



Employer Discretions Policy

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EMPLOYER DISCRETIONS – STATEMENT OF POLICY

EMPLOYER NAME: [Barrow Borough Council](#)

The employer stated above has prepared this written statement of policy in relation to its exercise of certain discretionary functions available under the above regulations.

PART A – Mandatory policy statements – Formulation of policy in accordance with:

Regulation 60 of the Local Government Pension Scheme (LGPS) Regulations 2013

Paragraph 2 (2) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014

Regulation 66 of the Local Government Pension Scheme (Administration) Regulations 2008

Regulation 106 of the Local Government Pension Scheme Regulations 1997

PART A1 – Discretions from 1 April 2014 in relation to post 31 March 2014 active members and post 31 March 2014 leavers (excluding councillor members)

Power of Scheme employer to award additional pension

(Regulation 31 of the LGPS Regulations 2013)

An employer can grant extra annual pension of up to a maximum £6,822 (figure at 1 April 2018) to an active Scheme member or within 6 months of leaving to a member whose employment was terminated on the grounds of redundancy or business efficiency. This maximum figure that can be initially awarded will be index linked and the level increased on the 1st April each year.

Employer's policy:

[The Council has no intention of using this discretionary power but may consider its use in exceptional cases in the future.](#)

Power of Scheme employer to contribute towards the cost of a member purchasing additional pension

(Regulation 16 (2) (e) and 16 (4) (d) of the LGPS Regulations 2013)

Where an active Scheme member wishes to purchase extra annual pension of up to £6,822 (figure at 1 April 2018) by making Additional Pension Contributions (APCs), the employer may voluntarily contribute towards the cost of purchasing that extra pension via a Shared Cost Additional Pension Contribution. This maximum figure that can be initially purchased will be index linked and the level increased on the 1st April each year.

Employer's policy:

[The Council has no intention of using this discretionary power but may consider its use in exceptional cases in the future.](#)

Flexible retirement

(Regulation 30 (6) and (8) of the LGPS Regulations 2013, Regulations 3 (5), 11(2),11(3), and para.2(1A) of sch.2 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 regulation 18(3) of the LGPS (Benefits, Membership and Contributions) Regulations 2007)

The Local Government Pension Scheme allows scheme members who have attained the age of 55 to draw all or part of their retirement benefits under flexible retirement arrangements even though they have not retired providing that:

- the employer consents, and
- there has been a reduction in hours, or
- there has been a reduction in grade.

Specifically where the employer consents to flexible retirement then, in addition to the benefits the member has accrued prior to 1 April 2008 (which the member must draw), the employer can also allow the member to choose to draw all, part or none of the pension benefits they accrued after 31 March 2008.

However, benefits taken on flexible retirement will be subject to a potential actuarial reduction if they are being drawn earlier than the member's normal retiring age (flexible retirement provisions may be operated for members potentially up to a member's 75th birthday). The reductions applied will be in accordance with guidance issued by the government actuary. Employers can, if they choose, waive in whole or in part, any reductions that might apply.

Employer's policy:

The Council will consider requests for flexible retirement on a case by case basis and only where it is in the best interests of the Council. The Council would normally expect the additional costs to be recovered within three years of the termination date.

All applications will be considered by Management Board and where additional costs are involved, obtain approval from the Early Retirement and Voluntary Redundancy Panel, Executive Committee or Full Council as required.

In such cases where the early release of pension benefits is approved, an actuarial reduction factor will be applied to the pension benefits unless the Member satisfies the "Rule of 85" or the Council decides to waive the reduction.

Early retirement and waiving actuarial reductions

(Schedule 2 paragraphs 1(1)(c), 2(1), 2(2) and Regulation 3 (1) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, Regulation 30(8) of the LGPS Regulations 2013 and regulation 30(5) and 30A(5) of the LGPS (Benefits, Membership and Contributions) Regulations 2007)

If a member leaves a local government employment before he is entitled to the immediate payment of retirement benefits, then if he is age 55 or more (or having attained age 55 and have previously been awarded deferred benefits after 01 April 2014) he may choose to receive payment of them immediately.

Any benefits payable may be reduced as appropriate in accordance with guidance issued by the Government Actuary.

A policy decision is required to be made in respect of each of the following discretions:

- (1) Where a member voluntarily draws benefits between the age of 55 and 60 who has then satisfied the 'Rule of 85' or will do so before their 60th birthday, the actuarial reductions will be calculated pretending that the member had instead satisfied the 'Rule of 85' on their 60th birthday. The employer has discretion to require the actual date upon which the member satisfied (or would have satisfied) the 'Rule of 85' to be used. This will have the effect of reducing the actuarial reduction. Should an employer exercise this discretion, the employer must pay to the fund a pension strain payment.
- (2) In addition, employers can, if they choose, waive in whole or in part any reductions that might apply and the employer must pay to the Pension Fund a sum representing the capital cost of waiving those reductions. Due to the complexity in the level of protected benefits that now apply to different members, establishing what level of benefits can be waived can be difficult. Appendix 1 lists the options available to employers in terms of the level of reductions that can be waived and the grounds under which they may be waived.

Employer's policy:

The Council has no intention of using either discretionary power but may consider their use in exceptional cases in the future.

PART A2 – Discretions in relation to scheme members who ceased active membership on or after 1 April 2008 and before 1 April 2014 (excluding councillor members)

Power of Scheme employer to award additional membership

(Regulation 3 (10) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 and regulation 12 of the LGPS (Benefits, Membership and Contributions) Regulations 2007)

An employer can within 6 months of the date of termination grant extra membership in the pension scheme to a Scheme member whose employment was terminated before 1 April 2014 on the grounds of redundancy or business efficiency. Note that this is a time limited discretion which expires on 30 September 2014 for those whose employment is terminated on 31 March 2014.

Employer's policy:

This discretionary power has now expired.

Early release of deferred benefits

(Regulations 30(2), (5), 30A(3) and (5) of the LGPS (Benefits, Membership and Contributions) Regulations 2007 and reg.3(5A)(c), para.1(1)(aa) and para.2(1) of sch.2 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014)

Prior to 14 May 2018, members who left the scheme between 1 April 2008 and 31 March 2014 with deferred benefits (or suspended tier 3 benefits) who make an application to release benefits on or after age 55 and before age 60 required the former employer's consent. From 14 May 2018, this is no longer the case.

A policy decision is required to be made in respect of each of the following discretions:

- (1) Where a member voluntarily draws benefits between the age of 55 and 60 who has then satisfied the 'Rule of 85' or will do so before their 60th birthday, the actuarial reductions will be calculated pretending that the member had instead satisfied the 'Rule of 85' on their 60th birthday. The employer has discretion to require the actual date upon which the member satisfied (or would have satisfied) the 'Rule of 85' to be used. This will have the effect of reducing the actuarial reduction. Should an employer exercise this discretion, the employer must pay to the fund a pension strain payment.
- (2) In addition, employers can, if they choose, waive on compassionate grounds all of the actuarial reduction. If an employer does so, it must pay to the Pension Fund a sum representing the capital cost of waiving those reductions.

Employer's policy:

The Council has no intention of using either discretionary power but may consider their use in exceptional cases in the future.

PART A3 – Discretions in relation to scheme members who ceased active membership on or after 1 April 1998 and before 1 April 2008 and active councillor members and councillor members who ceased active membership on or after 1 April 1998

Early release of deferred benefits with employer consent

(Regulations 31(2) and (5) of the LGPS Regulations 1997 and reg.3(5A)(b), para.1(1)(f) and para.2(1) of sch.2 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014)

A policy decision concerning early release of benefits needs to be made in relation to active members who have left the scheme between 1 April 1998 and 31 March 2008 with deferred benefits and councillor members who left after 1 April 1998 who make an application to release benefits on or after age 50* and before age 55.

*It should be noted that benefits paid on or after age 50 and before age 55 would 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.

Prior to 14 May 2018, members who left the scheme between 1 April 1998 and 31 March 2008 with deferred benefits (and councillor members) who make an application to release benefits on or after age 55 and before age 60 required the former employer's consent. From 14 May 2018, this is no longer the case.

A policy decision is required to be made in respect of each of the following discretions:

- (1) Where a member voluntarily draws benefits between the age of 55 and 60 who has then satisfied the 'Rule of 85' or will do so before their 60th birthday, the actuarial reductions will be calculated pretending that the member had instead satisfied the 'Rule of 85' on their 60th birthday. The employer has discretion to require the actual date upon which the member satisfied (or would have satisfied) the 'Rule of 85' to be used. This will have the effect of reducing the actuarial reduction. Should an employer exercise this discretion, the employer must pay to the fund a pension

strain payment.

- (2) In addition, employers can, if they choose, waive on compassionate grounds all of the actuarial reduction. If an employer does so, it must pay to the Pension Fund a sum representing the capital cost of waiving those reductions.

Employer's policy:

The Council has no intention of using either discretionary power but may consider their use in exceptional cases in the future.

PART A4 – Discretions in relation to scheme members who ceased active membership before 1 April 1998

(Regulation D11(2) (c) of the LGPS Regulations 1995)

A policy decision concerning early release of benefits needs to be made in relation to active members who have left the scheme before 1 April 1998 who make an application on compassionate grounds to release benefits on or after age 50* and before age 60. Under these rules the sole discretion for an employing authority is that they may determine on compassionate grounds that benefits are to become payable on an unreduced basis.

*It should be noted that benefits paid on or after age 50 and before age 55 would be subject to an unauthorised payments charge under the Finance Act 2004 and, where applicable, an unauthorised payments surcharge under that Act, a Scheme sanction charge will not be payable.

Employer's policy:

The Council has no intention of using this discretionary power but may consider its use in exceptional, compassionate cases in the future.

PART B – Formulation of policy in accordance with further discretions under the Local Government Pension Scheme Regulations 2013

There are a number of other discretions which Scheme employers may exercise under the LGPS Regulations 2013. There is, however, no requirement to have a written policy in respect of these. However the following areas of discretion would be useful for scheme members, in order for them to establish the clear policy intention that the employers hold in these particular areas.

Shared Cost Additional Voluntary Contributions (SCAVCs)

(Regulation 17 of the LGPS Regulations 2013)

An active member may elect to pay AVCs into a scheme established under contract between his appropriate administering authority and a body approved for the purposes of the Finance Act 2004.

An employer can, at its discretion, contribute to the AVC scheme and where they do the AVC scheme is known as a shared cost additional voluntary contributions arrangement (SCAVC). An employer should establish whether, how much and in what circumstances to either continue with an existing SCAVC or enter into a new SCAVC.

Employer's policy:

The Council has no intention of using this discretionary power but may consider its use in exceptional cases in the future.

Late transfer requests

(Regulation 100(6) and 22(7) and (8) of the LGPS Regulations 2013 and reg.10(6) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014)

The Local Government Pension Scheme Regulations allow for the acceptance of transfer value payments into the fund (subject to the Pension Fund administering authorities approval) to enable members to transfer pension rights accrued prior to joining the scheme into the LGPS, and thereby count additional pension. This election should be made within 12 months of first joining the LGPS in the employment.

The discretion allowed under regulation 100(6) relates to the acceptance of transfers relating to non LGPS membership, where the member makes a request after the expiry of the first 12 months of joining the LGPS.

In most situations, previous LGPS rights are automatically aggregated unless an election to keep those accrued benefits separate is received. Regulations 22 (7) and (8) allow an employer to extend the 12 month time limit within which a Scheme member who has a deferred LGPS benefit in England or Wales following the cessation of employment (or cessation of a concurrent employment) to elect not to have the deferred benefits aggregated with their new LGPS employment (or on-going concurrent LGPS employment) if the member has not made an election to retain separate benefits within 12 months of commencing membership of the LGPS in the new employment (or within 12 months of ceasing the concurrent membership).

Regulation 10(6) of the LGPS (Transitional Provisions, Savings and Amendment)

Regulations 2014 allows a member to elect to aggregate a deferred benefit in respect of membership which ceased before 1 April 2014. Under this provision, the member would be awarded additional CARE benefits under the 2014 Scheme. The member must make the election to do so within 12 months of joining the 2014 Scheme (or such longer time as the employer may allow).

Employer's policy:

The Council has no intention of using this discretionary power but may consider its use in exceptional cases in the future.

Contributions payable by active members

(Regulation 9 and 10 of the LGPS Regulations 2013)

An active member shall make contributions to the Scheme at the relevant contribution rate, from his pensionable pay, in each employment in which he is an active member. The contribution rate to be applied to his pensionable pay in any financial year is the rate determined by the employer with reference to the tiered contribution pay bands stated in the regulations.

Where there is a material change to a member's pensionable pay in the course of a financial year, the employer may re-determine the contribution rate to be applied.

Employer's policy:

The Council will re-determine the contribution rate to be applied only where there is a material change to a member's pensionable pay in the course of a financial year.

Assumed Pensionable Pay

(Regulation 21(4),(5), (5A) and (5B) of the LGPS Regulations 2013)

Employers have the following 2 discretions:

- (1) Whether or not, when calculating assumed pensionable pay when a member:
 - is on reduced contractual pay or no pay on due to sickness or injury, or
 - is absent during ordinary maternity, paternity or adoption leave or during paid additional maternity, shared parental or adoption leave, or
 - is absent on reserve forces service leave, or
 - retires with a Tier 1 or Tier 2 ill health pension, or
 - dies in service

to include in the calculation the amount of any 'regular lump sum payment' received by the member in the 12 months preceding the date the absence began or the ill health retirement or death occurred. A 'regular lump sum payment' is a payment for which the member's employer determines there is a reasonable expectation that such a payment would be paid on a regular basis.

- (2) Where the pensionable pay received in the relevant 3 month period or, as the case may be, 12 week period, was, in the opinion of the employer, materially lower than the level of pensionable pay that the member normally receives, the employer has

discretion to replace the actual pensionable pay received with a higher level of pensionable pay to reflect the level of pensionable pay that the member would normally have received. An employer must have regard to the level of pensionable pay received in the previous 12 months when working out what level of pensionable pay the member normally receives.

Employer's policy:

The Council has no intention of using either discretionary power but may consider their use in exceptional cases in the future.

Shared-cost APCs to buy back lost pension

(Regulation 16 (16) of the LGPS Regulations 2013)

Members on the following types of leave which are not covered by APP are able to enter into an APC contract to buy back the lost CARE pension. If they make the election within 30 days of return, the employer must fund two-thirds of the cost.

The employer has discretion to extend the 30 day deadline.

- Additional maternity leave during which no pensionable pay is received
- Additional adoption leave during which no pensionable pay is received
- Shared parental leave during which no pensionable pay is received
- Authorised unpaid leave (excluding strike leave)

If the individual leave period lasted longer than 36 months, the employer is only required to share the cost in relation to the first 36 months of the leave.

Employer's policy:

The 30 days will commence from the date set out in the SCAPC notification letter which will be issued to the employee by the HR Department.

The Council has no intention of extending the 30 day deadline but may consider its use in exceptional cases in the future.



PART C – Mandatory policy statement* – Formulation of policy in accordance with:

Regulation 7 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006

Regulation 26 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000

Regulation 14 of the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011

*The mandatory requirements for a written policy under these regulations do not extend to employers whose employees are members of the LGPS by virtue of an admission agreement however as the provisions still apply it would be deemed appropriate for a policy statement to be in place

PART C1 – Discretions in relation to the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006

Redundancy and Compensation Payments

(Regulation 5 and 6 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006)

These regulations provide a discretionary power to award a one-off lump sum payment of up to 2 years pay (104 weeks), inclusive of any redundancy payment made. This applies to any member who terminates their employment on the grounds of redundancy, efficiency or in the case of a joint appointment (not job shares) where termination arises because the other holder of the joint appointment has left it.

The provisions apply to all employees who are eligible for participation in the LG Pension Scheme, whether or not they are current members of the scheme.

There is also a discretionary power to waive the weekly pay ceiling placed on statutory redundancy payments and to calculate, instead, on pay up to the actual week's pay.

Employer's policy:

The Council has no intention of using this discretionary power but may consider its use in exceptional cases in the future.

PART C2 – Discretions in relation to the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000

Redundancy and Compensatory Added Years payments

(Regulation 17, 19, 21 and 25 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000)

Prior to the 2006 discretionary regulations employers could award employees additional service following a redundancy or efficiency retirement where that employee was over age 50. Although this facility is no longer available to current active employees, there are still discretionary decisions to be made in respect of employees who are already in receipt of additional service.

These include:

- How to apportion any surviving spouse's or civil partners annual compensatory added years payment where the deceased person is survived by more than one spouse or civil partner.
- How the annual added years will be apportioned amongst any eligible children.
- Whether, in respect of the spouse of a person who ceased employment before 1 April 1998 and where the spouse or civil partner remarries, enters into a new civil partnership or cohabits after 1 April 1998, the normal pension suspension rules should be ignored i.e. whether the spouse's or civil partner's annual compensatory added years payments should continue to be paid or if the authority's policy is to apply the normal suspension rules, whether the spouse's or civil partner's annual compensatory added years payment should be reinstated after the end of the remarriage, new civil partnership or cohabitation.
- Whether and to what extent to reduce or suspend the member's annual compensatory added years payment during any period of re-employment in local government and how to reduce the member's annual compensatory added years payment following the cessation of a period of re-employment in local government.

Employer's policy:

The Council has no intention of using this discretionary power but may consider its use in exceptional cases in the future.

PART C3 – Discretions in relation to the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011

Injury Allowance payments

(Regulations 3 to 7 of the Local Government (Discretionary Compensation) (Injury Allowances) Regulations 2011)

Under the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011 Scheme employers must formulate, publish and keep under review a policy on:

a) whether or not to make an injury award to those who sustain an injury or contract a disease as a result of anything they were required to do in performing the duties of their job and in consequence of which they:

- suffer a reduction remuneration, or
- cease to be employed as a result of an incapacity which is likely to be permanent and which was caused by the injury or disease, or
- die leaving a surviving spouse, civil partner or dependant, and

b) if the Scheme employer has a policy to make such payments, how it will determine the amount of injury allowance to be paid.

Employer's policy:

The Council has no intention of using this discretionary power but may consider its use in exceptional cases in the future.



Declaration

It is understood that the above discretions are applicable to all eligible members of the Scheme. In respect of the mandatory policy requirements, a written statement should be published indicating the policy which is being applied by that employer in the exercise of its functions. A copy of the scheme employer's policy decisions should be sent to Your Pension Service within one month of the date the policy is revised.

Any change to the discretions exercised under the LGPS Regulations can take immediate effect from the date the Scheme employer agrees the change.

Any change to the discretions exercised under the Discretionary Compensation Regulations 2000, the Discretionary Compensation Regulations 2006 or the Injury Allowances Regulations 2011 cannot take effect until one month after the date the Scheme employer publishes a statement of its amended policy.

The policies made above:

- i. Must have regard to the extent to which the exercise of the discretions could lead to a serious loss of confidence in the public service;
- ii. Will not be used for any ulterior motive;
- iii. Will be exercised reasonably;
- iv. Will only be used when there is a real and substantial future benefit to the employer for incurring the extra costs that may arise;
- v. Will be duly recorded when applied.

Signed on behalf of the Employing Authority:

Name in Block Capital: S M ROBERTS

Position: Director of Resources and Section 151 Officer

Employing Authority: Barrow Borough Council

Date: 3rd October 2018

Appendix 1 – if voluntarily retiring

If there is an actuarial reduction regarding the particular tranche of membership, the employer has the right to -

	Group 1	Group 2	Group 3	Group 4
Part A	Waive all or none on compassionate grounds.			
Part B1	Waive all or none on compassionate grounds.	Waive all or none on compassionate grounds.	Waive all or none on compassionate grounds.	Waive all or none on this on compassionate grounds.
Part B2	Waive all or none on compassionate grounds.	Waive all or none on compassionate grounds.	Waive all, some or none on any grounds.	Waive all, some or none on any grounds.
Part C	Waive all, some or none on any grounds.	Waive all or none on compassionate grounds.	Waive all, some or none on any grounds.	Waive all, some or none on any grounds.
Part D1	Waive all, some or none on any grounds.	Waive all, some or none on any grounds.	Waive all, some or none on any grounds.	Waive all, some or none on any grounds.

Part A = membership to 31 March 2008

Part B1= membership 1 April 2008 to 31 March 2014

Part B2 = membership 1 April 2014 to 31 March 2016

Part C – membership 1 April 2016 to 31 March 2020 onwards

Part D1 = membership 1 April 2020 onwards

Group 1 member = a member who was an active member prior to 1 October 2006 and who was born on 31 March 1956 or earlier

Group 2 member = a member who was an active member prior to 1 October 2006, was born between 1 April 1956 and 31 March 1960 inclusive, and who would reach their CRA by 31 March 2020

Group 3 member = a member who was an active member prior to 1 October 2006 and who is not a Group 1 or Group 2 member

Group 4 member = a member who was not a member prior to 1 October 2006.

If member retires on flexible retirement, the employer may waive all, some or none of any reduction on any grounds.