

CITY OF YORK COUNCIL STATEMENT OF POLICY

LGPS EMPLOYER DISCRETION POLICY With effect from 1st April 2014

This document incorporates the City of York Council policies 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 City of York Council's (CYC) 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. CYC retain 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
<p>20(1)(b) (Ref R)</p>	<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>CYC 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 CYC guidance on pensionable and non pensionable pay</p>

<p>30(8) (Ref R)</p>	<p>Whether to waive, in whole or in part, actuarial reduction on benefits paid on flexible retirement</p>	<p>CYC will not waive any actuarial reduction on benefits paid on flexible retirement.</p>
<p>30(8) (Ref R)</p>	<p>Whether to waive, in whole or in part, actuarial reduction on benefits which a member voluntarily draws before normal pension age</p>	<p>CYC will not waive any actuarial reduction on benefits paid which a member voluntarily draws before normal pension age</p>
<p>Sch 2 Paras 1(2) and 2(2) (Ref TP)</p>	<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>CYC will not switch on the 85 Year Rule for any employee voluntarily drawing benefits on or after age 55 and before age 60</p>
<p>3(1), Sch 2, paras 2(1) and 2(2) (Ref TP) 30(5) and 30A(5) (Ref B)</p>	<p>Whether to waive any actuarial reduction on pre and/or post April 2014 benefits on compassionate grounds</p>	<p>CYC will not waive any actuarial reduction and pay any pension strain costs arising out of voluntary early retirement or flexible retirement</p>
<p>30A and 30(5) (ref B)</p>	<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>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 Head of Paid Service and Section 151 Officer.</p>

	<p>NOTE: <i>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.</i></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 CYC 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>	
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".	CYC will permit aggregation beyond 12 months.
31 (Ref R)	From 1st April 2014, the employer has the authority to grant additional pension to a member by up to £6,500 per annum.	CYC will not grant additional pension to a member
15(1)(b) (Ref TP) 66(8) (Ref L) 66(9)(b) (former Ref L)	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".	CYC will extend the 30 day deadline if there is evidence of administrative shortcomings.

	<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>	
<p>16(2)(e) and 16(4)(b) (Ref R)</p>	<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><i>CYC 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</i></p> <p><i>Other than the circumstances above, CYC will not enter any Shared cost APC/AVC arrangements</i></p>
<p>19(2) (RefR)</p>	<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>	<p>CYC will consider whether or not to make a refund based on the merits of each case and in light of advice from Internal Audit.</p>

<p>91 (1)and (8) (Ref R)</p>	<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>	<p>CYC will consider whether or not to make a refund based on the merits of each case and in light of advice from Internal Audit.</p>
<p>92 (1)and (2) (Ref R)</p>	<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>	<p>CYC will not direct that interim payments are made from the Fund pending a decision.</p>

91 (4)
(Ref R)

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.

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.

CYC 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>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>CYC 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>CYC 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><i>For previous LGPS membership with an employer other than CYC, various inter fund transfer regulations apply.</i></p>	<p>CYC will allow members to opt to transfer pension rights beyond the 12 month period only if there is evidence of administrative shortcomings. See Appendix 3 for guidance</p> <p>The Administering Authority will provide guidance on individual queries but must be contacted within the 12 month period above.</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>CYC 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>CYC will allocate the appropriate band for all members' pensionable pay (to include casuals) based on each monthly pensionable salary pay figure. The percentage could potentially change on a monthly basis.</p> <p>The relevant banding rate at the end of the year will correspond with the annual pensionable pay figure.</p> <p>CYC have agreed to review the pensionable pay earnings quarterly for members to ensure the correct banding rate is allocated.</p>
<p>12(6) (Ref TP)</p>	<p>From 1st April 2008, regulations introduced tiered ill health retirement and this continues under LGPS 2014.</p> <p>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>CYC will be guided by the recommendation of an Independent Registered Medical Practitioner (IRMP).</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>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 brought into payment on ill health grounds.</p>	<p>CYC 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 Occupational Health 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 CYC 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. See above</p>	<p>CYC will be guided by the recommendation of an Independent Registered Medical Practitioner (IRMP)</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>CYC 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>CYC will extend the deadline 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>CYC 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>CYC will not grant any awards</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>CYC 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>

Note

Unless otherwise stated, the application of these discretions will be in accordance with the Officers Delegation Scheme with advice from the Director of Customer and Business Support Services – who is accountable for the proper and consistent application of this policy on behalf of CYC.