

SURREY COUNTY COUNCIL

STATEMENT OF POLICY ON EMPLOYER DISCRETIONS IN RELATION TO THE LOCAL GOVERNMENT (LG) PENSION SCHEME REGULATIONS, THE LG (EARLY TERMINATION OF EMPLOYMENT) (DISCRETIONARY COMPENSATION) REGULATIONS AND THE LG (DISCRETIONARY PAYMENTS) (INJURY ALLOWANCES) REGULATIONS



1. General principles

- 1.1 Surrey County Council (the council) is a participating employer in the Local Government Pension Scheme (LGPS) and is required to formulate, publish and keep under review a Statement of Policy on certain discretions which they have the power to exercise in relation to the LGPS Regulations, the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations and the Local Government (Discretionary Payments) (Injury Allowances) Regulations.
- 1.2 The approach to exercising discretion is to allow the council to make a reasonable decision in individual cases, but, also to be clear as to the factors it will take into account in making the decision.
- 1.3 In formulating and reviewing its policy statement the council is required to:
- Have regard to the extent to which the exercise of its discretionary powers, unless properly limited, could lead to a serious loss of confidence in the public services, and,
 - Be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable cost.
- 1.4 Where reference is made in this policy to an officer with a decision making role, the authority to make these decisions will be for them and their successor roles should there be a change in the future.
- 1.5 Where reference is made to the Severance Review Group (SRG), the SRG consists of the Director of Legal, Democratic Services and Cultural Services, and includes senior managers, from each of the main directorates, with experts from Finance, Human Resources and Pensions.

The SRG considers all cases which lead to:

- A termination leading to a severance payment i.e. redundancy or efficiency;
- A challenge to suitable alternative employment in the case of a termination;

- Early or flexible retirement for active or deferred members where there is a capital cost;
- Flexible retirement for active or deferred members where there is an exception to the Flexible Retirement Policy;
- Additional discretionary compensation;
- The award of additional pension or the election to contribute to any shared cost additional pension arrangements;

Except cases involving:

- the Chief Executive, which are approved by the People Performance and Development Committee (PPDC); a Strategic Director/Director or senior manager reporting directly to a Strategic Director/Director, which are approved by the Chief Executive in consultation with the Chairman of the PPDC (Leader of the Council);
- Any severance with under £20k capitalised cost which can be decided by a relevant officer as identified in Part 2 of the Council's Scheme of Delegation ("de minimis" cases).

1.6 This policy confers no contractual rights.

1.7 The council retains the right to change the policy at any time.

1.8 Only the version of the policy that is current at the time a relevant event occurs will be applicable.

1.9 The council encourages any complaint relating to first instance decisions to be raised with the council in the first instance. However, if the complaint is not resolved satisfactorily these matters would need to be referred under the council Internal Dispute Resolution Procedure, details of which are available at <http://www.surreypensionfund.org/themes/surrey/scheme%20documents/Dispute%20Procedure%20Guide.pdf>.

2. Discretions that require a published policy

2.1 Discretions from 1 April 2014 in relation to post 31 March 2014 active members and post 31 March 2013 leavers.

2.1.1 Discretion:

Whether, at full cost to the employer, to grant extra annual pension of up to £6,675¹ to an active Scheme member within six months of leaving to a member whose employment was terminated on the grounds of redundancy or business efficiency [regulation 31 of the LGPS Regulations 2013].

The council policy statement:

There will be no general adoption of this discretion².

2.1.2 Discretion:

Whether, where an active Scheme member wishes to purchase extra annual pension of up to £6,675¹ by making Additional Pension Contributions (APCs), to voluntarily contribute towards the cost of purchasing that extra pension via a Shared Cost Additional Pension Contribution (SCAPC) [regulations 16(2)(e) and 16(4)(d) of the LGPS Regulations 2013].

The council policy statement:

There will be no general adoption of this discretion².

2.1.3 Discretion:

Whether to permit flexible retirement for staff aged 55³ or over who, with agreement of the employer, reduce their working hours or grade [regulation 30(6) of the LGPS Regulations 2013] and, if so, as part of the agreement to permit flexible retirement,

¹ The figure of £6,675 is increased each April (starting April 2015) under the Pension (Increase) Act 1971 (as if it were a pension with a PI date of 1 April 2013). The uprated figure as of April 2015 is £6,675.

² Decisions regarding this discretion are delegated to a relevant officer as identified in Part 2 of the council's Scheme of Delegation, except for those cases involving:-

- (i) the Chief Executive, which are approved by the PPDC; a Strategic Director/Director or senior manager reporting directly to a Strategic Director/Director, which are approved by the Chief Executive in consultation with the Chairman of the PPDC (Leader of the Council);
- (ii) a capitalised cost, where a decision by a relevant officer as identified in Part 2 of the council's Scheme of Delegation will only be taken after consideration by the SRG¹.

³ Age 50 for those LGPS members transferred from the Learning and Skills Council to whom regulation 16A of the LGPS (Benefits, Membership and Contributions) Regulations 2007 applies. Such members only need the employer's permission to reduce their working hours or grade, but, if that permission is given, do not require their employer's permission to draw their benefits (as such members have the automatic right to take the benefits by virtue of regulation 18A of the LGPS (Benefits, Membership and Contributions) Regulations 2007 and regulation 24 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014.

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 accrued after 31 March 2008 and before 1 April 2014, and/or
- all, part or none of the pension benefits they accrued after 31 March 2014 [regulations 11(2) and 11(3) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014].

The council policy statement:

Any adoption will be in accordance with the Flexible Retirement Policy.⁴ It will be at the complete discretion of the employee's Strategic Director/Director, Head of Service/Assistant Director or Head Teacher of a school to determine whether flexible retirement should be granted bearing in mind the operational needs of the service, except for those cases involving :-

- (i) **the Chief Executive, which are approved by the PPDC; a Strategic Director/Director or senior manager reporting directly to a Strategic Director/Director, which are approved by the Chief Executive in consultation with the Chairman of the PPDC (Leader of the Council);**
- (ii) **a capitalised cost, where a decision by the employee's Strategic Director/Director, Head of Service/Assistant Director or Head Teacher will only be taken after consideration by the SRG¹;**
- (iii) **exceptions to the Flexible Retirement Policy⁴, where a decision by the employee's Strategic Director/Director, Head of Service/Assistant Director or Head Teacher of a school will only be taken after consideration by the SRG¹.**

2.1.4 Discretion:

Whether to waive, in whole or in part, any actuarial reduction which would otherwise be applied to the benefits taken on flexible retirement before Normal Pension Age (NPA)⁵ [regulation 3(5) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, regulation 18(3) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 and regulations 30(6) and 30(8) of the LGPS Regulations 2013].

The council policy statement:

There will be no general adoption of this discretion².

⁴ Refer to Flexible Retirement Policy at <http://snet.surreycc.gov.uk/snet/core/sccwspublications.nsf/WebLookupFileResourcesByUNID/docid11D2952AAFB2A94B80257E1A00332DC8?openDocument>

⁵ NPA means the employee's individual State pension age at the time the employment is terminated, but, with a minimum of age 65

2.1.5 Discretion:

Whether to “switch on” the 85 year rule for a member voluntarily drawing benefits on or after age 55 and before age 60 [paragraph 1(2) & 2(2) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014].

The council policy statement:

There will be no general adoption of this discretion².

2.1.6 Discretion:

Whether to waive any actuarial reduction on pre and/or post April 2014 benefits for Group 1⁶, Group 2⁷, Group 3⁸ and Group 4⁹ active members (voluntarily retiring after age 55¹⁰ and before Normal Pension Age), deferred members and suspended tier 3 ill health pensioners who are electing to draw benefits [*regulations 3(1), Schedule 2(1) and 2(2) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 regulation 30(8) of the LGPS Regulations 2013 and regulations 30(5) or 30A(5) of the LGPS (Benefits, Membership and Contributions) Regulations 2007*].

The council policy statement:

Where there is the discretion to waive actuarial reductions on compassionate grounds¹¹.

Each case will be considered on its own facts and only then:

⁶ Members who were members of the LGPS before 1 October 2006 and who will be 60 or more on 31 March 2016.

⁷ , Members who were members of the LGPS before 1 October 2006 and who will not be 60 or more on 31 March 2016 but will attain age 60 between 1 April 2016 and 31 March 2020.

⁸ Members who were members of the LGPS before 1 October 2006 and who will not be 60 or more on 31 March 2016 and will not attain age 60 between 1 April 2016 and 31 March 2020.

⁹ Members who were not members of the LGPS before 1 October 2006.

¹⁰ Age 50 for those LGPS members transferred from the Learning and Skills Council to whom regulation 16A of the LGPS (Benefits, Membership and Contributions) Regulations 2007 applies. Such members only need the employer’s permission to reduce their working hours or grade, but, if that permission is given, do not require their employer’s permission to draw their benefits (as such members have the automatic right to take the benefits by virtue of regulation 18A of the LGPS (Benefits, Membership and Contributions) Regulations 2007 and regulation 24 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014.

¹¹ The council’s definition ‘Compassionate grounds’ is that the circumstances must:

- (i) Not occur as a result of a decision or action made by the member, where the consequences could reasonably have been foreseen AND
- (ii) Result in exceptional hardship either to the member directly or a spouse, civil partner or dependent. Financial hardship alone is unlikely to constitute compassionate grounds.

(A) for active employees;

with the approval by a relevant officer as identified in Part 2 of the council's Scheme of Delegation after consideration by the Severance Review Group¹, except for those cases involving:-

- (i) the Chief Executive, which are approved by the PPDC; a Strategic Director/Director or senior manager reporting directly to a Strategic Director/Director, which are approved by the Chief Executive in consultation with the Chairman of the PPDC (Leader of the Council);**

(B) For deferred or suspended ill health tier 3 pensioners;

with the approval of the SRG¹.

Where there is a discretion to waive actuarial reductions on any grounds.

There will be no general adoption of this discretion¹².

2.2 Discretions for Scheme members (excluding councillor members) who ceased active membership on or after 1 April 2008 and before 1 April 2014.

2.2.1 Discretion:

Whether to grant applications for the early payment of deferred pension benefits on or after age 55 and before age 60 [regulation 30(2) of the LGPS (Benefits, Membership and Contributions) Regulations 2007].

The council policy statement:

(A) Where there is no financial disadvantage to the council:

Applications will be granted. This decision is delegated to the Pension Services Manager.

(B) Where there is a financial disadvantage to the council:

¹² Decisions regarding this discretion are delegated to:

(A) for active employees;

a relevant officer as identified in Part 2 of the council's Scheme of Delegation after consideration by the Severance Review Group, except for those cases involving:-

- (i) the Chief Executive, which are approved by the PPDC; a Strategic Director/Director or senior manager reporting directly to a Strategic Director/Director, which are approved by the Chief Executive in consultation with the Chairman of the PPDC (Leader of the Council);

(B) for deferred or suspended ill health tier 3 pensioners;

the approval of the SRG^{1.5}

There will be no general adoption of this discretion, unless ‘compassionate grounds’¹¹ are established. Each case will be considered on its own facts. This decision is delegated to the SRG¹.

3.1.2 Discretion:

Whether, on compassionate grounds¹¹, to waive any actuarial reduction that would normally be applied to deferred benefits which are paid before age 65 [*regulation 30(5) of the LGPS (Benefits, Membership and Contributions) Regulations 2007*].

The council policy statement:

Each case will be considered on its own facts. This decision is delegated to the SRG¹.

2.2.3 Discretion:

Whether to grant applications for the early payment of a suspended tier 3 ill health pension on or after age 55 and before age 60 [*regulation 30A(3) of the LGPS (Benefits, Membership and Contributions) Regulations 2007*].

The council policy statement:

(A) Where there is no financial disadvantage to the council:

Applications will be granted. This decision is delegated to the Pension Services Manager.

(B) Where there is a financial disadvantage to the council:

There will be no general adoption of this discretion, unless ‘compassionate grounds’¹¹ are established. Each case will be considered on its own facts. This decision is delegated to the SRG¹.

2.2.4 Discretion:

Whether, on compassionate grounds¹¹, to waive any actuarial reduction that would normally be applied to any suspended tier 3 ill health pension benefits which are paid before age 65 [*regulation 30A(5) of the LGPS (Benefits, Membership and Contributions) Regulations 2007*].

The council policy statement:

Each case will be considered on its own facts. This decision is delegated to the SRG¹.

2.3 Discretions for Scheme members who ceased active membership between 1 April 1998 and 31 March 2008.

2.3.1 Discretion:

Whether to grant applications for an early payment of pension benefits on or after age 50¹³ and before age 60 [*regulation 31(2) of the LGPS Regulations 1997*].

The council policy statement:

(A) Where there is no financial disadvantage to the council:

Applications will be granted. This decision is delegated to the Pension Services Manager.

(B) Where there is a financial disadvantage to the council:

There will be no general adoption of this discretion, unless ‘compassionate grounds’¹¹ are established. Each case will be considered on its own facts. This decision is delegated to the SRG¹.

2.3.2 Discretion:

Whether, on compassionate grounds¹¹ to waive the actuarial reduction that would normally be applied to benefits which are paid before age 65 [*regulation 31(5) of the LGPS Regulations 1997*].

The council policy statement:

Each case will be considered on its own facts. This decision is delegated to the SRG¹.

2.4 Discretions to be exercised under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006.

2.4.1 Discretion

Whether to base a redundancy payment on an employee’s actual weeks’ pay where this exceeds the statutory weeks pay limit of, currently, £464 per week (as at 6 April 2014) [*regulation 5 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006*].

The council policy statement:

All redundancy payments to be calculated on the employee’s actual weeks pay.

2.4.2 Discretion

¹³ Except in the case of LGPS members who are former members of the Metropolitan Civil Staffs Superannuation Scheme and who are covered by regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997, or former NHS Scheme members who are covered by regulation 23 of the LGPS (Transitional Provisions) Regulations 1997, benefits paid on or after age 50 and before age 55 will be subject to an unauthorised payments charge under the Finance Act 2004 and, where applicable, an unauthorised payments surcharge under the Act, and a Scheme sanction charge on any benefits built up after 5 April 2006.

Whether to make a termination payment (inclusive of any redundancy payment) of up to a maximum of 104 weeks' pay to an employee who is, or is eligible to be, a member of the LGPS and whose employment is terminated on the grounds of redundancy or in the interests of the efficient exercise of the employer's functions or, in the case of a joint appointment, because the other holder of the appointment has left it [*regulation 6 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006*].

The council policy statement:

(A) Employees over the age of 55 and members of the LGPS:

Subject to statutory limits, a termination payment will be made based on the number of weeks as calculated by the ready reckoner multiplied by the employee's weekly pay, up to a maximum of 30 weeks pay.

(B) Employees over the age of 55 and not members of the LGPS and employees under the age of 55:

Subject to statutory limits, a termination payment will be made based on 1.5 weeks pay for each year of continuous local government service, up to a maximum of 40 weeks pay.

(C) Any consideration of further additional discretionary awards will be subject to statutory limits and must be supported by the relevant Strategic Director/Director, Head of Service/Assistant Director or Head Teacher. Cases must show that an individual would suffer substantial detriment through the termination of their employment, over and above the underlying policy assumption that the scheme provides fair and reasonable compensation for loss of office and only then with the approval by the SRG¹ except for those cases involving :-

- (i) the Chief Executive, which are approved by the PPDC; a Strategic Director/Director or senior manager reporting directly to a Strategic Director/Director, which are approved by the Chief Executive in consultation with the Chairman of the PPDC (Leader of the Council).**

2.5 Discretions to be exercised under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000.

2.5.1 Discretion

How a person's annual compensatory added years (CAY) payment is to be abated during, and following the cessation of, any period of re-employment by an employer who offers membership of the LGPS to its employees, regardless of whether or not the employee chooses to join the LGPS (except where the employer is an Admitted Body, in which case abatement only applies if the person is in the LGPS in the new employment) [*Parts VI and VII of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000*].

The council policy statement:

The council must ensure that the aggregate of the annual CAY, annual LGPS pension and annual rate of pay from the new employer does not exceed the annual rate of pay from the employment in which the CAY were granted. If that position cannot be achieved by a reduction in the CAY payment then the CAY payment must be suspended.

After ceasing the re-employment the credited period will be readjusted or stopped altogether if the resulting pension from the re-employment exceeds the value of the pension which could have been paid if the member had remained in the first employment until age 65.

2.5.2 Discretion

How any surviving spouse's or civil partner's annual compensatory added years is to be apportioned where the deceased person is survived by more than one spouse or civil partner [*regulation 21(4) of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000*].

The council policy statement:

Where a deceased former employee is survived by more than one spouse or civil partner the annual CAY pension will be apportioned equally between eligible spouses or civil partners.

2.5.3 Discretion

Whether, if the spouse or civil partner of a person who ceased employment before 1 April 1998 remarries, enters into a civil partnership or cohabits after 1 April 1998, the normal annual compensation suspension rules will be disapplied i.e. the spouse's or civil partner's annual compensatory added years will continue to be paid [*regulation 21(5) of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000*].

The council policy statement:

Where the spouse or civil partner of a person (who ceased employment before 1 April 1998) remarries or cohabits after 1 April 1998, the spouse's or civil partner's annual CAY pension will continue to be paid.

2.5.4 Discretion

Whether, in respect of the spouse or civil partner of a person who ceased employment before 1 April 1998 and where the spouse or civil partner remarries or cohabits or enters into a civil partnership on or after 1 April 1998 with another person who is also entitled to a spouse's or civil partner's annual CAY payment, the normal rule requiring one of them to forego payment whilst the period of marriage, civil partnership or co-habitation lasts, should be disapplied i.e. whether the spouses' or civil partners' annual CAY payments should continue to be paid to both of them [*regulation 21(7) of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000*].

The council policy statement:

CAY payments will continue to be paid to both parties in respect of a spouse or civil partner of a person who ceased employment before 1 April 1998 and where the spouse or civil partner remarries or cohabits or enters into a civil partnership on or after 1 April 1998 with another person who is also entitled to a spouse's or civil partners annual CAY payment.

2.5.5 Discretion

How, if compensatory added years were awarded to an employee who was not in the LGPS (because the employee had not joined or had opted out of the LGPS) the employer will decide to whom any children's annual compensatory added years payments are to be paid and, in such a case, how the annual added years will be apportioned amongst the eligible children cohabitation [*regulation 25(2) of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000*].

The council policy statement:

Where a deceased former employee is survived by at least one eligible child then the children's CAY pension will be paid in the same proportion as under the main pension scheme regulations.

2.6 Discretions to be exercised under the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011

2.6.1 Discretion

Whether 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:

- suffer a reduction 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, and
- [*Regulation 14(1) of the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011*].

The council policy statement:

There will be no new adoptions of an Injury Allowance award.

3 Additional discretions

3.1 Discretions for Scheme members who ceased active membership before 1 April 1998

3.1.1 Discretion:

Whether to grant applications for an early payment of pension benefits on or after age 50¹⁴ and before age 60 on compassionate grounds¹¹ [*regulation D11 (2) (c) of the LGPS Regulations 1995*].

The council policy statement:

Each case will be considered on its own facts. This decision is delegated to the SRG¹.

3.2 Discretions from 1 April 2014 in relation to post 31 March 2014 active members and post 31 March 2013 leavers.

3.2.1 Discretion

Whether, how much, and in what circumstances to contribute to a shared cost Additional Voluntary Contribution (SCAVC) arrangement entered into on or after 1 April 2014 [*regulation 17 of the LGPS Regulations 2013*] and whether, how much, and in what circumstances to continue to contribute to any SCAVC arrangement that the employer had entered into before 1 April 2014 [*regulation 15(1)(d) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, regulation 25(3) of the LGPS (Administration) Regulations 2008 and regulation 15(3) of the LGPS (Benefits, Membership and Contributions) Regulations 2007*].

The council policy statement:

There will be no general adoption of this discretion².

3.2.2 Discretion:

Whether, with the agreement of the Pension Fund administering authority, to permit a Scheme member to elect to transfer other pension rights into the LGPS if he/she has not made such an election within 12 months of joining the LGPS [*regulation 100(6) of the LGPS Regulations 2013*].

The council policy statement:

There will be no general adoption of this discretion. Any decisions on an adoption of this discretion are delegated to the Pension Services Manager¹⁵.

3.2.3 Discretion:

Whether to extend the 12 month time limit within which a Scheme member who has a deferred LGPS benefit in England or Wales following the cessation of employment

¹⁴ Except in the case of former NHS Scheme members who are covered by regulation 23 of the LGPS (Transitional Provisions) 1997, benefits paid on or after age 50 and before age 55 will be subject to an unauthorised payments charge under the Finance Act 2004 and, where applicable, an unauthorised payments surcharge under the Act, but, there would be no Scheme sanction charge.

¹⁵ Discretion 3.1.2 also requires the permission of the Administering Authority (Pension Fund).

(or cessation of a concurrent employment) after 31 March 2014 may elect not to have their deferred benefits aggregated with their new LGPS employment (or ongoing concurrent LGPS employment) if the member has not made an election to retain separate benefits within 12 months of commencing membership of the LGPS in the new employment (or within 12 months of ceasing the concurrent membership) *[regulations 22(7) and (8) of the LGPS Regulations 2013]*.

The council policy statement:

There will be no general adoption of this discretion. Any decisions on an adoption of this discretion are delegated to the Pension Services Manager.

3.2.5 Discretion

How the pension contribution band to which an employee is to be allocated on joining the Scheme, and at each subsequent April, will be determined and the circumstances in which the employer will, in addition to the review each April, review the pension contribution band to which an employee has been allocated following a material change which affects the member's pensionable pay in the Scheme year (1 April to 31 March) *[regulations 9 and 10 of the LGPS Regulations 2013]*.

The council policy statement:

On joining the Scheme the council will allocate an employee the pension contribution band commensurate with his/her annualised first full months contractual pay. This will be reviewed each time there is a change in pay.

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