

Local Government Pension Scheme (LGPS)

LGPS Discretions Policy Statement

Background

Regulation 60 of the LGPS Regulations 2013 and paragraph 2(2) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 say that a Scheme employer must prepare and publish a written statement of its policy in relation to the exercise of its functions under these regulations. There are similar requirements in respect of the LGPS 2008 and 1997 regulations regarding benefits accrued under the legacy 'final salary' schemes.

The council's current Discretions Policy Statement (the 'Statement') was approved by Appointments Committee in July 2014 and is published on the GCC website.

What's changing, and why?

Since publication of the previous Statement in 2014 there have been various decisions from the Pensions Ombudsman and courts relating to the exercise by employers of discretions available to them under the various public sector schemes. Advice from the LGA regarding these developments suggests an employer may be vulnerable to challenge if:

1. The employer's policy in relation to a discretion that is available under the scheme rules may be construed as an unreasonable 'fetter on discretion' (i.e. potentially unlawful) if expressed as a pre-determined outcome.
2. The employer does not give any indication of the type of circumstances in which an available discretion may be exercised.

A number of the provisions under our currently published Statement are potentially vulnerable to challenge in respect of one or both of the above. The Statement has therefore been revised to include appropriate caveats.

An indication of the type of situation in which discretion may be exercised has also been included by way of example. The following standard wording has been used for this purpose:

“... unless exceptional circumstances apply and it is in the County Council’s economic and/or operational interests to do so, as detailed in a business case. This might, for example, be to redress a situation in which the member would otherwise suffer loss as a result of employer error or other maladministration”.

The above standard wording would therefore potentially apply to circumstances where it is agreed that:

1. an employer’s error (or other maladministration) has occurred;
2. the member will suffer a loss as a result of the employer’s error; and
3. exercise of the discretion by the employer will remedy what would otherwise be an unfair loss to the employee.

Of the 14 sections of the DPS sections 3, 6, 8 and 10 are not affected and therefore remain unaltered. The other sections have been modified to incorporate the above amendments.

On the basis of the above the Appointments Committee is requested to approve the recommended revisions to the wording. As required under the regulations the revised Statement will be uploaded to the council’s website to replace the existing version and a copy will be forwarded to the Gloucestershire LGPS Administering Authority.

Nick Lerry

Human Resources

24th February 2021