieve if the school is considering applicants currently working in other local authority areas. Limiting recognition to just academies lying within the West Berkshire boundaries would be complicated when trying to calculate continuous service dates.

#### 5. Impact

- 5.1 Changing the policy will have limited financial impact. Any impact that it does have will be on the delegated budgets of maintained schools. Schools will have to manage the financial impact on an individual basis. They are prepared to do this for the perceived benefits of removing a barrier to recruitment.
- 5.2 As set out clearly above, there is no impact on the redundancy rights of school staff; these are already protected in law by the Redundancy Payments Modification Order, which covers both maintained schools and academy schools. There is likewise no impact on pension entitlements as academy schools are covered by the Local Government Pension Scheme and the Teachers' Pension Scheme.

- 5.3 Annual leave - support staff would have the period of service working in an academy school counted towards their entitlement to annual leave. WBC employees have their initial entitlement to leave increased (by an additional week) after 5 continuous years' service. Counting academy service would bring forward the date of attaining this additional leave entitlement. Teachers would be unaffected as they have no annual leave entitlement.
- 5.4 Sick pay – support staff would have the period of service working in an academy school counted towards their continuous service entitlement to sick pay. From the first day of employment, WBC employees are entitled to one month on full pay if they are sick. This entitlement increases for each completed year of continuous employment, up to a maximum of six months full pay and six months half pay after 5 years. With the average number of days off sick well below the month's full pay entitlement, this policy will have negligible effect on the sick pay bill. It will only affect employees who are unlucky enough to require more than a month off sick in a year.
- 5.5 Sick pay – teachers would have the period of service working in an academy school counted towards their cumulative entitlement to sick pay. Teachers' entitlement is based on cumulative service in maintained schools, and full entitlement is reached after 4 completed years' service. Academy service will therefore add to this cumulative entitlement only for teachers who have previously obtained less than four years' cumulative service before starting at the academy. The potential financial impact will therefore be even less than for support staff.
- 5.6 Maternity/adoption pay – all employees have statutory entitlements to maternity and adoption leave from day one. Occupational entitlements to pay (six weeks on 90% pay and a further 12 weeks at 50% pay) are gained after one year's continuous service. Including continuous academy service in this calculation would mean that the date of entitlement would be brought forward. After one year in the new employment, this advantage would have been superseded. The only staff affected by this change would be those who became pregnant or adopted within a year of transferring to the new employment.
- 6. Conclusion**
- 6.1 Adopting a policy that allows for the recognition of continuous service in academy schools for the purpose of entitlement to occupational benefits will enable schools and the authority to remain competitive in the market for school teaching and support staff.
- 6.2 The cost implications are minimal and will be borne by the schools' delegated budgets.

## **Appendices**

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There are no Appendices to this report.

## **Consultees**

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**Local Stakeholders:** n/a

**Officers Consulted:** EMAB (head teachers)

**Trade Union:** Unison, GMB, NASUWT, NUT, ASCL, NAHT

# Agenda Item 5.

<b>Title of Report:</b>	<b>LGPS 2014 Policy Statement</b>
<b>Report to be considered by:</b>	Personnel
<b>Date of Meeting:</b>	28 May 2014
<b>Forward Plan Ref:</b>	PC2826

## **Purpose of Report:**

To propose the Council's policy with regard to:

The Local Government Pension Scheme Regulations 2013:  
16(2)(e) and 16(4)(d) (funding of additional pension);  
30(6) (flexible retirement);  
30(8) (waiving of actuarial reduction);  
31 (award of additional pension); and  
9(1) and (3) (contribution bandings)  
17(1) (additional voluntary contributions)  
22 (merging of deferred member pension accounts)  
100(6) (inward transfers of pension rights)  
21(5) (assumed pensionable pay)  
74 (adjudication and internal disputes)

and

Paragraphs 2(2) of Schedule 2 to the Local Government Pension Scheme (Transitional Provisions, Savings & Amendment) Regulations 2014 - whether to 'switch on' the 85 year rule for a member who voluntarily retires (leaves employment) and elects to draw their benefits on or after the age of 55 and before the age of 60.

## **Recommended Action:**

To approve the Policy Statements

## **Reason for decision to be taken:**

To meet the requirements of Regulation 60 of the LGPS Regs 2013 and the LGPS 2014 Transitional Provisions.

## **Other options considered:**

n/a

## **Key background documentation:**

Appendix B Berkshire Pension Fund Guide to Employers

The proposals contained in this report will help to achieve the above Council Strategy priorities and principles by:  
The proposals do not relate to the Council Strategy

## **Portfolio Member Details**

<b>Name &amp; Telephone No.:</b>	Councillor Alan Law - Tel (01491) 873614
<b>E-mail Address:</b>	alaw@westberks.gov.uk

<b>Date Portfolio Member agreed report:</b>	28 <sup>th</sup> April 2014
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<b>Contact Officer Details</b>	
<b>Name:</b>	Sean Anderson
<b>Job Title:</b>	Head of Customer Services
<b>Tel. No.:</b>	01635 519149
<b>E-mail Address:</b>	sanderson@westberks.gov.uk

### Implications

**Policy:** These Policies are required under the requirements of the LGPS Regs 2013 and the LGPS 2014 Transitional Provisions. The proposed policy allows cases to be decided on an individual basis which will enable individual cases to be managed to meet operational requirements of the Council.

**Financial:** The Policies in some instances allow a degree of discretion which if applied could have an impact on the Council's Finances . As each case will be determined on its own merits it is not possible to quantify within this report what that might be. The policy proposes that the authority for determining decisions on costs is the same as for Discretionary Compensation payments to employees (i.e. all costs for an individual over £10,000 to be approved by Executive).

**Personnel:**

**Legal/Procurement:** These Policies are required under the requirements of the LGPS Regs 2013 and the LGPS 2014 Transitional Provisions.

**Property:** N/A

**Risk Management:** N/A

<b>Is this item relevant to equality?</b>	Please tick relevant boxes	
	<b>Yes</b>	<b>No</b>
Does the policy affect service users, employees or the wider community and:		
• Is it likely to affect people with particular protected characteristics differently?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Is it a major policy, significantly affecting how functions are delivered?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Will the policy have a significant impact on how other organisations operate in terms of equality?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Does the policy relate to functions that engagement has identified as being important to people with particular protected characteristics?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Does the policy relate to an area with known inequalities?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Outcome</b> (Where one or more 'Yes' boxes are ticked, the item is relevant to equality)		
Relevant to equality - Complete an EIA available at <a href="http://www.westberks.gov.uk/eia">www.westberks.gov.uk/eia</a>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Not relevant to equality	<input checked="" type="checkbox"/>	<input type="checkbox"/>

<b>Is this item subject to call-in?</b>	Yes: <input type="checkbox"/>	No: <input checked="" type="checkbox"/>
<p>If not subject to call-in please put a cross in the appropriate box:</p> <p>The item is due to be referred to Council for final approval <input type="checkbox"/></p> <p>Delays in implementation could have serious financial implications for the Council <input checked="" type="checkbox"/></p> <p>Delays in implementation could compromise the Council's position <input type="checkbox"/></p> <p>Considered or reviewed by Overview and Scrutiny Management Commission or associated Task Groups within preceding six months <input type="checkbox"/></p> <p>Item is Urgent Key Decision <input type="checkbox"/></p> <p>Report is to note only <input type="checkbox"/></p>		

# Executive Summary

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## 1. Introduction

- 1.1 With effect from 1 April 2014 the Local Government Pension Scheme Regulations 2013 and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 came into force. These changes originated in a review of the affordability and sustainability of the LGPS
- 1.2 Under these Regulations, as with previous Regulations, Scheme employers are required to prepare, maintain and keep under review a statement of policy concerning a number of discretions made available to them throughout the Regulations. This report has been prepared in order to satisfy those requirements.
- 1.3 Accordingly and as required by Regulation 60 of the Local Government Pension Scheme Regulations 2013 (Statements of policy about exercise of discretionary functions) a Scheme employer (West Berkshire Council) must prepare a written statement of its policy in relation to the exercise of its functions under regulations:
  - (1) 16(2) (e) and 16(4) (d) (funding of additional pension);
  - (2) 30(6) (flexible retirement);
  - (3) 30(8) (waiving of actuarial reduction); and
  - (4) 31 (award of additional pension).
- 1.4 In addition and in accordance with Paragraphs 2(2) of Schedule 2 to the Local Government Pension Scheme (Transitional Provisions, Savings & Amendment) Regulations 2014 a Scheme employer must also prepare a written statement on whether, in respect of benefits relating to pre 1st April 2014 membership, to 'switch on' the 85 year rule for a member who voluntarily retires (leaves employment) and elects to draw their benefits on or after the age of 55 and before the age of 60 thereby agreeing to waive in full or part any actuarial reduction applied to the member's benefits.
- 1.5 In addition, the Berkshire Pension Fund recommends that the Employer formulates policy with respect to several other Regulations. These are included in the report.

## 2. Recommended Action

- 2.1 To approve the LGPS Policy Statements and provide the same to the Berkshire Pension Fund.

## 3. Equalities Impact Assessment Outcomes

- 3.1 This item is not relevant to equality.

## 4. Conclusion

- 4.1 This report completes our requirements as required by the Local Government Pension Scheme 2013 Regulations.



# Executive Report

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## 1. Introduction

- 1.1 With effect from 1 April 2014 the Local Government Pension Scheme Regulations 2013 and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 came into force. These originated in a review of the affordability and sustainability of the LGPS
- 1.2 Under these Regulations, as with previous Regulations, Scheme employers are required to prepare, maintain and keep under review a statement of policy concerning a number of discretions made available to them throughout the Regulations. This report has been prepared in order to satisfy those requirements.
- 1.3 There are 10 policies requiring consideration and approval. The Policies are provided in full in Appendix A with further guidance from the Berkshire Pension Fund within Appendix B. The Policies, options and recommendations are as follows.

## 2. LGPS 2013 Regulation 16 – Additional Pension Contributions

- 2.1 The Scheme employer may resolve to fund in whole or in part any arrangement entered into by an active scheme member to pay additional pension contributions by way of regular contributions in accordance with Regulation 16(2) (e), or by way of a lump sum in accordance with Regulation 16(4) (d).
- 2.2 The Scheme employer may enter into an APC contract with a Scheme member who is contributing to the MAIN section of the Scheme in order to purchase additional pension of not more than the additional pension limit (£6,500 from 1st April 2014 subject to annual increase in line with the Pensions (Increase) Act 1971).
- 2.3 The amount of additional contribution to be paid is determined by reference to actuarial guidance issued by the Secretary of State.
- 2.4 Consideration needs to be given to the circumstances under which the Scheme employer may wish to use their discretion to fund in whole or in part an employee's Additional Pension Contributions.
- 2.5 Options suggested by the Pension Fund are:
  - (a) Not to fund an employee's APCs
  - (b) To consider funding an employee's APCs in exceptional circumstances and subject to the employee's difficult domestic circumstances
  - (c) To consider funding an employee's APCs in circumstances where there is a financial or practical reason for doing so.
- 2.6 The recommendation in respect of Additional Pension Contributions (Regulation 16) is Option (a); **not to fund an employee's APCs.**
- 2.7 This is in line with current policy under the 'old' LGPS Regulations.

### **3. LGPS 2013 Regulation 30(6) – Flexible Retirement (see guidance note 2 in employer’s guide)**

- 3.1 An active member who has attained the age of 55 or over and who with the agreement of their employer reduces their working hours or grade of employment may, with the further consent of their employer, elect to receive immediate payment of all or part of the retirement pension to which they would be entitled in respect of that employment as if that member were no longer an employee in local government service on the date of the reduction in hours or grade (adjusted by the amount shown as appropriate in actuarial guidance issued by the Secretary of State – see separate policy under Regulation 30(8)).
- 3.2 As part of the policy making decision the Scheme employer must consider whether, in addition to the benefits the member may have accrued prior to 1 April 2008 (which the member must draw), to permit the member to choose to draw all, part or none of the pension benefits they built up after 31 March 2008 and before 1 April 2014 and all, part of none of the pension benefits they built up after 1 April 2014.
- 3.3 Due consideration must be given to the financial implications of allowing an employee to draw all or part of their pension benefits earlier than their normal retirement age.
- 3.4 Options suggested by the Pension Fund are;
- (a) to consider each application on its merits subject to the financial implications for the employer
  - (b) to accept any applications where there is no cost to the employer subject to there being no detrimental impact on the service
  - (c) applications will be considered with the decision being delegated to the appropriate officer
  - (d) to only allow for the release of pension benefits built up before 1 April 2008
  - (e) to allow for all pension benefits to be released regardless of the dates of Scheme membership.

**The recommendation in respect of Flexible Retirement (Regulation 30(6)) is Option (b); that to accept any applications where there is no cost to the employer subject to there being no detrimental impact on the service.**

### **4. LGPS 2013 Regulation 30 (8) – Waiving of Actuarial Reduction**

- 4.1 Where a Scheme employer’s policy under regulation 30(6) (flexible retirement) is to consent to the immediate release of benefits in respect of an active member who is aged 55 or over, those benefits must be adjusted by an amount shown as appropriate in actuarial guidance issued by the Secretary of State (commonly referred to as actuarial reduction or early payment reduction).
- 4.2 A Scheme employer (or former employer as the case may be) may agree to waive in whole or in part and at their own cost, any actuarial reduction that may be required by the Scheme Regulations.

- 4.3 Due consideration must be given to the financial implications of agreeing to waive in whole or in part any actuarial reduction
- 4.4 Options suggested by the Pension Fund are;
- (a) to consider each application on its merits subject to the financial implications for the scheme employer
  - (b) a decision to waive any actuarial reduction will be considered in exceptional circumstances subject to the employee's exceptionally difficult personal and domestic circumstances
  - (c) an actuarial reduction will always be applied where relevant and a decision to waive such a reduction will not be considered.

**The recommendation in respect of Waiving of Actuarial Reduction (Regulation 30 (8)) is Option (b) that a decision to waive any actuarial reduction will only be considered where there will be a financial or other benefit to the employer.**

## **5. LGPS 2013 Regulation 31 – Award of Additional Pension**

5.1 A Scheme employer may resolve to award

- (a) an active member, or
- (b) a member who was an active member but dismissed by reason of redundancy, or business efficiency, or whose employment was terminated by mutual consent on grounds of business efficiency,

additional annual pension of, in total (including any additional pension purchased by the Scheme employer under Regulation 16), not more than the additional pension limit (£6,500 from 1st April 2014 subject to annual increase in line with the Pensions (Increase) Act 1971).

5.2 Any additional pension awarded is payable from the same date as any pension payable under other provisions of the Scheme Regulations from the account to which the additional pension is attached.

5.3 In the case of a member falling within sub-paragraph (b) above, the resolution to award additional pension must be made within 6 months of the date that the member's employment ended.

5.4 Options are;

- (a) to consider using this discretion in cases of redundancy and business efficiency subject to the financial implications for the employer
- (b) to consider using this discretion on compassionate grounds due to the member's exceptionally difficult personal or domestic circumstances
- (c) to consider using this discretion where a sufficient benefit to the employer can be justified

- (d) not to apply this discretion

**The recommendation in respect of Additional Pension Reg 31 is Option (d); not to award additional pension except in the following circumstances;**

5.5 Additional pension under regulation 31 may be awarded to an employee who would otherwise be eligible for a lump sum compensation payment under the WBC Discretionary Compensation policy. Where the employee agrees to forgo the lump sum payment (in excess of any statutory redundancy compensation) that would otherwise have been paid, the Council will award additional pension actuarially equivalent in value to the lump sum compensation payment, provided that the additional annual pension would not exceed the statutory limits.

5.6 This is in line with current policy under the 'old' LGPS Regulations.

**6. LGPS (Transitional Provisions and Savings) 2014 Schedule 2; (2) and (3) – Switching on the 85-year Rule**

6.1 Where a scheme member retires or leaves employment and elects to draw their benefits at or after the age of 55 and before the age of 60 those benefits will be actuarially reduced unless their Scheme employer agrees to meet the full or part cost of those reductions as a result of the member otherwise being protected under the 85 year rule as set out in previous Regulations.

6.2 So as to avoid the member suffering the full reduction to their benefits the Scheme employer can 'switch on' the 85 year rule protections thereby allowing the member to receive fully or partly unreduced benefits but subject to the Scheme employer paying a strain (capital) cost to the Pension Fund

6.3 Options suggested by the Pension Fund are;

- (a) to consider each occurrence as it arises subject to the financial implications for the employer
- (b) any decision to 'switch on' the 85 year rules will only be considered where there will be a financial or other benefit to the employer
- (c) any decision to 'switch on' the 85 year rule will be considered on compassionate grounds in exceptional circumstances subject to the employee's exceptionally difficult and personal and domestic circumstances
- (d) under no circumstances will the Scheme employer agree to 'switch on' the 85 year rule

**The recommendation in respect of 'Switching on the 85 year Rule' is Option (b); to any decision to 'switch on' the 85 year rules will only be considered where there will be financial or other benefit to the employer each occurrence as it arises subject to the financial implications.**

6.4 The decision-making process will be as set out in the Employer Statement; Local Government Pension Scheme Discretions Policy referred to in para 3.6 above

## **7. LGPS 2013 Regulation 9(1) (3) – Contributions**

- 7.1 Where an active member changes employment or there is a material change which affects the member's pensionable pay during the course of a financial year, the Scheme employer may determine that a contribution rate from a different band (as set out in Regulation 9(2)) should be applied.
- 7.2 Where the Scheme employer makes such a determination it shall inform the member of the revised contribution rate and the date from which it is to be applied.
- 7.3 Options suggested by the Pension Fund are;
- (a) to set employee contribution rates at 1st April each year and make no changes throughout the year
  - (b) to make changes to employee contribution rates throughout the year from the effective date of any change in employment or material change to the rate of pensionable pay received.
  - (c) To consider a change to an employee's rate of pay where the employee requests a review as a result of a change in employment or material change in pensionable pay

**The recommendation in respect of Contributions Regulation 9(1) (3) is Option (a); to set employee contribution rates at 1st April each year and make no changes throughout the year.**

- 7.4 This is recommended for administrative convenience.

## **8. LGPS 2013 Regulation 17(1) – Shared Cost Additional Voluntary Contributions**

- 8.1 An active member may enter into arrangements to pay additional voluntary contributions (AVCs) or to contribute to a shared cost additional voluntary contribution arrangement (SCAVCs) in respect of an employment. The arrangement must be a scheme established between the appropriate administering authority and a body approved for the purposes of the Finance Act 2004, registered in accordance with that Act and administered in accordance with the Pensions Act 2004.
- 8.2 The Scheme employer needs to determine whether or not it will make contributions to such an arrangement on behalf of its active members.
- 8.3 Options suggested by the Pension Fund are;
- (a) to consider using this discretion where a sufficient benefit to the employer can be justified
  - (b) not to apply this discretion

**The recommendation in respect of Shared Cost Additional Voluntary Contributions Reg 17(1) is Option (b); not to apply this discretion.**

- 8.4 This is in line with current policy under the 'old' LGPS Regulations.

**9. LGPS 2013 Regulation 22 (7) 22 (8) – Merging of Deferred Member Pension Accounts with Active Member Pension Account**

- 9.1 A deferred member's pension account is automatically aggregated with their active member's pension account unless the member elects within the first 12 months of the new active member's pension account being opened to retain their deferred member's pension account.
- 9.2 A Scheme employer can, at their discretion, extend the 12 month election period.
- 9.3 Options suggested by the Pension Fund are;
- (a) each case will be examined at the appropriate time
  - (b) to extend the 12 month deadline to 18 months
  - (c) to allow an active member to elect not to aggregate a deferred member's pension account with an active member's pension account beyond the 12 month deadline only
  - (d) to allow an active member to elect not to aggregate a deferred member's pension account to an active member's pension account beyond the 12 deadline only where there is no financial risk to the employer and it is no financial risk to the employer and it is of benefit to the member

**The recommendation in respect of Deferred Pensions Regulation 22 (7) 22 (8) is option (d); to allow an active member to elect not to aggregate a deferred member's pension account to an active member's pension account beyond the 12 month deadline only where there is no financial risk to the employer and it is no financial risk to the employer and it is of benefit to the member.**

- 9.4 This is in line with current policy under the 'old' LGPS Regulations.

**10. LGPS 2013 Regulation 100(6) – Inward Transfers of Pension Rights**

- 10.1 A request from an active member to transfer former pension rights from a previous arrangement into the Local Government Pension Scheme as a result of their employment with a Scheme employer must be made in writing to the administering authority and the Scheme employer before the expiry of the period of 12 months beginning with the date on which the employee first became an active member in an employment (or such longer period as the Scheme employer and administering authority may allow).
- 10.2 Options suggested by the Pension Fund are;
- (a) each case will be examined at the appropriate time
  - (b) to extend the 12 month deadline to 18 months subject to the administering authority's agreement
  - (c) to accept transfers in beyond the 12 month deadline where there is no financial risk to the employer subject to the authority's agreement

- (d) not to extend the 12 month deadline

**The recommendation in respect of Inward Transfers of Pensions Rights Reg 100(6) is Option (d); to not to extend the 12 month deadline.**

## **11. LGPS 2013 Regulation 21(5) – Assumed Pensionable Pay**

11.1 A Scheme employer needs to determine whether or not to include in the calculation of assumed pensionable pay, any 'regular lump sum payment' received by a Scheme member in the 12 months preceding the date that gave rise to the need for an assumed pensionable pay figure to be calculated.

11.2 Options suggested by the Pension Fund are;

- (a) each case will be examined at the appropriate time
- (b) no regular lump sum payments will ever be included in the calculation of assumed pensionable pay
- (c) regular lump sum payments will always be included in the calculation of assumed pensionable pay

**The recommendation in respect of Assumed Pensionable Pay Reg 21(5) is Option (a); each case will be examined at the appropriate time.**

11.3 There are likely to be few cases relevant to this regulation. Option (a) allows full consideration of the circumstances of each case as it arises.

## **12. LGPS 2013 Regulation 74 – Applications for Adjudication of Disagreements**

12.1 Each Scheme employer must appoint a person ("the adjudicator") to consider applications from any person whose rights or liabilities under the Scheme are affected by:

- (1) a decision under regulation 72 (first instance decisions); or
- (2) any other act or omission by a Scheme employer or administering authority,
- (3) and to make a decision on such applications.

12.2 Responsibility for determinations under this first stage of the Internal Disputes Resolution Procedure (IDRP) rests with "the adjudicator".

12.3 **It is recommended that the Council appoint Andy Walker (Head of Finance) as the Adjudicator** for this purpose.

12.4 This is in line with current policy.

## **13. Recommended Action**

13.1 To approve the LGPS Employer Policy Statements (as attached).

## **Appendices**

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Appendix A – West Berkshire LGPS 2013 Policies in respect of;

- (a) Regulation 16. Additional Pension Contributions
- (b) Regulation 30(6) Flexible Retirement
- (c) Regulation 30 (8) Waiving of Actuarial Reduction
- (d) Regulation 31 Award of Additional Pension
- (e) Schedule 2 Switching on of the 85 year rule
- (f) Regulation 9 (1) & (3) Re -determination of active member contributions
- (g) Regulation 17(1) Additional Voluntary Contributions
- (h) Regulation 22 Merging of Deferred Pension Accounts
- (j) Regulation 100(6) Inward Transfer of Pension Rights
- (k) Regulation 21(5) Assumed Pensionable pay
- (l) Regulation 74 Application for Adjudication

Appendix B – Berkshire Pension Fund Guide to Employers

Appendix C – Employer Statement; Local Government Pension Scheme Discretions Policy

## **Consultees**

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### **Local Stakeholders:**

**Officers Consulted:** Robert O'Reilly  
Jane Milone  
Gemma McNamara  
Steve Duffin

**Trade Union:** Unison, GMB



## Appendix A

### **PART A – Formulation of COMPULSORY policy in accordance with Regulation 60 of the Local Government Pension Scheme Regulations 2013**

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#### **(A) Regulation 16 – Additional Pension Contributions** *(see guidance note 1 in employer's guide)*

The Scheme employer may resolve to fund in whole or in part any arrangement entered into by an active scheme member to pay additional pension contributions by way of regular contributions in accordance with **Regulation 16(2)(e)**, or by way of a lump sum in accordance with **Regulation 16(4)(d)**.

The Scheme employer may enter into an APC contract with a Scheme member who is contributing to the MAIN section of the Scheme in order to purchase additional pension of not more than the additional pension limit (£6,500 from 1<sup>st</sup> April 2014 subject to annual increase in line with the Pensions (Increase) Act 1971).

The amount of additional contribution to be paid is determined by reference to actuarial guidance issued by the Secretary of State.

Consideration needs to be given to the circumstances under which the Scheme employer may wish to use their discretion to fund in whole or in part an employee's Additional Pension Contributions.

#### **Scheme Employer's policy concerning the whole or part funding of an active member's additional pension contributions**

##### **Employer Policy**

Not to fund an employee's APCs except in the circumstances set out below.

Additional pension under regulation 16 may be awarded to an employee who would otherwise be eligible for a lump sum compensation payment under the WBC Discretionary Compensation policy. Where the employee agrees to forgo the lump sum payment (in excess of any statutory redundancy compensation) that would otherwise have been paid, the Council will award additional pension actuarially equivalent in value to the lump sum compensation payment, provided that the additional annual pension would not exceed the statutory limits.

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#### **(B) Regulation 30(6) – Flexible Retirement** *(see guidance note 2 in employer's guide)*

An active member who has attained the age of 55 or over and who with the agreement of their employer reduces their working hours or grade of employment may, with the further consent of their employer, elect to receive immediate payment of all or part of the retirement pension to which they would be entitled in respect of that employment as if that member were no longer an employee in local government service on the date of the reduction in hours or grade (*adjusted by the amount shown as appropriate in actuarial guidance issued by the Secretary of State – separate policy required under Regulation 30(8)*).

As part of the policy making decision the Scheme employer must consider whether, in addition to the benefits the member may have accrued prior to 1 April 2008 (which the member must draw), to permit the member to choose to draw all, part or none of the pension benefits they built up after 31 March

2008 and before 1 April 2014 and all, part of none of the pension benefits they built up after 1 April 2014.

Due consideration must be given to the financial implications of allowing an employee to draw all or part of their pension benefits earlier than their normal retirement age.

### **Scheme Employer's policy concerning flexible retirement**

#### **Employer Policy**

Individual applications will be considered on the basis of the circumstances and after taking into consideration the financial implications for the Scheme Employer.

---

#### **(C ) Regulation 30(8) – Waiving of Actuarial Reduction *(see guidance note 3 in employer's guide)***

Where a Scheme employer's policy under regulation 30(6) (flexible retirement) is to consent to the immediate release of benefits in respect of an active member who is aged 55 or over, those benefits must be adjusted by an amount shown as appropriate in actuarial guidance issued by the Secretary of State (commonly referred to as actuarial reduction or early payment reduction).

A Scheme employer (or former employer as the case may be) may agree to waive in whole or in part and at their own cost, any actuarial reduction that may be required by the Scheme Regulations.

Due consideration must be given to the financial implications of agreeing to waive in whole or in part any actuarial reduction.

### **Scheme Employer's policy concerning the waiving of actuarial reduction**

#### **Employer Policy**

Individual applications will be considered on the basis of the circumstances and after taking into consideration the financial implications for the Scheme Employer.

---

#### **(D) Regulation 31 – Award of Additional Pension *(see guidance note 4 in employer's guide)***

A Scheme employer may resolve to award

(a) an active member, or

(b) a member who was an active member but dismissed by reason of redundancy, or business efficiency, or whose employment was terminated by mutual consent on grounds of business efficiency,

additional annual pension of, in total (including any additional pension purchased by the Scheme employer under Regulation 16), not more than the additional pension limit (£6,500 from 1<sup>st</sup> April 2014 subject to annual increase in line with the Pensions (Increase) Act 1971).

Any additional pension awarded is payable from the same date as any pension payable under other provisions of the Scheme Regulations from the account to which the additional pension is attached.

In the case of a member falling within sub-paragraph (b) above, the resolution to award additional pension must be made within 6 months of the date that the member's employment ended.

### **Scheme Employer's policy concerning the award of additional pension**

#### **Employer Policy**

Not to apply this discretion.

---

## Local Government Pension Scheme (Transitional Provisions and Savings) Regulations 2014

### **(E) Schedule 2 – paragraphs 2 and 3** *(see guidance note 5 in employer's guide)*

Where a scheme member retires or leaves employment and elects to draw their benefits at or after the age of 55 and before the age of 60 those benefits will be actuarially reduced unless their Scheme employer agrees to meet the full or part cost of those reductions as a result of the member otherwise being protected under the 85 year rule as set out in previous Regulations.

So as to avoid the member suffering the full reduction to their benefits the Scheme employer can 'switch on' the 85 year rule protections thereby allowing the member to receive fully or partly unreduced benefits but subject to the Scheme employer paying a strain (capital) cost to the Pension Fund

### **Scheme Employer's policy concerning the 'switching on of the 85 year rule**

#### **Employer Policy**

To consider each occurrence as it arises subject to the financial implications for the Scheme Employer.

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## **PART B – Formulation of RECOMMENDED policy in accordance with the Local Government Pension Scheme Regulations 2013**

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### **(F) Regulation 9(1) & (3) – Contributions** *(see guidance note 6 in employer's guide)*

Where an active member changes employment or there is a material change which affects the member's pensionable pay during the course of a financial year, the Scheme employer may determine that a contribution rate from a different band (as set out in Regulation 9(2)) should be applied.

Where the Scheme employer makes such a determination it shall inform the member of the revised contribution rate and the date from which it is to be applied.

### **Scheme Employer's policy concerning the re-determination of active members' contribution bandings at any date other than 1<sup>st</sup> April**

#### **Employer Policy**

To set employee contribution rates as at the 1<sup>st</sup> April each year and to make no changes throughout the year.

---

### **(G) Regulation 17(1) – Additional Voluntary Contributions** *(see guidance note 7 in employer's guide)*

An active member may enter into arrangements to pay additional voluntary contributions (AVCs) or to contribute to a shared cost additional voluntary contribution arrangement (SCAVCs) in respect of an employment. The arrangement must be a scheme established between the appropriate administering authority and a body approved for the purposes of the Finance Act 2004, registered in accordance with that Act and administered in accordance with the Pensions Act 2004.

The Scheme employer needs to determine whether or not it will make contributions to such an arrangement on behalf of its active members.

## **Scheme Employer's policy concerning payment of Shared Cost Additional Voluntary Contributions**

### **Employer Policy**

Not to apply this discretion.

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## **(H) Regulation 22 – Merging of Deferred Member Pension Accounts with Active Member Pension Accounts** *(see guidance note 8 in employer's guide)*

A deferred member's pension account is automatically aggregated with their active member's pension account unless the member elects within the first 12 months of the new active member's pension account being opened to retain their deferred member's pension account.

A Scheme employer can, at their discretion, extend the 12 month election period.

## **Scheme Employer's policy concerning merging of Deferred Member Pension Accounts with Active Member Pension Accounts**

### **Employer Policy**

To allow an active member to elect not to aggregate a deferred member's pension account to an active member's pension account beyond the 12 month deadline only where there is no financial risk to Scheme Employer and is of benefit to the member.

---

## **(J) Regulation 100(6) – Inward Transfers of Pension Rights** *(see guidance note 10 in employer's guide)*

A request from an active member to transfer former pension rights from a previous arrangement into the Local Government Pension Scheme as a result of their employment with a Scheme employer must be made in writing to the administering authority and the Scheme employer before the expiry of the period of 12 months beginning with the date on which the employee first became an active member in an employment (or such longer period as the Scheme employer and administering authority may allow).

## **Scheme Employer's policy concerning the extension of the 12 month transfer application period**

### **Employer Policy**

To accept transfers in beyond the 12 month deadline where there is no financial risk to the Scheme Employer subject to the administering authority's agreement.

---

## **(K) Regulation 21(5) – Assumed Pensionable Pay** *(see guidance 11 in employer's guide)*

A Scheme employer needs to determine whether or not to include in the calculation of assumed pensionable pay, any 'regular lump sum payment' received by a Scheme member in the 12 months preceding the date that gave rise to the need for an assumed pensionable pay figure to be calculated.

**Scheme Employer’s policy concerning inclusion of ‘regular lump sum payments’ in assumed pensionable pay calculations**

**Employer Policy**

Each case will be examined at the appropriate time.

---

**(L) Regulation 74 – Applications for Adjudication of Disagreements** *(see guidance note 9 in employer’s guide)*

Each Scheme employer must appoint a person (“the adjudicator”) to consider applications from any person whose rights or liabilities under the Scheme are affected by:

- (a) a decision under regulation 72 (first instance decisions); or
- (b) any other act or omission by a Scheme employer or administering authority,

and to make a decision on such applications.

Responsibility for determinations under this first stage of the Internal Disputes Resolution Procedure (IDRP) rests with “the adjudicator” as named below by the Scheme employer:

Name: Mr A Walker

Job Title: Head of Finance

Full Address: West Berkshire Council

Market Street

Newbury Berks

Post Code: RG14 5LD

Tel No: 01635 519433

Fax No: \_\_\_\_\_

Email: awalker@westberks.gov.uk

Adjudicator’s Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## SCHEME EMPLOYER CONFIRMATION

It is understood that the discretions contained within this statement of policy are applicable to all eligible members of the Scheme. The Scheme rules allow for a revised statement to be issued at least one month in advance of the date that any new policy takes effect. The revised statement must be sent to the administering authority and the employer must publish its statement as revised in a place that is accessible to all of its eligible scheme members.

The policies made above:

Have regard to the extent to which the exercise of the discretions could lead to a serious loss of confidence in the public service;

Will not be used for any ulterior motive;

Will be exercised reasonably;

Will only be used when there is a real and substantial future benefit to the employer for incurring the extra costs that may arise;

Will be duly recorded when applied.

Signed on behalf of the Scheme Employer: \_\_\_\_\_

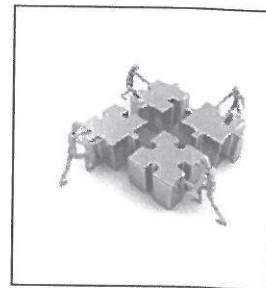
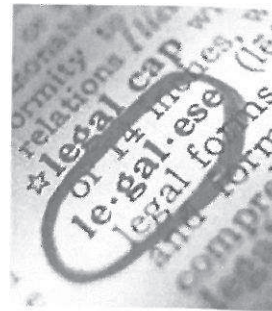
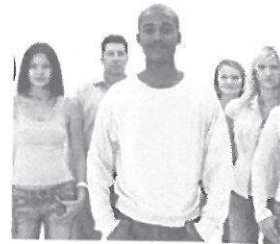
Name in Block Capitals: \_\_\_\_\_

Position: \_\_\_\_\_

Scheme Employer's Name: \_\_\_\_\_

Date: \_\_\_\_\_

**LOCAL GOVERNMENT PENSION  
SCHEME REGULATIONS 2013**



**EMPLOYER'S GUIDE TO COMPLETING  
A STATEMENT OF POLICY WITH REGARD TO  
THE EXERCISE OF DISCRETIONARY FUNCTIONS**

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## INTRODUCTION

With effect from 1 April 2014 the Local Government Pension Scheme Regulations 2013 and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 came into force.

Under these Regulations, as with previous Regulations, Scheme employers are required to prepare, maintain and keep under review a statement of policy concerning a number of discretions made available to them throughout the Regulations. Scheme employers have many decisions to take with regard to numerous discretions and requirements made of them as outlined in the statutory legislation and it is important that each Scheme employer takes full responsibility for ensuring that their obligations are fulfilled appropriately and in accordance with the statutory instruments laid by Parliament.

Some statements of policy in respect of certain Scheme Regulations are compulsory as in the main they can carry significant cost implications for a Scheme employer and this is the minimum policy requirement made of Scheme employers. However, it is generally recognised that there is considerable value in Scheme employers making statements of policy in respect of other Scheme Regulations where discretion is available to them for ease of administration and consistency of approach even though it is not compulsory to do so.

This guide is intended to assist Scheme employers in completing a statement of policy. It is set out into three distinct sections:

1. Those policies that are compulsory;
2. Those policies that are recommended; and
3. Other Regulations that may require an employer decision.

Some policy examples are provided throughout this guide although these are for guidance only and are not to be perceived as the administering authority giving advice.

## REGULATIONS FOR WHICH A STATEMENT OF POLICY IS COMPULSORY

### LOCAL GOVERNMENT PENSION SCHEME REGULATIONS 2013 (S.I. 2013 No. 2356)

In accordance with Regulation 60 of the Local Government Pension Scheme Regulations 2013 (*Statements of policy about exercise of discretionary functions*) a Scheme employer **must** prepare a written statement of its policy in relation to the exercise of its functions under regulations:

- 16(2)(e) and 16(4)(d) (funding of additional pension);
- 30(6) (flexible retirement);
- 30(8) (waiving of actuarial reduction); and
- 31 (award of additional pension).

STATUTORY INSTRUMENTS	
2013 No. 2356	
PUBLIC SERVICE PENSIONS, FUNDS AND AWARDS	
The Local Government Pension Scheme Regulations 2013	
Enacted	18th September 2013
Laid before Parliament	19th September 2013
Coming into force	1st April 2014
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## LOCAL GOVERNMENT PENSION SCHEME (TRANSITIONAL PROVISIONS, SAVINGS & AMENDMENT) REGULATIONS 2014 (S.I. 2014 No. 525)

In accordance with Paragraph 2(2) of Schedule 2 to the Local Government Pension Scheme (Transitional Provisions, Savings & Amendment) Regulations 2014 a Scheme employer **must** prepare a written statement on whether, in respect of benefits relating to pre 1<sup>st</sup> April 2014 membership, to 'switch on' the 85 year rule for a member who voluntarily elects to draw their benefits on or after age 55 and before the age of 60.

## LOCAL GOVERNMENT PENSION SCHEME (ADMINISTRATION) REGULATIONS 2008 (as amended) (S.I. 2008 No. 239)

Scheme employers will have previously produced a statement of policy in accordance with Regulation 66 of the Local Government Pension Scheme (Administration) Regulations 2008 in respect of a number of discretions available to them under those Regulations.

It is important that Scheme employers keep that statement of policy under review and refer to it when exercising those discretions on or after 1 April 2014 in relation to Scheme members who ceased active membership between 1 April 2008 and 31 March 2014.

## LOCAL GOVERNMENT PENSION SCHEME REGULATIONS 1997 (as amended) (S.I. 1997 No. 1612)

Scheme employers will have previously produced a statement of policy in accordance with Regulation 106 of the Local Government Pension Scheme Regulations 1997 in respect of a number of discretions available to them under those Regulations.

It is important that Scheme employers keep that statement of policy under review and refer to it when exercising those discretions on or after 1 April 2014 in relation to Scheme members who ceased active membership between 1 April 1998 and 31 March 2008.

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It is important that Scheme employers maintain and review their statement to ensure that it is always up to date with their intended policy. The policy statement is likely to be referred to on a regular basis and so Scheme employers must be happy that the policies at stated reflect the decisions that they are wishing to take.

It is important to take account of the following regulatory requirements:

1. A Scheme employer **must** send a copy of its statement of policy to the administering authority (Royal Borough of Windsor & Maidenhead) and must publish its statement.
2. A Scheme employer **must** keep its statement of policy under review and make such revisions as are appropriate following a change of its policy.
3. Where a revision to the statement of policy is made, a Scheme employer **must** send a copy of its revised statement to the administering authority before the expiry of one month beginning with the date that any such revision is made. A Scheme employer must also publish its revised statement.
4. In preparing, or reviewing and making revisions to its statement, a Scheme employer **must** have regard to the extent to which the exercise of its discretionary functions could lead to a serious loss of confidence in the public service.

5. Once completed, a Scheme employer **must** ensure that its statement of policy is published in a place that is easily accessible to all of its eligible Scheme employees and that any revisions made to the statement of policy are equally accessible.
6. A Scheme employer will be required to sign a declaration stating that their policies will not be used for any ulterior motive, will be exercised reasonably, will only be used when there is a real and substantial future benefit to the employer for incurring the extra costs that may arise and will be duly recorded when applied.

## GUIDANCE NOTES FOR COMPLETION OF A POLICY STATEMENT UNDER THE LGPS 2014 REGULATIONS - COMPULSORY

### Guidance Note 1 – Regulation 16(2)(e) and 16(4)(d) – Employer Funded APCs

Regulation 16 refers to Additional Pension Contributions (APCs) which an active member of the Scheme can elect to pay under certain circumstances. The options are:

- Option 1 - To buy extra pension;
- Option 2 - To buy 'lost' pension for unpaid leave of absence or unpaid child-related leave;
- Option 3 - To buy 'lost' pension due to a trade dispute (strike).

Where the employee is contributing to the MAIN section of the Scheme they can enter into an APC contract in respect of all three options listed above. However, where an employee is contributing to the 50/50 section of the Scheme they can only enter into an APC contract in respect of options 2 and 3.



Options 1 and 3 are at full cost to the employee whereas option 2 is a shared cost contribution between the employee and their employer providing that the employee elects to enter into a Shared Cost APC (SCAPC) contract within the first 30 days of returning to work following the unpaid period of absence.

For the purposes of the employer policy statement it is only option 1 for which a policy has to be made. The employer must determine whether or not they would ever be likely to enter into a shared cost APC arrangement with an employee.

Paragraph 2(e) of regulation 16 states that where APCs are to be paid on a regular basis they may be funded in whole or in part by the member's Scheme employer i.e. at a reduced or no cost to the Scheme member.

Paragraph 4(d) of regulation 16 states that where APCs are to be paid as a lump sum they may be funded in whole or in part by the member's Scheme employer i.e. at a reduced or no cost to the Scheme member.

Where APCs are to be paid in line with paragraph (2)(e) the arrangement to pay those regular contributions must be entered into for a number of complete years (the minimum being one year). The amount of additional contributions to be paid each Scheme year must be specified and where the Scheme member has more than one pension account because of holding more than one post, the account to which the APCs are attached must also be specified.

Where APCs are to be paid in line with paragraph (4)(d) the arrangement to pay that lump sum must specify the amount to be paid and the account to which the APCs are attached should the Scheme member have more than one pension account.

There is a limit to the amount of additional pension that can be purchased which is set every 1<sup>st</sup> April and is increased in line with the Pensions (Increase) Act 1971. The initial limit, from 1<sup>st</sup> April 2014, is £6,500. Of course a member does not have to purchase the full £6,500 but every time an APC arrangement is entered into, either by payment of regular contributions or by payment of a lump sum, it must specify the amount to be credited to the member's pension account at the end of the Scheme year.

The amount of contribution to be paid is to be determined in accordance with actuarial guidance issued by the Secretary of State and is based on the age and gender of the member.

When making your policy decision you need to consider under what circumstances you, as a Scheme employer, may wish to use your discretion to pay in whole or in part an employee's APCs. Or perhaps you would consider never using this discretion. Or perhaps you would want to know the cost implications before making a decision.

Ultimately it is your decision but some examples of policy statements might be:

- Not to fund an employee's APCs.
- To consider funding an employee's APCs in exceptional circumstances and subject to the employee's difficult domestic circumstances.
- To consider funding an employee's APCs in circumstances where there is a financial or practical reason for doing so.

#### Guidance Note 2 – Regulation 30(6) – Flexible Retirement

An active member who has attained the age of 55 or over, and with the agreement of their employer reduces either their hours of work or grade of their employment may, with the further consent of their employer, elect to receive immediate payment of all or part of their retirement pension built up to the date that their hours or grade is reduced. The amount of pension payable would be adjusted in accordance with actuarial guidance issued by the Secretary of State (but see guidance note 3 regarding the waiving of actuarial reduction).

The purpose of flexible retirement is to allow an individual the opportunity to move gradually into retirement by reducing their hours of work or the level of responsibility required of them rather than facing the perceived 'cliff edge' of retirement. Although the employee's level of income will reduce this is in some part or wholly compensated for by the release of all or part of their accrued pension benefits.



As part of any agreement to permit flexible retirement a Scheme employer must consider whether, in addition to the benefits the member has accrued prior to 1 April 2008 (which the member must draw), to permit the member to choose to draw all, part or none of the pension benefits they built up after 31 March 2008 and before 1 April 2014 and all, part or none of the pension benefits they built up after 31 March 2014.

Flexible retirement can be used as a very good management tool although there can be cost implications for Scheme employers subject to the amount of actuarial reduction that may or may not be applied to the member's benefits (see guidance note 3).

When deciding upon the policy to be adopted Scheme employers need to be aware of the potential financial implications of allowing one of their employees to draw part or all of their retirement benefits earlier than their normal retirement age.

A Scheme employer may also as part of their policy statement wish to consider and define by how much an employee's hours or grade might need to be reduced before allowing any employee to take flexible retirement.

Unless your policy is to never grant flexible retirement, it is critical that before making any decision to allow an employee early access to any of their pension benefits that you contact the pension administration team requesting details of the employer costs that might be involved.

Some examples of policy statements might be:

- To consider each application on its merits subject to the financial implications for the employer.
- To accept any applications where there is no cost to the employer subject to there being no detrimental impact on the service.
- Applications will be considered with the decision being delegated to the appropriate officer or Committee.
- To only allow for the release of pension benefits built up before 1 April 2008.
- To allow for all pension benefits to be released regardless of the dates of Scheme membership.
- Not to accept any applications from Scheme members for flexible retirement.

### Guidance Note 3 – Regulation 30(8) – Waiving of Actuarial Reduction

Paragraph 8 of regulation 30 provides a Scheme employer with the power to waive all or part of any actuarial reduction (percentage reduction to benefits to reflect their early payment) that may be applied to one of their employee's pension benefits as a result of them agreeing to take those benefits early in line with their employer's policy on flexible retirement.

The discretion available to a Scheme employer under this paragraph is linked very closely to the discretion available under Regulation 30(6) but whereas that discretion refers to a



Scheme employer's policy to allow an employee to take all or part of their benefits due to flexible retirement, this policy relates purely to whether or not a Scheme employer will consider waiving all or part of any actuarial reduction applied to the employee's benefits thereby allowing the employee to enjoy the full or increased value of their accrued benefits.

The purpose of applying an actuarial reduction is to protect the Pension Fund against a loss of funding. All Scheme members will have a date from which their benefits are expected to be released (commonly referred to as their Eligible Retirement Date (ERD) or sometimes their Normal Retirement Date (NRD) or Critical Retirement Age (CRA)). This is a known event and as such the amount of contributions paid by both the employee and the employer plus the investment returns received by the Pension

Fund over the period that the employee is a member of the Scheme, should be sufficient to ensure that by the time the member's benefits become payable from their ERD, NRD or CRA, there is sufficient money in the Pension Fund to pay for those benefits for the rest of the member's lifetime (and the lifetimes of their entitled survivors).

Where benefits are paid from an earlier date than ERD, NRD or CRA, the pension benefits have to be paid for longer and in order to reflect this extended payment period, benefits are reduced so that less is paid over a longer time even though ultimately, an equivalent amount is expected to be paid from the Pension Fund. Of course, the unknown factor is how long the member is going to live but assumptions as to life expectancy are built into the reduction percentages applied to the pension benefits.

If the early reduction factors were not applied to the member's benefits the Pension Fund would not have sufficient funds to pay for the member's benefits over their lifetime. Therefore, if a Scheme employer takes a decision to waive or reduce that actuarial reduction, they have to pay an amount to the Pension Fund to ensure that the Pension Fund does have sufficient funds to pay those benefits to the member. This is often referred to as a capital or strain cost.

Scheme employer's have to be very careful when considering whether or not to waive any actuarial reduction and must always take into account the possible costs to be applied when deciding whether or not to allow an employee to receive their benefits early (whether this is due to flexible retirement, redundancy or business efficiency).

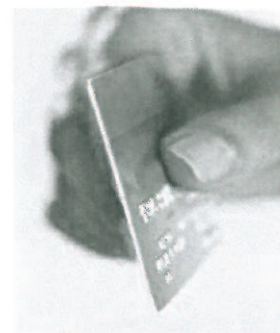
When deciding upon your statement of policy it is vital that you consider the implications identified above so that you do not risk receiving what can be quite sizeable invoices for capital costs without having first been made aware of what those costs could be.

Some examples of policy statements might be:

- To consider each application on its merits subject to the financial implications for the employer.
- A decision to waive any actuarial reduction will only be considered where there will be a financial or other benefit to the employer.
- A decision to waive any actuarial reduction will be considered in exceptional circumstances subject to the employee's exceptionally difficult personal and domestic circumstances.
- An actuarial reduction will always be applied where relevant and a decision to waive such a reduction will not be considered.

#### Guidance Note 4 – Regulation 31 – Award of Additional Pension

Regulation 31 gives a Scheme employer the power to award an active member of the Scheme, or a member who was active but dismissed by reason of redundancy or business efficiency, additional pension up to a value of the additional pension limit as set out in Regulation 16 and as previously described in guidance note 1 i.e. £6,500 from 1<sup>st</sup> April 2014 subject to re-valuation each subsequent 1<sup>st</sup> April in line with the Pensions (Increase) Act 1971.



In the case of an active member (one who is currently contributing to the Scheme) a Scheme employer can award the additional pension at any time with the amount being credited to the relevant active member pension account in the Scheme year in which the resolution to award the additional pension is made.



In the case of a member who was an active member but has been dismissed due to redundancy or business efficiency, the resolution to award additional pension must be made within the period of 6 months of the date that the member's employment was terminated. The amount awarded is treated as being credited to the relevant active member pension account on the day before the date of termination of employment.

By awarding extra pension to a Scheme member there is potential for that Scheme member's benefits to exceed the permitted Annual or Lifetime Allowances resulting in a tax charge being made to the Scheme member. This is, however, solely the responsibility of the Scheme member to ascertain.

The cost of providing additional pension is to be determined in accordance with actuarial guidance issued by the Secretary of State and is based on the age and gender of the member.

As always, Scheme employers will need to be fully aware of the cost implications in awarding active members additional pension. Subject to that, however, this discretion could be a useful management tool when used as a recruitment or retention incentive. It could even perhaps be used as a reward system for exceptional performance.

Some examples of policy statements might be:

- To consider using this discretion in cases of redundancy and business efficiency subject to the financial implications for the employer.
- To consider using this discretion on compassionate grounds due to the member's exceptionally difficult personal or domestic circumstances.
- To consider using this discretion where a sufficient benefit to the employer can be justified.
- Not to apply this discretion.

#### **Guidance Note 5 – Paragraph 2(2) of Schedule 2 to the LGPS (Transitional Provisions, Savings & Amendment) Regulations 2014**

In order to make a policy in respect of this particular Regulation, Scheme employers need to be somewhat aware of the 85 year rule that existed under former Scheme Regulations, a rule under which many employees will retain protected rights as carried forward into the LGPS 2013 Regulations.

In brief, the 85 year rule states that where a Scheme member's age in whole years when added to their Scheme membership in whole years equals 85 that is the point from which their pension benefits can be released without actuarial reduction being applied. So, for example, an employee aged 60 with 25 years of Scheme membership would meet their 85 year rule date. Whilst the Regulations governing the 85 year rule are complex for the purposes of producing a policy statement it is not deemed necessary to go into that level of detail.

Until the introduction of the LGPS 2013 Regulations it was not possible for a Scheme member to voluntarily elect to draw their pension benefits before the age of 60 – they had to have their employer's consent. With effect from 1 April 2014, however, any Scheme member can voluntarily elect to retire (leave their employment) from the age of 55 and draw their pension benefits without the need to have their employer's consent. Now clearly, in many cases this would result in a large actuarial reduction being applied to those benefits to reflect their early payment but if a Scheme member has protection under the 85 year rule it would appear, initially at least, that by voluntarily retiring they would be protected against that actuarial reduction thereby generating a capital or strain cost that the Scheme employer would be required to pay to the pension fund (see guidance note 3 which looks at employers' costs arising due to early release of benefits).

However, the LGPS (Transitional Provisions, Savings & Amendment) Regulations 2014 'switches off' the protections afforded to Scheme members who meet the 85 year rule before the age of 60 thereby requiring Scheme member benefits to be actuarially reduced irrespective of whether or not the member satisfies the conditions of the 85 year rule.

The purpose of this policy is to determine the circumstances under which a Scheme employer might consider 'switching back on' the 85 year rule protection for those affected employees thereby agreeing to reduce or waive entirely any actuarial reduction being applied to those pension benefits that would otherwise have been protected under the 85 year rule. This would generate a capital or strain cost for which the Scheme employer would become liable.

As a Scheme employer, therefore, you need to consider the circumstances, if any, where you might agree to 'switch on' the 85 year rule for any of your eligible employees a decision that you may not be in a position to take until you have received from the pension administration team, details of the impact that the actuarial reductions will have on various parts of a Scheme member's benefits and the resulting employer costs that may arise should you agree to waive in full or in part, the actuarial reduction to be applied to the various parts of the Scheme member's benefits.

NOTE: Subject to a Scheme member meeting the 85-year rule and the protections afforded to them under former Scheme Regulations, different actuarial reductions may apply to different parts of the Scheme member's benefits i.e. 80<sup>th</sup>s benefits built up before 1 April 2008, 60<sup>th</sup>s benefits built up after 31 March 2008 and before 1 April 2014 and 49<sup>th</sup>s benefits built up since 1 April 2014. Only the pension administrators will be able to provide this level of detail and so should be contacted as early as possible in order to understand the implications for a Scheme employer in agreeing to 'switch back on' the 85-year rule for any of their eligible Scheme members.

When deciding upon your statement of policy it is vital that you consider the implications identified above and take into account the potential employer costs that could arise and the circumstances under which the payment of those costs might be acceptable.

Some examples of policy statements might be:

- To consider each occurrence as it arises subject to the financial implications for the employer.
- Any decision to 'switch on' the 85 year rule will only be considered where there will be a financial or other benefit to the employer.
- Any decision to 'switch on' the 85 year rule will be considered on compassionate grounds in exceptional circumstances subject to the employee's exceptionally difficult personal and domestic circumstances.
- Under no circumstances will the Scheme employer agree to 'switch on' the 85 year rule.

## **GUIDANCE NOTES FOR COMPLETION OF A POLICY STATEMENT UNDER THE LGPS 2014 REGULATIONS - RECOMMENDED**

### **Guidance Note 6 – Regulation 9(1) & (3) - Contributions**

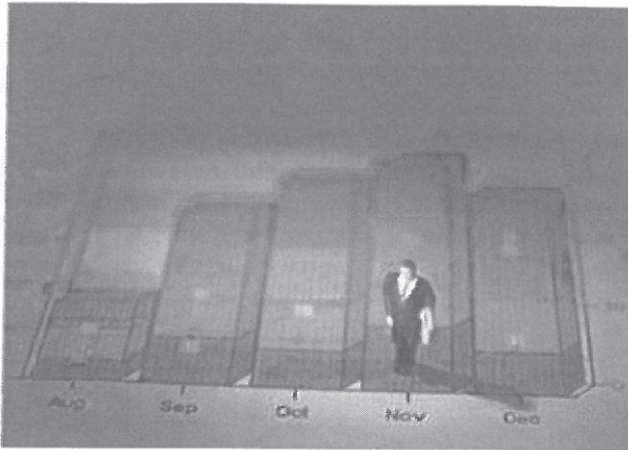
Paragraph 2 of Regulation 9 of the LGPS Regulations 2013 provides a table of contribution rates to be applied to all active Scheme members subject to the relevant pay range applicable to their employment. It is important to note that where an employee holds more than one job with a Scheme employer each job is to be treated separately when determining the

contribution rate to be applied (unless an employer determines that a single employment relationship exists).

The table as currently set out in Regulation 9 provides the pay ranges applicable from 1<sup>st</sup> April 2014.

Each year a Scheme employer is required to assess each of its Scheme members' actual pensionable pay as at 1<sup>st</sup> April, for every post that the employee may hold and apply the contribution rate in column 3 of the table as it relates to the pay ranges outlined in column 2.

It is important to note that from 1<sup>st</sup> April 2014 Scheme employers must assess their scheme members' contribution bandings based on their actual annual pensionable pay and not the full time equivalent (or term time equivalent) rate of pay as under former Regulations. This is



particularly important as with effect from that date non-contractual overtime and pay received in respect of any additional hours worked became pensionable.

Paragraph 3 of Regulation 9, however, provides a Scheme employer with the opportunity to apply a different contribution rate from a different pay band at any time during the Scheme year where either the employee has a change in employment or has a material change which affects their pensionable pay during the financial year.

Clearly this could be as a result of either an increase or a decrease to the employee's rate of pay and so a Scheme employer needs to consider carefully under what circumstances, if any, they may wish to apply a change to a Scheme member's contribution rate from any date other than 1<sup>st</sup> April each year. As pension benefits are funded in the main by the amounts of employee and employer contributions paid, a certain amount of over or under funding could occur should adjustments to employee contribution rates not be made to reflect the change in levels of pay at the time that they arise. However, a Scheme employer may simply view this as immaterial and consider that for every one employee whose rate should have been increased there will one for whom the rate should have been decreased. In any event, the correct rate must be applied from 1<sup>st</sup> of April next.

Scheme employers should be particularly aware of changes in the rates of pay for large groups of employees who, for example, may be redeployed or whose pay may be re-assessed as part of a job evaluation exercise particularly where the rate of pay has been decreased. Scheme employers may wish to consider what risk there is in receiving a large number of disputes from employees who feel they are paying a higher rate of pension contribution than is necessary if the rates are not amended from the effective date of change. It is probably more unlikely that employees paying a lower rate than perhaps required will choose to raise such a dispute.

Some examples of policy statements might be:

- To set employee contribution rates at 1<sup>st</sup> April each year and make no changes throughout the year.
- To make changes to employee contribution rates throughout the year from the effective date of any change in employment or material change to the rate of pensionable pay received.
- To consider a change to an employee's rate of pay where the employee requests a review as a result of a change in employment or material change in pensionable pay.

## Guidance Note 7 – Regulation 17(1) – Shared Cost AVCs



Regulation 17 of the LGPS Regulations 2013 allows an active member to contribute to an Additional Voluntary Contribution (AVC) scheme established between the administering authority (Royal Borough of Windsor & Maidenhead) and a body approved for the purposes under the Finance Act 2004.

Paragraph 1 of Regulation 17 states that an active member can also contribute to a Shared Cost Additional Voluntary Contribution Scheme (SCAVC). By its very definition, a SCAVC Scheme means that the cost of contributing to an AVC scheme is shared between the employee and the employer and whilst a Scheme employer is not required to make a policy decision in this regard, it is highly recommended that for clarity and administrative ease, such a policy statement is made.

A Scheme employer may wish to consider under what circumstances, if any, it may wish to contribute on behalf of its employees and if a decision to make contributions is agreed, what contribution limit will be applied. For example, a Scheme employer may consider using this discretion as a management tool when used as a recruitment or retention incentive. It could even be used as a reward system for exceptional performance perhaps.

Some examples of policy statements might be:

- To consider using this discretion where a sufficient benefit to the employer can be justified.
- Not to apply this discretion.

## Guidance Note 8 – Regulation 22(7) and 22(8) – Merging of Deferred Member Pension Accounts with Active Member Pension Account

Where a person with a deferred member's pension account becomes an active member (or continues to be an active member in a concurrent employment), the benefits in the deferred member's pension account must be aggregated with those in the active member's pension account within 12 months (or such longer time as the Scheme employer in relation to that active member's pension account permits) from the date on which the member again became an active member of the Scheme (or continues to be an active member in a concurrent employment) unless within 12 months of the new active member pension account being opened (or the concurrent active member's pension account being available) the member makes an election to the appropriate administering authority to retain the deferred member's pension account.

The purpose of this statement is to state the Scheme employer's policy on whether or not to extend the 12-month deadline set out in the Scheme regulations.

It is possible that a Scheme employer will deem 12 months to be a long enough period for a Scheme member to elect not to have a deferred member's pension account aggregated with their active member's pension account but there may be certain circumstances under which a Scheme employer may wish to consider extending that deadline where perhaps there may be a benefit to the individual and no detriment to the employer e.g. where the member has pre 1 April 2014 membership and the final pay in their former job is higher (in real terms, after adding inflation) than in the new job.

Some examples of policy statements might be:

- Each case will be examined at the appropriate time.
- To extend the 12-month deadline to 18 months.
- To allow an active member to elect not to aggregate a deferred member's pension account with an active member's pension account beyond the 12-month deadline.
- To allow an active member to elect not to aggregate a deferred member's pension account to an active member's pension account beyond the 12-month deadline only where there is no financial risk to the employer and it is of benefit to the member.

#### **Guidance Note 9 – Regulation 74 – Applications for Adjudication of Disagreements**

Whilst not an employer discretion, it would seem appropriate for a Scheme employer to include details relating to this Regulation as part of their policy statement.

Each Scheme employer is required to appoint an adjudicator who will consider applications from any person whose rights or liabilities under the Scheme are disputed and to make a decision regarding such applications.

The Internal Disputes Resolution Procedure (IDRP) is a three-stage appeal process enabling a Scheme member, or representative of a scheme member, to raise a complaint with regard to a decision that may have been taken which impacts on the level of pension benefits that the Scheme member ultimately receives.



Of course, before invoking the IDRP process a Scheme member is encouraged to contact the Pension Fund in an effort to resolve any issue that they may have but where a suitable resolution cannot be found, the member has a right to apply under stage 1 of IDRP to the adjudicator appointed by the member's Scheme employer or former Scheme employer as the case may be.

If the member remains dissatisfied once stage 1 has been completed they can apply to the administering authority at stage 2 for a further review of the appeal to take place. Ultimately, if the member is not satisfied with the outcome, The Pensions Ombudsman will make a final and binding determination at stage 3 although the Pensions Advisory Service (tPAS) monitors all disputes prior to The Pensions Ombudsman's involvement.

For the purpose of the statement of policy each Scheme employer is asked to complete the details of their appointed adjudicator and to keep the administering authority up to date with any change that may be made. Part of the Adjudicator's responsibilities will be, under Regulation 74(4), to agree under what circumstances to extend the time for making an application under this Regulation and under Regulation 74(6), to determine the procedure to be followed when exercising functions under this Regulation and the manner in which those functions are to be exercised.

For clarity, the appointed adjudicator is normally a senior officer such as a Head of Finance or Head of HR or perhaps a Head of Legal Services, Headteacher or Chairman of the Governors.

#### **Guidance Note 10 – Regulation 100(6) – Inward Transfers of Pension Rights**

A request from an active member to transfer former pension rights from a previous pension arrangement into the Local Government Pension Scheme must be made in writing to the administering authority and the Scheme employer before the expiry of the period of 12 months beginning with the date on which the employee first became an active member in an

employment (or such longer period as the Scheme employer and (since 1 April 2014) the administering authority may allow).



The purpose of this statement is to set out the Scheme employer's policy on whether or not to extend the 12-month deadline set out in the Scheme regulations having regard to the administering authority's agreement.

It is possible that a Scheme employer will deem 12 months to be a long enough period for a Scheme member to elect to have former pension rights transferred into the Scheme but there may be certain circumstances under which a Scheme employer may wish to consider extending that deadline.

If a Scheme employer does choose to use its discretion to extend the 12-month deadline it is important any potential financial implications for the employer are identified. An example of this could be where an employee is perhaps due to be made redundant in the coming months and is aged 55 or over. All pension benefits are released immediately without actuarial reduction in such circumstances including any benefits 'purchased' by the transfer in of former pension rights. As explained previously in guidance note 3 the Scheme employer is responsible for paying a capital or strain cost to the Pension Fund when an employer decision is taken to release a Scheme member's benefits early and if a transfer of former pension rights is received shortly before the termination of a Scheme member's employment this will increase the employer's cost. So the Scheme employer must seek further guidance from the administering authority on each occasion that it may consider extending the 12-month deadline and to obtain from the administering authority their agreement for the transfer to proceed.

Some examples of policy statements might be:

- Each case will be examined at the appropriate time.
- To extend the 12-month deadline to 18 months subject to the administering authority's agreement.
- To accept transfers in beyond the 12-month deadline subject to administering authority's agreement.
- To accept transfers in beyond the 12-month deadline where there is no financial risk to the employer subject to the administering authority's agreement.
- Not to extend the 12-month deadline.

#### Guidance Note 11 – Regulation 21(5) – Assumed Pensionable Pay

Assumed pensionable pay is calculated when a member:

- enters a period of reduced contractual pay or no pay due to sickness or injury; or
- is absent during a period of paid child-related leave; or
- is absent on reserve forces service leave; or
- retires with an entitlement to a Tier 1 or Tier 2 ill health retirement; or
- dies in service.

A Scheme employer needs to determine whether or not to include in the calculation of assumed pensionable pay, any 'regular lump sum payment' received by the member in the 12 months preceding the date that any of the circumstances listed above occurred.

A 'regular lump sum payment' is a payment for which the Scheme employer determines there is a reasonable expectation that such a payment would be received on a regular basis. Any decision to include a 'regular lump sum payment' in the calculation of assumed pensionable pay needs to be fair, equitable and justifiable.

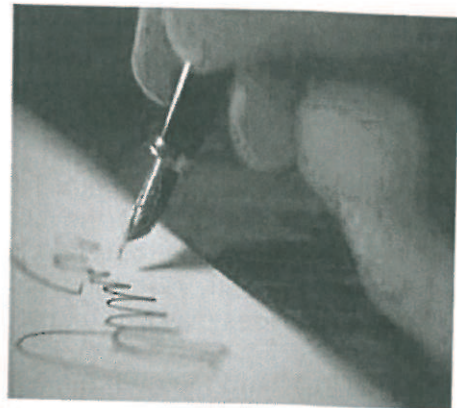
Some examples of policy statements might be:

- Each case will be examined at the appropriate time.
- No 'regular lump sum payments' will ever be included in the calculation of assumed pensionable pay.
- 'Regular lump sum payments' will always be included in the calculation of assumed pensionable pay.

## SIGNING OFF THE STATEMENT OF POLICY

Once all of the Scheme employer statements of policy have been agreed and inserted at the relevant sections of the document the Scheme employer must sign a declaration to confirm that the statement of policy will be maintained and kept regularly under review.

In addition the Scheme employer is confirming that where any changes are made to the statement of policy, a copy will be sent to the administering authority and that the statement of policy is published in a place where it is freely accessible to all of its employees.



Finally, the Scheme employer must ensure that, however it chooses to adopt the discretions available to it, no decision or action will be taken that could lead to a serious loss of confidence in the public service that the Scheme employer provides.

The statement of policy must be signed by an authorised person who is in a position to ensure that the requirements of the statement of policy are maintained and adhered to.

## **OTHER SCHEME REGULATIONS WHERE A SCHEME EMPLOYER DECISION MAY BE REQUIRED**

### **Local Government Pension Scheme Regulations 2013**

#### **Regulation 3(1)(b) and Part 2 of Schedule 2 – Whom to offer membership of the LGPS (Designated Bodies)**

A person is eligible to become an active member of the Scheme in an employment if they are employed by a 'Scheme employer'. In general this covers the vast majority of Local Government employees who will be contractually admitted to the LGPS at the start of their employment if they are under the age of 75 and have a contract of employment of at least three months' duration.

However, a few employers listed in Part 2 of Schedule 2 to the LGPS 2013 Regulations (such as Town, Parish and Community Councils) are required to 'designate' employees or certain groups of employees as being eligible for membership of the Scheme. These employers are referred to as 'Designated Bodies'.

What this means is, for example, that a Town Council could designate just the Town Clerk as being eligible for membership of the LGPS but not any other people that they employ. Subject to the requirements of the Government's 'Workplace Pensions' initiative any designated bodies currently restricting access to the LGPS as a qualifying pension scheme for any of their employees may wish to re-consider their position.

#### **Regulation 3(1)(c) and Regulation 4(2)(b) – Which employees to designate for membership (Admitted Bodies)**

From time to time non-Local Government employers or associated employers apply to gain 'Admission Body' status in the LGPS. This could be a charity, a non-profit making company with links to a local authority or a private company as a successful bidder to undertake a contract in respect of a Local Authority service being outsourced.

In order to gain 'Admission Body' status an admission agreement has to be completed part of which is to identify and designate those employees who will be granted access to the LGPS from the point at which the 'Admission Body' begins its membership of the Pension Fund and to consider whether future employees working in that contract should be allowed access to the Scheme.

#### **Regulation 19(2) – Exclusion of rights to return of contributions**

Under certain circumstances Scheme members are entitled to a refund of their contributions when they leave their employment. However, where a person leaves an employment because of an offence of a fraudulent character or because of grave misconduct in connection with that employment the Scheme employer may direct payment out of the Pension Fund of a sum equal to all or part of the member's contributions to the member, the member's spouse, civil partner, cohabiting partner or any of the member's dependants.

#### **Regulation 20(1)(b) – Meaning of pensionable pay**

Regulation 20 sets out the meaning of pay with regard to what is pensionable and what is not pensionable.



Regulation 20(1)(a) states that all the salary, wages, fees and other payments paid to the employee are pensionable and that under Regulation 20(1)(b) so is any benefit specified in the employee's contract of employment as being a pensionable emolument.

Subject to the exclusions from pensionable pay set out in Regulation 20(2), Scheme employers may wish to consider what payments, if any, they should include as being pensionable emoluments in their employees' contracts of employment.

#### **Regulation 37(3) & (4) – Special provisions in respect of members receiving Tier 3 ill health benefits**

When a Scheme member becomes permanently incapable of undertaking the duties of their employment and the Independent Registered Medical Practitioner (IRMP) certifies a Tier 3 ill health retirement, the member's accrued benefits come into payment immediately, without enhancement, for up to a maximum period of three years, with a review taking place after 18 months.

The Scheme member is required to inform the Scheme employer upon starting any employment whilst those benefits are in payment and to answer any reasonable questions about the employment status including details of pay and hours worked.

If the Scheme employer determines that the Scheme member has entered into gainful employment or the Scheme member fails to answer the questions raised by the Scheme employer, the Scheme employer may determine to cease payment of the Tier 3 benefit and to recover any payment made in respect of any period it determines that the member has been in gainful employment.

Gainful employment means paid employment for not less than 30 hours in each week for a period of not less than 12 months

#### **Regulation 38(3) & (6) – Early payment of retirement pension on ill health grounds: deferred and deferred pensioner members**

A deferred member (or deferred pensioner member) who, because of ill health or infirmity of mind or body, becomes permanently incapable of discharging efficiently the duties of the employment they were engaged in at the date they became a deferred member and who is unlikely to be capable of undertaking gainful employment before normal pension age, or for at least three years, whichever is sooner, may ask to receive immediate payment of their deferred benefits regardless of their age.

Under these circumstances the deferred member must make a request in writing to their former Scheme employer who, having obtained a certificate from their Independent Registered Medical Practitioner (IRMP) setting out their opinion as to whether or not the former employee meets the qualifying conditions for 'ill health retirement', may agree to the release of the deferred benefits

This is a Scheme employer decision and not one required of the administering authority.

#### **Regulations 91, 92, 93 & 95 – Forfeiture of pension rights after conviction for employment-related offences etc**

If a person who is a member of the Scheme is convicted of a relevant offence committed in connection with an employment because of which the person has left that employment, a Scheme employer may apply to the Secretary of State for the issue of a forfeiture certificate.

Where such a forfeiture certificate is issued, the member's former Scheme employer may direct that any of the member's rights under the LGPS Regulations are forfeited. The former Scheme employer must serve a notice of its decision to make a direction on the member. The Scheme employer can also decide whether to direct interim payments out of the Pension Fund to anyone that they consider to be entitled to receive payment of a benefit from the Scheme as if no forfeiture direction was given. They can also consider whether or not to recover from the Pension Fund any monetary obligation or, if less, the value of the member's benefits, 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.

#### Disclaimer

This guide is provided for information purposes only and does not confer any contractual or statutory rights. No responsibility will be assumed by the Royal County of Berkshire Pension Fund for any direct or consequential loss, financial or otherwise, damage or inconvenience, or any other obligation or liability incurred by readers relying on information contained herein. In the event of any dispute the appropriate legislation will prevail.

# Employer Statement – Local Government Pension Scheme Discretions Policy

## Document Control

<b>Document Ref:</b>	LGPSDISC	<b>Date Created:</b>	April 2014
<b>Version:</b>	2.0	<b>Date Modified:</b>	
<b>Revision due</b>	April 2015		
<b>Author:</b>	Sean Anderson	<b>Sign &amp; Date:</b>	
<b>Owning Service</b>	Customer Services		
<b>Equality Impact Assessment: (EIA)</b>	<b>Date undertaken:</b>	April 2014	
	<b>Issues (if any):</b>	None. Equality should be a factor when exercising the discretion to treat each case on its merits.	
<b>Chief Executive</b>	Sign & Date:		
<b>Corporate Director (Community Services)</b>	Sign & Date:		
<b>Corporate Director (Children &amp; Young People)</b>	Sign & Date:		
<b>Corporate Director (Environment)</b>	Sign & Date:		

## Change History

Version	Date	Description	Change ID
1			
2	April 2014	To meet the requirements of the LGPS 2013 Regulations	
3			

*This Policy is not for publication externally*



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## 1. Purpose

- 1.1 The purpose of this policy is to set out how the Council will apply the discretions available to it in the application of the Local Government Pension Scheme Regulations.

## 2. Applicability

- 2.1 This policy applies to all employees who are eligible to become members of the Local Government Pension Scheme, including those employed in maintained schools.
- 2.2 This policy has been the subject of consultation with recognised trade unions and has been ratified by the Council's Corporate Board. The Personnel Committee has approved the LGPS Discretions Policy.

## 3. Roles and Responsibilities

- 3.1 The Royal Borough of Windsor and Maidenhead is the administering authority for the [Royal County of Berkshire Pension Fund](#).
- 3.2 West Berkshire Council (WBC) is the 'Scheme Employer' for the purpose of this document.
- 3.3 The Chief Executive of WBC has overall responsibility for ensuring that Discretionary Compensation Payments are managed appropriately in accordance with this policy.
- 3.4 Customer Services is responsible for maintaining and updating the policy and ensuring that it is applied consistently and fairly.

## 4. Policy decisions

- 4.1 Under the Local Government Pension Scheme Regulations 2013 and the Local Government Pension Scheme (Transitional Provisions and Savings) Regulations 2014 the Council, as the Scheme employer, is required to formulate policy with respect to the Regulations set out from section 5 below.
- 4.2 Requests for the Council to make decisions under this policy which will involve financial cost to the Council will be considered and approved on an individual basis by the Personnel Committee.
- 4.3 Where the total cost to the Council of a pensions discretion decision will exceed £10,000, the costs must first be approved by the Executive. Below £10,000, the costs must be approved by the Chief Executive in consultation with the Leader and Shadow Leader of the Council.
- 4.4 Factors to be taken into account when making decisions will include;
- 4.4.1 Overall reasonableness in exercising the discretion;
  - 4.4.2 Real and substantial future benefits to the Council and its tax payers;
  - 4.4.3 Direct financial savings to be incurred;

#### 4.4.4 Employee relations considerations.

### **COMPULSORY policy in accordance with Regulation 60 of the LGPS Regulations 2013:**

#### **5. Regulation 16 – Additional Pension Contributions**

- 5.1 The Scheme employer may resolve to fund in whole or in part any arrangement entered into by an active scheme member to pay additional pension contributions by way of regular contributions in accordance with *Regulation 16(2)(e)*, or by way of a lump sum in accordance with *Regulation 16(4)(d)*.
- 5.2 The Scheme employer may enter into an APC contract with a Scheme member who is contributing to the MAIN section of the Scheme in order to purchase additional pension of not more than the additional pension limit (£6,500 from 1<sup>st</sup> April 2014 subject to annual increase in line with the Pensions (Increase) Act 1971).
- 5.3 The amount of additional contribution to be paid is determined by reference to actuarial guidance issued by the Secretary of State.
- 5.4 ***The policy of WBC is not to fund, in whole or in part, an employee's Additional Pension Contributions.***

#### **6. Regulation 30(6) – Flexible Retirement**

- 6.1 An active member who has attained the age of 55 or over and who with the agreement of their employer reduces their working hours or grade of employment may, with the further consent of their employer, elect to receive immediate payment of all or part of the retirement pension to which they would be entitled in respect of that employment as if that member were no longer an employee in local government service on the date of the reduction in hours or grade (adjusted by the amount shown as appropriate in actuarial guidance issued by the Secretary of State – separate policy required under Regulation 30(8)).
- 6.2 As part of the policy making decision the Scheme employer must consider whether, in addition to the benefits the member may have accrued prior to 1 April 2008 (which the member must draw), to permit the member to choose to draw all, part or none of the pension benefits they built up after 31 March 2008 and before 1 April 2014 and all, part or none of the pension benefits they built up after 1 April 2014.
- 6.3 Due consideration must be given to the financial implications of allowing an employee to draw all or part of their pension benefits earlier than their normal retirement age.
- 6.4 ***The policy of WBC is to agree to individual applications for flexible retirement where there are no financial costs to the Council and there is no detrimental effect on service delivery.***

## 7. Regulation 30(8) – Waiving of actuarial reduction

7.1 Where a Scheme employer's policy under regulation 30(6) (flexible retirement) is to consent to the immediate release of benefits in respect of an active member who is aged 55 or over, those benefits must be adjusted by an amount shown as appropriate in actuarial guidance issued by the Secretary of State (commonly referred to as actuarial reduction or early payment reduction).

7.2 A Scheme employer (or former employer as the case may be) may agree to waive in whole or in part and at their own cost, any actuarial reduction that may be required by the Scheme Regulations.

7.3 Due consideration must be given to the financial implications of agreeing to waive in whole or in part any actuarial reduction.

**7.4 *The policy of WBC is that a decision to waive any actuarial reduction in the case of flexible retirement will only be considered where there will be a financial or other benefit to the employer.***

## 8. Regulation 31 – Award of additional pension

8.1 A Scheme employer may resolve to award

- (a) an active member, or
- (b) a member who was an active member but dismissed by reason of redundancy, or business efficiency, or whose employment was terminated by mutual consent on grounds of business efficiency,

additional annual pension of, in total (including any additional pension purchased by the Scheme employer under Regulation 16), not more than the additional pension limit (£6,500 from 1<sup>st</sup> April 2014 subject to annual increase in line with the Pensions (Increase) Act 1971).

8.2 Any additional pension awarded is payable from the same date as any pension payable under other provisions of the Scheme Regulations from the account to which the additional pension is attached.

8.3 In the case of a member falling within sub-paragraph (b) above, the resolution to award additional pension must be made within 6 months of the date that the member's employment ended.

**8.4 *It is the policy of WBC not to use its discretion to award additional pension, except in the circumstances set out in 5.5 below.***

**8.5 *Additional pension under regulation 31 may be awarded to an employee who would otherwise be eligible for a lump sum compensation payment under the WBC Discretionary Compensation policy. Where the employee agrees to forgo the lump sum payment (in excess of any statutory redundancy compensation) that would otherwise have been paid, the Council will award additional pension actuarially equivalent in value to the lump sum compensation payment, provided that the additional annual pension would not exceed the statutory limits.***

## Local Government Pension Scheme (Transitional Provisions and Savings) Regulations 2014

### 9. Schedule 2 – paras 2 and 3

9.1 Where a scheme member retires or leaves employment and elects to draw their benefits at or after the age of 55 and before the age of 60 those benefits will be actuarially reduced unless their Scheme employer agrees to meet the full or part cost of those reductions as a result of the member otherwise being protected under the 85 year rule as set out in previous Regulations.

9.2 So as to avoid the member suffering the full reduction to their benefits the Scheme employer can 'switch on' the 85 year rule protections thereby allowing the member to receive fully or partly unreduced benefits but subject to the Scheme employer paying a strain (capital) cost to the Pension Fund.

**9.3 *It is the policy of WBC to that a decision to 'switch on' the 85-year rule, will only be made where there would be a financial or other benefit to the Council.***

## RECOMMENDED policy in accordance with the Local Government Pension Scheme Regulations 2013

### 10. Regulation 9(1) & (3) – Contributions

10.1 Where an active member changes employment or there is a material change which affects the member's pensionable pay during the course of a financial year, the Scheme employer may determine that a contribution rate from a different band (as set out in Regulation 9(2)) should be applied.

10.2 Where the Scheme employer makes such a determination it shall inform the member of the revised contribution rate and the date from which it is to be applied.

**10.3 *The Council will set employee contribution rates at 1<sup>st</sup> April each year and will make no changes during the year.***

### 11. Regulation 17(1) – Additional Voluntary Contributions

11.1 An active member may enter into arrangements to pay additional voluntary contributions (AVCs) or to contribute to a shared cost additional voluntary contribution arrangement (SCAVCs) in respect of an employment. The arrangement must be a scheme established between the appropriate administering authority and a body approved for the purposes of the Finance Act 2004, registered in accordance with that Act and administered in accordance with the Pensions Act 2004.

**11.2 *It is the policy of WBC not to use its discretion to contribute to shared cost additional voluntary contribution arrangements.***



## 12. Regulation 22 – Merging of Deferred Member Pension Accounts with Active Member Pension Accounts

- 12.1 A deferred member's pension account is automatically aggregated with their active member's pension account unless the member elects within the first 12 months of the new active member's pension account being opened to retain their deferred member's pension account.
- 12.2 A Scheme employer can, at its discretion, extend the 12 month election period.
- 12.3 ***It is the policy of WBC to allow an active member to elect not to aggregate a deferred member's pension account to an active member's pension account beyond the 12 month deadline only where there is no financial risk to the Council and is of benefit to the member.***

## 13. Regulation 100(6) – Inward Transfers of Pension Rights

- 13.1 A request from an active member to transfer former pension rights from a previous arrangement into the Local Government Pension Scheme as a result of their employment with a Scheme employer must be made in writing to the administering authority and the Scheme employer before the expiry of the period of 12 months beginning with the date on which the employee first became an active member in an employment (or such longer period as the Scheme employer and administering authority may allow).
- 13.2 ***It is the policy of WBC not to accept transfers in beyond the 12 month deadline.***

## 14. Regulation 21(5) – Assumed Pensionable Pay

- 14.1 A Scheme employer needs to determine whether or not to include in the calculation of assumed pensionable pay, any 'regular lump sum payment' received by a Scheme member in the 12 months preceding the date that gave rise to the need for an assumed pensionable pay figure to be calculated.
- 14.2 ***It is the policy of WBC to consider whether to include any regular lump sum payment in the assumed pensionable pay calculation in each case at the appropriate time.***

## 15. Regulation 74 – Applications for Adjudication of Disagreements

- 15.1 Each Scheme employer must appoint a person ("the adjudicator") to consider applications from any person whose rights or liabilities under the Scheme are affected by:
- (a) a decision under regulation 72 (first instance decisions); or
  - (b) any other act or omission by a Scheme employer or administering authority,
- and to make a decision on such applications.
- 15.2 Responsibility for determinations within the Council under this first stage of the Internal Disputes Resolution Procedure (IDRP) rests with "the adjudicator" as named below:

Name	Mr A Walker
Job Title	Head of Finance
Full Address	West Berkshire Council Market Street Newbury Berks RG14 5LD
Telephone	01635 519433
Fax	
Email	awalker@westberks.gov.uk

Adjudicator's signature	
Date	

## 16. Review

- 16.1 This policy will be reviewed to respond to any changes every year, or when there are changes to the Local Government Pension Scheme or to Council policy.

## 17. SCHEME EMPLOYER CONFIRMATION

- 17.1 It is understood that the discretions contained within this statement of policy are applicable to all eligible members of the Scheme. The Scheme rules allow for a revised statement to be issued at least one month in advance of the date that any new policy takes effect. The revised statement must be sent to the administering authority and the employer must publish its statement as revised in a place that is accessible to all of its eligible scheme members.

- 17.2 The policies made above:

- 17.2.1 Have regard to the extent to which the exercise of the discretions could lead to a serious loss of confidence in the public service;
- 17.2.2 Will not be used for any ulterior motive;
- 17.2.3 Will be exercised reasonably;
- 17.2.4 Will only be used when there is a real and substantial future benefit to the employer for incurring the extra costs that may arise;
- 17.2.5 Will be duly recorded when applied.

Signed on behalf of the Scheme Employer	
Name in Block Capitals	
Position	

Scheme Employer's Name	
Date	

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# Agenda Item 6.

<b>Title of Report:</b>	<b>Personal Relationships at Work</b>
<b>Report to be considered by:</b>	Personnel
<b>Date of Meeting:</b>	28th May 2014
<b>Forward Plan Ref:</b>	PC2811

**Purpose of Report:** To propose the adoption of a policy which sets out how the Council will deal with close personal relationships at work which might involve, or be perceived to involve, conflicts of interest.

**Recommended Action:** To recommend that the policy at appendix A is submitted to Personnel Committee for approval

**Reason for decision to be taken:** To protect employees and the Council from allegations of conflict of interest arising from close personal relationships between colleagues or with contractors or suppliers

**Other options considered:** Not to have a policy

**Key background documentation:** Code of Conduct for Officers (Constitution 13.5)

The proposals contained in this report will help to achieve the above Council Strategy priorities and principles by:  
Ensuring that employees are aware of the potential for conflict of interest and are not put in a position where they could be perceived as having a conflict of interest, as a result of close personal relationships at work

Portfolio Member Details	
<b>Name &amp; Telephone No.:</b>	Councillor Alan Law - Tel (01491) 873614
<b>E-mail Address:</b>	alaw@westberks.gov.uk
<b>Date Portfolio Member agreed report:</b>	Jan 2014

Contact Officer Details	
<b>Name:</b>	Jane Milone
<b>Job Title:</b>	HR Manager - Policy, Strategy and Information
<b>Tel. No.:</b>	01635 519238
<b>E-mail Address:</b>	jmilone@westberks.gov.uk

## Implications

**Policy:** This is a new HR policy  
**Financial:** none  
**Personnel:** This is a new HR policy  
**Legal/Procurement:** none  
**Property:** none  
**Risk Management:** none

Is this item relevant to equality?	Please tick relevant boxes	Yes	No
Does the policy affect service users, employees or the wider community and:			
• Is it likely to affect people with particular protected characteristics differently?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Is it a major policy, significantly affecting how functions are delivered?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Will the policy have a significant impact on how other organisations operate in terms of equality?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Does the policy relate to functions that engagement has identified as being important to people with particular protected characteristics?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Does the policy relate to an area with known inequalities?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Outcome</b> (Where one or more 'Yes' boxes are ticked, the item is relevant to equality)			
Relevant to equality - Complete an EIA available at <a href="http://www.westberks.gov.uk/eia">www.westberks.gov.uk/eia</a>			<input type="checkbox"/>
Not relevant to equality			<input checked="" type="checkbox"/>

Is this item subject to call-in?	Yes: <input checked="" type="checkbox"/>	No: <input type="checkbox"/>
If not subject to call-in please put a cross in the appropriate box:		
The item is due to be referred to Council for final approval		<input type="checkbox"/>
Delays in implementation could have serious financial implications for the Council		<input type="checkbox"/>
Delays in implementation could compromise the Council's position		<input type="checkbox"/>
Considered or reviewed by Overview and Scrutiny Management Commission or associated Task Groups within preceding six months		<input type="checkbox"/>
Item is Urgent Key Decision		<input type="checkbox"/>
Report is to note only		<input type="checkbox"/>

# Executive Summary and Report

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## 1. Introduction

- 1.1 Corporate Board initially asked for a new Personal Relationships at Work Policy to be drafted in Spring 2013. After considering and rejecting the first draft, and suggesting alternative ways of addressing the issues, in Autumn 2013 Corporate Board asked HR to revise the original draft to take account of specific concerns. This was presented to Corporate Board in December 2013 and Management Board in January 2014. Delays in receiving a consultation response from the unions prevented it coming to Personnel Committee in February 2014.
- 1.2 Corporate Board wanted to ensure a balanced policy that enables employees to be clear about the potential impact of close personal relationships at work, and the steps they should take to ensure that relevant relationships were disclosed. It needed to provide managers with mechanisms for minimising the impact at work. The aim was to protect the Council and its employees from actual or perceived conflict of interest, or perception or accusation of bias, favouritism or prejudice. They were keen to include close personal friendships in the definition of 'close personal relationships' for particular areas, such as relationships with contractors or involvement in selection panels.
- 1.3 A balance has to be struck between intrusion into the personal lives of employees and the organisation's ability to address justified concerns. The trade unions were particularly concerned to ensure that this balance was achieved, and their comments have been taken into account in the final draft. They have recommended that guidance is provided, with examples, to help managers make fair and reasonable decisions.
- 1.4 The draft policy at appendix A is based on policies adopted by other local authorities, the Council's own Officer Code of Conduct (set out in 13.5 of the Constitution), and guidance from our on-line employment law provider (XpertHR).

## 2. Proposals

- 2.1 Personnel Committee is asked to approve this policy.

## 3. Equalities Impact Assessment Outcomes

- 3.1 The policy has been drafted to ensure that it complies with relevant equality legislation. It specifically includes civil partnerships and same-sex relationships, and notes that it applies equally to all employees whatever their seniority, gender or sexual orientation.

## 4. Conclusion

- 4.1 The Council should have a clear statement of its policy on the management of close personal relationships at work;
  - (1) To put mechanisms in place to prevent issues arising;
  - (2) To provide a transparent way of tackling any concerns that do arise;  
and

- (3) To ensure that employees have a clear understanding of the expectations on them with regard to behaviour and disclosure of relationships.

## **Appendices**

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Appendix A - Draft Personal Relationships at Work Policy May 2014

## **Consultees**

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**Local Stakeholders:** n/a

**Officers Consulted:** CMT

**Trade Union:** Rosemary Culmer, Dave Pearson, Eddie Hunter



# Personal Relationships at Work Policy

## Document Control

<b>Document Ref:</b>	HR PRW01	<b>Date Created:</b>	May 2014
<b>Version:</b>	1.0	<b>Date Modified:</b>	
<b>Revision due</b>	April 2018		
<b>Author:</b>	Jane Milone	<b>Sign &amp; Date:</b>	May 2014
<b>Owning Service</b>	Human Resources		
<b>Equality Impact Assessment: (EIA)</b>	<b>Date undertaken:</b>	November 2013	
	<b>Issues (if any):</b>	None – all considered and taken into account in the policy	

<b>Chief Executive</b>	Sign & Date:	
<b>Corporate Director (Community Services)</b>	Sign & Date:	
<b>Corporate Director (Children &amp; Young People)</b>	Sign & Date:	
<b>Corporate Director (Environment)</b>	Sign & Date:	

## Change History

Version	Date	Description	Change ID
1			
2			
3			

*This Policy is not for publication externally*



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## 1. Purpose

- 1.1 The Council recognises that employees who work together may have or form close personal relationships. While it does not wish to interfere with these personal relationships, it is necessary to ensure that all employees behave, and are perceived to behave, in an appropriate and professional manner at work.
- 1.2 The purpose of this policy is to set out the approach that the Council will take to ensure that close personal relationships at work do not have an adverse impact in the workplace or on the reputation of the Council.
- 1.3 The provisions of this policy are intended to avoid any possible conflict of interest, perception or accusation of bias, favouritism or prejudice. They are also intended to ensure that all employees feel confident of fair treatment without the fear that a close personal relationship will influence their or other employees' treatment or broader working relationships.
- 1.4 The Personnel Committee has approved the Personal Relationships at Work Policy.

## 2. Applicability

- 2.1 This policy applies equally to all non-school based employees working for the Council, regardless of their job, level of seniority, gender or sexual orientation.
- 2.2 Close personal relationships, for the purpose of this policy, include pre-existing relationships as well as relationships that develop between employees whilst in employment.
- 2.3 Definition of close personal relationship:
- Employees or applicants who are married, dating, in a civil partnership or co-habiting;
  - Immediate family members of the applicant or employee, e.g. parents and step-parents, son and daughter, brother and sister, grandparent and grandchild;
  - Other relations of the applicant or employee, e.g. extended family such as aunts, uncles, cousins, nieces, nephews and any other individuals with whom there is a close personal relationship;
  - Close friendships – in some circumstances, as specified in the policy below.
- 2.4 This policy covers close personal relationships with contractors and suppliers, as well as with other employees. Close personal relationships with service users are not covered by this policy.
- 2.5 This policy has been the subject of consultation with heads of service and trade unions and has been ratified by the Council's Corporate Board.

## 3. Principles

- 3.1 The Council recognises that relationships as defined above may exist or develop within the organisation. Not all will be a cause for concern, but it is important to

be clear about what actions will be taken to prevent these concerns arising and to address any that do arise.

- 3.2 Any disclosure relating to a close personal relationship under the terms of this policy will be treated sensitively, fairly and with an appropriate level of confidentiality.
- 3.3 Wherever possible, the Council will seek to agree, with both parties, a resolution to any issues raised as a result of close personal relationships at work. However, it reserves the right to impose a solution if an agreed approach cannot be achieved.
- 3.4 The disciplinary procedure will be used to deal with serious breaches of this policy.

#### 4. **Policy**

- 4.1 Employees are required to declare a close personal relationship to their manager where there is a real or perceived potential conflict of interest. Any declaration should be treated with confidence and noted on the personal file.
- 4.2 The following paragraphs set out the circumstances where a declaration is required;
  - 4.2.1 Any employee who is involved in staff recruitment must inform his/her manager if he/she has a close personal relationship (including close friendships) with any of the candidates for appointment. He/she should not be involved in the selection process.
  - 4.2.2 Applicants for appointment (e.g. for a different job, secondment or development opportunity) must disclose to the decision-maker any close personal relationship with other employees in the team or service, or with relevant contractors or suppliers.
  - 4.2.3 Any employee who has a close personal relationship (including close friendships) with a contractor or supplier where the employee's job allows him/her authority over the contractor or supplier (for example if the employee has the authority to decide to whom to award contracts), must declare the relationship to his/her manager.
  - 4.2.4 A manager should declare, to the head of service, a close personal relationship with any employee whom he/she supervises (directly or indirectly).
- 4.3 Any employee who is involved in a close personal relationship (including close friendships) with a colleague, contractor or supplier must not allow that relationship to influence his/her conduct at work in a way that could be, or be perceived to be, detrimental to the interests of the Council or to other employees.
- 4.4 An employee must not engage in any work related activities with the named contractor following the disclosure of a personal relationship unless this has been agreed in writing by the Head of Service (following written consultation with the Head of Finance and the Head of Legal Services).

4.5 In order to avoid a situation in which an employee has managerial authority over another with whom he/she has a close personal relationship, the Council reserves the right, if deemed necessary and after careful consideration of all available options;

- Not to appoint an individual to a post even if he/she is the best candidate for the job;
- To elect to transfer one or both of the employees involved in the relationship to a job in another team, service, or workplace.
- To consider dismissal of one or both of the employees involved, if no other options are available.

## 5. **Actions to be taken on appointment**

### 5.1 Where there is a relationship between applicant and manager

5.1.1 A line manager should not be involved in the selection process where he/she has a close personal relationship (including close friendship) with an applicant for a job.

5.1.2 Where new appointments are being considered, and there is a personal relationship (including close friendship) between an applicant and the immediate line manager or senior reporting manager of that team or service, the implications of this should be considered and discussed as part of the selection process. This is to ensure that, assuming they are otherwise the most suitable candidate for the job, the appointment would also be appropriate taking into account operational issues and standards.

5.1.3 The type of issues that should be explored include:

- potential conflict of interest and confidentiality issues, including the impact on the perceptions and employee relations within the team;
- the potential for alternative supervision/line management arrangements for the applicant where there are potential conflicts of interest;
- if the work of the post involves financial transactions, ensuring the appropriate separation of duties, probity and other financial safeguards;
- impact on service users or the public, including issues relating to trust and confidence and the public image of the Council.

5.1.4 It is important to ensure that any approaches or actions are not unfair or discriminatory. Avoid any assumption at the outset that the working arrangement will be unsatisfactory without exploring the issues, whilst exploring the issues that may arise to ensure these can be managed effectively.

### 5.2 Where there is a relationship between applicant and team colleagues

5.3 Where an individual is appointed, transferred or promoted and will work in the same team or establishment with an employee with whom they have a close personal relationship, but not in a line management relationship, the implications of this should be considered and discussed as part of the selection process. This will only affect the selection process if there is evidence that such a personal relationship will present any risks that cannot be effectively managed

#### 5.4 Authority to appoint

5.5 Where the appointing manager considers that a candidate could be appointed, despite a declared relevant relationship as defined, they must clear the appointment with their Head of Service.

5.6 Where one party to the relationship is the Head of Service, the necessary authority for appointment should be authorised by the Corporate Director and Head of Human Resources.

5.7 The recruiting manager should make a written record of the fact that the decision to appoint, despite a declared relationship, was made with appropriate authority. This record should be kept with the candidate's original application form on his/her personal file. The candidate should be made aware of this.

#### 6. **Actions to be taken with respect to relationships formed whilst in post**

6.1 Employees are expected to exercise judgement as to whether or not a relationship has developed to such an extent that it can be described as a close personal relationship that could potentially raise an issue that this policy seeks to address.

6.2 Failure to disclose such a personal relationship in accordance with paragraph 4.1 above could leave an employee open to allegations of misconduct should subsequent issues arise.

6.3 Where a close personal relationship involves the direct line manager or senior reporting manager and a team member, the appropriate senior manager within the team or service group should, in consultation with Human Resources and both employees:

- make alternative supervision/line management arrangement of the team member for issues involving a potential conflict of interest. These include matters related to pay, promotion, job opportunity, redundancy, discipline and grievance issues;
- consider if it is appropriate to communicate any agreed adjustments etc to other colleagues in the team/workplace to manage any concerns;
- consider more specific operational issues, e.g. in relation to finance and procurement roles and responsibilities which are governed by Financial Regulations, Procedures, or Procurement Rules;
- assess any impact on service users and the public, including issues relating to trust and confidence and the public image of the Council.

6.4 Expectations should be clearly defined and managed as appropriate.

#### 7. **Actions to be taken when issues cannot be managed effectively**

7.1 Where any issues identified cannot be managed effectively or the individuals within the relationship feel uncomfortable remaining within the same team (including after the breakdown of a relationship), a discussion should take place with both employees to explore whether a move to another team, service or location might be the most appropriate way forward.

7.2 When discussing such an issue there should be no assumptions made, on gender, status/grade etc. as to who might be the most appropriate employee to move. Care should be taken to avoid discrimination and ensure that the views of the individuals involved are taken into account, balancing this with the needs of the service and the issues that present themselves. Human Resources should be involved in the discussion.

### 7.3 Transfer

7.3.1 A transfer could mean a move to a different team, service or directorate, or a move to a different location for one or both the employees;

7.3.2 Wherever possible the transfer should be to a 'suitable alternative' post on the same terms and conditions as the employee's current post. Redeployment will be sought with transferees being given priority for vacant posts, after consideration of any redeployees on the grounds of redundancy or ill-health capability.

7.3.3 Of the two employees involved in a particular situation, the Council is likely to consider transferring the employee whose skills, experience and knowledge could be more easily deployed elsewhere;

7.3.4 An employee who refuses to move to a 'suitable alternative' post may be subject to the disciplinary process on the basis of refusal to comply with a reasonable management instruction.

### 7.4 Dismissal

7.4.1 Dismissal (for 'some other substantial reason') will only be considered as a last resort, and where the actions of either one or both parties concerned has adversely affected the operations or reputation of the Council or has significant potential to do so.

## 8. **Review**

8.1 This policy will be reviewed to respond to any changes and at least every three years.

## **Other Relevant Documentation**

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Officer Code of Conduct

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