

# Southampton City Council

## Severance & Pensions Payments: Discretionary Powers Policy

| Severance and Pension Payments: Discretionary Powers Policy |                               |                      |                                    |
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| <b>Version</b>  | V2                            | <b>Feed back:</b>    | SD Legal and Governance            |
|   |                               | <b>Approved by:</b>  | Full Council as part of Pay Policy |
| <b>Date last amended</b>                                    | January 2019                  | <b>Approval date</b> | Pay Policy March 2019              |
| <b>Lead officer</b>   | Janet King                    | <b>Review date</b>   | January 2020                       |
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# Severance & Pension Payments: Discretionary Powers Policy

## 1. Purpose

1.1 To set out the Council's policy on each of the mandatory discretions available under the Regulations\* and confirm the position on relevant optional discretions.

1.2 The policy explains the context of discretions, whether or not they will be applied and the circumstances and criteria for applying them in relation to existing staff (members) and ex-staff (deferred members).

\* The 2014 Scheme Regulations – regulation 60 of the LGPS Regulations 2013 and paragraph 2(2) of Schedule 2 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, The 2008 Scheme Regulations – regulation 66 of the LGPS (Administration) Regulations, and LGPS Regulations 1997 – regulation 106

## 2. Scope

2.1 The Council will approach the application of any discretions in a fair and consistent manner, in line with the Regulations, equality legislation and the specific provisions and criteria of the policies and procedures relating to pensions, organisational change, redundancy and retirement.

2.2 This policy is applicable to Council staff and staff in schools where the Council is the scheme employer for LGPS purposes.

2.3 The policy covers discretionary arrangements relating to early retirements that result from redundancy, flexible retirement, or those that are staff-led i.e. where the member of staff meets the scheme criteria to be able to choose to retire without employer consent.

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

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

2.6 Except in certain defined cases, early retirement and discretionary payments/pension enhancements are not available as of right. Any application for voluntary early retirement, discretionary payment or pension enhancement, will be considered in the context of the

stated parameters within which the Council will operate its discretions, whether it is in the interest of the Council, the financial consequences to the Council of granting any such request, and the employee's personal circumstances.

2.7 Scheme members who are made redundant and are 55 or over, with at least 2 years membership, are automatically entitled to early release of their pension, without reduction. The LGPS Regulations do not allow for the pension to be deferred in these circumstances.

2.8 The Council will be liable for scheme charges for early retirements arising from redundancy in all cases.

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

### 3. Roles and Responsibilities

3.1 In the formulation and review of this policy the Council:

- Is satisfied that the policy is workable, affordable and reasonable, having regard to the foreseeable costs;
- Has considered the potential for the application of its discretionary powers (unless properly limited) to lead to a loss of confidence in the public service.

3.2 The responsibility for payment of discretionary pension arrangements has been delegated to officers named in the Scheme of Delegation, with the exception of payments for Schools, which will continue to be decided by the Governance Committee.

### Discretionary Powers – Severance

#### 4. Redundancy Pay Calculations

4.1 A redundancy payment will be due to any member of staff with at least two years' continuous local government service at the date of a dismissal that fulfils the statutory definition of redundancy. Redundancy pay (including any severance pay) under £30,000 is not taxable.

Discretion: Whether to base redundancy payments on an actual weeks' pay where this exceeds the statutory weeks' pay limit.

4.2 The Council/school will calculate redundancy payments on the basis of actual weeks' pay (capped at the top of Grade 13) where this exceeds the weeks' pay limit in the statutory calculation.

4.3 The council will calculate redundancy pay based on age, continuous local government service and actual weekly pay (capped at the top of Grade 13), up to a maximum of 30 weeks' pay, using the following formula:

- (Age factor) x (number of complete years of continuous local government service - capped at 20 years) x (gross weekly salary capped at the top of grade 13) = Redundancy Entitlement.

The age factor is calculated as follows:

- 0.5 for each full year of service where the employee's age was under 22;
- 1 for each full year of service where the employee's age was 22 or above, but under 41; and
- 1.5 for each full year of service where the employee's age was 41 or above.

4.4 Voluntary "redundancy" payments will be an enhanced lump sum payment that applies a 1.25 multiplier to the above formula. Any pay in lieu of notice is taxable and will be funded by the employing service. All voluntary severance payments must be in line with the Council's Scheme of Delegation. The Service Director HR and OD will exercise the delegation after consulting the Council's Exits' panel which comprises the Service Director Finance and Commercialisation, Service Director Legal and Governance and Service Director HR and OD (or their nominated deputies); staff who exit the Council this way will not be re-employed by the council within a two year period.

4.5 Where a redundant employee commences subsequent local government employment (or employment with a body included in The Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order 1999, as amended) within a month and a day of leaving the Council, there will be no entitlement to a redundancy payment. However if an employee starts employment after a break of at least a month and a day, their continuous employment under the Modification Order will be broken and redundancy compensation is payable.

## 5. Compensations Payments

5.1 The 2006 Regulations allow employers to award lump sum compensation payments within certain parameters. A lump sum payment can only be granted where the employer is not making Additional Pension Contributions on behalf of a member of staff. Any redundancy payment must be offset against the lump sum compensation payment.

**Discretion:** Whether to award lump sum compensation of up to 104 weeks' pay in cases of redundancy, termination of employment on efficiency grounds, or cessation of a joint appointment.

5.2 The Council/school will calculate redundancy payments, including any separate calculations for voluntary redundancy, in line with agreed policies applicable at the time, subject to such payments not exceeding the equivalent of 104 weeks' pay.

## 6. Use of Redundancy Payment to Purchase Additional Pension

6.1 The Local Government Pension Scheme Regulations (LGPS) allow redundancy payment in excess of the statutory amount (e.g. where actual weekly pay is higher than the statutory maximum figure used for the calculation) to be used to buy additional pension where the employer permits this.

Discretion: Whether to allow employees to use any redundancy payment in excess of the statutory amount to be used to buy additional pension.

6.2 The Council/school will allow any redundancy payment in excess of the statutory amount to be used to buy additional pension. The staff member must request prior to leaving their employment. All of the non-statutory amount must be transferred to pension. It is not possible to relinquish only part of the payment.

## 7. Discretionary Powers - Pensions

The following discretions apply to members who were actively paying into the scheme as at 1 April 2014 onwards

Discretion: Whether, at the full cost to the Scheme employer, to grant extra annual pension of up to £6,822 (figure at 1 April 2018) to an active member or within 6 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]

7.1 The Council/school will exercise its discretion to enable the purchase of additional pension where individuals have taken early retirement due to redundancy or efficiency (up to £6,822 per annum as at 1<sup>st</sup> April 2018).

Discretion: Whether, how much, and in what circumstances to contribute to a Shared Cost APC scheme

Where an active scheme member has decided to make Additional Pension Contributions (APCs) to purchase extra pension benefits up to £6,822 per annum (figure as at 1 April 2018), the employer can resolve to **voluntarily** contribute towards the cost of this too.

Note: This does not include instances where the employee is paying for **lost** pension via an APC where the election was made in the first 30 days (or longer if the employer allows) – in this circumstance the employer **must** pay two-thirds of the cost of such purchase

7.2 The Council/school will not exercise its discretion to contribute towards APC.

Discretion: Whether to allow flexible retirement for staff aged 55 or over who, with the agreement of the Scheme employer, reduce their working hours or grade [regulation 30(6) of the LGPS Regulations 2013] and, if so, as part of the agreement to allow flexible retirement:

- whether, in addition to the benefits the member has built up prior to 1 April 2008 (which the member must draw), to allow 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 / or
- all, part or none of the pension benefits they built up after 31 March 2014
- 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) [regulation 3(5) of the LGPS (Transitional Provisions,

Employers may allow a member from age 55 onwards to draw all or part of the pension benefits they have already built up whilst still continuing in employment. This is provided the employer agrees to the member either reducing their hours or moving to a position on a lower grade.

In such cases, pension benefits will be reduced in accordance with actuarial tables unless the employer waives the reduction either fully or in part or a member has protected rights.

If the Council allows members to retire under flexible retirement, and they meet the 85 year rule between the ages of 55 and 60, there may be a cost to the employer as there is no option to switch the 85 year rule off in this instance.

7.3 The Council will consider requests for Flexible Retirement from employees aged 55 and over with at least 2 years scheme membership, who wish to take a "step down" in responsibility or in working hours, and access their accrued pension benefits, including application for the release of benefits accrued after 31 March 2008. Applications will be considered (but will be subject to employer approval) on the merits of each case and the needs of the business and will include:

- all the pension benefits they built up after 31 March 2008 and before 1 April 2014, and / or
- all of the pension benefits they built up after 31 March 2014

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

**Discretion:** Whether to “switch on” the 85 year rule for a member voluntarily drawing benefits on or after age 55 and before age 60.

Active members are now able to voluntarily retire between ages 55 and 60. If they were a member of the LGPS on 30 September 2006 then some of their benefits could be protected from reductions applied to early payment under the 85 year rule. This rule only applies automatically to members voluntarily retiring from age 60 but the employer has the discretion to “switch it on” for voluntary retirements between age 55 and 60.

This discretion does not apply to flexible retirement (see [Regulation 30\(6\)](#)) whereby the 85 year rule is always switched on.

Where the employer does not choose to “switch on” the rule, then benefits built up would be subject to reduction in accordance with actuarial guidance issued by the Secretary of State regardless of whether a member meets the rule or not

If the employer does agree to “switch on” the 85 year rule, the employer will have to meet the cost of any strain on fund resulting from the payment of benefits before age 60 i.e. where the member has already met the 85 year rule or will meet it before age 60.

7.5 The Council/school will not exercise its discretion to “switch on the 85 year rule” for those who meet the criteria and retire between ages 55 and 60. Any member wishing to retire may see a reduction in their pension benefits.

**Discretion:** Whether to waive, in whole or in part, any actuarial reductions on benefits which a member voluntarily draws before normal pension age (other than on the grounds of flexible retirement).

Employers can agree to waive any actuarial reductions due in the case of employees retiring any time after age 55.

Employers should also note that the strain cost of any such retirements would need to be met by the employer and paid into the Pension Fund at the appropriate time.

#### Members joined before 1 October 2006 and who reached 60 before 1 April 2016 – Group 1

- To waive on compassionate grounds, any actuarial reductions applied to benefits built up before 1 April 2016

- To waive on any grounds, actuarial reductions applied to benefits built up after 1 April 2016

Members joined before 1 October 2006 and who reach age 60 between 1 April 2016 and 31 March 2020 and also meet their critical retirement age before 1 April 2020 (date member meets the 85 year rule)– Group 2

- To waive on compassionate grounds, any actuarial reductions applied to benefits built up before 1 April 2020
- To waive on any grounds, actuarial reductions applied to benefits built up after 1 April 2020

Members joined before 1 October 2006 and who reach age 60 after 1 April 2016 but before 31 March 2020 and don't meet their critical retirement age before 1 April 2020 (date member meets the 85 year rule) – Group 3

- To waive on compassionate grounds, any actuarial reductions applied to benefits built up before 1 April 2014
- To waive on any grounds, actuarial reductions applied to benefits built up after 1 April 2014

Members joined after 1 October 2006 – Group 4

- To waive on compassionate grounds, any actuarial reductions applied to benefits built up before 1 April 2014
- To waive on any grounds, actuarial reductions applied to benefits built up after 1 April 2014

7.6 The Council/school will consider requests for early retirement from deferred members over the age of 55 on compassionate grounds where medical evidence is provided that the individual has to provide continuous care for a sick partner or dependant and/or where it is in the Council's interests to do so, and having regard to the Pension Fund Charge for paying benefits early being affordable in each case

7.7 The Council/school will not waive any of the actuarial reduction applicable to an employee who retires voluntarily between ages 55 and Normal Pension Age. The Council/school will not consent to ex-staff taking deferred benefits early unless there is no cost to the employer.

The following discretions apply to members who left the scheme between 1 April 2008 and before 1 April 2014

**Discretion:** Whether to “switch on” the 85 year rule for a member with deferred benefits voluntarily drawing benefits on or after age 55 and before age 60 or upon the voluntary early payment of a suspended tier 3 ill health pension?

A member with a deferred benefit who left the scheme voluntarily between 1 April 2008 – 31 March 2014 and who has subsequently become a deferred pensioner may now claim their benefits from age 55 without their employers consent. However, these benefits will be reduced for early payment.

Where a member has reached the 85 year rule at the point of retirement, an employer can consent to switching on the 85 year rule. Any ‘strain’ to the Fund will be payable immediately by the Scheme employer.

7.8 The Council/school will not exercise its discretion to “switch on the 85 year rule” for those who meet the criteria and retire between ages 55 and 60. Any member wishing to retire may see a reduction in their pension benefits.

**Discretion:** Whether to waive reductions which may occur on deferred benefits claimed between ages 55-60 or suspended tier 3 ill health for leavers between 1 April 2008 and 31 March 2014.

A member with a deferred benefit who left the scheme voluntarily between 1 April 2008 – 31 March 2014 or was awarded a Tier 3 ill health pension under the 2007 Regulations and who has subsequently become a deferred pensioner may now claim their benefits from age 55 without their employers consent. However, these benefits will be reduced for early payment.

An employer can consent to waiving any reductions, on compassionate grounds, which may be applied to deferred benefits or suspended tier 3 ill health pension paid early.

7.9 Early payment of deferred pension benefits following suspension of tier three ill health pensions, will be granted provided it is in the Council's interest to do so, and having regard to the Pension Fund Charge for paying benefits early being affordable in each case.

7.10 The Council/school may consider waiving actuarial reductions for deferred members on compassionate grounds where the member can provide medical evidence that they are providing continuous care for a sick partner or dependent.

The following discretions apply to members who left the scheme between 1 April 1998 and before 1 April 2008

**Discretion:** Whether, as the 85 year rule does not automatically fully apply to members who would otherwise be subject to it and who choose to voluntarily draw their deferred benefits (on or after 14 May 2018) on or after age 55 and before age 60, to switch the 85 year rule back on in full for such members.

Deferred members who left the scheme after 1 April 1998 are now able to voluntarily retire between ages 55 and 60. If they were a member of the LGPS on 30 September 2006 then some of their benefits could be protected from reductions applied to early payment under the 85 year rule. This rule only applies automatically to members voluntarily retiring from age 60 but the ceding employer has the discretion to “switch it on” for voluntary retirements between age 55 and 60.

Where the employer does not choose to “switch on” the rule, then benefits built up would be subject to reduction in accordance with actuarial guidance issued by the Secretary of State regardless of whether a member meets the rule or not

If the employer does agree to “switch on” the 85 year rule, the employer will have to meet the cost of any strain on fund resulting from the payment of benefits before age 60 i.e. where the member has already met the 85 year rule or will meet it before age 60.

**7.11** The Council/school will not exercise its discretion to “switch on the 85 year rule” for those who meet the criteria and retire between ages 55 and 60. Any member wishing to retire may see a reduction in their pension benefits.

**Discretion:** Whether to grant application for early payment of deferred benefits on or after age 50 and before age 55.

A member with a deferred benefit who left the scheme between 1 April 1998 – 31 March 2008 can claim their benefits from age 50 with their employers consent.

However, these benefits may be reduced for early payment and/or be subject to an unauthorised payment charge under the Finance Act 2004

**7.12** The Council/school will consider requests for early retirement from deferred members between the ages 50-55

**7.13** The Council/school will not waive any of the actuarial reduction applicable to an employee who retires voluntarily between the ages of 50-55. The Council/school will not consent to ex-staff taking deferred benefits early unless there is no cost to the employer.

**Discretion:** Whether to waive any actuarial reduction on compassionate grounds which would normally be applied to benefits which are paid before age 65.

Employers can agree to waive any actuarial reductions on compassionate grounds due in the case of employees who ceased active membership between 1 April 1998 and 31 March 2008.

Employers should note that the strain cost of any such retirements would need to be met by the employer and paid into the Pension Fund at the appropriate time.

7.14 The Council/school may consider waiving actuarial reductions for deferred members on compassionate grounds where the member can provide medical evidence that they are providing continuous care for a sick partner or dependent

The following discretions apply to members who ceased active membership before 1 April 1998

Discretion: Whether to grant early payment of a deferred benefit on compassionate grounds, on or after age 50 and before NRD.

An employer can grant application for early payment of deferred benefits on or after age 50 on compassionate grounds.

However, these benefits may be reduced for early payment and/or be subject to an unauthorised payment charge under the Finance Act 2004

7.15 The Council/school will consider requests for early retirement from deferred members between on or after age 50 and before NRD on compassionate grounds where medical evidence is provided demonstrating that the individual needs themselves or has to provide continuous care for a sick partner or dependant and/or where it is in the Council's interest to do so, and having regard to the Pension Fund Charge for paying benefits early being affordable in each case.

Discretion: Whether to extend the 12 month option period for a member to elect to join deferred benefits to their current employment/membership

The election to keep separate pension benefits must be made within 12 months of becoming an active member, who must be active at the date of election.

An employer may allow a period longer than 12 months

7.16 Where a new member of staff of the Council has a deferred pension from a previous period of local government employment, it will normally be joined to the new LGPS pension unless the member of staff opts to keep them separate.

7.17 The Council/school will not exercise the discretion to allow a longer period than 12 months.

Discretion: Whether to extend the normal time limit for acceptance of a transfer value beyond 12 months from joining the LGPS

Where an active member requests to transfer previous pension rights into the LGPS, the member must make a request within in 12 months of becoming an active member.

An employer may allow a longer period than 12 months

**7.18** The Council/School will only accept an election for transfer of pension rights from an external pension provider into the LGPS if this election is made within 12 months of the member joining the LGPS. Any transfer will be subject to agreement by Hampshire County Council, as the administering authority.

Discretion: - whether to, how much and in what circumstances to contribute to a shared-cost Additional Voluntary Contribution (SCAVC) arrangement

**7.19** The Council will contribute to a SCAVC arrangement in return for the employee's agreement to reduce their salary by an amount equivalent to the contribution. In addition, the employee agrees to pay £1 per month into the AVC fund as their contribution to the shared cost AVC arrangement. This contribution will be deducted from the employee's gross salary.

**7.20** The Council will ensure that the employee has sufficient pay after any AVC reductions to meet any lawful deductions from pay. Should the employee's earnings fall below the national Living Wage or Lower Earnings Limit they will be unable to participate.

**7.21** The employee needs to note that they may become subject to a tax charge if they make pension savings which exceed the 'Annual Allowance' in any tax year