# Local Government Pension Scheme Discretions Policy

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| **Approved by:** | The Trust Board | **Date:** | 18 December 2023 |
| Recognised unions have been consulted on this document via the Unity Schools Partnership Joint Consultation and Negotiation Committee.<br>It was accepted by Unity Schools Partnership on | | **Date:** | 18.12.23 |

## OVERVIEW

Unity Schools Partnership, as an employer, is under a legal duty to prepare and publish a written statement of its policy relating to certain discretionary powers under the Regulations which apply to the Local Government Pension Scheme ("the LGPS").

This policy statement clarifies Unity Schools Partnership position on the discretions it can exercise in accordance with the LGPS 2014 regulations and guidance on how they apply to different retirement options.

The policy statement applies to all members of staff who are eligible to be members of the LGPS, as defined in the regulations.

Employees who are members of the pension scheme are only entitled to receive pension benefits if they have 2 years or more service. Under LGPS 2014 Regulation 18, if an employee leaves within 2 years of the start of their employment, their contributions can be repaid (Employee Contributions) or transferred to another scheme, unless there is some fraudulent offence or misconduct in connection with the employment.

## PRINCIPLES

Unity Schools Partnership will treat any individual retirement case and decisions on its merits. Decisions relating to retirement will be made considering the business case and implications for the Trust including: financial implications, employment law consideration, the pension regulations and the specific legality of each case. It may also consider long term savings, affordability, skills and skills retention and impact on delivery of a particular function within the Trust.

Each decision will be made free from discrimination on the grounds of any protected characterising – age, disability, gender reassignment, marriage or civil partnership, pregnancy & maternity, race, religion and belief, sex, sexual orientation or any other personal criteria. The Trust's decisions relating to retirement and the release of pension benefits will be in line with the current pension regulations. These regulations may be updated from time to time and the relevant Authority will default to the regulations if the policy is not explicit on any current or future regulation.

Decisions relating to the release of deferred benefits to former employees will refer to the relevant pension policies applicable at the time of their employment. In such cases, the decision as to the release of deferred benefits will be on a case by case basis and will consider the criteria detailed in these principles. Guidance may be sought from the pension administrators as required.

## DISCRETIONS

Within the pension regulations there are a number of discretionary statements that require the Trust to explicitly state their position. The discretions detailed below relate to the current LGPS 2014 regulations and guidance.

| No. | Area | Regulation | Discretion | Policy Summary | Explanation |
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| **1** | Employees' contributions | R9(1) & R9(3) | Determine rate of employees' contributions | The Trust will normally implement changes in contribution rates with effect from the first day of April each year. | Contribution rates are determined by the pension authority and the Trust will adopt these rates. |
| **2** | Funding of Additional Pension Contributions | Regulations 16(2)(e) and 16(4)(d) Pensions Regulations | To fund, in whole or in part, additional pension contributions on behalf of an employee where these are to be paid by regular contributions (Regulation 16(2)(e)) or by lump sum (Regulation 16(4)(d))<br><br>Note: The amount of additional pension that may be credited to an active member's pension accounts may not exceed the additional pension limit of £6,500 (uplifted annually) | The Trust Board will consider each case on its merits but will not normally fund additional contributions either wholly or in part. | This means the Trust Board can pay additional pension contributions on behalf of current employees. The Trust Board will only consider this in exceptional circumstances. |
| **3** | | R19(2) | No right to return of contributions if member left due to offence of a fraudulent character or grave misconduct unless employer directs a total or partial refund is to be made. | The Trust will consider each case on its merits. | The decision as to whether to exercise this discretion will be made by the Director of Finance & HR, whose decision will be final. The decision may be made by a sub-committee, as determined by the Chairman, on behalf of the Trust. The Director of Finance & HR will then arrange for the outcome to be notified to the individual member of staff. |
| **4** | | R20(1)(b) | Specify in an employee's contract what other payments or benefits, other than those specified in R20(1)(a) and not otherwise precluded by R20(2), are to be pensionable | The Trust Board will consider each case on its merits. | As these situations arise infrequently, the Trust will deal with each case on an individual basis. |
| **5** | | Regulation 21(5) | In determining Assumed Pensionable Pay, whether a lump sum payment made in the previous 12 months is a "regular lump sum" | The Trust Board will consider each case on its merits. | This means the Trust will deal with each case on an individual basis taking into account the circumstances surrounding the |

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| | | | | | payment e.g. duration, regularity etc |
| **6** | Aggregation of Benefits: Concurrent Employments | Regulation 22 (7)(b), Pensions Regulations | To allow an active member with concurrent employments, who ceases an employment with an entitlement to a deferred pension, a longer period than 12 months in which to elect not to have the benefits in their deferred member's pension account aggregated with the benefits in their active member's pension account. | The Trust Board will consider each case on its merits but will not normally exercise this discretion. | This means the Trust Board can allow members with more than 1 pension under different employment contracts (at the same time) longer than the usual 12-month deadline to choose not to combine the pensions. The Trust Board will only consider this in exceptional circumstances. |
| **7** | Aggregation of Benefits: Deferred Member becoming Active Member | Regulation 22 (8)(b), Pensions Regulations | To allow a deferred member who again becomes an active member a longer period than 12 months in which to elect not to have the benefits in their deferred member's pension account aggregated with the benefits in their active member's pension account. | The Trust Board will consider each case on its merits but will not normally exercise this discretion. | The benefits are usually aggregated (joined-up), unless the member elects to keep them separate. The Trust Board can agree to a former member having longer than the usual 12-month deadline to choose not to combine the pensions. The Trust Board will only consider this in exceptional circumstances. |
| **8** | Flexible retirement | Regulation 30(6) & TP11(2) Pensions Regulations | To agree to an employee aged 55 or over reducing their hours of work or grade so that they may receive all or some of their retirement pension while still employed. This is provided the employer agrees to the member either reducing their hours or moving to a position on a lower grade. | The Trust Board will consider each case on its merits but will not normally agree to requests for flexible retirement. | This means the Trust Board can agree to an employee aged 55 or over drawing their pension whilst they continue to work for the employing authority on reduced pay / hours or grade. |
| **9** | Waiving of Actuarial Reduction to Pensions | Regulation 30(8), Pensions Regulations | To agree to waive, in whole or in part, any reduction that would otherwise be made on the early payment of a pension to a former employee aged 55 or to the pension paid to an employee allowed to take flexible retirement under Regulation 30(6) of the Pensions Regulations. | The Trust Board will consider each case on its merits but will not normally agree to waive any actuarial reductions. | This means the Trust Board can agree to waive any reductions to an individual's pension where they have left employment / been granted flexible retirement from age 55. The Trust Board will only consider this in exceptional circumstances. |

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| **10** | Early Payment of Pension in cases of Members with Transitional Protection | Schedule 2, Transitional Regulations | To agree to that the transitional protections set out in Paragraph 1(3) of Schedule 2 to the Transitional Regulations should apply. This affects members with transitional protection who choose to retire between the ages of 55 and 60. The transitional protections offer complete or partial protection from actuarial reductions depending on the circumstances. | The Trust Board will consider each case on its merits but will not normally agree to the payment of unreduced retirement benefits to a member with transitional protection who meets the 85-year rule until they are 60. | This means that the Trust Board can agree to '85-year rule' transitional protection being 'switched on'. The Trust Board will only consider this in exceptional circumstances. |
| **11** | Waiver of Actuarial Reductions to Pension in cases of Members with Transitional Protection | Schedule 2, Transitional Regulations | To waive on compassionate grounds, any Reduction that would otherwise be made to a member's pension payable on early retirement. | The Trust Board will consider each case on its merits but will not normally waive, on compassionate grounds, any reduction that would otherwise be made to a member's pension payable on early retirement. | This means the Trust Board will only agree on compassionate grounds, to waive any reduction to pension benefits that would otherwise be made to the pension payable to a member covered by the transitional protections if there are exceptional circumstances. |
| **12** | Award of Additional Pension | Regulation 31, Pensions Regulations | To award additional pension to: (1) an active member; or (2) a former active member who was dismissed by reason of redundancy or business efficiency.<br><br>Note: Any additional pension awarded (including any additional pension purchased by the employer under Regulation 16 of the Pensions Regulations (see above) may not exceed the additional pension limit of £6,500 (uplifted annually). Additionally, in the case of a former active member falling within (2) above, the resolution to award additional pension must be made within 6 months from the date on which the employment ended. | The Trust Board will consider each case on its merits but will not normally award additional pension | This means the Trust Board has the power to award additional pension to either an active (current) member of the LGPS, or, within six months of leaving if the member left on the grounds of redundancy or business efficiency. The Trust Board will only consider this in exceptional circumstances. |
| **13** | Recovery of Money Owed as a result of Misconduct | Regulation 93, Pensions Regulations | To recover money owing to the former employer where a person has left employment as a result of grave misconduct or of a criminal, negligent or fraudulent act or omission in relation to that employment and | The Trust Board will normally seek to recover any money owing as a result of a former employee's grave misconduct, or criminal, negligent or fraudulent acts or omissions from the employee's pension benefits. | This means the Trust Board can look to recover money from an ex-employee where they have left employment as a result of grave misconduct or of a criminal, negligent or fraudulent |

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| | | | owes money to the employer arising out of such that misconduct, act or omission.<br><br>Note: If there is a dispute about the amount owed the Trust Board may only recover the money from the employee's pension benefits under a court order or the award of an arbitrator. | | act or omission in relation to that employment. |
| **14** | Redundancy Payments | Regulation 5, Compensation Regulations | To base redundancy pay on actual pay where actual pay exceeds the statutory maximum under the Employment Rights Act 1996. | The Trust Board will base redundancy payments on an employee's actual pay in all cases. | This means the Trust Board can base the calculation of an individual's redundancy pay on their actual weeks' pay where it exceeds the statutory maximum weekly redundancy pay. |
| **15** | Shared Cost Additional Voluntary Contribution Agreement | Regulation R17(1) & TP15(1)(d) & A25(3) | An employer can choose to pay for or contribute towards a member's Additional Voluntary Contribution arrangement entered into on or after 1st April 2014 via a shared cost AVC. An employer can choose to pay for or contribute towards a member's Additional Voluntary Contribution arrangement entered into before 1st April 2014 via a shared cost AVC. | The Trust Board will not normally exercise this discretion. | This means the Trust Board has the power to pay for or contribute towards the cost of an AVC however, the Trust Board will only consider this in exceptional circumstances. |
| **16** | Compensation for loss of Employment | Regulation 6, Compensation Regulations | To pay compensation to a person whose employment ceases - by reason of redundancy; - in the interests of the efficient exercise of the employing authority's functions; or in the case of a joint appointment, because the other holder of the appointment leaves<br><br>Note: Compensation may not be paid under this Regulation if: - a person's period of membership of the Pension Scheme has been increased under Regulation 12 of the Benefits Regulations (see above); or - a person has been awarded an additional pension under Regulation 13 of the Benefits Regulations (see above). In all cases the | The Trust Board will not normally pay compensation under this Regulation except to ensure that an employee whose employment is terminated by reason of redundancy receives, under Regulation 5 of the Compensation Regulations and this Regulation a total of up to 30 weeks' pay calculated in accordance with the Statutory Redundancy Pay Table.<br><br>Note: The effect of the Trust Board's policy on the exercise of its discretions under Regulations 5 and 6 of the Compensation | This means the Trust Board will only pay an employee who is made redundant using the statutory redundancy calculation up to 30 weeks' pay. |

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| | | | amount of compensation paid under this Regulation may not exceed 104 weeks' pay. In all cases the decision to pay compensation under this Regulation must be made no later than 6 months after the date of termination of the person's employment. | Regulations is that a person whose employment is terminated by reason of redundancy will be paid up to 30 weeks' pay calculated in accordance with the Statutory Redundancy Pay Table. A person whose employment is terminated in the interests of the efficient exercise of the Trust's functions, or where the other holder of a joint appointment leaves, will not normally be paid compensation under these Regulations. | |
| **17** | Ill health retirement | Regulation 37(3) & (4) | Determine whether person in receipt of Tier 3 ill health pension has started gainful employment. | The Trust will only make these decisions acting on appropriate guidance form an independent registered medical practitioner. | This means the Trust will follow the advice of the independent registered medical practitioner. |
| **18** | Ill health retirement | Regulation 37 (3) | Whether to recover any overpaid Tier 3 pension following commencement of gainful employment. | The Trust will only make these decisions acting on appropriate guidance form an independent registered medical practitioner. | This means the Trust will follow the advice of the independent registered medical practitioner. |
| **19** | Ill health retirement | Regulation 38 (3) | Decide whether deferred beneficiary meets criteria of being permanently incapable of former job because of ill health and is unlikely to be capable of undertaking gainful employment before normal pension age or for at least three years, whichever is the sooner. | The Trust will only make these decisions acting on appropriate guidance form an independent registered medical practitioner. | This means the Trust will follow the advice of the independent registered medical practitioner. |
| **20** | Ill health retirement | Regulation 38 (6) | Decide whether a suspended ill health tier 3 member is unlikely to be capable of undertaking gainful employment before normal pension age because of ill health. | The Trust will only make these decisions acting on appropriate guidance form an independent registered medical practitioner. | This means the Trust will follow the advice of the independent registered medical practitioner. |
| **21** | Forfeiture Certificates | Regulation 91, Pensions Regulations | To apply to the Secretary of State for the issue of a forfeiture certificate.<br><br>Note: A forfeiture certificate may be applied for where a member has been convicted of an offence committed in connection with the | The Trust Board will consider each case on its merits, both in relation to applying for a forfeiture certificate and to the giving of a direction that pension benefits will be forfeited | This means the Trust Board can apply for a certificate from the secretary of state which permits withholding pension benefits from an individual who has been convicted of certain offences. |

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| | | | member's employment and because of which the member has left that employment. A forfeiture certificate is a certificate, issued by the Secretary of State that the offence was gravely injurious to the State or is liable to lead to serious loss of confidence in the public service. To direct, where a forfeiture certificate has been issued, that any rights under the Pensions Regulations be forfeited.<br><br>Note: If the former employer has suffered loss as a direct consequence of the offence, a direction may only be given if the loss cannot be recovered except after an unreasonable time or at disproportionate cost. A direction may only be given if the application for a forfeiture certificate was made within a period of three months beginning with the date of the conviction. | where a forfeiture certificate has been issued. | |
| **22** | Inward Transfer of Pension Rights | Regulation 100, Pensions Regulations | To allow a person more than 12 months beginning with the date when they first became an active member in an employment to request the acceptance of a transfer value for certain accrued pension rights.<br><br>Note: Regulation 100 of the Pensions Regulations requires that a request must be made within 12 months beginning with the date on which the member became an active member in an employment or such longer period as the employer and the Administering Authority may allow. The discretion is, therefore, exercisable concurrently by the Administering Authority. | The Trust Board will consider each case on its merits but will not normally exercise this discretion. | This means the Trust Board can agree to allow an individual who has been a member for more than 12 months to request to transfer previous pension funds into the LGPS fund. The Trust Board will only consider this in exceptional circumstances. |