

# PENSIONS DISCRETIONS POLICY



# Surrey Heath Borough Council Pension Discretions Policy

## 1 Introduction

- 1.1** Surrey Heath Borough Council (the Council) is a participating employer in the Local Government Pension Scheme (LGPS) and 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”).
- 1.2** Surrey Heath Borough Council is also under a duty to formulate, publish and keep under review a Statement of Policy in respect of how these powers are applied where they relate to the payment of compensation to employees whose employment is terminated as a result of redundancy or certain other reasons.
- 1.3** This document is intended to comply with these duties and the following table, sets out the discretionary powers concerned, identifies the relevant Regulation that gives Surrey Heath Borough Council the discretion and describes how the discretion will be exercised.
- 1.4** 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 Surrey Heath Borough Council.
- 1.5** This statement is not a definitive statement of the law and is subject to the provisions of the relevant Regulations.
- 1.6** 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”
- 1.7** The Regulations which apply to the payment of compensation to employees whose employment is terminated as a result of redundancy, other specified reasons or injury are:
- The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (referred to as the “Compensation Regulations”).
  - The Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011 (referred to as the “Injury Regulations”).

## **2 Definitions**

In the Appendix below:

- 2.1** “The Scheme” or “the Pension Scheme” means the LGPS and “the Fund” or “the Pension Fund” means the fund maintained under the LGPS;
- 2.2** “Member” means a member of the LGPS;
- 2.3** “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.
- 2.4** 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.
- 2.5** 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.

## **3 Scope**

This policy covers all employees who are members of the LGPS and are employed at Surrey Heath Borough Council.

## **4 Equality Assessment Policy**

The Council’s Equality Scheme demonstrates its commitment to equality internally and externally and ensures that all sections of the community are given an opportunity to contribute to the wellbeing of the community. An equality impact assessment has been carried out on this policy and procedure. The Council ensures that consultation is representative of the community and that consideration is given on how to consult ‘hard-to-reach’ groups and will positively learn from responses.

## **5 Policy Statement**

- 5.1** This Policy document provides a full summary of the key discretions in-line with the LGPS Regulations. This policy contains no contractual rights.

- 5.2 Discretionary compensation payments will only be awarded in exceptional circumstances.
- 5.3 The Council retains the right to change the policy at any time. 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.
- 5.4 Only the version of the policy that is current at the time a relevant event occurs will be applicable.
- 5.5 The full list of the Council's policy statement relating to pensions discretions awarded by the Regulations can be found at Appendix A.

## **6. Policy Review**

- 6.1 This policy and the discretions found at Appendix A will be reviewed annually.

**Appendix 1****Summary of Local Government Pension Scheme (LGPS) Discretions with Surrey Heath Borough Council**

NB: Where the discretion concerns a Tier 1 or Tier 2 Officer the delegation will be the Employment Committee  
Tier 1 Officer is the Head of Paid Service and the Tier 2 Officers are the Strategic Directors and Heads of Service

<b>No</b>	<b>Area</b>	<b>Regulation</b>	<b>Discretion</b>	<b>Policy summary</b>	<b>Delegation</b>
1	<b>Whether to vary an employee's contribution band</b>	Regulations 9 and 10 Pensions Regulations	Members must pay pension contributions at the appropriate rate set on 1 <sup>st</sup> April or the first day of active membership, if later.	Surrey Heath Borough Council may vary employee's contribution rate if there is a material change and each case will be considered on its merits.	Head of HR, Performance and Communications.
2	<b>Whether to increase assumed pensionable pay in certain specific circumstances</b>	Regulation 21(5), 21(5A) and 21(5B) Pension Regulations	If a member is absent as a result of illness, child related leave or reserve forces leave their pension benefits may be based on assumed pensionable pay (APP). If, in the employer's opinion, the member's APP is materially lower than their pay in the twelve months preceding the absence they can either include (1) a "regular" lump sum	Surrey Heath Borough Council may increase assumed pensionable pay and each case will be considered on its merits.	Head of HR, Performance and Communications.

			received during that period or (2) substitute a higher pensionable pay having regard for their earnings in that period.		
3	<b>Funding of Additional Pension Contributions</b>	Regulations 16(2)(e) and 16 (4) (d) Pensions Regulations	Whether to fund, in whole or in part, a shared cost additional pension contributions (SCAPC) on behalf of an active member by regular contributions (Regulation 16(2)(e)) or by lump sum (Regulation 16(4)(d))	Surrey Heath Borough Council does not currently make discretionary contributions towards the cost of APCs to purchase extra annual pension, nor will the Council establish such a scheme in the future unless this would result in a significant financial advantage. This may be considered in exceptional circumstances where there are business benefits. Consideration will be based on the same rationale as the Council's policy relating to granting extra annual pension.  Note: Discretion does not apply where member elects within 30 days of	Both the Head of Paid Service and the Employment Committee.

				return from authorised unpaid leave to pay a SCAPC to cover the cost of 'lost' pension as the regulations state that the employer must, in these cases, contribute 2/3 of the cost to a SCAPC.	
4	<b>Shared Cost Additional Voluntary Contributions (SCAVCs)</b>	Regulation 17(1) and Schedule 1 (definition of SCAVC) Pension Regulations	Whether to contribute towards a Shared Cost Additional Contribution arrangement. Pre-201 SCAVCs also fall under Regulation 17 by virtue of Regulation 15(2A) Transitional Regulations.	Surrey Heath Borough Council will not contribute to SCAVCs except in exceptional circumstances.	Both the Head of Paid Service and the Employment Committee.
5	<b>Whether to grant early payment of pension on compassionate grounds (pre-1<sup>st</sup> April 1998 leavers)</b>	Regulation D11(2) (c) of 1995 Regulations	Whether to agree to early payment of pension benefits from age 50 on compassionate grounds. The employer should note that pension benefits paid before age 55 may attract an unauthorised payments surcharge and they may have to pay a strain cost because the pension	Surrey Heath Borough Council will only agree to early payment of pension in exceptional circumstances.	Both the Head of Paid Service and the Employment Committee.

			benefits cannot be reduced.		
6	<b>Flexible Retirement</b>	Regulation 30(6) Pensions Regulations  Regulations 11(2) and (3) of Transitional Regulations	Whether to agree to an employee aged 55 or over reducing their hours of work or their grade so that they may receive all or some of their retirement pension while still employed.  Whether, in addition to any pre-1 <sup>st</sup> April 2008 pension benefits which the member must draw, to permit the member to draw; (a) all, part or none of benefits accrued between 1 <sup>st</sup> April 2008 and 31 <sup>st</sup> March 2014 and (b) all, part or none of the pension benefits built up after 31 <sup>st</sup> March 2014.	There is a general presumption that the Council will consider requests for Flexible retirement on their merits and to agree where it is in the Council's interests. On the basis that pension benefits taken before normal retirement age are reduced in accordance with guidance issued by the Government Actuary.  <b>See separate Flexible Retirement Policy Statement</b>	Both the Head of HR, Performance and Communications and the Head of Paid Service.  The Head of HR, Performance and Communications and the Employment Committee where the flexible retirement request concerns the Head of Paid Service.
7	<b>Switching-on the 85-year rule (excludes flexible retirement)</b>	Schedule 2 of Transitional Regulations	Whether to switch on the 85-year rule under Regulation 1(2) and 1(3)	Whilst there will be no general adoption of this discretion, Surrey Heath	Both the Head of Paid Service and the Employment Committee.



			of Schedule 2 of the Transitional Regulations.	Borough Council may agree to switch on the 85 year rule in exceptional circumstances such as compassionate grounds, or where it is in Surrey Heath's business interests, and taking into account the affordability of the employer costs arising.	
8	<b>Waiving of Actuarial Reduction to Pensions</b>	Regulation 30(8), Pensions Regulations	(Post 2014) Whether to agree to waive, in whole or in part, any actuarial reduction that would otherwise apply to the pension paid to a former employee aged 55 or over under 30(5) or 30(6) [flexible retirement] using regulation 30(8) of the Pension Regulations.	This may be considered in exceptional circumstances where there are business benefits. Surrey Heath Borough Council reserves the right to review the details of each case based on its individual merits.	Both the Head of Paid Service and the Employment Committee.
		Schedule 2 of Transitional Regulations	(Pre-2014) Whether to waive actuarial reductions entirely under 30(5) or 30 A(5) [deferred pensioner members] of the Benefits Regulations and Regulation 2(1), of		

			Schedule 2 of the Transitional Regulations.		
9	<b>Award of Additional Pension (not exceeding the overall additional pension limit of £6, 822 (April 2018 and uplifted annually)).</b>	Regulation 32, Pensions Regulations	<p>To award additional pension at full cost to the employer:</p> <ul style="list-style-type: none"> <li>(1) an active member; or</li> <li>(2) a former active member who was dismissed by reason of redundancy, business efficiency or mutual consent on grounds of business efficiency.</li> </ul> <p>Additionally, in the case of a 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.</p>	This is a general presumption that Surrey Heath Borough Council will not award additional membership. However, Surrey Heath Borough Council will consider and decide individual cases on their merits where it is in Surrey Heath's interest and taking account of the employer costs of the additional pension.	Both the Head of Paid Service and the Employment Committee.

10	<b>Aggregation of Benefits: Concurrent Employments</b>	Regulation 22(7)(b), Pensions Regulations	Whether to allow an active member with concurrent employments, who ceases an employment with an entitlement to a deferred pension, more than 12 months to elect <b>not</b> to have their deferred pension aggregated with their active member's pension account.	Surrey Heath Borough Council will only extend the deadline in exceptional circumstances.	Both the Head of Paid Service and the Employment Committee.
11	<b>Aggregation of Benefits: Deferred Member becoming Active Member</b>	Regulation 22(8) (b), Pensions Regulations	Whether to allow a deferred member who becomes an active member longer than 12 months in which to elect <b>not</b> to have their deferred benefits aggregated with the benefits in their active member's pension account.	Surrey Heath Borough Council will only extend the deadline in exceptional circumstances.	Both the Head of Paid Service and the Employment Committee.
12	<b>Aggregation of Benefits: Deferred Member becoming Active Member (pre-2014 membership)</b>	Regulation 10(6) (b) Transitional Regulations	Whether to allow a deferred member who becomes an active member longer than 12 months in which to <b>elect</b> for their pre-2014 deferred benefits to be aggregated with their	Surrey Heath Borough Council will only extend the deadline in exceptional circumstances.	Both the Head of Paid Service and the Employment Committee.

			active member's pension account (but, technically, they would lose the final salary link if they have not made an election under 5(5). Transitional Regulations within twelve months of becoming an active member of 2013 scheme).		
13	<b>Inward Transfer of Pension Rights</b>	Regulation 100, Pensions Regulations	Whether to allow an employee who has been an active member in their current employment for more than 12 months to ask for the transfer of certain accrued pension rights to be considered.  <b>Note:</b> Regulation 100(6) of the Pensions Regulations requires that a request must be made within 12 months beginning with the date on which the member first became an active member in an employment or such longer period as the	Surrey Heath Borough Council will only extend the deadline in exceptional circumstances.	Both the Head of Paid Service and the Employment Committee.

			employer and the Administering Authority may allow. The discretion is, therefore, only exercisable if <b>both</b> the Employing Authority and the Administering Authority agree.		
<b>14</b>	<b>Redundancy Payments</b>	Regulation 5, Compensation Regulation 2006	Whether to base redundancy pay on actual pay where actual pay exceeds the statutory maximum under the Employment Rights Act 1996 (£508.00 from April 2018).	Surrey Heath Borough Council will base the calculation of a week's pay for redundancy on actual pay if it is higher than the statutory limit.	Both the Head of HR, Performance and Communications and the Head of Paid Service.
<b>15</b>	<b>Compensation for loss of Employment</b>	Regulation 6, Compensation Regulations 2006	Whether to pay compensation to a person whose employment ceases <ul style="list-style-type: none"> <li>- by reason of redundancy;</li> <li>- in the interest of the efficient exercise of the employing authority's functions; or</li> </ul>	Surrey Heath Borough Council will only award compensation for loss of employment in exceptional circumstances.	Both the Head of HR, Performance and Communications and the Head of Paid Service.

			in the case of a joint appointment, because the other holder of the appointment leaves.		
16	<b>Injury Allowances</b>	14(1) of the Compensation Regulations 2011	<p>Scheme employer (LGPS employers), <b>apart from admission bodies</b>, must formulate, publish and keep under review a policy on:</p> <ol style="list-style-type: none"> <li>1. whether to make and 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: <ul style="list-style-type: none"> <li>- suffer a reduction in remuneration, or</li> <li>- cease to be employed as a result</li> </ul> </li> </ol>	Surrey Heath Borough Council may only pay injury allowances in exceptional circumstances.	Both the Head of Paid Service and the Employment Committee.

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