

**HERTFORDSHIRE COUNTY COUNCIL**

**LOCAL GOVERNMENT PENSION SCHEME**

**PAYMENT OF DISCRETIONARY COMPENSATION TO EMPLOYEES**

**POLICY ON EXERCISE OF EMPLOYER DISCRETIONS**

Hertfordshire County Council (“the County Council”) as an employer is under a legal duty to prepare and publish a written statement of its policy relating to certain discretionary powers under the Regulations which apply to the Local Government Pension Scheme (“the LGPS”).

The County Council is also under a duty to formulate, publish and keep under review the policy that the County Council applies in exercising discretionary powers under Regulations relating to the payment of compensation to employees whose employment is terminated as a result of redundancy or certain other reasons.

This document is intended to comply with these duties and, in the following table, sets out the discretionary powers concerned, identifies the relevant Regulation that gives the County Council the discretion and describes how the discretion will be exercised.

***Where, in relation to the exercise of any discretionary power, this document states that the Council will exercise, or normally exercise (or that it is the policy of the Council to exercise or normally to exercise) that power in a certain way only if there are exceptional or wholly exceptional circumstances, then the person or body making the decision on behalf of the Council in any particular case (“the decision maker”) must consider whether there are exceptional or, as the case may be, wholly exceptional circumstances which apply in that case. The decision maker should consider (but not to the exclusion of any other factors) the member’s personal circumstances, any compassionate issues and any benefits to the Council. All of these factors do not need to be present and any single circumstance may be exceptional, or wholly exceptional. The issue is whether the circumstances are such that they are so far beyond what would be regarded as normal or usual as to amount to exceptional.***

The policy set out in this document will not be departed from except as provided for in the policy or following a variation to the policy approved by the Full Council of the County Council.

This statement is not a definitive statement of the law and is subject to the provisions of the relevant Regulations.

The Regulations that apply to the LGPS are:

- The Local Government Pension Scheme Regulations 2013 (these are referred to as the “Pensions Regulations”);
- The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (referred to as the “Transitional Regulations”);
- The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 applied to the LGPS before 1 April 2014, are preserved in part on a transitional basis by the Transitional Regulations and are referred to as the “Benefits Regulations”

The Regulations which apply to the payment of compensation to employees whose employment is terminated as a result of redundancy or other specified reasons are:

- The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (referred to as the “Compensation Regulations”).

In the table below:

- (1) “The Scheme” or “the Pension Scheme” means the LGPS and “the Fund” or “the Pension Fund” means the fund maintained under the LGPS;
- (2) “Member” means a member of the LGPS;
- (3) “Active member” means a member in employment and paying, or treated as paying, contributions to the LGPS, or absent from employment for a reason mentioned in Regulation 11 of the Pensions Regulations.
- (4) References to a member with transitional protection are those who can count membership accrued before 1 October 2006 and who have statutory transitional protection under the Transitional Regulations, wholly or partly, from changes that would otherwise be made to their pension entitlements and/or from actuarial reductions that would otherwise be applied to their pension benefits as a result of the coming into force of the Pensions Regulations on 1 April 2014.
- (5) References to a member meeting “the 85 year rule” are those a members whose age in whole years when added to the member’s total membership in whole years is 85 years or more.

The power to exercise and to take any decision in relation to the each of the discretions is delegated to the Head of Human Resources and Organisational Development.

This statement was approved by Full Council and is intended to comply with the County Council’s duties under Regulation 60 of the Pensions Regulations and Regulation 7 of the Compensation Regulations.

No.	Area	Regulation	Discretion	Policy Summary	Explanation
1	<b>Funding of Additional Pension Contributions</b>	Regulations 16(2)(e) and 16(4)(d) Pensions Regulations,	<p>To fund, in whole or in part, additional pension contributions on behalf of an employee where these are to be paid by regular contributions (Regulation 16(2)(e)) or by lump sum (Regulation 16(4)(d))</p> <p><b>Note:</b> The amount of additional pension that may be credited to an active member's pension accounts may not exceed the additional pension limit of £6,500 (uplifted annually)</p>	The County Council will not normally fund additional contributions either wholly or in part, but may do so in wholly exceptional circumstances.	This means the Council can pay additional pension contributions of behalf of current employees. The County Council will however only do this in wholly exceptional circumstances
2	<b>Flexible Retirement</b>	Regulation 30(6), Pensions Regulations	To agree to an employee aged 55 or over reducing their hours of work or grade so that they may receive all or some of their retirement pension while still employed	The County Council will only agree to requests for flexible retirement in exceptional circumstances. Any additional cost to the County Council (payments to the Pension Fund) will be offset by the potential savings from the reduction in hours and/or grade.	This means the County Council can agree to an employee aged 55 or over drawing their pension whilst they continue to work for the County Council on reduced pay / hours or grade. The County Council will however only do this in exceptional circumstances.
3	<b>Waiving of Actuarial Reduction to Pensions</b>	Regulation 30(8), Pensions Regulations	To agree to waive, in whole or in part, any reduction that would otherwise be made on the early payment of a pension to a former employee aged 55 or to the	The County Council will only agree to waive actuarial reductions in the following	This means the County Council can agree to waive any reductions to an individual's pension where

			pension paid to an employee allowed to take flexible retirement under Regulation 30(6) of the Pensions Regulations	<p>circumstances:</p> <p>(1) There would be no cost to the County Council;</p> <p>(2) In cases of exceptional hardship or on exceptional compassionate grounds</p>	they have left employment and / or where they have requested and been approved for flexible retirement from age 55. The County Council will however only do this where there is no cost to the County Council or in a case where the employee is suffering exceptional hardship or on exceptional compassionate grounds.
4	<b>Award of Additional Pension</b>	Regulation 31, Pensions Regulations	<p>To award additional pension to:</p> <p>(1) an active member; or</p> <p>(2) a former active member who was dismissed by reason of redundancy or business efficiency, or whose employment was terminated by mutual consent on grounds of business efficiency</p> <p><b>Note:</b> Any additional pension awarded (including any additional pension purchased by the employer under Regulation 16 of the Pensions Regulations (see above) may not exceed the additional pension limit of £6,500 (uplifted annually).</p> <p>Additionally, in the case of a former active</p>	<b><i>The County Council will only agree to award additional pension in wholly exceptional circumstances.</i></b>	This means the County Council has power to award additional pension to either a current employee in the LGPS or an employee who has left by way of redundancy or business efficiency. <b><i>The County Council will only do this in wholly exceptional circumstances.</i></b>

			member falling within (2) above, the resolution to award additional pension must be made within 6 months from the date on which the employment ended.		
5	<b>Aggregation of Benefits: Concurrent Employments</b>	Regulation 22 (7)(b), Pensions Regulations	To allow an active member with concurrent employments, who ceases an employment with an entitlement to a deferred pension, a longer period than 12 months in which to elect not to have the benefits in their deferred member's pension account aggregated with the benefits in their active member's pension account.	The County Council will consider each case on its merits, the length of any longer period allowed to be determined having regard to the facts of the particular case.	This means the County Council can allow individuals with more than 1 pension under different employment contracts longer than the usual 12 month deadline to choose not to combine the pensions. The County Council will consider each case on its own merits.
6	<b>Aggregation of Benefits: Deferred Member becoming Active Member</b>	Regulation 22 (8)(b), Pensions Regulations	To allow a deferred member who again becomes an active member a longer period than 12 months in which to elect not to have the benefits in their deferred member's pension account aggregated with the benefits in their active member's pension account.	The County Council will consider each case on its merits, the length of any longer period allowed to be determined having regard to the facts of the particular case.	This means the County Council can agree to an employee who has ceased to be an active member of the LGPS who again becomes an active member, longer than the usual 12 month deadline to choose not to combine the pensions. The County Council will consider each case on its own merits.
7	<b>Early Payment of Pension in cases of Members with</b>	Schedule 2, Transitional	To agree to that the transitional protections set out in Paragraph 1(3) of	It is not the County Council's policy to agree	This means the County Council will not agree to

	<b>Transitional Protection</b>	Regulations	Schedule 2 to the Transitional Regulations should apply. This affects members with transitional protection who choose to retire between the ages of 55 and 60. The transitional protections offer complete or partial protection from actuarial reductions depending on the circumstances.	to the application of Paragraph 1 (3) of Schedule 2 to the Transitional Regulations, which means that the County Council will not agree to the payment of unreduced retirement benefits to a member with transitional protection who meets the 85 year rule until they are aged 60.	the payment of unreduced pension benefits to a pension scheme member who is covered by the transitional protections who meets the '85 year rule' until they are aged 60.
8	<b>Waiver of Actuarial Reductions to Pension in cases of Members with Transitional Protection</b>	Schedule 2, Transitional Regulations	To waive on compassionate grounds, any Reduction that would otherwise be made to a member's pension payable on early retirement.	The County Council will only agree, on compassionate grounds, to waive any reduction that would otherwise be made to the pension payable to a member with transitional protection if there are exceptional circumstances	This means the County Council will only agree on compassionate grounds, to waive any reduction to pension benefits that would otherwise be made to the pension payable to a member covered by the transitional protections if there are exceptional circumstances
9	<b>Inward Transfer of Pension Rights</b>	Regulation 100, Pensions Regulations	To allow a person more than 12 months beginning with the date when they first became an active member in an employment to request the acceptance of a transfer value for certain accrued pension rights.	The County Council will consider each case on its merits, the length of any longer period to be determined having regard to the facts of the	This means the County Council can agree to allow an individual who has been employed for more than 12 months to request to transfer previous

			<p><b>Note:</b> Regulation 100 of the Pensions Regulations requires that a request must be made within 12 months beginning with the date on which the member became an active member in an employment or such longer period as the employer and the Administering Authority may allow. The discretion is, therefore, exercisable concurrently by the Administering Authority.</p>	particular case.	pension funds into the LGPS fund. The County Council will consider each case on its merits.
10	<b>Forfeiture Certificates</b>	Regulation 91, Pensions Regulations	<p>To apply to the Secretary of State for the issue of a forfeiture certificate.</p> <p><b>Note:</b> A forfeiture certificate may be applied for where a member has been convicted of an offence committed in connection with the member's employment and because of which the member has left that employment. A forfeiture certificate is a certificate, issued by the Secretary of State that the offence was gravely injurious to the State or is liable to lead to serious loss of confidence in the public service.</p> <p>To direct, where a forfeiture certificate has been issued, that any rights under the Pensions Regulations be forfeited.</p>	The County Council will consider each case on its merits, both in relation to applying for a forfeiture certificate and in relation to the giving of a direction, where a forfeiture certificate has been issued, that pension benefits be forfeited.	This means the Council can apply for a certificate from the secretary of state which permits withholding pension from an individual who has been convicted of certain offences.

			<p><b>Note:</b> If the former employer has suffered loss as a direct consequence of the offence, a direction may only be given if the loss cannot be recovered except after an unreasonable time or at disproportionate cost.</p> <p>A direction may only be given if the application for a forfeiture certificate was made within a period of three months beginning with the date of the conviction</p>		
11	<b>Recovery of Money Owed as a result of Misconduct</b>	Regulation 93, Pensions Regulations	<p>To recover money owing to the former employer where a person has left employment as a result of grave misconduct or of a criminal, negligent or fraudulent act or omission in relation to that employment and owes money to the employer arising out of such that misconduct, act or omission.</p> <p><b>Note:</b> If there is a dispute about the amount owed the County Council may only recover the money from the employee's pension benefits under a court order or the award of an arbitrator.</p>	The County Council will normally seek to recover any money owing as a result of a former employee's grave misconduct, or criminal, negligent or fraudulent acts or omissions from the employee's pension benefits.	This means the County Council can look to recover money from an ex-employee where they have left employment as a result of grave misconduct or of a criminal, negligent or fraudulent act or omission in relation to that employment.
12	<b>Redundancy Payments</b>	Regulation 5, Compensation Regulations	To base redundancy pay on actual pay where actual pay exceeds the statutory maximum under the Employment Rights Act 1996.	The County Council will base redundancy payments on an employee's actual pay in	This means the County Council can base the calculation of an individual's redundancy

				all cases.	pay on their actual weeks pay where it exceeds the statutory maximum weekly redundancy pay.
13	<b>Compensation for loss of Employment</b>	Regulation 6, Compensation Regulations	<p>To pay compensation to a person whose employment ceases</p> <ul style="list-style-type: none"> <li>- by reason of redundancy;</li> <li>- in the interests of the efficient exercise of the County Council's functions; or</li> </ul> <p>in the case of a joint appointment, because the other holder of the appointment leaves</p> <p><b>Note:</b> Compensation may not be paid under this Regulation if:</p> <ul style="list-style-type: none"> <li>- a person's period of membership of the Pension Scheme has been increased under Regulation 12 of the Benefits Regulations (see above); or</li> <li>- a person has been awarded an additional pension under Regulation 13 of the Benefits Regulations (see above).</li> </ul> <p>In all cases the amount of compensation paid under this Regulation may not exceed 104 weeks' pay.</p>	<p>The County Council will not normally pay compensation under this Regulation except to ensure that an employee whose employment is terminated by reason of redundancy receives, under Regulation 5 of the Compensation Regulations and this Regulation a total of up to 30 weeks pay calculated in accordance with the Statutory Redundancy Pay Table.</p> <p><b>Note:</b> The effect of the County Council's policy on the exercise of its discretions under Regulations 5 and 6 of the Compensation Regulations is that a person whose employment is terminated by reason of redundancy will be paid</p>	<p>This means the County Council will only pay an employee who is made redundant using the statutory redundancy calculation up to 30 weeks pay.</p>

			<p>In all cases the decision to pay compensation under this Regulation must be made no later than 6 months after the date of termination of the person's employment.</p>	<p>up to 30 weeks' pay calculated in accordance with the Statutory Redundancy Pay Table. A person whose employment is terminated in the interests of the efficient exercise of the County Council's functions, or where the other holder of a joint appointment leaves, will not normally be paid compensation under these Regulations.</p>	
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