



MID SUSSEX DISTRICT COUNCIL

EMPLOYMENT POLICY STATEMENT

Policy title: LOCAL GOVERNMENT PENSION SCHEME (LGPS) AND EARLY TERMINATION OF EMPLOYMENT: DISCRETIONS POLICY

Date: April 2018

Revision: First

Approved: Full Council

Policy Statement

Under various regulations, the Council is given authority to exercise certain discretions regarding pensions and early termination of employment. It is required to issue a statement to indicate the policy of the Council in exercising those discretionary provisions. This policy sets out the Council's decisions in exercising such discretions.

Scope

This policy relates to all staff employed by the District Council on contracts of more than 3 months.

This policy does not confer any contractual rights and is subject to amendment at any time in the future. Only the current pension discretions policy applies at the time of any event except for scheme members who ceased active membership before the 1st April 2014, where discretions under previous pension discretions policies will apply unless superseded by this policy or later policies or scheme regulations. Where costs to the Pension Fund are referred to these are costs that when incurred must be met by the employer.

This policy statement will be brought to the attention of all Mid Sussex District Council employees.

Legislation under which these discretions are exercised.

Local Government Pension Scheme Regulations 2013 [prefix R]

Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 [prefix TP]

Local Government Pension Scheme (Administration) Regulations 2008 [prefix A]

Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (as amended) [prefix B]

Local Government Pension Scheme (Transitional Provisions) Regulations 2008 [prefix T]

Local Government Pension Scheme Regulations 1997 (as amended) [prefix L]

Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2006 [prefix E]

Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011 [prefix D]

Policy Standards

The Council has resolved that, in each of the areas listed below, it will be guided in its discretionary powers by the policy shown:

- a) **Redundancy Calculations Generally.** Power to calculate an employee's redundancy payment using his/her actual week's pay rather than the statutory capped limit (*under prefix E regulation 5*).

This Council's Decision: To calculate redundancy on the basis of the actual week's pay.

The calculation of a week's pay is as defined by the Employment Rights Act 1996.

- b) **Redundancy.** Power to pay increased redundancy compensation to a maximum of 66 actual weeks' pay to staff with at least two years' service (*under prefix E regulation 6*).

(i)Compulsory Redundancy

This Council's Decision: To pay a one-off lump sum based on 2 times the statutory redundancy formula (calculated according to length of service and age) to a maximum of 60 actual week's pay.

(ii)Voluntary Redundancy

This Council's Decision: To pay a one-off lump sum based on 2.1 times the statutory redundancy formula (calculated according to length of service and age) to a maximum of 63 actual weeks' pay.

(iii)Strain on the Pension Fund

Staff aged 55 and above have the automatic right to access their accrued pension if their contract of employment is terminated on the grounds of redundancy. Where an individual is under the age of 60, or is under the age of 65 and has not met the *85 year rule (see below), then the Council is required to make a payment to the Pension Fund known as 'strain on the fund' to offset the early access costs and / or the costs of not applying any actuarial reductions that would otherwise reduce the benefits payable. The Council, if it wishes to do so, can offset these costs against any non-statutory compensation paid to an individual. The Council must still pay any statutory redundancy payment that is due.

This Council's Decision: Where there is a 'strain on the fund' the Council will deduct the costs payable to the Pension Fund from any non-statutory compensation payment made to an individual.

After deducting the 'strain on the fund' costs any remaining balance of the non-statutory compensation, together with all of the statutory redundancy pay, will be paid to the employee. For avoidance of doubt statutory redundancy pay is based on the statutory cap limit and not actual week's pay.

(iv) TUPE

For clarification, any staff transferred to this authority under the Transfer of Undertakings (Protection of Employment) Regulations 2006 and as amended 2014, i.e. under TUPE, or on

an equivalent basis, that are made redundant for any reason following the transfer would receive redundancy compensation calculated on the basis of their terms and conditions immediately prior to the transfer. This would apply even if the compensation were less beneficial than that usually provided by this authority.

- c) **Efficiency of the Service.** Power to pay up to a maximum of 104 actual weeks' pay to staff whose contract of employment is to be terminated in the efficiency of the service (*under prefix E regulation 5 & 6*).

This Council's Decision: To treat this in a similar way to that of compulsory redundancy, i.e. a maximum of 63 weeks will be paid.

Strain on the Pension Fund

Staff aged 55 and above have the automatic right to access their accrued pension if their contract of employment is terminated on the grounds of the efficiency of the service. Where an individual is under the age of 60, or is under the age of 65 and has not met the *85 year rule (see below), then the Council is required to make a payment to the Pension Fund known as 'strain on the fund' to offset the early access costs and / or the costs of not applying any actuarial reductions that would otherwise reduce the benefits payable. The Council, if it wishes to do so, can offset these costs against any non-statutory compensation paid to an individual.

This Council's Decision: Where there is a 'strain on the fund' the Council will deduct the costs payable to the Pension Fund from any non-statutory compensation payment made to an individual.

After deducting the 'strain on the fund' costs if there is any compensation payment remaining then the Council will pay the balance to the individual.

- d) **Conversion of Lump Sum Compensation Payment into Additional Pension Entitlement.** Power to convert lump sum compensation in excess of any statutory redundancy payment, at the employee's request, into additional annual pension entitlement of up to £6,500 (1st April 2014 figure).

This Council's Decision: To allow the employee to convert the lump sum compensation in excess of any statutory redundancy payment into additional pension entitlement as above.

- e) **Power of employing authority to grant additional pension**

Power to grant a member on redundancy or efficiency of the service termination of employment an additional pension of not more than £6,500 a year (1st April 2014 figure) payable from the date of retirement (*under prefix R regulation 31*).

This Council's decision: That this discretion not be used.

- f) **Power of employing authority to share the purchase cost of additional annual pension**

i) Where the staff member wishes to purchase additional annual pension of up to £6,500 a year via Additional Pension Contributions (APCs), the power for the employing authority to share the cost of this. This would be via a Shared Cost Additional Pension Contribution (*under prefix R regulations 16(2)e & (4)d*).

This Council's Decision: That this discretion not be used.

- g) **Voluntary Early Retirement before age of 60** – Staff aged between the ages of 55 to 59 can choose voluntarily to retire and draw their pension with immediate benefits without the

employer's consent, subject to actuarial reductions for early payment. Power to apply the *85 year rule (see below) if the employee meets its requirements (termed switching the 85 year rule back on) (*under prefix TP schedule 2, 1(1)c*).

This Council's Decision: That this discretion not be used.

- h) **Voluntary Early Retirement before age of 60** – Staff aged aged 55 or over can choose voluntarily to retire and draw their pension with immediate benefits without the the employer's consent, subject to actuarial reductions for early payment. Power to waive any actuarial reductions (*under prefix R regulation 30 [5]*).

This Council's Decision: That this discretion not be used.

- i) **(i) Flexible Retirement:** Subject to the employer's consent power to allow a member of the scheme to draw all or part of their pension after the age of 55 and to continue to work for the Council providing the staff member either reduces their hours or grade (*under prefix R regulation 30 [6]*).

This Council's Decision: To allow staff to draw all or part their pension after the age of 55 (but reduced if they do not meet the *85 year rule [see below]) providing the staff member either reduces their hours or grade / salary by a minimum of 20%, the arrangement meets the operational requirements of the Council and ordinarily where there is no cost to the Pension Fund. Exceptionally however, Flexible Retirement may be agreed where there is a cost to the Pension Fund if a strong business case exists for doing so. There will usually be a cost to the Pension Fund if a staff member draws their pension prior to age 60, whether or not they meet the 85 year rule.

(ii) Flexible Retirement: Power to waive, in full or in part, any actuarial reduction that is applied to the early payment of those benefits.

This Council's decision: This power may be used exceptionally where a strong business case exists for doing so and where the cost of this will be recouped within 2 years by the savings made for the Council due to the Flexible Retirement.

- j) **Shared Cost Additional Voluntary Contribution (SCAVC)** - Power to assist employees in "topping-up" pension benefits by sharing with them the cost of Additional Voluntary Contributions. This discretion might be used as another form of inducement in the recruitment process (*under prefix R regulation 17*).

This Council's Decision: That this discretion not be used.

- k) **Power to grant an application for reinstatement of a suspended tier 3 ill health pension on or after age 55 and before age 60.**

This Council's Decision: That this discretion not be used.

- l) **Power to include any regular lump sum payment received by the employee in the preceding 12 months when calculating assumed pensionable pay when the employee is** (*under prefix R regulation 21*):

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

This Council's Decision: That this discretion not be used.

m) **Power to make an injury award to those who sustain an injury or contract a disease as a result of anything they were required to do in performing the duties of their job and in consequence of which they** (*under prefix D regulation 3-7*):

- suffer a reduction in remuneration, or
- cease to be employed as a result of an incapacity which is likely to be permanent and which was caused by the injury or disease, or
- die leaving a surviving spouse, civil partner or dependant

This Council's Decision: That this discretion not be used.

n) **Transferring non-LGPS pension entitlements to the LGPS:** Staff with accrued non-LGPS pension entitlements who join the LGPS for the first time, or if previously a member of the LGPS acquired these subsequently, have 12 months from joining to transfer them. This period may be extended at the discretion of the council where there is available evidence that the employee formally commenced a transfer within the 12 months period which has not been completed (*under prefix R regulation 100 [6]*).

This Council's Decision: That this discretion is used.

o) **Transferring previous LGPS pension entitlements:** Staff with previous LGPS pension entitlements from non-West Sussex authorities have 12 months from joining (or rejoining) the WSCC scheme to elect **not** to have these aggregated with future pension entitlements accrued (i.e. to decide to keep them separate). This period may be extended at the discretion of the council where there is available evidence that the employee formally requested this within the 12 months period but that this was not actioned (*under prefix R regulation 22 [7] & [8]*).

This Council's Decision: That this discretion is used.

p) **Pension contribution bands:** The correct pension contribution band for each employee is calculated using the Employee Contribution Table (England and Wales) issued by the LGPS annually. The table is tiered, with higher contribution rates for higher earning staff. Staff pay the rate applicable to them on the whole of their gross salary. The Council's policy is that if an employee's salary rises during the course of the year into a higher contribution band then he or she would be required to pay the increased rate on all of their salary from that date (and vice a versa if their salary decreased). Where this situation applies following the backdating of a salary increase, the employee would be required to make backdated contributions at the higher rate (*under prefix R regulations 9 & 10*).

All continuous service with bodies listed under the Modification Order will be included in all of the redundancy and compensation payments listed above.

Explanatory Note - 85 year rule

*This only applies whilst the 85 year rule remains fully in force to the 31st March 2016. The 85 year rule is a test to calculate whether pension benefits should be actuarially reduced if a pension is paid to a member of the scheme before they reach 65. If the sum of the scheme member's age plus their LGPS membership (for part-time staff, scheme membership towards this rule counts at its full calendar length) is equal to at least 85 years then their pension is not reduced. If it is less than 85 years then their pension benefits will be actuarially reduced. The earliest a member of staff can draw their pension without the Council's consent is 55.

Since the 1st April 2008 the 85 year rule has been in the process of being phased out. There are transitional protection arrangements in place. Scheme members who will be 60 or over prior to the 31st March 2016 will receive full protection on all their pensionable service if they

meet the terms of the rule. Those who reach 60 between the 1st April 2016 and the 31st March 2020 will receive at least partial protection of their pensionable service accrued between the 1st April 2008 and the 31st March 2020, as well as full protection of all earlier service, if they meet the terms of the rule.

If you will be under age 60 by the 31st March 2016 and choose to retire between the age of 60 and 65, then, provided you satisfy the 85 year rule when you start to draw your pension and were a scheme member as at 30th September 2006, the benefits you have built up to the 31st March 2008 will not be reduced.

Please note that the above Explanatory Note on the 85 year rule is for information purposes only and does not form part of this corporate policy or of itself confer any entitlements on staff.

May 2016