
LGPS DISCRETIONS STATEMENT SCHEME EMPLOYERS

	Position/Committee	Date
Prepared by	Chief Financial Officer	March 2024
To be reviewed	Chief Financial Officer	On re-evaluation of the Scheme



LGPS DISCRETIONS STATEMENT SCHEME EMPLOYERS

OVERVIEW

The Local Government Pension Scheme (LGPS) in England and Wales was amended from 1 April 2014. The provisions of the new LGPS, together with protections for members benefits accrued before 1 April 2014, are now contained in the Local Government Pension Scheme Regulations 2013 (the '**LGPS Regulations 2013**'), the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (the '**LGPS Transitional Regulations 2014**') and the Local Government Pension Scheme (Amendment) Regulations 2018 ('**LGPS Amendment Regulations 2018**').

Therefore, this statement now relates to the application of discretions under:

- (a) the **LGPS Regulations 2013** and the **LGPS Amendment Regulations 2018**;
- (b) the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 ('**LGPS Transitional Regulations 2014**'); and
- (c) the Local Government Pension Scheme Regulations 1997 ('**LGPS Regulations 1997**') and the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 ('**LGPS Benefits Regulations 2007**'), which continue to have effect in so far as is necessary under *Regulation 3 (Membership before 1 April 2014) of the LGPS Transitional Regulations 2014*.

This statement is issued by the West Yorkshire & North Yorkshire Pension Funds (the '**Fund**') to assist Scheme Employers under the Fund.

Furthermore, this statement has been prepared on the Fund's understanding of the above regulations; therefore whilst it represents the views of the Fund it should not be treated as a complete and authoritative statement of the law. Moorlands Learning Trust may wish, or will need, to take their own legal advice on the interpretation of any particular regulations. No responsibility whatsoever will be assumed by the Fund for any liability, financial or otherwise, incurred by Moorlands Learning Trust relying on this statement. The Fund does not accept any responsibility for reliance on the contained, or referred to, in this statement.

INTRODUCTION

Under *Regulation 60 (statements of policy about exercise of discretionary functions) of the LGPS Regulations 2013* and *paragraph 2(2) of Schedule 2 of the LGPS Transitional Regulations 2014*, Moorlands Learning Trust are required to make and publish policy statements on how they will exercise **five specific discretions**.

Following the implementation of the LGPS Amendment Regulations 2018 **two further mandatory discretions** have been introduced under regulations 24(a), 30(a), 30(c), 30(e) and 30(f).

In addition, there are **two further discretions** relevant to employers, which relate to members who left before 1 April 2014. These are under *Regulation 66 of the Local Government Pension Scheme (Administration) Regulations 2008* (in respect of leavers between 1 April 2008 and 31 March 2014) and under *Regulation 106 of the LGPS Regulation 1997* (in respect of leavers between 1 April 1998 and 31 March 2008).

Any policy statements made must not limit, or 'fetter' how Moorlands Learning Trust uses any of the discretions afforded by the scheme.

The use of any discretion is likely to lead to immediate and potentially continuing increased pension costs for Moorlands Learning Trust, which could be considerable.

Moorlands Learning Trust is required to keep its statement under review and make such revisions as are appropriate following a change in its policy. Following any changes in its policy Moorlands Learning Trust must publish the revised policy and send a copy to the administering authority within one month of the date the policy is revised.

In formulating and revising the policy statements outlined below, Moorlands Learning Trust must have regard to the extent to which the exercise of its discretionary powers could lead to a serious loss of confidence in the public service.

The discretions listed below are those that require a written policy, however Moorlands Learning Trust have further discretions under the regulations that they may wish to formulate a written policy on.

FURTHER GUIDANCE FROM THE LOCAL GOVERNMENT PENSION SCHEME SECRETARIAT

When formulating any policies Scheme Employers should also take into account information provided by the LGPC Secretariat which can be found [here](#):

SCHEME EMPLOYER DISCRETIONS

Specific discretions under the LGPS Regulations 2013 and the LGPS Transitional Regulations 2013.

Details of the **five discretions** available are as follows:

1. Shared cost Additional Pension Contributions - Regulation 16 (2)(e) and 16 (4)(d)

*Note: these specific provisions of Regulation 16 allow an active member who is paying into the main scheme to enter into an arrangement to pay additional contributions, either by regular contributions (Regulation 16(2)(e)) or by a lump sum payment (Regulation 16(4)(d)). This may be funded in whole or in part by **the employer**.*

Moorlands Learning Trust does not consider contributions towards additional pension contributions to be an essential part of its employment strategy. However, **Moorlands Learning Trust** will consider applications made under these specific provisions having regard to **Moorlands Learning Trust's** general policy from time to time, on the employee pay strategy and the particular circumstances surrounding each case.

It is likely that decisions will be made on the merits of each case having particular regard to factors such as:

- **Moorlands Learning Trust's** ability to meet the cost of granting such a request; and/or
- the member's personal circumstances.

2. Awarding Additional Pension - Regulation 31

*Note: this Regulation 31 allows employers to grant additional pension up to the maximum allowed by the scheme rules provided that the member is active **or** is within 6 months of leaving **for reasons of** redundancy **or** business efficiency **or** whose employment was terminated by mutual consent on grounds of business efficiency.*

Employers may wish to use this Regulation as an aid to recruitment, an aid to retention or to compensate or reward an employee who is retiring.

*Employers should also consider provisions of this Regulation, in particular Regulation 31(4), if they decide to exercise their power under **Section 1 (general power of competence) of the Localism Act 2011**.*

Moorlands Learning Trust will consider applications made under this *Regulation* having regard to the particular circumstances surrounding each case. Decisions will be made on the merits of each case having particular regard to the following:

- the member's personal circumstances;
- the interests of **Moorlands Learning Trust**;
- the additional contributions due to the Fund by **Moorlands Learning Trust** in respect of the exercise of this discretion;
- any potential benefits or savings to **Moorlands Learning Trust** arising from the exercise of this discretion;
- other options that are, from time to time, available under **Moorlands Learning Trust's** severance arrangements;
- the funding position of **Moorlands Learning Trust** within the Fund;
- the ability of **Moorlands Learning Trust** to meet the cost of granting such an award.

3. Flexible Retirement - Regulation 30(6) & TP11(2)

Note: this provision in the Regulation allows the employer to consent for a member who has attained the age of 55 to draw all or part of their retirement benefits (both pension and lump sum) whilst continuing in employment and Fund membership provided that:

- *there has been a reduction in hours, or*
- *a reduction in grade.*

Part of the agreement to allow flexible retirement is: whether, in addition to the benefits the member has built up prior to 1 April 2008 (which the member must draw), to allow the member to choose to draw

- all, part or none of the pension benefits they built up after 31 March 2008 and before 1 April 2014, and / or
- all, part or none of the pension benefits they built up after 31 March 2014 and

Employers can choose to waive any reductions that apply under Regulation 30(8).

Moorlands Learning Trust will consider applications made under this Regulation having regard to the particular circumstances surrounding each case. Decisions will be made on the merits of each case having particular regard to:

- the operating requirements of the employing department
- **Moorlands Learning Trust's** ability to meet the cost of granting such a request
- whether any demonstrable cost saving in excess of potential savings available under any severance arrangements in place for time to time can be made
- the member's personal circumstances.

4. Waiving actuarial reductions - Regulation 30(8)

Note: the employer may waive whole or in part, any actuarial reduction which would otherwise be applied to the benefits taken on flexible retirement before Normal Pension Age

Moorlands Learning Trust, will consider applications made under this Regulation having regard to the particular circumstances surrounding each case. Decisions will be made on the merits of each case having particular regard to:

- the operating requirements of the employing department
- **Moorlands Learning Trust's** ability to meet the cost of granting such a request
- whether any demonstrable cost saving in excess of potential savings available under any severance arrangements in place from time to time can be made
- the member's personal circumstances

5. **Switching on the 85 rule – Schedule 2 - 1(1)(c) of the LGPS Transitional Regulations 2014**

Note: The employer can decide to “switch on” the 85 year rule to allow members to receive benefits either unreduced or with a smaller reduction to their 85 year rule date. The employer will be responsible for meeting any strain costs relating to benefits being paid before age 60. If the employer does not “switch on” the 85 year rule the member’s benefits will be reduced to age 60 or the date they meet the 85 year rule if later.

Moorlands Learning Trust, will consider applications made under this Regulation having regard to the particular circumstances surrounding each case. Decisions will be made on the merits of each case having particular regard to:

- **Moorlands Learning Trust’s** ability to meet the cost of granting such a request;
- whether any demonstrable cost saving in excess of potential savings available under any severance arrangements in place from time to time can be made;
- the member's personal circumstances.

Further discretions under the LGPS Regulations 1997 and the LGPS Benefits Regulations 2007. (The following points are only applicable to the members of the WYPF. Discretions under this section are not applicable to NYPF members as only active members at the point of transfer of The Skipton Academy to Moorlands Learning Trust are covered by the 2013 Regulations and not these Regulations)

There are also two other discretions for employers but these relate specifically to members who left before 1 April 2014.

Whilst the LGPS Regulations 2013 repeals the LGPS Regulations 1997 and the LGPS Benefits Regulations 2007 (in so far as they had not already been repealed), Regulation 3(1) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 allows for the LGPS Regulations 1997 and the LGPS Benefits Regulations 2007 to still have effect in so far as they relate to certain member benefits before 1 April 2014. As such, the other discretions still available for certain members only, are as follows:

1. Early Payment of Deferred Pensions for members who left before 1st April 2014 – Regulation 2 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, Regulation 30(2) and 30(5) of the LGPS Benefits Regulations 2007 & Regulation 31(2) and Regulation 31(5) of the LGPS Regulations 1997

Note: This Regulation allows employers to allow members who left the scheme before 1 April 2014 and who are over the age of 55 to take their benefits early. Under Regulation 30(5) employers can waive any reduction to benefits paid under that Regulation on compassionate grounds. Additionally under Regulation 2 (1(2)) employers may elect to 'switch on' the 85 year rule where a member has taken voluntarily early payment of deferred benefits from age 55.

Moorlands Learning Trust, will consider applications made under this Regulation having regard to the particular circumstances surrounding each case. Decisions will be made on the merits of each case having particular regard to:

- **Moorlands Learning Trust's** ability to meet the cost of granting such a request
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- the member's personal circumstances

Applications for the payment of unreduced benefits on the grounds of compassion will be granted if:

- in **Moorlands Learning Trust's** sole opinion, the special extenuating circumstances surrounding the application, along with the supporting evidence provided justify approval and
- **Moorlands Learning Trust** can meet the cost of granting such a request.

N.B. Deferred members who left the Scheme before 1 April 2008 can still make application for the early payment of their deferred benefits after age 50 under LGPS rules. However, under HMRC rules such payments would be classed as 'un-authorised' and would be subject to a punitive tax charge.

2. Early Payment of Deferred Pensions for members who left before 1st April 2014 and have ceased to be entitled to a tier 3 ill benefit - Regulation 2 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, Regulation 30A(3) and 30A(5) of the LGPS Benefits Regulations 2007.

These regulations allow employers to permit members who have ceased to be entitled to a tier 3 ill health benefit and who are over the age of 55 to take their benefits early. Under sub paragraph 5 of Regulation 30A employers can waive any reduction to benefits paid under that Regulation on compassionate grounds. Alternatively under Regulation 2 (1(2)), employers may elect to 'switch on' the 85 year rule where voluntary early payment of suspended tier 3 ill health pension is taken.

Moorlands Learning Trust, will consider applications made under this Regulation having regard to the particular circumstances surrounding each case. Decisions will be made on the merits of each case having particular regard to:

- **Moorlands Learning Trust's** ability to meet the cost of granting such a request
- the member's personal circumstances

Applications for the payment of unreduced benefits on the grounds of compassion will be granted if:

- in **the employer's** sole opinion, the special extenuating circumstances surrounding the application, along with the supporting evidence provided justify approval and
- **the employer** can meet the cost of granting such a request.

Discretions under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (as amended) (SI 2006/2914)

In the event that compulsory redundancies are made, any redundancy payments made will be calculated using the statutory redundancy pay calculation.

Discretions under the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011 (SI 2011/2954)

Moorlands Learning Trust will consider each case on its merits.