

North York Moors National Park Authority Finance, Risk, Audit and Standards Committee

1 September 2014

Local Government Pension Scheme Regulations

1. Purpose of the Report

- 1.1 To seek Members' approval for the Authority's updated policy regarding the discretionary payments that may be made to staff under Pension Scheme Regulations.

2. Background

- 2.1 Staff employed by North York Moors National Park Authority are entitled to join the Local Government Pension Scheme (LGPS). The North Yorkshire Pension Fund is part of the LGPS and is administered by North Yorkshire County Council (NYCC). This Authority, together with many other small public organisations in the area, is a member of the North Yorkshire Pension Fund.
- 2.2 LGPS rules allow each Authority a certain amount of discretion regarding access to the scheme, payment of benefits and so on. Members previously approved policies regarding Discretion Payments in February 2007 and September 2009. Following the changes to the LGPS that took place in April 2014, North Yorkshire Pension Fund has advised that the policy should be reviewed and updated.

3. Proposals

- 3.1 The draft discretionary documents are attached as **Appendix 1**. The discretions are based on those currently used by NYCC. This opportunity has also been used to clarify which elements of individual staff members' pay is subject to pension contributions. This is detailed in **Appendix 2**.

4. Financial and Staffing Implications

- 4.1 There are no significant changes to the financial or staffing positions resulting from the proposals contained in this report.

5. Sustainability Appraisal

- 5.1 A Sustainability Assessment is not required because the report is an Administrative report.

6. Legal Implications

- 6.1 There are no significant legal implications to the issues outlined in this report.

7. Recommendation

- 7.1 That: Members approve the draft discretionary policies detailed in **Appendix 1** and note the pensionable pay in **Appendix 2**.

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Background documents to this report

File Ref.

1. None

North York Moors National Park Authority Statement of Policy

LGPS Employer Discretion Policy With effect from 1 April 2014

This document incorporates the North York Moors National Park Authority's (NPA) under the following LGPS Regulations as at 1st April 2014. For ease of reference, each discretion in this document is marked 'Ref R', 'Ref TP' etc. to correspond with the relevant Regulation.

Ref 'R'	<i>The Local Government Pension Scheme 2013</i>
Ref 'TP'	<i>The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014</i>
Ref 'A'	<i>The Local Government Pension Scheme (Administration) Regulations 2008</i>
Ref 'T'	<i>The Local Government Pension Scheme (Transitional Provisions) Regulations 2008</i>
Ref 'B'	<i>The Local Government Pension Scheme (Benefits, Membership and Contributions Regulations (as amended) 2007 (to include amendments contained in the Local Government Pension Scheme (Miscellaneous) Regulations 2012)</i>
Ref 'L'	<i>The Local Government Pension Scheme Regulations 1997 (as amended)</i>
Ref 'OT'	<i>The Local Government Pension Scheme (Transitional Provisions) Regulations 1997 (as amended)</i>
Ref 'IA'	<i>The Local Government (Discretionary Payments) Regulations 1996 (as amended)</i>

The following is a statement of the NPA's policy on the exercise of discretions under the Local Government Pension Scheme Regulations (as detailed above). The policy represents clear guidance on the exercise of any particular discretion.

The decision maker retains the right to deviate from the policy in exceptional circumstances. The NPA retains the right to amend these policies at any time. The policies confer no contractual rights. The policy in force at the time of a relevant event occurring will be the one that is applied.

Regulation	Discretion	Policy
20(1)(b) (Ref R)	<p>An employer can specify in an employee's contract what other payments or benefits, other than those specified in regulation 20(1)(a) and not otherwise precluded by regulation 20(2), are to be pensionable.</p> <p>The employee's pay is "all the salary, wages, fees & other payments paid to him/her for his/her own use in respect of his/her employment". The employer may opt to specify in an employee's contract any other payment or benefit that may be pensionable, excluding the following items which are not deemed pensionable under the Regulation:</p> <ul style="list-style-type: none"> ◆ Expenses (travel, subsistence, other expenses allowances) ◆ Payments in lieu of notice of termination ◆ Payment in consideration of holidays ◆ Payments made as an inducement not to terminate employment ◆ Any amount treated as the money value for the provision of a motor vehicle or any amount paid in lieu of such a provision 	<p>NPA reserves the right to specify what, if any, other payments or benefits are to be pensionable in accordance with the Regulations and will automatically include "detriment" or "protected" pay as pensionable pay.</p> <p>See Appendix 1 for NPA guidance on pensionable and non-pensionable pay</p>
30(8) (Ref R)	<p>Whether to waive, in whole or in part, actuarial reduction on benefits paid on flexible retirement</p>	<p>NPA will not waive any actuarial reduction on benefits paid on flexible retirement. All applications for flexible retirement will be considered in line with the process and criteria set out in the Early Retirement Policy.</p>
30(8) (Ref R)	<p>Whether to waive, in whole or in part, actuarial reduction on benefits which a member voluntarily draws before normal pension age</p>	<p>NPA will not waive any actuarial reduction on benefits paid which a member voluntarily draws before normal pension age</p>
Sch 2 Paras 1(2) and 2(2) (Ref TP)	<p>Whether to "switch on" the 85 year rule for a member voluntarily drawing benefits on or after age 55 and before age 60.</p>	<p>NPA will not switch on the 85 Year Rule for any employee voluntarily drawing benefits on or after age 55 and before age 60</p>
3(1), Sch 2, paras 2(1) and 2(2) (Ref TP) 30(5) and 30A(5) (Ref B)	<p>Whether to waive any actuarial reduction on pre and/or post April 2014 benefits on compassionate grounds</p>	<p>NPA will not waive any actuarial reduction and pay any pension strain costs arising out of voluntary early retirement or flexible retirement</p>
30A and 30(5) (ref B)	<p>To waive, on compassionate grounds, any actuarial reduction that would otherwise be applied to benefits paid early.</p> <p>The employer may determine on compassionate grounds that a members' retirement pension and grant should not be reduced if paid early under Regulation 30(A)</p> <p>NOTE: This discretion only applies to those members who have left employment on or after 01.04 2008 and before 01.04.2014. A deferred pension brought into early payment on compassionate grounds cannot be reduced.</p> <p>Where a tier 3 ill health retirement pension has been paid and subsequently ceased, LGPS member becomes a 'deferred Pensioner' who has ceased to be employed by NPA and is not receiving payment of benefits. He or she may seek early release of pension benefit from age 55 (as preserved benefits into payment) on compassionate grounds.</p>	<p>Applications from deferred Pensioners will only be considered on compassionate grounds, taking into account the costs of waiving any reduction. All applications will be considered by the relevant Director and the Chief Executive.</p>

22(7)(b) (Ref R)	Where an active member has previous LGPS service, they may elect to aggregate this with their ongoing service within twelve months of becoming an active member, or "such longer period as their employer may allow".	NPA will permit aggregation within 12 months only.
31 (Ref R)	From 1 st April 2014, the employer has the authority to grant additional pension to a member by up to £6,500 per annum.	NPA will not grant additional pension to a member
15(1)(b) (Ref TP) 66(8) (Ref L) 66(9)(b) (former Ref L)	<p>A scheme member who wishes to elect to convert In House AVC's into a period of scheme membership must do so within 30 days of ceasing to be an active member "or such longer period as the employer may allow".</p> <p>The legislation states that an employee must make an election within 30 days of retiring if he wishes to transfer his AVC benefits into the LGPS. The employing authority may allow the member to make this election beyond 30 days of retiring.</p>	NPA will extend the 30 day deadline if there is evidence of administrative shortcomings.
16(2)(e) and 16(4)(b) (Ref R)	<p>Whether, how much, and in what circumstances to contribute to a shared cost APC / AVC scheme</p> <p>If a scheme member wishes to buy more pension, he/she can do this through either an Additional Pension Contribution (APC) or an Additional Voluntary Contribution (AVC). There is a discretion as to whether the employer wishes to share the cost of an APC or AVC or buy additional pension for employees through an Employer APC or AVC</p>	<p>NPA will contribute to Shared Cost APC Schemes only when an employee has opted to buy back 'lost' pension due to a period of authorised unpaid leave (including sickness and child related leave) within 30 days of returning to work from that leave. In these circumstances, the employee will pay one third of the cost of the Shared Cost APC and the employer will pay two thirds of the cost</p> <p>Other than the circumstances above, NPA will not enter any Shared cost APC/AVC arrangements</p>
19(2) (RefR)	<p>A scheme member who meets the normal criteria for a refund of pension contributions is not entitled to such a refund if he/she ceased employment due to an offence of a fraudulent character or due to grave misconduct unless the employer directs that a total or partial refund may be made.</p> <p>The employer may over rule the LGPS legislation and pay a refund of contributions to a member who is entitled to a refund had they simply resigned but who instead was dismissed due to an offence of a fraudulent character or due to grave misconduct.</p>	NPA will consider whether or not to make a refund based on the merits of each case and in light of advice from Internal Audit.
91 (1)and (8) (Ref R)	<p>If a scheme member is convicted of, and ceases employment as a result of, an offence in connection with his/her employment which was gravely injurious to the state or liable to lead to a serious loss of confidence in the public service, the employer can apply to the Secretary of State or the Office of the Deputy Prime Minister for the issue of a forfeiture certificate. If the Secretary of State issues a certificate the employer may direct that certain of the person's rights are forfeited.</p> <p>The employing authority may apply to remove the member's entitlement to receive his pension.</p>	NPA will consider whether or not to apply for and enact a certificate based on the merits of each case and in light of advice from Internal Audit.
92 (1)and (2) (Ref R)	<p>Where the Secretary of State has issued a forfeiture certificate but the employer has not applied the certificate, nor notified the scheme member of an award of benefits under the LGPS, the employer may direct that interim payments are made out of the Pension Fund until such time as it decides to apply the forfeiture certificate or to make an award of benefits.</p> <p>The employer may instruct the pension fund to pay the pension until a decision is taken by the employer to forfeit the pension.</p>	NPA will not direct that interim payments are made from the Fund pending a decision.

<p>91 (4) (Ref R)</p>	<p>Where a member (i) ceases employment in consequence of a criminal, negligent or fraudulent act or omission in connection with that employment and (ii) has incurred a monetary obligation arising therefrom to the employer and (iii) is entitled to pension benefits under the LGPS, the employer may recover the amount of the monetary obligation or the value of the member's pension rights, if less, other than transferred in pension rights, from the Pension Fund and reduce the member's benefits accordingly.</p> <p>If member dismissed due to a criminal, negligent or fraudulent act in connection with his employment and it costs the employer money, the employer may recover the outstanding amount from the member's benefits. If the pension entitlement is below the amount owed the employer may recover the full value of the pension benefits. If the pension benefit is not due to be brought into payment immediately then this amount may be noted and deducted from the pension at a later date. The employer may only recover local government benefits, not benefits transferred in from another approved scheme.</p>	<p>NPA will consider whether or not to recover and reduce benefits accordingly based on the merits of each case and in light of advice from internal audit.</p>
<p>93(2) and (Ref R)</p>	<p>Where</p> <ul style="list-style-type: none"> (i) a member ceases employment in consequence of an offence involving fraud or due to grave misconduct in connection with that employment, and (ii) the employer has suffered a direct financial loss resulting therefrom, and (iii) the member is entitled to benefits under the LGPS and a forfeiture certificate has been applied, or the member is entitled to a refund of pension contributions <p>the employer may direct that the amount of the direct financial loss, or the refund of contributions if less, be recovered from the Pension Fund.</p> <p>Virtually as 91 above, but with the issue of forfeiture certificate the money is recovered by the pension fund, not the employer.</p>	<p>NPA will consider whether or not to recover and reduce benefits accordingly based on the merits of each case and in light of advice from internal audit.</p>
<p>95 (Ref R)</p>	<p>Whether, if the member has committed treason or been imprisoned for at least 10 years for one or more offences under the Official Secrets Acts, forfeiture under R91 or recovery of a monetary obligation under R93 should deprive the member or the member's surviving spouse or civil partner of any GMP entitlement</p>	<p>NPA will consider each case on its merits.</p>
<p>100(68) (Ref R)</p>	<p>If a scheme member wishes to transfer pension rights into the NYPF from a non-local government source, he/she must opt to do so within 12 months of joining the LGPS "or such longer period as the employer may allow".</p> <p>With effect from 1st April 2014, this regulation also includes any AVC arrangements dated prior to membership of the North Yorkshire Pension Fund</p> <p><i>Note: It is common practice in pension schemes (eg the NHS) to only allow transfers into a scheme within the 1st year of the member joining the scheme. This is because it is more beneficial for the member as the member's salary is usually lower upon joining the scheme than in later years resulting in increased years bought. In addition the money transferred in may be used for investment over a longer period of time.</i></p> <p>For previous LGPS membership with an employer other than NPA, various inter fund transfer regulations apply.</p>	<p>NPA will allow members to opt to transfer pension rights beyond the 12 month period if there is evidence of administrative shortcomings.</p> <p><i>The Administering Authority will provide guidance on individual queries but must be contacted within the 12 month period above.</i></p>

<p>3(6), 4(6)(c), 8(4), 10(2)(a), 17(2)(b) (Ref TP) and 11(2) (Ref B)</p>	<p>Whether to allow a member to select final pay period for fees to be any 3 consecutive years ending 31st March in the 10 years prior to leaving</p>	<p>NPA will allow members to so choose.</p>
<p>9(1) and 9(3) (Ref R)</p>	<p>From 1 April 2014 Banded Contribution rates for employees will be based on actual pensionable pay received.</p> <p>Employers to assess the relevant contribution band to determine the rate of employee contribution.</p> <p>Note: LGPS 2014 allocates contribution bands based on actual pay received, and not on whole time equivalent pay as was used in the LGPS 2008 Regulations</p>	<p>On 1st April each year, NPA will allocate the appropriate band for all members' pensionable pay based on the previous years' pensionable pay and include incremental progression and cost of living increases where known as at 1 April . This will not change during the financial year unless there is a post change. For new posts commencing during the year, their band will depend on starting salary.</p> <p>Only permanent changes to pensionable pay will result in re banding.</p> <p>If members have variable or nil hours contracts, the relevant band will be based on an assessment of the total pensionable pay received in the previous year. For new variable or nil hours posts, banding will be by reference based on the whole time equivalent of the salary, and reviewed 6 months after appointment so as ensure the correct band has been allocated (based on total pensionable pay in the first 6 months after appointment). If any member believes this would be inaccurate, they should ask their Line Manager to contact the Employment Support Service for further information.</p>
<p>12(6) (Ref TP)</p>	<p>From 1st April 2008, regulations introduced tiered ill health retirement and this continues under LGPS 2014. If an employer determines, in the case of a qualifying active member:-</p> <p>(a) To terminate his employment on grounds that his ill health or infirmity of mind or body renders unlikely to be capable of discharging efficiently the duties of his current employment</p> <p><u>And</u></p> <p>(b) That he unlikely to be capable of obtaining any gainful employment before his normal retirement age,</p> <p>They shall agree to his retirement pension coming into payment before his normal retirement date and decide whether Tier 1, 2 or 3 payments are payable</p>	<p>NPA will be guided by the recommendation of an Independent Registered Medical Practitioner (IRMP).</p>
<p>38(3) (Ref R)</p>	<p>Employer to decide whether deferred beneficiary meets permanent ill health criteria</p> <p><i>Note: Scheme members who have left employment and are entitled to preserved benefits may obtain access to the payment of their pension benefits early on ill health grounds. The IRMP will be asked to certify that the employee, who has left a local government employment before he is entitled to the immediate payment of retirement benefits, has become permanently incapable of discharging efficiently the duties of that employment because of ill health or infirmity of mind or body.</i></p> <p>No enhancement to the service will apply where preserved benefits are being bought into payment on ill health grounds.</p>	<p>NPA will be guided by the recommendation of an Independent Registered Medical Practitioner (IRMP)</p> <p>Applications from former employees with deferred benefits will be managed by former Service; the Service is responsible for referring the former employee to the Independent Registered Medical Practitioner (IRMP) via the Health and Wellbeing Service and notifying the former employee of the outcome of the application. Payment of pension benefits will commence from the date of the employee's letter requesting that the preserved benefits be brought into payment.</p>
<p>38(6) (ref R)</p>	<p>To grant an application for reinstatement of a suspended tier 3 ill health pension on or after age 55 and before age 60</p> <p>Where a tier 3 ill health retirement pension has been paid and subsequently ceased, LGPS member becomes a 'deferred Pensioner' who has ceased to be employed by</p>	<p>NPA will be guided by the recommendation of an Independent Registered Medical Practitioner (IRMP).</p> <p>See above</p>

	<p>NPA and is not receiving payment of benefits. He or she may seek further Ill Health Retirement benefit payments (as preserved benefits into payment) on an unrelated medical condition.</p> <p>See above</p>	
<p>6(3) (Ref T) 42(4) (Ref L) 9 (Ref OT)</p>	<p>Whether to accept (late) elections after 31.3.1998 from members who want to count membership between 1.4.72 and 5.4.88 for widower's pensions.</p> <p>If late election is allowed, the employer must pass a resolution, within 6 months of agreeing to accept the election, to state that the membership will count for widower's pensions</p>	<p>NPA will extend the deadline where there is evidence of administrative shortcomings.</p>
<p>17(3) (Ref OT)</p>	<p>Whether to extend time limit for repayment of a previous refund during the period 1.4.74 and 31.12.79</p>	<p>NPA will extend the time limit where there is evidence of administrative shortcomings</p>
<p>Reg 8 (SI 2006/966)</p>	<p>Whether to recover employee contributions that had been reduced or waived after 40 years' pensionable local government service</p>	<p>NPA will not seek to recover such contributions</p>
<p>Reg 33 to 38 Ref (IA)</p>	<p>Whether to award an injury allowance following loss of employment or reduction in pay or death in service through permanent incapacity after sustaining an injury or contracting a disease as a result of anything he or she was required to do in carrying out duties of job.</p>	<p>NPA will consider each case on its merits using the criteria and guidance referred to in Appendix 4 'Injury Award Scheme'.</p>
<p>98 (1)(b) (Ref R)</p>	<p>Whether to agree to bulk transfer payment where two or more members' active membership ends on their joining a registered non local government scheme</p>	<p>NPA will consider whether or not to agree on the merits of each case after consideration with the Administering Authority and after having taken appropriate actuarial advice.</p>

Pensionable Pay

When is pay pensionable under the Local Government Pension Scheme Regulations?

LGPS 2014 covers what elements of pay are pensionable and, as importantly, what aren't.

This is therefore a good opportunity to set out categories of pay and awards available to NPA employees and whether or not they are pensionable under the LGPS regulations.

Pensionable payments are included in the total 'pay' figure each year on which both the employee and the employer pay pension contribution. Where appropriate, pensionable pay is taken into account for the final salary figure when calculating retirement benefits (for pension benefits built up until 31 March 2014). LGPS 2014 is not a final salary scheme, and therefore pension benefits based on contributions paid on pensionable pay is built up each year and revalued in line with CPI so as to retain its value up until retirement.:-

What is pensionable pay?

<i>Pensionable</i>	<i>Non Pensionable</i>
Salary Market supplement payments Protected pay Acting up payments Honoraria payments for additional temporary duties Accelerated incremental progression Additional hours/overtime Maternity/Paternity Keeping in Touch pay	Recruitment payments Expenses (e.g travel/subsistence) Cycle allowance Telephone rental payments

Additional Hours/Overtime

For LGPS purposes, 'additional hours' includes all hours worked above the normal contractual hours of the individual employee. Also any employee with a 'nil hours' contract where **all** hours worked are pensionable.

Other Working Arrangements

With variable hours' contracts, e.g. between 5 and 15 hours per week, pensionable pay will apply to all hours worked.

Also, with annualised hours' contracts, pensionable pay will be payable on all hours worked.

For any queries on pensionable pay, contact Ian Nicholls i.nicholls@northyorkmoors.org.uk or ext 2502