Employer Discretionary policies under the Local Government Pension Scheme

Background

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. Discretions are powers that enable scheme employers such as the Royal Borough of Kensington and Chelsea (RBKC) some flexibility in choosing how to apply the rules of the LGPS in respect of certain benefits.

Every employer must send a copy of its Discretionary Decisions Policy Statement to its Administering Authority (the Royal Borough of Kensington & Chelsea RBKC).

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.

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.

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.

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.

Some discretions are exercised by RBKC as the Administering Authority rather than the scheme employer. These are held in a separate document.

<u>RBKC Policy Statement</u>

This policy statement applies to all RBKC employees, former employees or their dependants or individuals who have eligibility to join the pension scheme.

This policy document details the discretionary policy decisions applicable to:

- active scheme members from 1st April 2014 and members who ceased active membership from 1st April 2014;
- active scheme members from 1st April 2008 and members who ceased active membership on or after 1st April 2008 and before 1 April 2014, and;
- active scheme members from 1st April 1998 and members who ceased active membership on or after 1st April 1998 and before 1st April 2008.

When it determines (or reviews) a discretionary policy, RBKC must have regard to the extent to which the exercise of the discretions could lead to a serious loss in confidence in the public service.

Amongst RBKC's considerations when formulating or reviewing its policy, are the following:

- Cost - There is usually a cost associated with a discretionary power. Therefore, any exercise of a discretionary power must be affordable and not in any way lead to a loss of confidence in public services;

• The basis on which decisions are made under the discretionary policy - Policies should not be drafted in such a way that they restrict RBKC's ability to exercise the discretion where, on occasion, there is merit in exercising it;

• Equality - Any policy should avoid using criteria that discriminates either directly or indirectly i.e. for example, a policy which benefits one gender or an age group.

It is important to note that nothing in this statement creates any right for any person or an expectation that a discretion will or will not be exercised. The Policy can be amended at any time and whether a discretion is exercised is RBKC's decision alone.

Discretionary policies fall in broadly two categories – policies that RBKC is required to publish (mandatory) and ones that are not (non-mandatory). The mandatory policies are summarised in the tables below by reference to a member's date of leaving.

In addition, RBKC has set out its policy in respect of several non-mandatory discretions in the tables below. These are discretions that RBKC is asked to exercise on a frequent basis.

List of discretionary policies applicable from 1 April 2014 in relation to post-31 March 2014 active members (excluding councillor members) and post-31 March 2014 leavers (excluding councillor members)

Mandatory Policies

Discretion	Legislative provision	Summary of discretion	RBKC's policy
Award of additional pension **EMPLOYER**	Regulation 31 of the Local Government Pension Scheme Regulations 2013 [SI 2013/2356]	This discretion is whether to award additional pension (of up to £8,903* pa at 1 April 2025) to: • an active member; or • within 6 months of ceasing to be an active member on the grounds of redundancy or business efficiency. *Note - this figure is revalued annually	The Council will not award additional pension, other than in exceptional circumstances, where there is a clear financial or operational advantage to the Council. The decision will be made by the Director of Human Resources. Where the discretion is exercised the cost to the pension fund is to be reimbursed within one month of a resolution being made.
Provision of additional pension **EMPLOYER**	Regulations 16(2)(e) & 16(4)(d) of the Local Government Pension Scheme Regulations 2013 [SI 2013/2356]	This discretion is whether the Council contributes to some or all of the purchase of additional pension by an active member, either by regular contributions or lump sum. Where a Council contributes to some of the purchase, this is often known as a shared cost APC (SCAPC).	The Council will only in exceptional circumstances fund in whole or in part pension contributions to cover a period of authorised 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 decision will be made by the Director of Human Resources.
Flexible retirement **EMPLOYER**	Regulation 30(6) of the Local Government Pension Scheme Regulations 2013 [SI 2013/2356] Regulation 11(2) of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment)	Whether to permit flexible retirement for staff aged 55 or over who, with the agreement of the Scheme employer, reduce their working hours or grade and, if so, as part of the agreement to permit flexible retirement: 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:	The Council will consider allowing flexible retirement to a scheme member aged 55 years or over but only where no costs occur to the Council. The Council will permit members to take part or none of their post-2008 pension benefits. Requests will only be considered where the reduction in hours, grade or both would result in at least a 40% reduction in gross pay.

	Regulations 2014 [SI 2014/525]	▪ 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	This discretion may only be used where the employing department can demonstrate that there is no adverse impact to service users. 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. Decisions will be made on each case by the Director of Human Resources in conjunction with the Director of Resources.
Waiving actuarial reduction **EMPLOYER**	Regulation 30(8) of the Local Government Pension Scheme Regulations 2013 [SI 2013/2356]	This discretion is whether to waive in whole or in part an actuarial reduction in respect of: • a member who has been permitted to take flexible retirement and is not protected by the 85-year rule; or • a member who, having reached age 55 but not their normal retirement age and who is no longer working in the employment in which their pension benefits were earned, elects to receive early payment of those benefits	The Council's policy is that no waiver of actuarial reduction will be made in such a case.
Waiving actuarial reduction on compassion ate grounds **EMPLOYER**	Schedule 2, Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 [SI 2014/525] Regulations 30(5) and 30A(5) of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 [SI 2007/1166]	Whether to waive any actuarial reduction for a member voluntarily drawing benefits before normal pension age other than on the grounds of flexible retirement (where the member has both pre-1 April 2014 and post-31 March 2014 membership): 1. on compassionate grounds (pre-1 April 2014 membership) and in whole or in part on any grounds (post-31 March 2014 membership) if the member was not in the LGPS before 1 October 2006 2. on compassionate grounds (pre-1 April 2014 membership) and in whole or in part on any grounds (post-31 March 2014	The Council's policy is that a decision to waive any actuarial reduction on compassionate grounds will only be considered, in very exceptional circumstances. Although the term compassionate grounds is not defined in the regulations, the Council's policy is to apply the following definition: 'Compassionate grounds means that the scheme member is required to look after a long-term sick dependant relative on a whole-time basis, is therefore unable to take up gainful employment, and in consequence is suffering financial hardship'

		membership) if the member was in the LGPS before 1 October 2006, will not be 60 by 31 March 2016 and will not attain 60 between 1 April 2016 and 31 March 2020 inclusive, if it is agreed to apply the 85-year rule 3. on compassionate grounds (pre-1 April 2020 membership) and in whole or in part on any grounds (post 31 March 2020 membership) if the member was in the LGPS before 1 October 2006, will not be 60 by 31 March 2016 and will attain 60 between 1 April 2016 and 31 March 2020.	In addition, the Council will satisfy itself that the sick dependant relative has a permanent long-term condition with a reasonable life expectancy having regard to his/her age. The member will need to provide evidence to demonstrate that all of the criteria are met. The decision will be made by the Director of Human Resources.
Early retirement and the 85-year rule **EMPLOYER**	Paragraph 1(1)(c) and 1(2) of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 [SI 2014/525]	This discretion is whether to allow the rule of 85 to apply to a member who has otherwise qualified for the rule, and who is voluntarily electing to retire at or after reaching age 55 and before reaching age 60 under: • regulation 30(5) (early retirement) of the LGPS Regulations 2013; or • regulation 30(1) (choice of early pension), or regulation 30A (choice of payment of pension: pensioner member with deferred benefits) of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 Use of the discretion waives the actuarial reduction that would otherwise arise.	The Council's policy is not to 'switch on' the 85-year rule and that no waiver of actuarial reduction will be made in any such a case.

Non-Mandatory Policies

Discretion	Legislative provision	Summary of discretion	RBKC's policy
Determine rate of employees' contributions **EMPLOYER**	Regulation 9(1) & Regulation 9(3) of the LGPS Regulations 2013	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 Scheme 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 course of a Scheme year (1 April to 31 March)	The Council's policy for new employees / scheme members the band is assessed on the salary and additional payments on the date of commencement. This includes existing employees / scheme members who move to new employment during the year. For existing members, the contribution band is determined on pay in April each year. The banding is reassessed each month according to the monthly pensionable pay.
Shared cost additional voluntary contribution (SCAVC) arrangement **EMPLOYER**	Regulation 17 of the LGPS Regulations 2013 and Regulation 15(2A) of the LGPS (Transitional Provisions, Savings and Amendment] Regulations 2014].	This discretion is whether to, how much, and in what circumstances to contribute to a SCAVC arrangement	The Council does not propose to introduce a shared cost AVC scheme.
Extend time-limit for SCAPC upon return from absence **EMPLOYER**	Regulation 16(16) of the LGPS Regulations 2013	Whether to extend 30-day deadline for member to elect for a shared cost APC upon return from a period of absence from work with permission with no pensionable pay (otherwise than because of illness or injury, relevant child-related leave or reserve forces service leave).	The Council's policy is that any request to pay such contributions after the 30-day limit will be considered and decided by the Pensions Manager. Such a request will only be granted in cases of child-related leave where it can be demonstrated that the reason for the member missing the original 30-day deadline was because the member had not been made aware of that deadline; and the election is made no more than 6 months after the member returns from the period of leave of absence

Include lump sum in APP calculation **EMPLOYER**	Regulation 21(5) of the LGPS Regulations 2013	In determining Assumed Pensionable Pay (APP), whether a lump sum payment made in the previous 12 months is a "regular lump sum".	The Council's policy is that a "regular lump sum" is used in the calculation of APP.
Substitute higher level of pay in APP calculation **EMPLOYER**	Regulations 21(5A) and 21(5B) of the LGPS Regulations 2013	Where in the Employer's opinion, the pensionable pay received in relation to an employment (adjusted to reflect any lump sum payments) in the 3 months (or 12 weeks if not paid monthly) preceding the commencement of Assumed Pensionable Pay (APP), is materially lower than the level of pensionable pay the member would have normally received, decide whether to substitute a higher level of pensionable pay having had regard to the level of pensionable pay received by the member in the previous 12 months.	The Council's policy is that a higher level of pensionable pay is used in the calculation of APP.
Late aggregation of post-April 2014 LGPS deferred benefits **EMPLOYER**	Regulation 22(8)(b) of the LGPS Regulations 2013	Whether to extend the 12-month option period for a member to elect that post 31 March 2014 deferred benefits should not be aggregated with a new employment.	RBKC will reserve the right to exercise this discretion. Requests made outside of the 12-month period will not be considered unless: a) No previous option was given to the member due to a clear administration error (e.g. service declared but the transfer quotation had never been requested); or b) Where there has been an administrative delay in processing the initial request which was received within the initial 12 months of active membership; or c) There is clear evidence that they had not been informed of or could not reasonably have known of the time limit. This will be a decision made by the Pensions Manager, but RBKC would not expect any extension to extend beyond 24 months from the date of joining.

Late aggregation of pre–April 2014 LGPS deferred benefits **EMPLOYER**	Regulation 10(6) of the LGPS Transitional Regulations 2014	Whether to extend the 12-month option period for a member (who did not become a member of the 2014 Scheme by virtue of TP5(1)) to elect that pre-1 April 2014 deferred benefits should be aggregated with a new employment.	RBKC will reserve the right to exercise this discretion. Requests made outside of the 12-month period will not be considered unless: a) No previous option was given to the member due to a clear administration error (e.g. service declared but the transfer quotation had never been requested); or b) Where there has been an administrative delay in processing the initial request which was received within the initial 12 months of active membership; or c) There is clear evidence that they had not been informed of or could not reasonably have known of the time limit. This will be a decision made by the Pensions Manager, but RBKC would not expect any extension to extend beyond 24 months from the date of joining.

List of discretionary policies in relation to scheme members (excluding councillor members) who ceased active membership on or after 1 April 2008 and before 1 April 2014

Mandatory Policies

Discretion	Legislative provision	Summary of discretion	RBKC's policy
Early retirement and the 85-year rule **EMPLOYER**	Paragraph 1(1)(c) and 1(2) of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 [SI 2014/525]	Whether to apply the 85-year rule for: • a deferred member voluntarily drawing benefits on or after age 55 and before age 60; or • a pensioner member with deferred benefits voluntarily drawing benefits on or after age 55 and before age 60 Use of the discretion waives the actuarial reduction that would otherwise arise.	The Council's policy is not to 'switch on' the 85-year rule and that no waiver of actuarial reduction will be made in any such a case.
Waiving actuarial reduction on compassion ate grounds **EMPLOYER**	Regulation B30(5) & B30A(5)of the LGPS (Benefits, Membership and Contributions) Regulations 2007 and Paragraph 2(1) of Schedule 2 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014	Whether to waive, on compassionate grounds, the actuarial reduction that would normally be applied to: • deferred benefits paid early under Regulation B30; or • benefits paid early under Regulation B30(A) (pensioner member with deferred benefits)	The Council's policy is that a decision to waive any actuarial reduction on compassionate grounds will only be considered, in very exceptional circumstances. Although the term compassionate grounds is not defined in the regulations, the Council's policy is to apply the following definition: 'Compassionate grounds means that the scheme member is required to look after a long-term sick dependant relative on a whole-time basis, is therefore unable to take up gainful employment, and in consequence is suffering financial hardship' In addition, the Council will satisfy itself that the sick dependant relative has a permanent long-term condition with a reasonable life expectancy having regard to his/her age. The member will need to provide evidence to demonstrate that all of the criteria are met. The

			decision will be made by the Director of Human Resources.

List of discretionary policies in relation to scheme members (including councillor members) who ceased active membership on or after 1 April 1998 and before 1 April 2008

Mandatory Policies

Discretion	Legislative provision	Summary of discretion	RBKC's policy
Early retirement and the 85-year rule **EMPLOYER**	Paragraphs 1(2) & 1(1)(f) of Schedule 2 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 & Regulation 60 of the LGPS (Benefits, Membership and Contributions) Regulations 2007	Whether to apply the 85-year rule for a deferred member voluntarily drawing benefits on or after age 55 and before age 60 Use of the discretion waives the actuarial reduction that would otherwise arise.	The Council's policy is not to 'switch on' the 85-year rule and that no waiver of actuarial reduction will be made in any such a case.
Waiving actuarial reduction on compassion ate grounds **EMPLOYER**	Regulation 31(5) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 & Paragraph 2(1) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014	Whether to waive, on compassionate grounds, the actuarial reduction that would normally be applied to deferred benefits paid early	The Council's policy is that a decision to waive any actuarial reduction on compassionate grounds will only be considered, in very exceptional circumstances. Although the term compassionate grounds is not defined in the regulations, the Council's policy is to apply the following definition: 'Compassionate grounds means that the scheme member is required to look after a long-term sick dependant relative on a whole-time basis, is therefore unable to take up gainful employment, and in consequence is suffering financial hardship' In addition, the Council will satisfy itself that the sick dependant relative has a permanent long-term condition with a reasonable life expectancy having regard to his/her age. The member will need to provide evidence to demonstrate that all of the criteria are met. The decision will be made by the Director of Human Resources.

List of discretionary policies in relation to scheme members who ceased active membership before 1 April 1998

Mandatory Policies

Discretion	Legislative provision	Summary of discretion	RBKC's policy
Allow early retirement on compassionate grounds **EMPLOYER**	Regulation 3(5A)(vi) of the LGPS (Transitional Provisions, Savings and Amendment Regulations 2014. Regulation 4 of the LGPS (Transitional Provisions) Regulations 1997. Regulation 106(1) of the LGPS Regulations 1997. Regulation D11(2) of the LGPS Regulations 1995.	Grant application for early payment of deferred benefits on or after age 50 on compassionate grounds. Although the common provisions of the 1997 Transitional provisions regulations do not specify regulation D11(2)(c), the intention was that it should apply to this regulation.	The Council's policy is that a decision to allow a retirement on compassionate grounds will only be considered, in very exceptional circumstances. The Council's policy is that a decision to waive any actuarial reduction on compassionate grounds will only be considered, in very exceptional circumstances. Although the term compassionate grounds is not defined in the regulations, the Council's policy is to apply the following definition: 'Compassionate grounds means that the scheme member is required to look after a long-term sick dependant relative on a whole-time basis, is therefore unable to take up gainful employment, and in consequence is suffering financial hardship' In addition, the Council will satisfy itself that the sick dependant relative has a permanent long-term condition with a reasonable life expectancy having regard to his/her age. The member will need to provide evidence to demonstrate that all of the criteria are met. The decision will be made by the Director of Human Resources.

List of discretionary policies in relation to employees of an employing authority that is defined under Regulation 2 of The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (as amended)

Mandatory Policies

Discretion	Legislative provision	Summary of discretion	RBKC's policy
Redundancy pay EMPLOYER	Regulation 5 of The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006	Whether to base redundancy payments on an actual week's pay where this exceeds the statutory week's pay limit.	The Council's policy is to base redundancy pay on an employee's actual week's pay.
Lump sum compensati on EMPLOYER	Regulation 6 of The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 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.	The Council's policy is that termination payments are usually based on the number of weeks' pay as calculated by the redundancy calculator, capped at the statutory maximum of 30 weeks. Payments in excess of this will only be considered, in very exceptional circumstances, when strong, justifiable reasons can be demonstrated. The decision will be made by the Director of Human Resources.

List of discretionary policies in relation to employees of an employing authority that is defined under Regulation 2 of The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000

Mandatory Policies

Discretion	Legislative provision	Summary of discretion	RBKC's policy
Abatement **EMPLOYER**	Regulations 17 and 19 - Parts VI and VII of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000.	To what extent a person's annual compensatory added years payment is to be abated (reduced or suspended) 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 an active member of the LGPS in the new employment)	RBKC's policy is that compensation pensions will not be abated if a member enters eligible employment
Spouse's pension **EMPLOYER**	Regulation 21(5) of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000.	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.	RBKC's policy is that all spouse's pensions and annual compensation will continue to be paid on cohabitation or remarriage.