
THE ROYAL
BOROUGH OF



KENSINGTON
AND CHELSEA

Royal Borough of Kensington & Chelsea

Local Government Pension Scheme
Discretionary Decisions Policy Statement

Royal Borough of Kensington & Chelsea Pension Fund

1. Background.

- 1.1 All employers who participate in the Local Government Pension Scheme (LGPS) are required to draw up a Discretionary Decisions Policy Statement in accordance with Regulation 66 of the Local Government Pension Scheme (Administration) Regulations 2008, and Regulation 60 of the Local Government Pension Scheme Regulations 2013.
- 1.2 Every employer must send a copy of its Discretionary Decisions Policy Statement to its Administering Authority (the Royal Borough of Kensington & Chelsea [RBKC]).
- 1.3 Every employer must:
- keep its statement under review,
 - make such revisions as are appropriate, and
 - ensure that all discretionary decisions made are in accordance with the governing LGPS regulations.
- 1.4 In preparing, reviewing and making revisions to its statement, employers must be satisfied that the policy is workable, affordable and reasonable, having regard to foreseeable costs.
- 1.5 The responsibility is on the employer to fund, or where appropriate arrange for the scheme member in their current or former employment to fund, the resulting costs from the discretionary decision(s) that the employer makes.
- 1.6 Existing policy employer discretions required to be in place under the 2008 and 1995 schemes remain in force for those employees who left the scheme prior to 1st April 2014 and they are included in this document.
- 1.7 This document also summarises for information the discretion decisions made by the RBKC Administering Authority.

2. The RBKC Policy Statement.

- 2.1 This policy statement applies to all RBKC employees who are current or deferred members of the Council's LGPS or have eligibility to join the scheme.
- 2.2 This policy document details the discretionary policy decisions applicable to:
- active scheme members from 1st April 2014 and members with ceased active membership from 1st April 2014,
 - active scheme members from 1st April 2007 and ceased active scheme members on or after 1st April 2007 and before 1 April 2014, and
 - active scheme members from 1st April 1998 and ceased active membership on or after 1st April 1998 and before 1st April 2008.

2.3 This policy statement also summarises the relevant LGPS policy discretions made by the pension fund Administering Authority (RBKC).

3. Discretions relating to active scheme members from 1st April 2014 and members with ceased active membership from 1st April 2014.

3.1 Flexible Retirement.

Context

Regulation 30(6) and 30(8) Local Government Pension Scheme Regulations 2013 enables an employer to let a scheme member in their employment aged 55 years or over to reduce his/her hours or grade and receive immediate payment of all or part of the pension benefits to which that scheme member would be entitled to in respect of that employment.

This payment is adjusted by the amount shown as appropriate in actuarial guidance.

In the event that the scheme member would suffer such an actuarial reduction in the pension and lump sum due to the early payment, the regulations allow a further discretion for the employer, at its own cost, to waive that reduction in any particular case.

RBKC policy

The Council will consider allowing flexible retirement to a scheme member aged 55 years or over but only where no costs occur to the pension fund.

If a flexible retirement is requested in relation to a reduction in contractual hours, requests will only be considered where the reduction in contractual hours is at least 40 %. Under this arrangement the employee would not be permitted to work more than 3 days per week.

This discretion may only be used where the employing department can demonstrate that there is no adverse impact to service users.

The Council wishes to support employees who wish to have a gradual transition to full retirement via a reduction in working hours or a reduction in responsibility, so will be minded to support applications from employees who have attained age 60 years. In all cases, support will be required from the employing department who will need to submit a business case detailing how the service will be maintained.

No waiver of actuarial reduction will be made in such a case.

Decisions will be made on each case by the Director of Human Resources in conjunction with the Town Clerk and the Director of Finance

3.2 The 85-year rule.

Context

The employer has discretion whether to apply the 85-year rule protections to scheme members who choose to voluntarily draw their benefits between age 55 years and 60 years, under [paragraph 1(1)(c) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014].

The 85-year rule does not automatically apply if the scheme member decides to voluntarily draw (non-flexible retirement) benefits between age 55 years and 60 years. In this situation employers have discretion whether to agree to apply the 85-year rule.

Employers who agree to apply the 85-year rule to scheme members not entitled to it under the pension regulations have to meet all the pension strain costs (as under the 2008 Scheme).

Employers have the discretion to waive actuarial reductions applied to a scheme member's benefits and to accept all the pension strain costs.

In circumstances where employers do not agree to apply the 85-year rule, the scheme member would be required to meet all the pension strain costs via the actuarial reduction applied to their pension, or be permitted to fund the full strain cost themselves.

RBKC policy

No waiver of actuarial reduction will be made in any such a case.

The decision made by the Director of Human Resources

3.3 Additional pension contributions.

Context

Under Regulations 16(2)(e) and 16(4) d) the employer has discretion, where an active scheme member wishes to purchase extra annual pension via Additional Pension Contributions (APCs), to voluntarily contribute towards the cost of that extra pension via a Shared Cost Additional Pension Contribution (SCAPC). This employer contribution can be either by regular ongoing contribution or one-off lump sum.

Regulation 16 also gives the employer discretion to fund in whole or in part the scheme member's lump sum contribution to pay existing Additional Pension Contributions (APCs) to cover a period of absence from work on child-related leave, reserve forces leave or because of illness or injury.

Should the employer exercise its discretion to fund in whole or in part a SCAPC the Regulations also permit the Administering Authority to require a medical report from the applicant, to show that he/she is in reasonably good health.

RBKC policy

The Council will only in exceptional circumstances fund in whole or in part pension contributions to cover a period of absence. Consideration will be given to the circumstances of each individual case and will include reasons for the absence e.g. unplanned change in circumstances or bereavement. The Council will always require a medical report from an applicant, obtained at the applicant's cost, before agreeing any additional pension contributions.

The decision will be made by the Director of Human Resources.

3.4 Discretion of employer to award additional pension.

Context

Regulation 31 LGPS 2013 provides employer discretion to award up to £6,500 per year additional pension (increased in April each year by the Pensions Increase Act) to an active member or a member who is dismissed by reason of redundancy, business efficiency or retirement.

RBKC policy

The Council will consider use of this regulation to award additional pension on the recommendation of the Director of Human Resource (DHR) if the DHR finds that an employee can demonstrate that awarding additional pension will lead to actual cash savings for the Council which always fully offset the cost of awarding additional pension.

If the DHR considers that this has not been demonstrated, then the request will be refused. Where the discretion is exercised the cost to the pension fund is to be reimbursed within one month of a resolution being made.

4 Discretions in relation to active scheme members from 1st April 2007 and ceased active scheme members on or after 1st April 2007 and before 1 April 2014.

4.1 Augmentation.

Context

For a scheme member leaving on the grounds of redundancy or business efficiency on or before 31 March 2014, the employer has discretion to augment pension scheme membership (by up to 10 years).

RBKC policy

The policy is not to augment pensions.

The decision made by the Director of Human Resources

4.2 Shared cost additional voluntary contribution

[Regulation 67]

A shared cost AVC scheme may be established.

Policy

The Council does not propose to introduce a shared cost AVC scheme.

4.3 Serious Ill Health

[Regulation 50]

If, when a retirement pension first becomes payable to a member, the administering authority are satisfied that his life expectancy is less than one year, they may pay him a lump sum equal to five times the amount by which the annual rate of the retirement pension exceeds his guaranteed minimum. This replaces the death grant that would otherwise be payable, and no further pension is payable.

Policy

The Council will pay the commuted pension at the employee's discretion.

4.4 Employer's discretion to reduce member's contribution rate

[former Regulation 15]

Under previous regulations an employer could waive employee pension contributions for scheme members who had attained 40 years of Local Government service and had not yet attained the age of 60. Employees who commenced employment between the ages of 18 and 20 and had continuous Local Government service since then could not accrue additional membership on completion of 40 years' membership until after they have reached age 60. Under the 2006 Regulations membership in excess of 40 years is now allowed, with the employer and employee contributions being paid to the Pension Fund. The employer has discretion to waive the arrears of employee contributions for the period prior to 6 April 2006.

Policy

An RBKC employee who has achieved 40 years' service prior to age 60 within Local Government will have contributions to the pension fund waived up to 5 April 2006.

4.5 Employees with previous deferred benefits

The 2004 Regulations removed the right of an employee who had elected not to transfer their deferred benefits from a previous employer, to combine their benefits on termination of the second employment. Employees had one year from 1 April 2004 -for existing staff - or from date of commencement of employment for new starts. Both periods may be extended at the discretion of the employing authority.

Policy

The Council extended the period to the 30 September 2005. The period may be further extended if an employee can demonstrate that they were unaware of the time-limited option.

4.6 Early Payment of deferred benefits.

Context

Whether to grant application for early payment of deferred pension benefits between the ages 55 years and 60 years and whether to waive, on compassionate grounds, the actuarial reduction applied to these benefits.

RBKC policy

Applications for early payment of pension benefits will be considered on an individual basis in view of all relevant considerations including the likely costs and benefits and taking into account any protection rights that may be held by individuals regarding the 85-year rule.

A waiver of the actuarial reduction on compassionate grounds will be considered only in very exceptional circumstances.

This will be a decision made by the Bi-Borough Director of Human Resources.

4.7 Payment of ill health retirement and whether to waive the actuary reduction.

Context

Whether to grant an application for early payment of pension benefits to a deferred scheme member of a suspended tier 3 ill health pension between the ages of 55 years and 60 years and whether to waive, on compassionate grounds, the actuarial reduction applied to these benefits.

RBKC policy

Whether to allow early payment of pension benefits and whether to allow a waiver of the actuarial reduction on compassionate grounds will be considered only in very exceptional circumstances.

This will be a decision made by the Bi-Borough Director of Human Resources.

4.8 Flexible Retirement

Context

An employer may consent to allow an employee, aged over 50, to reduce his/her hours or grade and receive payment of pension benefits under the main scheme regulations. If the employee would suffer an actuarial reduction in the pension and lump sum due to the early payment, the regulations confer a further discretion for the employer, at their cost, to waive that reduction in any particular case.

RBKC Policy

The Council will only consider allowing flexible retirement where there is a clear business benefit. This will generally only apply where no costs are incurred arising from early retirement. No waiver of pension abatement will generally be made.

5 Discretions in relation to active scheme members from 1st April 1998 and ceased active membership on or after 1st April 1998 and before 1st April 2008.

5.1 Early Payment of Deferred Benefits.

Context

The LGPS Regulations 1997 - Regulation 31.

The 1997 Scheme introduced, for those scheme members leaving employment after the 1st April 1998, the right of the former scheme member to elect to receive payment of their pension benefits between ages 50 to 59 years, but only with the consent of their former employer. The benefits received will be subject to an actuarial reduction permitted and subject to any protections under the 85-year rule.

RBKC Policy

An employee will be allowed to retire and receive accrued pension benefits subject to the employer's agreement and the Pension Fund being reimbursed the cost of the early payment of benefits.

This will be a decision made by the Bi-Borough Director of Human Resources.

5.2 Increase of Service for Members.

Context

The LGPS Regulations 1997 - Regulation 52

Under the 1997 Scheme, employers may resolve to increase the total service of a Scheme member. A resolution may not be made if the scheme member is entitled to receive ill health benefits.

RBKC Policy

It is not proposed to augment membership for any employee. In the case of termination of employment on the grounds of redundancy, the Council will not use its new discretion to allow any compensation in excess of the statutory amount to be converted to augmented

This will be a decision made by the Bi-Borough Director of Human Resources.

5.3 Permanent Reduction in Pay - Certificates of Protection.

Context

The Local Government Pension Scheme Regulations 1997 Regulation 23 apply. The 1997 LGPS Regulations allows employers to issue a Certificate of Protection, with or without a formal application from the employee, in cases where pay is permanently reduced, frozen or increases are restricted, in order to avoid eventual benefits being adversely affected.

Whilst employers need not issue a certificate if a scheme member does not apply for one within 12 months after the date of the reduction, freeze or other restriction, best practice principles indicate that the employee should be provided with appropriate protection in these circumstances.

RBKC Policy

To issue certificates of protection automatically in cases where pay is permanently reduced, frozen or restricted.

5.4 Buy back of lost membership benefits arising from periods where no pay is received (e.g. unpaid maternity leave, unpaid leave of absence and industrial disputes).

Context

The Local Government Pension Scheme Regulations 1997 Regulation 18

An election to pay back contributions must be made within 30 days or such longer period as the employer may allow.

RBKC Policy

Time limits for elections to pay back contributions will be set in relation to each individual case and as and when each situation arises.

This will be a decision made by the Bi-Borough Director of Human Resources.

5.5 Widower's Pensions

[Regulation 9 (Transitional Provisions) Regulations 1997]

The Council may resolve that an election from all female members should be accepted to enable membership between 1 April 1972 and 5 April 1988 to count for the purpose of a widower's pension, and all previous contracts are deemed paid in full.

Policy

The Council has resolved that the membership between 1 April 1972 and 5 April 1988 of all female members will count for the purposes of a widower's pension and all previous contracts are deemed paid in full.

5.6 Discretion of employer to increase total membership of active member

Regulation 12 LGPS (Benefits, Membership and Contributions) Regs 2007

Under this regulation an employer has the power to increase the membership (pensionable service) of an employee in the pension scheme by up to 10 years.

Local policy:

This Council will consider use of this regulation to increase pensionable service in cases where there is a clear business benefit and the cost to the pension fund is reimbursed within one month of a resolution being made. Any decision to increase pensionable service under this regulation will be taken by the Administration Committee.

5.7 Discretion of employer to award additional pension

Regulation 13 LGPS (Benefits, Membership and Contributions) Regs 2007

This regulation gives an employer the power to award up to £5000 per year additional pension on retirement.

Local policy:

Discretion of employer to award additional pension

The Administration Committee of the Council will only consider making an award under this regulation on the recommendation of the Chief Human Resources Officer. A one-off pension lump sum payment of up to £5,000 may be granted by the Committee in a case of extreme personal financial hardship. If the Chief Human Resources Officer considers that the circumstances in any case justify it then a report will be referred to the Administration Committee.

5.8 Discretion to permit flexible retirement

Regulation 18 LGPS (Benefits, Membership and Contributions) Regs 2007

This regulation enables an employer to let an employee aged 55 or more (50 for protected members) reduce his/her hours or grade and receive part or full payment of pension benefits under the main scheme regulations. If the employee would suffer an actuarial reduction in the pension and lump sum due to the early payment, the regulations confer a further discretion for the employer, at its own cost, to waive that reduction in any particular case.

Local policy:

The Council will consider allowing flexible retirement to an employee aged 55 or more (50 for protected members), only where there is a clear business benefit. This

will only apply where no costs occur to the pension fund from the flexible retirement. No waiver of actuarial reduction will be made in such a case.

5.9 Discretion to permit early payment of pension

Regulation 30 LGPS (Benefits, Membership and Contributions) Regs 2007

Under this regulation a member of the pension scheme aged 55 or more may apply for the early payment of their retirement benefits, subject to the consent of their employer. An application may be made by either a current employee or a former employee holding deferred benefits. This regulation gives a further discretion to the employer, at its own cost, to waive any actuarial reduction on compassionate grounds.

Local policy:

The Council will agree to an application from a current employee only in a case where it is satisfied that there is a clear business benefit, and where the employee or the employing business group are willing to reimburse to the pension fund any costs arising from the early retirement. The Council will consider an application from a former employee holding deferred benefits, based on the merits of the case and taking in to account any of the individual's circumstances that seem relevant. Normally the former employee or his/her former business group will be expected to reimburse to the pension fund any costs arising from the early retirement. The Council will consider a waiver of actuarial reduction on compassionate grounds.

5.10 Discretion to permit late inward transfer of pension rights

Regulation 83 LGPS (Administration) Regs 2008

A request to transfer pension rights in to the LGPS must be made within 12 months of joining the scheme, but this regulation allows an employer to extend that period.

Local policy:

Any request to transfer pension rights after the twelve-month limit will be considered and decided by Chief Human Resources Officer. Such a request will be granted only if it is considered that there are significant extenuating circumstances.

5.11 Determination of questions and disputes

Regulation 58 LGPS (Administration) Regs 2008

An employer must specify the job title and the address of the person to whom applications to deal with questions and disputes arising from the administration of scheme membership must be made.

Local policy:

In this Council such applications must be made to the Human Resources Systems and Services Manager; Third Floor – Green, Kensington Town Hall, London W8 7NX.

6 Administering Authority discretions.

Within the LGPS there are discretions that rest with the Administering Authority. The decisions made in each instance by the Administering Authority are detailed below for information.

All decisions in this section are made by the Bi-Borough Director of Human Resources.

6.1 Awarding Death Grant payments.

Context

Regulation 40 of the LGPS Regulations s 2013 (replacing Regulation 23 Admin Regulation 2008) allows an Administering Authority absolute discretion as to the person to whom a death grant payment should be made.

Administering Authority policy

The LBHF Administering Authority will decide to whom death grants should be paid, taking into account, but not limited to the scheme members “expression of wish” form.

Where there is no “expression of wish” form or an existing nomination which may no longer reflect the scheme member’s intentions (for example there is a subsequent marriage, divorce or children) letters of administration or grant of probate may be requested by the Bi-Borough Director of Human Resources prior to making a decision regarding the death grant.

6.2 Paying Child Pensions.

Context

Under Schedule 1 LGPS Regulations 2013 (replacing Regulation 26 Admin Regulations 2008) the Administering Authority has the discretion to ignore any break and treat a child’s full-time education or vocational training as continuous.

Administering Authority policy

The Council has delegated decisions on this matter to the Executive Director for Finance, Information Systems and Property.

6.3 Continuation of spouse's pension on co-habitation or re-marriage where the member left before 1st April 1998.

Context

The Local Government Pension Scheme (Transitional Provisions) Regulations 1997, The Local Government (Early termination of employment) Discretionary compensation) Regulations 2000.

The 1997 Transitional Provisions give the Administering Authority the power (on behalf of the Fund as a whole) to resolve that all spouses' pensions paid from the Fund and any annual compensation payment will continue in respect of co-habitation or re-marriage commencing on or after 1st April 1998.

Administering Authority policy

That all spouse’s pensions and annual compensation will continue to be paid on co-habitation or remarriage.

6.4 Re-employed Pensioners (Abatement).

Context

The Local Government Pension Scheme Regulations 1997 Regulation 109 The 1997 Scheme requires the administering authority to formulate a policy on the extent to which a pension should be abated. The policy formed applies to all pensioners who commence re-employment after 31st March 1998.

Administering Authority policy

The benefits of a pensioner who is re-employed in local authority service should continue to be subject to the appropriate reduction; i.e. in accordance with the previous mandatory abatement provisions. The Royal Borough will “deem” that any employee wishing to retain the right to combine benefits on completion of the second employment may do so without having formally elected to retain the right.

Making “Admission Agreements”

Regulations 5, 6 and 7 LGPS (Administration) Regs 2008

An administering authority may make an “Admission Agreement” with certain other organisations, in order to admit their employees to the local LGPS fund.

Local policy:

This Council will enter into an “Admission Agreement” where this is considered appropriate. Any such case will be considered and decided by the Administration Committee.

Considering late applications to pay contributions for absence

Regulation 22 LGPS (Administration) Regs 2008

A request to pay pension contributions to cover a period of unpaid leave must be made within 30 days, but this regulation allows an administering authority to extend that period.

Local policy:

Any request to pay such contributions after the 30-day limit will be considered and decided by the Chief Human Resources Officer. Such a request will be granted only if it is considered that meeting the 30-day deadline in a particular case was not reasonably practicable.

Permitting regular additional pension contributions

Regulation 23 LGPS (Administration) Regs 2008

A member of the local pension fund can apply to make regular additional pension contributions. In that event, this regulation permits the administering authority, if it wishes, to require a medical report from the applicant, to show that he/she is in good health.

Local policy:

This Council will always require such a medical report from an applicant – obtained at the applicant’s cost - before allowing regular additional contributions.

Awarding Death Grant payments

Regulation 23 LGPS (Administration) Regs 2008

This regulation gives an administering authority absolute discretion as to the person to whom a death grant payment should be made.

Local policy:

Decisions about the payment of death grants will be considered and made by the Chief Human Resources Officer.

Paying Child Pensions**Regulation 26 LGPS (Administration) Regs 2008**

Under this regulation, an administering authority has the discretion to treat a child's education or training as continuous, ignoring any break.

Local policy:

Decisions about the payment of child pensions will be considered and made by the Chief Human Resources Officer, taking into account the circumstances of each individual case.

Reclaiming additional costs arising from an employer's substandard performance**Regulation 43 LGPS (Administration) Regs 2008**

If an administering authority incurs extra work or other additional costs, as a result of an employer (including any part of RBKC) failing to provide necessary information as and when required, then the authority is able to recharge the employer for these costs.

Local policy:

This Council will make use of this regulation and will normally recharge employers (including any part of RBKC) for any additional costs incurred due to the performance of an employer.

Dealing with disputes**Regulation 60 LGPS (Administration) Regs 2008**

This regulation requires an administering authority to specify who will deal with questions and disputes arising from its role as an administering authority

Local policy:

In this Council the Chief Human Resources Officer will deal with such matters.

Reducing or suspending a retirement pension, if a pensioner starts new local government employment**Regulation 70 LGPS (Administration) Regs 2008**

The pension of an employee who retires and is subsequently reemployed in local government may be subject to reduction or suspension. This regulation requires an administering authority to state its local policy on this issue.

Local policy:

The basic pension (excluding any 'added years' element) of a pensioner who is re-employed in local government after 1 April 2008 will not be reduced or suspended, unless the pension was awarded on ill-health grounds.