

# Royal Borough of Kingston Pension Discretions guidance

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This document sets out the Councils' decision of each of the mandatory and non-mandatory Scheme Policy Discretions available under the Local Government Pension Scheme Regulations (LGPS). The aim of this guidance is to provide information detailed to each discretion within the policy for internal HR use to advise on the circumstances and criteria for applying each one. This document is not an official policy and any reference to mandatory or non-mandatory discretions must be referred to using the [Pensions Discretions Policy RBK](#).

## **Mandatory discretions**

### **Discretion 1**

Employees can purchase extra pension whereby the top-up purchase increases each year in line with inflation. Employers are also able to buy extra pension for the employees in scenarios where they are struggling to recruit for active members and so can be applied as a reward incentive, or if an employee was terminated on the grounds of redundancy or business efficiency.

#### Policy decision:

Kingston Council will not award extra pension as this could potentially result in unfair or unequal treatment to employees. It is important for Kingston Council to set a precedent that treats all employees the same and maintains consistency. If done so this will also result in a cost to the Council.

### **Discretion 2**

Employees can purchase extra pension through additional pension contributions (AVCs). Employers are also able to buy extra pension for the employees as a contribution towards the costs via a shared cost additional pension contribution (SCAPC).

#### Policy decision:

Kingston Council will not contribute towards an employee's pension through an AVC as this could potentially result in unfair or unequal treatment to employees. It is important for Kingston Council to set a precedent that treats all employees the same and maintains consistency. This will also result in a cost to the Council.

### **Discretion 3**

An employee can choose to retire aged 55 and over, or they can choose to flexibly retire whereby they continue to work but on reduced hours. The percentage in which the hours are reduced are decided by the employer. Pension regulations state that the employer must release all pension accrued before 2008 however, any pension accrued after is discretionary.

#### Policy decision:

Kingston Council will review each case line with the Flexible Retirement Policy and therefore any early payment of accrued pension without actuarial reduction will be determined by the merits of the case.

NB: Flexible retirement for Teachers undergo a separate process.

#### **Discretion 4**

If a member voluntarily draws benefits before their Normal Pension Age (NPA) and they were a member of the LGPS on 30 September 2006, then some or all of their benefits could be protected from the normal actuarial reduction applied to benefits paid early under what is called the 85 year rule. The 85 year rule is satisfied if the member's age at the date they draw their benefits and their scheme membership (each in whole years) adds up to 85 or more. If they are part-time, their membership counts towards the 85 year rule at its full calendar length.

For employees flexibly retiring they are entitled to that protection however, only employees who contributed before 2008 and are flexibly retiring will have this protection. As a result the employee will receive pre 2008 accrued pension unreduced.

#### Policy decision:

The employee who receives pre 2008 accrued pension during flexible retirement will have this protection and therefore is a cost to the employer. Therefore Kingston Council will not switch on the 85 year rule for such members and will not waive any actuarial reductions.

#### **Discretions 5.1, 5.2, 5.3, 5.4**

Depending on the membership that an employee holds will determine what group they are in. Whether to waive, in whole or in part, any actuarial reductions on benefits which a member voluntarily draws before normal pension age (other than on the grounds of flexible retirement). Employers can agree to waive any actuarial reductions due in the case of employees retiring any time after age 55.

There are 4 member groups covering the circumstances in which reductions could be waived and the benefits to which these would apply:

#### **Group 1 - Members that joined before 1 October 2006 and who reached 60 before 1 April 2016**

- To waive on compassionate grounds, any actuarial reductions applied to benefits built up before 1 April 2016
- To waive on any grounds, actuarial reductions applied to benefits built up after 1 April 2016

#### **Group 2 - Members that joined before 1 October 2006 and who reach age 60 between 1 April 2016 and 31 March 2020 and, also meet their critical retirement age before 1 April 2020 (date member meets the 85-year rule)**

- To waive on compassionate grounds, any actuarial reductions applied to benefits built up before 1 April 2020

- To waive on any grounds, actuarial reductions applied to benefits built up after 1 April 2020

**Group 3 - Were members of the LGPS before 1 October 2006 and who will reach age 60 after 31 March 2020 (or who would reach age 60 between 1 April 2016 and 31 March 2020 inclusive, but who would not meet their Critical Retirement Age (CRA) before 1 April 2020 - in this instance CRA is the earlier of the date upon which the member would meet the 85 year rule or age 65)**

- To waive on compassionate grounds, any actuarial reductions applied to benefits built up before 1 April 2014
- To waive on any grounds, actuarial reductions applied to benefits built up after 1 April 2014

**Group 4 - Members that joined after 1 October 2006**

- To waive on compassionate grounds, any actuarial reductions applied to benefits built up before 1 April 2014
- To waive on any grounds, actuarial reductions applied to benefits built up after 1 April 2014

Policy decision:

Cost of any such retirements as mentioned above would need to be met by the employer and paid into the Pension Fund at the appropriate time. Kingston Council will not waive any actuarial reductions for Group 1 members as they have now past state pension age, therefore there would be no actuarial reduction and no cost to the employer. For groups 2, 3 and 4 Kingston Council will not agree to waive the costs of actuarial reduction, meaning that pension and lump sum will be reduced, as the member would receive pension early.

**Discretion 6**

If a member voluntarily draws benefits before their Normal Pension Age (NPA) and they were a member of the LGPS on 30 September 2006, then some or all of their benefits could be protected from the normal actuarial reduction applied to benefits paid early under what is called the 85 year rule. The 85 year rule is satisfied if the member's age at the date they draw their benefits and their scheme membership (each in whole years) adds up to 85 or more. If they are part-time, their membership counts towards the 85 year rule at its full calendar length. As the 85 year rule does not apply automatically who would otherwise be subject to it and who choose to voluntarily draw their deferred benefits.

Policy decision:

Kingston Council will not switch on the 85 year rule for such members and will not waive any actuarial reductions. Additionally, if Kingston Council were to switch on the 85 year this would result in cost to the employer.

**Discretion 7**

There are three ill health tiers which will determine what benefits are payable which is determined by the council.

**Tier 1:** Unlikely to be capable of gainful employment before NPA and paid for the rest of their life.

**Tier 2:** Unlikely to be capable of gainful employment within three years of leaving but likely to be capable of gainful employment before NPA.

**Tier 3:** Likely to be capable of gainful employment within three years of leaving, or before NPA if this is earlier.

If an employee's health meets the criteria of tier 3 as instructed by the employer payment will stop after 3 years. An example of this is if an employee is having issues with eyesight and meets the criteria for tier 3 as this could potentially improve over time. Whether a member's pension is suspended on the mentioned grounds but reinstated the employer will switch on the 85 year rule again.

Policy decision:

Kingston Council will not switch on the 85-year rule in these circumstances.

**Discretion 8**

An employee can request their pension from a specific time period i.e. 2008-2014. In scenarios whereby the employee only requests pension for that time and does not want all of it reduced whether the employer will waiver any actuarial reduction.

If an employee meets the criteria of tier 3 ill health and are dismissed from the council they are entitled to take their pension accrued however, due to requesting this payment early the pension value will be reduced. Whether the employer will waive this in favour of the employee.

Policy decision:

Kingston Council will not waive any actuarial reductions on the grounds of what tier ill health category they fall under and the cost to the council as a result.

**Discretion 9**

There are some members of LGPS whereby the 85 year rule will not apply. Whether the employer will voluntarily switch the 85 year rule back on.

Policy decision:

Kingston Council will not switch on the 85 year rule on the grounds of not meeting the 85 year rule criteria and the cost to the council as a result

**Discretion 10**

Members of the LGPS cannot grant applications for early payment of retirement on or after the age of 50. However, there have been no regulations or legislation released to confirm the closure of this rule which once was granted for members in 1997. Due to there being no official ruling that supersedes the granting of application a discretion

decision must be made.

Policy decision:

Kingston Council will not grant applications for such members as this rule has not been in practice for over 25 years.

**Discretion 11**

If an employee decides to retire earlier than 65 there will be an actuarial reduction whereby the employee is at a loss in regards to the value of their pension accrued. Whether the employer will choose to waive the actuarial reduction.

Policy decision:

Kingston Council will not waive any actuarial reductions in order to maintain fairness and equality amongst all employees and cases managed. In addition, if a reduction is waived the employer must absorb costs associated.

**Discretion 12**

Whether a former member of staff who worked for the employer who has reached 50 can take their pension on compassionate grounds. The accessibility to apply for release of funds is based on the 1995 regulation which has now been superseded.

Policy decision:

Kingston Council will not grant applications for deferred pensions to be released when the individual has turned 50. All cases must be consistent in how they are approved and a precedent must be set in order to deal with cases related to this matter. In addition to this, there is a significant cost to the council if a decision is made to grant release of pension funds at 50.

**Not included in Pensions Discretions Policy**

Whether to base a redundancy payment on an employee's actual week's pay where this exceeds the statutory week's pay limit of currently, £508 per week. This discretion is discussed due to the rule of individuals who are being made redundant being capped at what their combined exit payment and redundancy payment is in total.

Council advice:

Kingston Council will calculate redundancy payment in accordance to the Redundancy Policy and in line with the statutory week's pay limit

**Not included in Pensions Discretions Policy**

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.

Council advice:

Kingston Council will not offer an automatic termination payment paid to employees who have been dismissed on the grounds of business efficiency. The council will manage

cases in line with the pay policy

**Discretion 13**

Abatement occurs when a member retires from their employer but returns back to work. If this takes place the employer abates their pension in which the member rejoins the scheme.

Policy decision:

Kingston Council may abate a previous employee's pension in scenarios of re-employment however they will not absorb the cost or waiver for the employee's pension to not be abated

**Discretion 14**

- a) An employer may decide to award a member compensatory pension which the individual receives in addition to their pension. This can be referred to as annual compensatory added years. There are scenarios whereby a deceased person's spouse or civil partner can be apportioned i.e. the member is awarded £1,000 annually and so this is continued.
- b) An employer may decide to award a member compensatory pension which the individual receives in addition to their pension. This can be referred to as annual compensatory added years. There are scenarios whereby a deceased person's spouse or civil partner can be apportioned i.e. the member is awarded £1,000 annually. Whether the spouse or civil partner of a person who ceased employment before 1 April 1998 and enters a civil partnership or cohabits after 1 April 1998 is entitled to this payment.
- c) An employer may decide to award a member compensatory pension which the individual receives in addition to their pension. This can be referred to as annual compensatory added years. There are scenarios whereby a deceased person's spouse or civil partner can be apportioned i.e. the member is awarded £1,000 annually. Whether payment should be reinstated after the end of the remarriage, new civil partnership or cohabitation.
- d) An employer may decide to award a member compensatory pension which the individual receives in addition to their pension. This can be referred to as annual compensatory added years (CAY). There are scenarios whereby a deceased person's spouse or civil partner can be apportioned i.e. the member is awarded £1,000 annually. Whether CAY payments should continue to both the member and the spouse or civil partner they remarried or entered into a civil partnership with.
- e) There can be scenarios where an employee may have not been auto-enrolled whereby the employer has picked up on this matter and the ombudsman has ruled in favour of the member. These payments will then be made to the employee as the employer in this scenario would have broken the law.

Policy decision (a):

Kingston Council will not apportion any surviving spouses or civil partners annual compensatory added years. All awards the deceased person was in receipt of is paid solely to the member

Policy decision (b):

Kingston Council will not apportion any surviving spouses or civil partners annual compensatory added years who ceases employment before 1 April 1998 and then remarries, enters into a civil partnership or cohabits after 1 April 1998. All awards the deceased person was in receipt of is paid solely to the member. This will soon be changed due to unfair and unequal treatment cases that have arisen from this. However, currently we must comply with the pension regulator.

Policy decision (c):

Kingston Council will not apportion any surviving spouses or civil partners annual compensatory added years. All awards the deceased person was in receipt of is paid solely to the member

Policy decision (d):

Kingston Council will not continue to make CAY payments to members who ceased employment and their spouses or civil partners. This will be disapplied to ensure the council is maintaining fairness and equality to those who cease employment

Policy decision (e):

Kingston Council will not make these payments or determine how the annual added years is apportioned amongst eligible children as these payments are made solely to the member.

## **Non-mandatory discretions**

### **Discretion 24**

The LGPS has a provision within its regulations to allow an employee to enter into an agreement in which the employer can decide to also contribute to their employee's AVC arrangement known as Shared cost additional voluntary contribution (SCAVC).

Policy decision:

AVCs are a separate provider to Kingston Council for employees. Under the salary sacrifice arrangement there is no cost to the Council and so will not contribute to the arrangement set up by the employee and AVC provider

### **Discretion 25**

Before 13 November 2001 if an active member has submitted an application to convert their scheme AVC to membership instead, whether to allow late application as the given time frame for employees is 30 days.

Policy decision:

There can be scenarios where the employer is possibly at fault or the employee had extenuating circumstances which resulted in sending their application for the above discretion late. Therefore, Kingston Council will make a decision to allow late applications based only on the merits of each case.

#### **Discretion 26**

Employers are able to refuse to return any contributions where a member left employment due to offence of a fraudulent character or grave misconduct. For example, in some businesses they may refuse as they could have leaked highly confidential information to the public.

#### Policy decision:

Kingston Council historically have never needed to exercise the refusal of contributions to staff once they have been dismissed or left the organisation on the grounds described in the discretion. Therefore Kingston Council state that they will not pay contributions back in order to maintain consistency and ensure equality and fairness to all colleagues.

#### **Discretion 27**

If an employee has met the criteria of tier 3 ill health benefits then both the employee and employer must follow the guidelines of procedure that follow once they are suspended from the organisation. This includes a review and assessment that must be carried out with the employee and employer after 18 months and the employee must communicate to the employer if they are ready to return to work. If either scenario has not occurred in line with the guidelines i.e. the employer has not been able to arrange an assessment due to availability issues, whether the employer will continue to pay the employee until the assessment is carried out, however, once they return to work whether these payments are recovered.

#### Policy decision:

Kingston Council will recover any payments made in full as this is in line with the pension regulation and tier 3 ill health rules.

#### **Discretion 28**

Employers can grant staff authorised long term leave that is unpaid. Once the employee returns to work they have 30 days to purchase back their pensionable pay through a Shared Cost Additional Pension Contribution (SCAPC). Whether the employer will extend this deadline once they return.

#### Policy decision:

Kingston Council must follow the procedure of returning to work for employees by making them aware of the 30 day deadline to purchase back pension. There could be cases whereby the line manager may forget to alert the member of staff therefore in order to protect Kingston Council managers this will be exercised on a case by case basis.

#### **Discretion 29**

The pension fund who administers authority to transfer an employee's pension into the



scheme decides in which scenarios this can occur. Employees have 12 months to do this once they join the LGPS.

Policy decision:

The pension fund who administers this authority makes the decision for employees within the council. Kingston Council state they only accept within the first 12 months of joining and so will not extend the deadline.

**Discretion 30**

The pension fund who administers authority to defer an employee's benefits into their new employment following cessation of employment after 31 March 2014. Employees have 12 months to do this once they join the LGPS.

Policy decision:

The pension fund who administers this authority makes the decision for employees within the council. Kingston Council state they only accept within the first 12 months of joining and so will not extend the deadline. This is to also maintain consistency with point 29 with extension of late cases past 12 months.

**Discretion 31**

The pension fund who administers authority to defer an employee's benefits into their new employment following cessation of employment who was not elected to be treated as a member and within that same employment contributed to the scheme on both 31 March 2014 and and 1 April 2014, and who joined new employment in LGPS on or after 14 May 2018

Policy decision:

The pension fund who administers this authority makes the decision for employees within the council. Kingston Council state they only accept within the first 12 months of joining and so will not extend the deadline. This is to also maintain consistency with point 29 and 30 with extension of late cases past 12 months

**Discretion 32**

Employers are legally obliged to review their pension bandings annually however, some employers can opt to do this more frequently. Whether and how often the bandings will be reviewed.

Policy decision:

Kingston Council have opted to do this monthly and so are compliant.

**Discretion 33**

Employees can have their pay reduced as a result of being on long term sick, maternity leave etc. During this time LGPS will credit the individual their full pension. The scenarios given in the discretion could result in the pension being enhanced and paid until normal pension age if these cases occurred before this time. This enhancement would need to be calculated to determine the pension they would have accrued from the age the incident/time off work occurred to when their normal pension age is.

Policy decision:

Kingston Council do not include regular lump sums in payment; however, full calculation will occur after the member has met the criteria of this discretion in order to ensure they are receiving the pension contribution they would have received accurately.

**Discretion 34**

Employees can have their pay reduced as a result of being on long term sick, maternity leave etc. During this time LGPS will credit the individual their full pension. The scenarios given in the discretion state whether to substitute a higher level than pay if the pension administration calculates a lower value based on the last 3 months of employment having received a higher amount beforehand i.e 12 months prior.

Policy decision:

The pension team calculates this discretion based on the previous 3 months of employment for that employee and projects this forward. As this is in line with the pension rules of calculating this discretion, Kingston Council will exercise the decision to pay a higher value if in line with rules and regulation of the pension fund. Therefore this will be based on a case by case basis.