

# Deciphering Discretions

Mio Yewman

Employer Liaison Officer



Administered in partnership



# How will this webinar work?

No Notes

Cambridgeshire Pension Fund Northamptonshire Pension Fund

## Deciphering Discretions

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West Northamptonshire Council | Cambridgeshire County Council  
Administered in partnership

CUSTOMER SERVICE EXCELLENCE CSE

Meeting chat

- Mio Yewman joined the meeting.
- Mio Yewman named the meeting to Webinar - a guide to formulating your LGPS discretions policy.
- Unknown User (Guest) and 6 others were invited to the meeting.

Type a new message



Go to: <https://pensions.northamptonshire.gov.uk/lgps/my-responsibility/discretions/>  
for the discretions template



# What we will cover:

- The employer discretions relating to how scheme rules and regulations are applied
- The choice you have regarding how you choose to apply some of these regulations (known as discretions)

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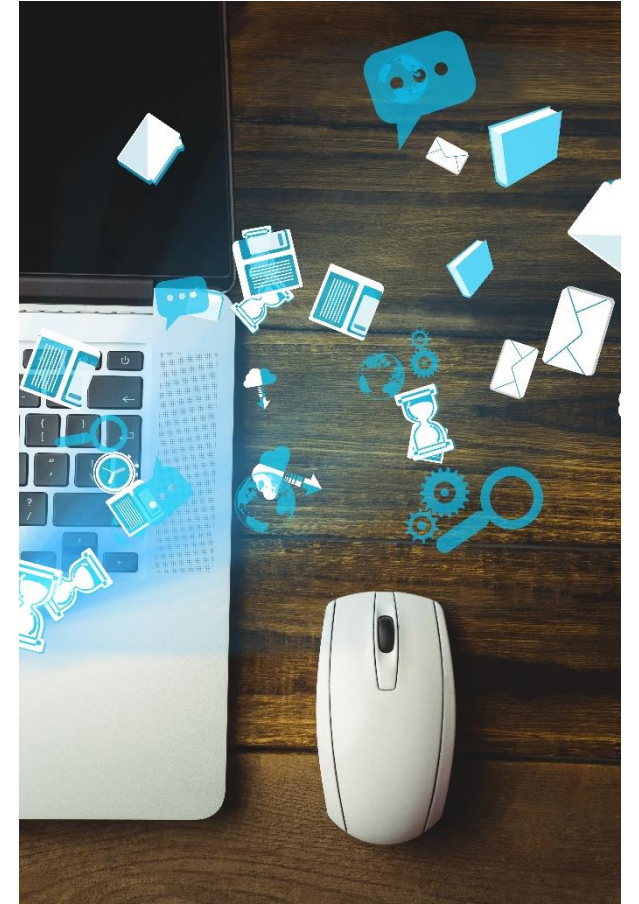
## By the end you will:

- Know what the compulsory discretions are
- Know what you must consider when writing the policy
- Know how to produce a discretions policy
- Have increased confidence when approached by a member who wants to exercise a discretion



# What is a Discretions Policy?

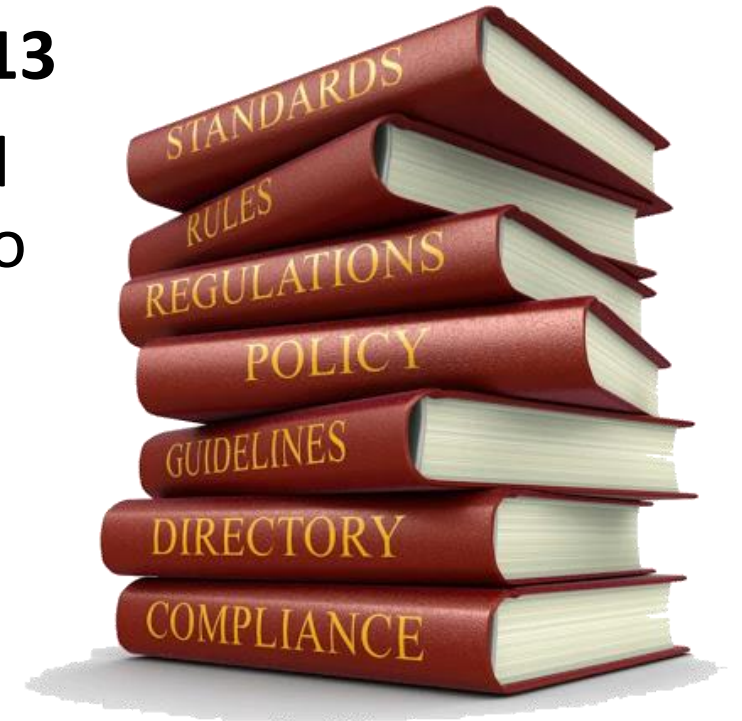
- The LGPS is a statutory scheme which means most of the rules and regulations regarding the Scheme are laid down by the Government
- However, the regulations provide the employers with certain discretionary powers to choose how to apply the scheme in certain areas
- You have to formulate, publish and keep under review a Statement of Policy on certain discretions which you have the power to exercise
- Your discretions policy will determine how you handle specific requests from employees regarding their LGPS pension e.g. Flexible retirement



# Why must I have a pensions discretion policy?

## **Local Government Pension Scheme Regulations 2013**

‘Employers are required to formulate, publish and keep under review a policy statement in relation to the exercise of a number of discretions under the LGPS’



# What does a discretion look like?

## An extract from Local Government Pension Scheme Regulations 2013

### ***Additional pension contributions***

**16.** —(1) *Subject to paragraph (15), an active member who is paying contributions under regulation 9 (contributions) may enter into arrangements to pay additional pension contributions (“APCs”) by regular contributions in accordance with paragraph (2), and a member who is paying contributions under regulation 10 (temporary reduction in contributions) may do so if the arrangement is to cover a period of absence of the description in regulation 11(4)(b) or (c) (contributions during absence from work), unless the appropriate administering authority determines in any particular case that it would not be practical to allow APCs to be paid by regular contributions.*

**(2)** *Where APCs are to be paid by regular contributions, the arrangements mentioned in paragraph (1)—*

*(a) must, when entered into, be for a complete year or number of years with a minimum period of one year;*

*(b) must specify the amount of extra contribution to be paid each Scheme year;*

*(c) must, where the member has more than one active member pension account, specify which account the APC is to be attached to;*

*(d) must specify the amount of additional pension to be credited to the active member’s pension account at the end of the Scheme year; and*

*(e) may be funded in whole or in part by the member’s Scheme employer.*

# How many are there?

- 38** Actives/leavers from 1/4/2014
- 17** Leavers from 1/4/2008 to 31/3/2014
- 15** Leavers from 1/4/1998 to 31/3/2008
- 2** Leavers before 1/4/1998
- 2** 2006 Compensation Regulations
- 7** 2000 Compensation Regulations
- 13** 2011 Injury Allowances Regulations

**87** in total

The full list can be found on

<https://www.lgpsregs.org/resources/guidesetc.php>



Please remember that you need to cover your ex-employees who have the deferred pensions or receiving pensions from us.

# As shown in our template...

<b><u>Discretions Policy for: &lt;insert employers name&gt;</u></b>		<b><u>Date:</u></b>		
This policy confers no contractual rights. <EMPLOYER NAME> retains the right to change the policies at any time without prior notice or consultation. 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.				
<b>Discretions have been colour coded -</b>				
	<b>Compulsory</b> - you must formulate, publish and keep under review a policy on these discretions			
	<b>Recommended</b> - there is no requirement for you to publish a written policy on these discretions, however as these matters arise fairly frequently it would perhaps be appropriate for you to do so in order that members can be clear on your policy on these matters			
	<b>Less Common</b> - there is no requirement for you to publish a written policy on these discretions			
<b>Discretions from 1.4.14. in relation to post 31.3.14. active members (excluding councillor members) and post 31.3.14. leavers (excluding councillor members)</b> <b>R = LGPS Regulations 2013 and</b> <b>TP = LGPS (Transitional Provisions, Savings and Amendments) Regulations 2014</b>				
	<b><u>Discretion</u></b>	<b><u>Regulation</u></b>	<b><u>Exercised by</u></b>	<b><u>Policy</u></b>
Granting additional pension	Whether to grant additional pension to an active member or within 6 months of ceasing to be an active member by reason of redundancy or business efficiency (by up to £6,675 p.a - figure at 1 April 2015)	R31	Employer	
Shared cost APCs	Whether, where an active Scheme member wishes to purchase extra annual pension of up to £6,675 (figure at 1 April 2015) by making Additional Pension Contributions (APCs), to (voluntarily) contribute towards the cost of purchasing that extra pension via a Shared Cost Additional Pension Contribution (SCAPC)	R16(2)(e) R16(4)(d)	& Employer	
	Whether to extend 30 day deadline for member to elect for a shared cost APC upon return from a period of absence from work with permission with no pensionable pay (otherwise than because of illness or injury, relevant child-related leave or reserve forces service leave)	R16(16)	Employer	

Our discretions policy template is available on [the Discretions page](#) of our website;

[Discretions - Cambridgeshire and Northamptonshire LGPS](#)



# What must I think about when writing the policy?

- **Cost:** almost every decision to not accept the minimum option and exercise your discretionary powers will come at a cost. It is advisable to get an estimate first
- **Discrimination:** when drafting your policy you must be sure it does not have any age related criteria or indirect sex discrimination. Think about ensuring fairness for all who may be affected.
- **Not Fettering:** we would recommend that rather than trying to cover absolutely every situation you have an overarching statement so that you still have the opportunity to exercise the discretions differently in different situations



Also consider....

**Loss of confidence in the public service!**

If policies are seen to favour or financially advantage particular individuals or groups of individuals in a way that is at odds with the financial circumstances of the employer, the population at large or may otherwise be seen as inappropriate, this could lead to a loss of confidence in the public service.

# An example of a compulsory discretion - Flexible Retirement

	<u>Discretion</u>	<u>Regulation</u>	<u>Exercised by</u>
Flexible retirement	Whether all or some benefits can be paid if an active member aged 55 or over and with at least 2 years qualifying service reduces their hours or grade (flexible retirement)	R30(6) & TP11(2)	Employer
Flexible retirement	Whether to waive, in whole or in part, actuarial reduction to benefits paid on flexible retirement	R30(8)	Employer (or Admin. Authority where Employer has become defunct)

Employer's discretions here are;

1. Whether the member are allowed for flexible retirement?
  2. If the members are allowed for flexible retirement, do you waive the early retirement reduction or not?
- Think about three key points, Cost (Financial implication), discrimination, and no fettering, when you are considering your approach

# An example of an recommended discretion

## Transferring in non LGPS pension rights – 12 month time limit

	<u>Discretion</u>	<u>Regulation</u>	<u>Exercised by</u>
Transferring in non LGPS pension rights	Extend normal time limit for acceptance of a transfer value beyond 12 months from joining the LGPS	R100(6)	Employer and Admin. Authority

- Employer's discretion here is, whether to accept the transfer in of non-LGPS pension rights to the LGPS outside 12 months time limit.
- This is not compulsory to formulate policy from the regulations, but it is advisable to formulate and include in your policy – comes up very often in the members' enquiries.
- Cost / Financial implication – at the time of transfer in, the service bought by the transfer within the LGPS is fully funded, but what about in the future? A potential risk to the employer as well as the Fund could be higher (at possible redundancy retirement? In adverse market condition?).
- Administrating Authority also have this discretion.
- No fettering – there could be some circumstance beyond the member's control (mal-administration etc)

# Can't I just copy the lead Council's policy??

- Not a good idea! Unless you want it to cost you money!
- The lead Council is often the biggest employer in the Fund with very different membership demographics and funding levels
- Formulate your own policy based on your own membership base and budgetary constraints, for no surprises later!



# How do I produce a policy?

## Make decisions

- For each discretion you should make a decision on what your normal approach will be for dealing with requests.

## Get approval

- This approach should then be formalised through whatever your decision making process is; for example, by committee, or by an Officer with delegating authority.

## Write policy

- Best practice is to keep the wording as simple as possible.
- Using bullet points would help to list the criteria and say clearly what you normally will, and will not, do.
- Make your normal approach clear, but give yourself leeway to allow for certain circumstances.

## Distribute

- Send a copy to your pensions administrator within one month following approval/revision
- Publish for members to access - ideally on a website

## What if I want to change my policy?

- Changing how you wish to apply a discretion is fine, as long as you have gone through the appropriate channels to do so and you publish the amended policy
- You should periodically review your discretions policy (at least annually), remembering to provide your pensions administrator with an updated copy within one month of the change
- You need to ensure your staff are aware of any changes you make

## Requests from members

- Make sure you fully understand what exactly the member is asking.
- Make sure you fully understand the scope of the discretion to be exercised
- Seek guidance regarding any costs to making this decision – **get an estimate!**





## Documenting your decision

- Gathering information is a very important stage in making the decision of whether or not to agree to a member's request. We have found that without this stage any appeals are likely to be found against you
- Give the member the opportunity to provide you with evidence to support their case
- Explore if there is any internal support to help with the case



Once you've agreed to exercise a discretion.....

- **Provide the member** with the 'Checking and Disputing your Employer's Decision' factsheet

- **Provide Pensions Service** with Notification of Employer Decision EMPLOYDEC form (alongside the Leaver Certificate)



Both documents are available on [the Forms, booklets and factsheets page](#) of our website under the sub-heading 'Discretions'

# Where can I find out more?

See the discretions page including compulsory and recommended discretions which we keep up to date on our website:

<http://pensions.cambridgeshire.gov.uk/index.php/employers/discretions/>

<http://pensions.northamptonshire.gov.uk/index.php/employers/discretions/>

# Contact details

## Employer's Team

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Any questions?

