

# **FARINGDON TOWN COUNCIL**

The Corn Exchange, FARINGDON, Oxfordshire, SN7 7JA

Telephone 01367 240281 Fax 01367 240303

[www.faringdowntowncouncil.gov.uk](http://www.faringdowntowncouncil.gov.uk)

Clerk: Sally Thurston



## **Faringdon Town Council discretionary policies under the Local Government Pension Scheme Regulations and other related Regulations**

### **Summary**

1. This report makes recommendations for **Faringdon Town Council** policies on discretions to be exercised:
  - i) under the LGPS Regulations 2013 from 1 April 2014 in respect of members of the Career Average Revalued Earnings (CARE) scheme,
  - ii) under earlier LGPS Regulations in respect of former employees who were members of the LGPS and who left prior to 1 April 2014,
  - iii) under the Local Government Pension Scheme Regulations 1997 in respect of local authority councillor members.

### **Background**

2. In March 2011, the Independent Public Service Pensions Commission, chaired by Lord Hutton, published its final report of the review of public service pensions. The report made clear that change was needed to “make public service pension schemes simpler and more transparent, [and] fairer to those on low and moderate earnings”.
3. As a result, it was decided that the Local Government Pension Scheme (LGPS) should be reformed so that, from 1 April 2014, benefits accrue on a Career Average Revalued Earnings (CARE) basis rather than on a final salary basis.
4. The provisions of the CARE scheme, together with the protections for members’ accrued pre 1 April 2014 final salary pension rights, are contained in the Local Government Pension Scheme Regulations 2013 and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014.
5. As a result of the changes, **Faringdon Town Council** is legally required to formulate, publish and send to the LGPS pension fund administering authority a written Statement of Policy on certain discretions under the LGPS which **Faringdon Town Council** has the power to exercise on and from 1 April 2014 in relation to members of the CARE scheme.
6. **Faringdon Town Council** is also legally required to (or where there is no requirement, is recommended to) formulate, publish and keep under review a Statement of Policy on certain other discretions it may exercise:

- i) under earlier LGPS Regulations in respect of former employees who were members of the LGPS and who left prior to 1 April 2014
7. Any amended policy under paragraph 6(i) above must be published and sent to the LGPS pension fund administering authority within one month of the date the revisions to the policy were made.
8. Overall, **Faringdon Town Council** is:
- i) required to formulate, publish and keep under review a written Statement of Policy on certain discretions in accordance with:
- regulation 60 of the Local Government Pension Scheme Regulations 2013,
  - paragraph 2(2) of Schedule 2 to the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014,
  - regulation 66 of the Local Government Pension Scheme (Administration) Regulations 2008 (in respect of former employees who were members of the LGPS and who left between 1 April 2008 and 31 March 2014),
  - regulation 106 of the Local Government Pension Scheme Regulations 1997 (in respect of former employees who were members of the LGPS and who left between 1 April 1998 and 31 March 2008), and
  - regulation 106 of the Local Government Pension Scheme Regulations 1997 in respect of local authority councillor members.
9. In formulating and reviewing its policies under the LGPS Regulations referred to in paragraph 8(i) above **Faringdon Town Council** is required to have regard to the extent to which the exercise of its discretionary powers might lead to a serious loss of confidence in the public service.

### Decisions required

10. **The Finance and Audit Committee of Faringdon Town Council** is asked:
- i) to approve the policies on the discretions to be exercised under the LGPS Regulations in respect of those employees who are active scheme members after 31 March 2014 and members and who cease active membership after 31 March 2014, as set out in the table at Annex 1, and
- ii) to approve the policies on the discretions to be exercised under the LGPS Regulations in respect of former employees who were scheme members and who left prior to 1 April 2014 (and in respect of local authority councillor members), as set out in the table at Annex 2.

### Effective date of policies

11. The policies on discretions to be exercised under the LGPS Regulations 2013 take immediate effect from the date **Faringdon Town Council** agrees the policies. Any change to the policies on existing discretions to be exercised under the LGPS Regulations in respect of former employees who were members of the scheme and who left pre 1 April 2014 (and in respect of local authority councillor members) take immediate effect from the date **Faringdon Town Council** agrees the policies.

## **Non-fettering of discretions**

12. The recommendations contained within this report, if approved, will form **Faringdon Town Council's** policies on pension and compensation discretions. It should be noted that:
- the policies will confer no contractual rights
  - subject to paragraph 11, **Faringdon Town Council** will retain the right to change the policies at any time without prior notice or consultation, and
  - only the policy which is current at the time a relevant event occurs to an employee / scheme member will be the one applied to that employee / member.

**Contact Officer:** Name: Sally Thurston

Tel: 01367 240281

E-mail: [sally@faringdowntowncouncil.gov.uk](mailto:sally@faringdowntowncouncil.gov.uk)

**Policy Approved By Finance and Audit Committee on: 25<sup>th</sup> November 2015**

## Fettering Discretion

When considering the options in the following tables it will be necessary to have regard to the question of fettering of discretion.

There are two trains of thought on this particular subject.

The first is that, in order not to be seen to fetter in any way an employer's discretion, the policy should state that each case will be determined based on its circumstances and merits and, if relevant to the discretion in question, up to a maximum of **XX** will be awarded. The policy should set out the criteria upon which the discretion will be based.

It is argued that constructing a policy in this way helps to satisfy the requirements set out in paragraphs 15 to 17 above.

The second type of approach is that, for a particular discretion, an employer might wish to adopt a standard policy (e.g. all redundancy payments will be based on an actual week's pay where this exceeds the statutory week's pay for redundancy payments) but make it plain in the policy statement that:

- the policy confers no contractual rights
- subject to paragraphs 11 above, the employer retains the right to change the policies at any time without prior notice or consultation, and
- only the policy which is current at the time a relevant event occurs to an employee / scheme member will be the one applied to that employee / member.

It may be argued that the employer is not fettering its discretion because it retains the right to amend/change the policy at any time and that the approach is seen to be fairer in that the policy is applied consistently across all employees. However, it can also be argued that such policies do fetter an employer's discretion (because they leave no scope to deal with individual, perhaps exceptional, cases) and may not adequately take into account the requirements set out in paragraphs 15 to 17 above.

A view given by the Pensions Ombudsman is that:

- where regulations allow an employer to exercise discretion a policy should be in place to set out how to exercise that discretion
- a policy is there to guide the decision-maker on how to exercise discretion
- an employer cannot generally bind itself as to how it will exercise discretion – fettering discretion is unlawful
- every case should be considered on its merits; a decision is to be made on whether to follow the policy or make an exception
- policies do not override the law; they should not apply a stricter test

## Annex 1

Table A: Discretions to be exercised on and after 1 April 2014 under the LGPS Regulations 2013 in relation to active scheme members (other than local authority councillor members) and members who cease active membership after 31 March 2014 (other than local authority councillor members).	<b>Faringdon Town Council</b> policy
<p>1. Whether, at full cost to <b>Faringdon Town Council</b> to grant extra annual pension of up to £6,675 (figure at 1 April 2015<sup>1</sup>) to an active scheme member or, within 6 months of leaving, to a member who is dismissed by reason of redundancy or business efficiency or whose employment is terminated by mutual consent on the grounds of business efficiency.</p> <p>Notes:</p> <ul style="list-style-type: none"> <li>- The maximum amount of £6,675 (figure at 1 April 2015) includes any amount of additional pension already granted by the employer under regulation 13 of the LGPS (Benefits, Membership and Contributions) Regulations 2007.</li> <li>- Scheme employers should, prior to 1 April 2014, already have prepared and published a policy on granting extra annual pension of up to £5,000 under the 2008 Scheme (in accordance with the LGPS (Administration) Regulations 2008). Employers may, therefore, wish to simply carry forward their existing policy (assuming they have one), but suitably amended to refer to the LGPS Regulations 2013.</li> <li>- The cost of any extra annual pension awarded would have to be paid to the Pension Fund by the employer as a lump sum</li> </ul>	<p><b>Faringdon Town Council</b> will not make use of the discretion to grant extra annual pension of up to £6,675 (figure at 1 April 2015) to an active scheme member or, within 6 months of leaving, to a member who is dismissed by reason of redundancy or business efficiency or whose employment is terminated by mutual consent on the grounds of business efficiency except in exceptional circumstances where <b>Faringdon Town Council</b> considers it is in its financial or operational interests to do so. Each case will be considered on the merits of the financial and / or operational business case put forward.</p>

<sup>1</sup> The figure of £6,500 that applied at April 2014 is increased each April (starting April 2015) under the Pension (Increase) Act 1971 (as if it were a pension with a PI date of 1 April 2013).

payment unless the employer agrees with the LGPS Pension Fund administering authority to pay increased contributions to meet the cost.

- The extra annual pension would form part of the Scheme member's main LGPS pension and so the member could, upon drawing pension benefits, commute up to 25% of the capital value of their LGPS pension benefits for a lump sum at the rate of £12 lump sum for each £1 of pension given up.
- Any extra annual pension granted by the employer would be subject to an actuarial reduction where, other than in a case of ill health retirement or retirement on redundancy or business efficiency grounds, that extra annual pension is drawn before the member's Normal Pension Age.
- The extra annual pension provides a benefit for the scheme member only i.e. a share does not flow through to any survivor's pension payable upon the death of the scheme member.
- The amount of extra annual pension purchased (or being purchased) by the employer under a Shared Cost Additional Pension Contributions (SCAPC) arrangement – see entry 2 below - (including a SCAPC arrangement where an employer is contributing 2/3rds of the cost of purchasing pension 'lost' during a period of absence) counts towards the £6,675 limit (figure at April 2015) of extra annual pension that the employer can award.
- Employers cannot grant extra annual pension if the employer makes an award of lump sum compensation (of up to 104 weeks' pay) under regulation 6 of the Local Government (Early Termination of Employment) (Discretionary Compensation)

(England and Wales) Regulations 2006 (see entry 2 in Table E below).

- Employers can, however, grant extra annual pension if the employer makes an award under regulation 5 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 i.e. bases a redundancy payment on an employee's actual weeks' pay where this exceeds the statutory weeks' pay limit (see entry 1 in Table E below). The difference between the statutory redundancy payment and the redundancy payment based on the employee's actual week's pay is, in this paper, termed the discretionary redundancy payment.
- Employers considering granting extra annual pension to members of the LGPS will need to take a view on whether doing so could leave them open to challenge on age or gender discrimination grounds (e.g. if those not in the Pension Scheme tend to be younger employees and part-time female workers). Compare this to an award of lump sum compensation (see entry 2 in Table E below) which can be awarded to not only those who are members of the LGPS but also to those who are eligible for membership of the LGPS (and so can be less open to challenge on age or gender discrimination grounds). An implication of the Equality Act 2010 and the Equality Act (Age Exceptions for Pension Schemes) Order 2010 is that all staff should be treated equally regardless of their age, unless different treatment can be objectively justified.
- If an employer wishes to award extra annual pension, the employer will need to consider the criteria for deciding to whom to grant such pension and for determining the amount of extra annual pension to grant in each case. The criteria should be included in the employer's policy statement. The policy should

not use criteria that are directly or indirectly discriminatory (unless objectively justified e.g. the employer could demonstrate that the policy pursues a legitimate aim and that it is proportionate and is an appropriate and necessary means of achieving that aim).

- An alternative approach that employers who wish to award extra annual pension could consider (for members whose employment is being terminated on the grounds of redundancy or business efficiency) is what might be termed 'extra annual pension by conversion'. In effect, the employer would have a policy that would permit the employer to:
  - award a lump sum compensation payment (of up to 104 weeks' pay) under regulation 6 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, inclusive (in redundancy cases) of any statutory redundancy payment and any increase in the redundancy payment made under regulation 5 of those Regulations (where an employee's actual weeks' pay exceeds the statutory weeks' pay limit) – (see entries 1 and 2 in Table E below)

Or

- having considered the view of the employee, to make an award of extra annual pension that is actuarially equivalent to the lump sum compensation payment that the employer would otherwise have made.

The employer would need to reflect this in their policy in relation to a discretionary lump sum compensation payment (see entries 1 and 2 in Table E below). It is important to stress that the employee would not be sacrificing a lump



sum compensation payment in return for extra annual pension in the LGPS and would not be using lump sum compensation payment that is paid or due to him/her in return for extra annual pension. Instead, the employer would, having considered the view of the employee, simply be making a determination to award extra annual pension and not to award a lump sum compensation payment. Where the employer decides to make an award of extra annual pension, the employer would award extra annual pension that was actuarially equivalent in value to the lump sum compensation payment (in excess of any redundancy payment) that would otherwise have been payable to the employee following cessation of employment. The policy could allow only the excess above any statutory and discretionary redundancy payment to be converted in this way, in which case any statutory and discretionary redundancy payments would still be payable, or allow all of the excess above any statutory redundancy payment to be converted, in which case any statutory redundancy payment would still be payable. It should be noted, however, that the amount of extra annual pension cannot exceed £6,675 (figure at April 2015). Extra annual pension that would exceed this limit is not permitted and so conversion would not be possible if it would produce extra annual pension above that limit. It is not permissible to split the award and award part as extra annual pension (up to the aforementioned limit) and the balance as a lump sum compensation payment.

- The facility for employers to grant extra 'augmented' membership of the Pension Scheme ceased after 31 March 2014. Employers who, prior to 1 April 2014, had a policy to allow 'extra membership by conversion' to members being made redundant or being retired on business efficiency grounds i.e. granting the member extra membership equivalent to any lump sum termination payment (in excess of the

statutory redundancy payment or in excess of the redundancy payment based on an actual week's pay where this exceeds the statutory weeks' pay limit) the employer would otherwise have awarded under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 are no longer be able to do so for retirements on or after 1 April 2014. Instead, the employer could grant the member extra annual pension actuarially equivalent to the value of any lump sum termination payment (in excess of the redundancy payment) the employer would otherwise have awarded under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 i.e. 'extra annual pension by conversion'.

- Employers wishing to award extra annual pension upon termination of employment on the grounds of redundancy or business efficiency might wish to consider including in their policy a clause that they will not grant extra annual pension in cases where an employee declines to accept:
  - an offer of what the employer considers to be suitable alternative employment, or
  - (for those employers who are subject to the Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order 1999 or who, whilst not subject to the Modification Order, choose to recognise service with employers on the Modification Order for redundancy payment purposes) an offer from another employer covered by the Redundancy Payments (Continuity of Employment in Local Government, etc) (Modification) Order 1999 which the current employer would consider to be suitable alternative employment and

<p>which would have started within four weeks* of the termination date.</p> <p>(* If the contract ends on a Friday, Saturday, or Sunday the four weeks is counted from the following Monday.)</p> <ul style="list-style-type: none"> <li>- An issue that potentially arises in granting extra annual pension is that, in some cases, it can result in the value of the scheme member's benefits being increased by more than the permitted standard Annual Allowance of, currently, £40,000 (2015/16). Any increase in value above that figure could result in a tax charge for the individual. Any additional pension granted will also count towards the capitalised value of a person's pension benefits which have to be assessed against the member's Lifetime Allowance (LTA) under the tax regime governing pension schemes. Each time a person retires and draws benefits from a pension scheme they use up a part of their LTA. If, on retirement under the LGPS, the capitalised value of their total LGPS benefits is more than the person's remaining LTA, they will have to pay tax on the excess (at the rate of 25% if the excess is paid in the form of pension and 55% if paid in the form of a lump sum). For more information see <a href="http://www.hmrc.gov.uk/manuals/rpsmmanual/RPSM06105000.htm">http://www.hmrc.gov.uk/manuals/rpsmmanual/RPSM06105000.htm</a> and <a href="http://www.hmrc.gov.uk/manuals/rpsmmanual/RPSM11100000.htm">http://www.hmrc.gov.uk/manuals/rpsmmanual/RPSM11100000.htm</a></li> </ul>	
<p>2. Whether, where an active scheme member wishes to purchase extra annual pension of up to £6,675 (figure at 1 April 2015<sup>2</sup>) by making Additional Pension Contributions (APCs), <b>Faringdon Town Council</b> will voluntarily contribute towards the cost of purchasing that extra pension</p>	<p><b>Faringdon Town Council</b> will only voluntarily contribute towards the cost of purchasing extra pension via a Shared Cost Additional Pension Contribution (SCAPC) in two situations. Firstly, where:</p>

<sup>2</sup> The figure of £6,500 that applied at April 2014 is increased each April (starting April 2015) under the Pension (Increase) Act 1971 (as if it were a pension with a PI date of 1 April 2013).

via a Shared Cost Additional Pension Contribution (SCAPC).

Notes:

- This discretion does not relate to cases where a member has a period of authorised unpaid leave of absence and elects within 30 days of return to work to pay a SCAPC to cover the amount of pension 'lost' during that period of absence. That is because, in those cases, the employer **must** contribute 2/3rds of the cost to a SCAPC. There may be some cases, even if it is not the employer's general policy to voluntarily contribute to a SCAPC, where an employer might wish to do so (see Options 2, 3, 4 and 5 opposite).
- Any extra annual pension granted by the employer under a SCAPC arrangement would be subject to an actuarial reduction where, other than in a case of ill health retirement, that extra pension is drawn before the member's Normal Pension Age.
- It should also be noted that the amount of extra annual pension purchased (or being purchased) by the employer under a Shared Cost Additional Pension Contributions (SCAPC) arrangement (including a SCAPC arrangement where an employer is contributing 2/3rds of the cost of purchasing pension 'lost' during a period of absence) reduces the amount of extra annual pension the employer could award under entry 1 above.
- The maximum amount of £6,675 (figure at 1 April 2015) includes any amount of additional pension purchased, or being purchased, by the member under regulation 14 of the LGPS (Benefits, Membership and Contributions) Regulations 2007.

- an active scheme member returns from a period of authorised leave of absence, and
- the member does not, within 30 days of returning from the leave of absence, make an election to buy-back the amount of pension 'lost' during that period of leave of absence, and
- the member subsequently makes an election to do so whilst an active member and 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 3 months after the member returns from the period of leave of absence or such longer period as **Faringdon Town Council** may deem reasonable in any individual case.

A decision on whether the member meets the above criteria (and on whether the 3 month period referred to should be extended in any individual case) will be taken by **Faringdon Town Council** and, where it is agreed that the conditions are met, **Faringdon Town Council** will be required to contribute 2/3rds of the cost of buying back the 'lost' pension via a SCAPC.

Secondly, in exceptional circumstances where **Faringdon Town Council** considers it is in its financial or operational interests to do so. Each case to contribute to a SCAPC (and a decision on the amount to be contributed) will be considered on the merits of the financial and / or operational business case put forward.

3. Whether to permit flexible retirement for staff aged 55<sup>3</sup> or over who, with the agreement of **Faringdon Town Council** reduce their working hours or grade and, if so, as part of the agreement:

- whether, in addition to the benefits the member has accrued prior to 1 April 2008 (which the member must draw if flexible retirement is agreed), to permit the member to choose to draw
  - all, part or none of the pension benefits they accrued after 31 March 2008 and before 1 April 2014, and / or
  - all, part or none of the pension benefits they accrued after 31 March 2014, and
- 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)<sup>4</sup>.

Notes:

- Scheme employers should, prior to 1 April 2014, already have

#### Flexible retirement

**Faringdon Town Council** will not agree to flexible retirement except in circumstances where **Faringdon Town Council** considers it is in its financial or operational interests to do so. Each case

- will be considered on the merits of the financial and / or operational business case put forward,
- will set out whether, in addition to any pre 1 April 2008 benefits, the member will be permitted, as part of the flexible retirement agreement, to take
  - a) all, some or none of their 1 April 2008 to 31 March 2014 benefits, and /or
  - b) all, some or none of their post 31 March 2014 benefits, and
- will require the approval of **Faringdon Town Council**.

#### Waiver of any actuarial reduction on flexible retirement

Where flexible retirement is agreed, the benefits payable will be subject to any actuarial reduction applicable under the Local Government Pension Scheme Regulations and

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

<sup>4</sup> NPA means the employee's individual State Pension Age at the time the employment is terminated, but with a minimum of age 65 (although, the NPA for membership accrued prior to 1 April 2014 is still linked to age 65, apart from those LGPS members transferred from the Learning and Skills Council to whom regulation 16A of the LGPS (Benefits, Membership and Contributions) Regulations 2007 applies for whom the NPA for membership accrued prior to 1 April 2014 is, by virtue of that regulation and regulation 24 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, still linked to age 60, and those LGPS members who are employees of the Meat Hygiene Service in the London Pension Fund Authority fund who are covered by regulation 144B of the LGPS Regulations 1997 for whom the NPA for membership accrued prior to 1 April 2014 is, by virtue of that regulation and regulation 24 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, still linked to age 60). State Pension Age is currently age 65 for men. State Pension Age for women is currently being increased to be equalised with that for men and will reach 65 by November 2018. The State Pension Age will then increase to 66 for both men and women from December 2018 to October 2020. Under current legislation the State Pension Age is due to rise to 67 between 2026 and 2028 and to 68 between 2044 and 2046. However, the government has announced plans to link rises in the State Pension Age above age 67 to increases in life expectancy.

prepared and published a policy on flexible retirement for flexible retirements under the 2008 Scheme and for waiving any actuarial reduction in whole or in part (in accordance with the LGPS (Administration) Regulations 2008). Employers may, therefore, wish to simply carry forward their existing policy (assuming they have one), but suitably amended for post 31 March 2014 flexible retirements to reflect the above provisions.

- If flexible retirement is agreed for a scheme member aged 55 or over but under 60 who is subject to the 85 year rule<sup>5</sup> and who, at the date of flexible retirement, has either met the 85 year rule or would have met the rule before age 60, there would be a strain on fund cost to be met by, and paid to the Pension Fund by, the employer in respect of the pension benefits paid following flexible retirement. The 85 year rule is satisfied if the person was a member of the LGPS on 30 September October 2006 and the member's age at the date they draw their benefits and their scheme membership (each in whole years) add up to 85 or more. If they are part-time, their membership counts towards the 85 year rule at its full calendar length.
- Where flexible retirement is agreed for an employee aged 55 or over but under Normal Pension Age the cost of waiving any actuarial reduction, in whole or in part, would have to be met by, and paid to the Pension Fund by, the employer.
- Overall, the benefits of flexible retirement include:
  - it assists in reducing capacity if required, and helps avoid redundancies (and associated costs)

the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014. **Faringdon Town Council** will only waive any such reduction, in whole or in part, where it considers it is in its financial or operational interests to do so. Each case will be considered on the merits of the financial and / or operational business case put forward and will require the approval of **Faringdon Town Council** including, where the reduction is only to be waved in part, approval for the amount of reduction to be waived.

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<sup>5</sup> The 85 year rule does not apply to former members of the Metropolitan Civil Staffs Superannuation Scheme, or Meat Hygiene Service members, or civil servants transferred to the Environment Agency who by virtue of regulation 24 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 are subject to, respectively, regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997, regulation 144B of the LGPS Regulations 1997 and regulation 15 of the LGPS (Transitional Provisions) Regulations 2008.

<ul style="list-style-type: none"> <li>• it can be a useful tool to support change management</li> <li>• it helps achieve and retain a balanced age profile within the workforce</li> <li>• it aids retention of required skills / knowledge / experience and enables transfer of skills / knowledge in the period leading up to an employee's full retirement</li> <li>• it offers a potentially acceptable solution to staff who may currently be a 'blockage' to promotion or re-organisation</li> <li>• it helps to alleviate 'burn out' and 'stress', improves morale, and assists in achieving Work-Life balance</li> <li>• it may assist a return to work after a medical related absence where ill health retirement is not appropriate</li> <li>• it assists employees to ease into retirement, making a gradual adjustment to full retirement.</li> </ul>	
<p>4. Whether, as the 85 year rule does not (other than on flexible retirement – see 3 above) <u>automatically</u> apply to members who would otherwise be subject to it and who choose to voluntarily draw their benefits on or after age 55 and before age 60, to apply the 85 year rule<sup>6</sup> to such voluntary retirements.</p> <p>Notes:</p> <ul style="list-style-type: none"> <li>- If the member has met the 85 year rule or would have met it before age 60, there would be no strain on Fund cost charged to the employer <u>unless</u> the employer has agreed to apply the 85 year rule in</li> </ul>	<p><b>Faringdon Town Council</b> will not agree to apply the 85 year rule where members choose to voluntarily draw their benefits on or after age 55 and before age 60 except in circumstances where <b>Faringdon Town Council</b> considers it is in its financial or operational interests to do so. Each case</p> <ul style="list-style-type: none"> <li>- will be considered on the merits of the financial and / or operational business case put forward, and</li> <li>- will require the approval of <b>Faringdon Town Council</b></li> </ul>

<sup>6</sup> The 85 year rule does not apply to former members of the Metropolitan Civil Staffs Superannuation Scheme, or Meat Hygiene Service members, or civil servants transferred to the Environment Agency who by virtue of regulation 24 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 are subject to, respectively, regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997, regulation 144B of the LGPS Regulations 1997 and regulation 15 of the LGPS (Transitional Provisions) Regulations 2008.

<p>the case in question. Instead, the cost would be met by an actuarial reduction to the scheme member's benefits<sup>7</sup>.</p> <ul style="list-style-type: none"> <li>- If the employer does agree to apply 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 would meet it before age 60.</li> <li>- Applying the 85 year rule might be a mechanism employers would wish to consider to encourage members to retire early to, for example, help achieve a balanced age profile within the workforce or to avoid possible redundancies later (which have attendant greater costs).</li> <li>- A half-way house would be to not apply the 85 year rule but to agree to waive some of the actuarial reduction that would otherwise be applied to the member's benefits (see 5 below). In this way the cost of drawing benefits early would be met in part by the scheme member (via an actuarial reduction to their benefits) and in part by the employer (via a strain on Fund charge).</li> <li>- The 85 year rule is satisfied if the person was a member of the LGPS on 30 September 2006 and the member's age at the date they draw their benefits and their scheme membership (each in whole years) add up to 85 or more. If they are part-time, their membership counts towards the 85 year rule at its full calendar length.</li> </ul> <p>Additional note for local authorities with staff in maintained schools:</p>	
<p>5. For: i) active members voluntarily retiring on or after age 55<sup>8</sup> and before</p>	<p>Where members choose to voluntarily draw their benefits on or after age 55 and before Normal Pension Age</p>

<sup>7</sup> There is no actuarial reduction on pre 1 April 2014 membership in the case of a former member of the Metropolitan Civil Staffs Superannuation Scheme who is aged 55 or over and has 25 years membership and who is covered by regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997.



<p>Normal Pension Age who elect under regulation 30(5) of the LGPS Regulations 2013 to immediately draw benefits, and</p> <p>ii) deferred members and suspended Tier 3 ill health pensioners who elect under regulation 30(5) of the LGPS Regulations 2013 to draw benefits (other than on ill health grounds) on or after age 55<sup>9</sup> and before Normal Pension Age</p> <p>who:</p> <ul style="list-style-type: none"> <li>- were <u>not</u> members of the LGPS before 1 October 2006 [Group 4 members], whether to: <ul style="list-style-type: none"> <li>o waive on compassionate grounds, any actuarial reduction that would otherwise be applied to benefits, if any, accrued before 1 April <u>2014</u>, and / or</li> <li>o waive, in whole or in part (on any grounds), any actuarial reduction that would otherwise be applied to benefits accrued after 31 March <u>2014</u></li> </ul> </li> <li>- <u>were</u> members of the LGPS before 1 October 2006 and <u>will</u> be 60 or more on 31 March 2016 [Group 1 members], whether to: <ul style="list-style-type: none"> <li>o waive on compassionate grounds, any actuarial reduction that</li> </ul> </li> </ul>	<p><b>Faringdon Town Council</b> will not agree to waive in whole or in part any actuarial reduction that would otherwise be applied to their benefits except in circumstances where <b>Faringdon Town Council</b> considers it is in its financial or operational interests to do so or there are compelling compassionate<sup>10</sup> reasons for doing so.</p> <p>Each case</p> <ul style="list-style-type: none"> <li>- will be considered on the merits of the financial and / or operational business case put forward, or</li> <li>- will be considered on the merits of the compassionate case put forward, and</li> <li>- will require the approval of <b>Faringdon Town Council</b> including, where the reduction is only to be waved in part, approval for the amount of reduction to be waived</li> </ul>
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<sup>8</sup> Age 50, by virtue of regulation 24 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, for those LGPS members transferred from the Learning and Skills Council to whom regulation 16A of the LGPS (Benefits, Membership and Contributions) Regulations 2007 applies and those civil servants transferred to the Environment Agency to whom regulation 15 of the LGPS (Transitional Provisions) Regulations 2008 applies.

<sup>9</sup> Age 50, by virtue of regulation 24 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, for those LGPS members transferred from the Learning and Skills Council to whom regulation 16A of the LGPS (Benefits, Membership and Contributions) Regulations 2007 applies and who are electing for early payment of a deferred benefit (but not if they are electing for early payment of a suspended Tier 3 ill health pension) and those civil servants transferred to the Environment Agency to whom regulation 15 of the LGPS (Transitional Provisions) Regulations 2008 applies and who are electing for early payment of a deferred benefit or early payment of a suspended Tier 3 ill health pension.

<sup>10</sup> There is no definition in the Regulations of “compassionate grounds”. However, one could take the view that, for example, releasing benefits because the member is short of funds / out of work would not be appropriate (as the pension scheme is not a social security scheme); whereas, for example, releasing benefits because the member has had to give up work to look after orphaned grandchildren would clearly be a case where an employer might wish to exercise compassion.

would otherwise be applied to benefits accrued before 1 April 2016, and / or

- waive, in whole or in part (on any grounds), any actuarial reduction that would otherwise be applied to benefits accrued after 31 March 2016

- were members of the LGPS before 1 October 2006 and will not be 60 or more on 31 March 2016 and will not attain age 60 between 1 April 2016 and 31 March 2020 [Group 3 members], whether to:

- waive on compassionate grounds, any actuarial reduction that would otherwise be applied to benefits accrued before 1 April 2014, and / or
- waive, in whole or in part (on any grounds), any actuarial reduction that would otherwise be applied to benefits accrued after 31 March 2014

- were members of the LGPS before 1 October 2006 and will not be 60 or more on 31 March 2016 but will attain age 60 between 1 April 2016 and 31 March 2020 [Group 2 members], whether to:

- waive on compassionate grounds, any actuarial reduction that would otherwise be applied to benefits accrued before 1 April 2020, and / or
- waive, in whole or in part (on any grounds), any actuarial reduction that would otherwise be applied to benefits accrued after 31 March 2020

Note:

- If the employer does agree to waive any actuarial reduction, the employer will have to meet the cost of the strain on fund resulting from that waiver.

Additional note for local authorities with staff in maintained schools:

Although section 37 of the Education Act 2002 gives all of the Maintained Schools with a delegated budget the power to go beyond the Local Authority's policies in respect of the dismissal of, or for the purpose of securing the resignation of, any member of the school's staff, in reality, as this will entail additional cost, a community school, a community special school, a maintained nursery school, a foundation school, a foundation special school, a foundation trust school or a voluntary school is unlikely to depart from the Local Authority's policy. Nevertheless, the power to go beyond the Local Authority's policy for the purposes of the dismissal of, or securing the resignation of, any member of the school's staff exists and so the Local Authority's policy statement in relation to the ability to waive an actuarial reduction as part of an arrangement for the dismissal of, or for the purpose of securing the resignation of, a member of staff will have to contain a modification to reflect the powers conferred by the Education Act 2002 on such Maintained Schools with a delegated budget – see Appendix A at the end of this document for additional information.

## Annex 2

<b>Table B: Discretions to be exercised on and after 1 April 2014 under the LGPS Regulations in relation to scheme members who ceased active membership between 1 April 2008 and 31 March 2014 (other than local authority councillor members)</b>	<b>Faringdon Town Council policy</b>
<p>1. Whether<sup>11</sup> to grant applications for the early payment of deferred pension benefits on or after age 55<sup>12</sup> and before age 60 (on grounds other than permanent ill health).</p> <p>Note:</p> <ul style="list-style-type: none"> <li>- Scheme employers should, prior to 1 April 2014, already have prepared and published a policy on the above matter under the 2008 Scheme (in accordance with the LGPS (Administration) Regulations 2008). Scheme employers should ensure that their current policy is up to date.</li> <li>- If the employer does agree to the request for early payment of deferred pension benefits on or after age 55 and before age 60, the employer will have to meet any strain on fund cost resulting from that decision.</li> <li>- Scheme employers have no discretion over whether or</li> </ul>	<p>Where a former scheme member who left the scheme between 1 April 2008 and 31 March 2014 requests early release of deferred benefits on or after age 55 and before age 60 (on grounds other than permanent ill health), approval will only be given on compassionate grounds<sup>13</sup>. Each case will be considered on its merits and will be subject to the approval of Faringdon Town Council. Subject to entry 2 below, the benefits payable in such circumstances will be subject to any actuarial reduction applicable under the relevant LGPS Regulations.</p>

<sup>11</sup> This discretion does not apply to those LGPS members transferred from the Learning and Skills Council to whom regulation 16A of the LGPS (Benefits, Membership and Contributions) Regulations 2007 applies or to those LGPS members who are former members of the Metropolitan Civil Staffs Superannuation Scheme and who are covered by regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997 or to former NHS Scheme members who are covered by regulation 23 of the LGPS (Transitional Provisions) Regulations 1997 (as such members have the automatic right to take benefits on or after age 50 and before age 60).

<sup>12</sup> Age 50 for those civil servants transferred to the Environment Agency to whom regulation 15 of the LGPS (Transitional Provisions) Regulations 2008 applies.

<sup>13</sup> There is no definition in the Regulations of "compassionate grounds". However, one could take the view that, for example, releasing benefits because the member is short of funds / out of work would not be appropriate (as the pension scheme is not a social security scheme); whereas, for example, releasing benefits because the member has had to give up work to look after orphaned grandchildren would clearly be a case where an employer might wish to exercise compassion.

<p>not to release deferred benefits on the grounds of permanent ill health. If a deferred member meets the criteria in the LGPS Regulations for release of benefits on the grounds of permanent ill health, the benefits are automatically payable.</p>	
<p>2. Whether, on compassionate grounds<sup>14</sup>, to waive any actuarial reduction that would normally be applied to deferred benefits which are paid before age 65<sup>15</sup>.</p> <p>Note:</p> <ul style="list-style-type: none"> <li>- Scheme employers should, prior to 1 April 2014, already have prepared and published a policy on the above matter under the 2008 Scheme (in accordance with the LGPS (Administration) Regulations 2008). Scheme employers should ensure that their current policy is up to date.</li> <li>- If the employer does agree to waive any actuarial reduction, the employer will have to meet the cost of the strain on fund resulting from that waiver.</li> </ul>	<p><b>Faringdon Town Council</b> will consider an application to waive, on compassionate grounds, any actuarial reduction that would normally be applied to deferred benefits which are paid before age 65. Each case will be considered on its merits and will be subject to the approval of <b>Faringdon Town Council</b></p>
<p>3. Whether<sup>16</sup> to grant applications for the early payment of a suspended Tier 3 ill health pension on or after age 55<sup>17</sup> and</p>	

<sup>14</sup> There is no definition in the Regulations of “compassionate grounds”. However, one could take the view that, for example, waiving a reduction because the member is short of funds / out of work would not be appropriate (as the pension scheme is not a social security scheme); whereas, for example, releasing benefits because the member has had to give up work to look after orphaned grandchildren would clearly be a case where an employer might wish to exercise compassion.

<sup>15</sup> Age 60 in the case of members transferred from the Learning and Skills Council to whom regulation 16A of the LGPS (Benefits, Membership and Contributions) Regulations 2007 applies, and for employees of the Meat Hygiene Service in the London Pension Fund Authority fund who are covered by regulation 144B of the LGPS Regulations 1997, and for former members of the Metropolitan Civil Staffs Superannuation Scheme and who are covered by regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997, and for former NHS Scheme members who are covered by regulation 23 of the LGPS (Transitional Provisions) Regulations 1997.

<p>before age 60 (on grounds other than permanent ill health). Note:</p> <ul style="list-style-type: none"> <li>- Scheme employers should, prior to 1 April 2014, already have prepared and published a policy on the above matter under the 2008 Scheme (in accordance with the LGPS (Administration) Regulations 2008). Scheme employers should ensure that their current policy is up to date.</li> <li>- If the employer does agree to the request for early payment of a suspended Tier 3 ill health pension on or after age 55 and before age 60, the employer will have to meet any strain on fund cost resulting from that decision.</li> <li>- Scheme employers have no discretion over whether or not to release deferred benefits on the grounds of permanent ill health. If a deferred member meets the criteria in the LGPS Regulations for release of benefits on the grounds of permanent ill health, the benefits are automatically payable.</li> </ul>	<p>Where a former scheme member who left the scheme between 1 April 2008 and 31 March 2014 requests early release of deferred benefits on or after age 55 and before age 60 (on grounds other than permanent ill health), approval will only be given on compassionate grounds<sup>18</sup>. Each case will be considered on its merits and will be subject to the approval of <b>Faringdon Town Council</b>. Subject to entry 4 below, the benefits payable in such circumstances will be subject to any actuarial reduction applicable under the relevant LGPS Regulations.</p>
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<sup>16</sup> This discretion does not apply to those LGPS members transferred from the Learning and Skills Council to whom regulation 16A of the LGPS (Benefits, Membership and Contributions) Regulations 2007 applies or to those LGPS members who are former members of the Metropolitan Civil Staffs Superannuation Scheme and who are covered by regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997 or to former NHS Scheme members who are covered by regulation 23 of the LGPS (Transitional Provisions) Regulations 1997 (as such members have the automatic right to take benefits on or after age 50 and before age 60).

<sup>17</sup> Age 50 for those civil servants transferred to the Environment Agency to whom regulation 15 of the LGPS (Transitional Provisions) Regulations 2008 applies.

<sup>18</sup> There is no definition in the Regulations of “compassionate grounds”. However, one could take the view that, for example, releasing benefits because the member is short of funds / out of work would not be appropriate (as the pension scheme is not a social security scheme); whereas, for example, releasing benefits because the member has had to give up work to look after orphaned grandchildren would clearly be a case where an employer might wish to exercise compassion.

4. Whether, on compassionate grounds<sup>19</sup>, to waive any actuarial reduction that would normally be applied to any suspended Tier 3 ill health pension benefits which are brought back into payment before age 65<sup>20</sup>.

Note:

- Scheme employers should, prior to 1 April 2014, already have prepared and published a policy on the above matter under the 2008 Scheme (in accordance with the LGPS (Administration) Regulations 2008). Scheme employers should ensure that their current policy is up to date.
- If the employer does agree to waive any actuarial reduction, the employer will have to meet the cost of the strain on fund resulting from that waiver.

**Faringdon Town Council** will consider an application to waive, on compassionate grounds, any actuarial reduction that would normally be applied to a suspended Tier 3 ill health pension which is brought back into payment before age 65. Each case will be considered on its merits and will be subject to the approval of **Faringdon Town Council**.

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<sup>19</sup> There is no definition in the Regulations of “compassionate grounds”. However, one could take the view that, for example, waiving a reduction because the member is short of funds / out of work would not be appropriate (as the pension scheme is not a social security scheme); whereas, for example, releasing benefits because the member has had to give up work to look after orphaned grandchildren would clearly be a case where an employer might wish to exercise compassion.

<sup>20</sup> Age 60 in the case of members transferred from the Learning and Skills Council to whom regulation 16A of the LGPS (Benefits, Membership and Contributions) Regulations 2007 applies, and for employees of the Meat Hygiene Service in the London Pension Fund Authority fund who are covered by regulation 144B of the LGPS Regulations 1997, and for former members of the Metropolitan Civil Staffs Superannuation Scheme and who are covered by regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997, and for former NHS Scheme members who are covered by regulation 23 of the LGPS (Transitional Provisions) Regulations 1997.

<b>Table C: Discretions to be exercised on and after 1 April 2014 under the LGPS Regulations in relation to scheme members who ceased active membership between 1 April 1998 and 31 March 2008 (and in relation to local authority councillor members who ceased or will cease active membership on or after 1 April 1998)</b>	<b>Faringdon Town Council policy</b>
<p>1. Whether<sup>21</sup> to grant applications for the early payment of pension benefits on or after age 50<sup>22</sup> and before age 60 (on grounds other than permanent ill health).</p> <p>Note:</p> <ul style="list-style-type: none"> <li>- Scheme employers should, prior to 1 April 2014,</li> </ul>	<p>Where a former scheme member who left the scheme between 1 April 1998 and 31 March 2008 (or a local authority councillor member who left the scheme on or after 1 April 1998) requests early release of deferred benefits on or after age 50 and before age 60 (on grounds other than permanent ill health), approval will not be</p> <p>Where a former scheme member who left the scheme between 1</p>

<sup>21</sup> This discretion does not apply to those LGPS members who are former members of the Metropolitan Civil Staffs Superannuation Scheme and who are covered by regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997 or to former NHS Scheme members who are covered by regulation 23 of the LGPS (Transitional Provisions) Regulations 1997 (as such members have the automatic right to take benefits on or after age 50 and before age 60).

<sup>22</sup> It should be noted that, except in the case of LGPS members who are former members of the Metropolitan Civil Staffs Superannuation Scheme and who are covered by regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997, or former NHS Scheme members who are covered by regulation 23 of the LGPS (Transitional Provisions) Regulations 1997, benefits paid on or after age 50 and before age 55 will be subject to an unauthorised payments charge under the Finance Act 2004 and, where applicable, an unauthorised payments surcharge under that Act, and a Scheme sanction charge on any benefits built up after 5 April 2006.



<p>already have prepared and published a policy on the above matter under the 1998 Scheme (in accordance with the LGPS Regulations 1997. Scheme employers should ensure that their current policy is up to date.</p> <ul style="list-style-type: none"> <li>- If the employer does agree to the request for early payment of deferred pension benefits on or after age 50 and before age 60, the employer will have to meet any strain on fund cost resulting from that decision.</li> <li>- Scheme employers have no discretion over whether or not to release deferred benefits on the grounds of permanent ill health. If a deferred member meets the criteria in the LGPS Regulations for release of benefits on the grounds of permanent ill health, the benefits are automatically payable.</li> </ul>	<p>April 1998 and 31 March 2008 (or a local authority councillor member who left the scheme on or after 1 April 1998) requests early release of deferred benefits on or after age 50 and before age 60 (on grounds other than permanent ill health), approval will only be given on compassionate grounds<sup>23</sup>. Each case will be considered on its merits and will be subject to the approval of <b>Faringdon Town Council</b>. Subject to entry 2 below, the benefits payable in such circumstances will be subject to any actuarial reduction applicable under the relevant LGPS Regulations.</p> <p style="text-align: center;">-</p>
<p>2. Whether, on compassionate grounds<sup>24</sup>, to waive any actuarial reduction that would normally be applied to deferred benefits which are paid before age 65<sup>25</sup>.</p> <p>Note:</p> <ul style="list-style-type: none"> <li>- Scheme employers should, prior to 1 April 2014,</li> </ul>	<p><b>Faringdon Town council</b> will consider an application to waive, on compassionate grounds, any actuarial reduction that would normally be applied to deferred benefits which are paid before age 65. Each case will be considered on its merits and will be subject to the approval of <b>Faringdon Town Council</b>.</p>

<sup>23</sup> There is no definition in the Regulations of “compassionate grounds”. However, one could take the view that, for example, waiving a reduction because the member is short of funds / out of work would not be appropriate (as the pension scheme is not a social security scheme); whereas, for example, releasing benefits because the member has had to give up work to look after orphaned grandchildren would clearly be a case where an employer might wish to exercise compassion.

<sup>24</sup> There is no definition in the Regulations of “compassionate grounds”. However, one could take the view that, for example, releasing benefits because the member is short of funds / out of work would not be appropriate (as the pension scheme is not a social security scheme); whereas, for example, releasing benefits because the member has had to give up work to look after orphaned grandchildren would clearly be a case where an employer might wish to exercise compassion.

<sup>25</sup> Age 60 in the case of employees of the Meat Hygiene Service in the London Pension Fund Authority fund who are covered by regulation 144B of the LGPS Regulations 1997 and members who are former members of the Metropolitan Civil Staffs Superannuation Scheme and who are covered by regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997 and for former members of the Metropolitan Civil Staffs Superannuation Scheme and who are covered by regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997, and for former NHS Scheme members who are covered by regulation 23 of the LGPS (Transitional Provisions) Regulations 1997 .

already have prepared and published a policy on the above matter under the 1998 Scheme (in accordance with the LGPS Regulations 1997). Scheme employers should ensure that their current policy is up to date.

- If the employer does agree to waive any actuarial reduction, the employer will have to meet the cost of the strain on fund resulting from that waiver.

