

LONDON BOROUGH OF HACKNEY
STATEMENT OF EMPLOYING AUTHORITY
DISCRETIONS POLICIES

(AS AN EMPLOYER IN THE
LONDON BOROUGH OF HACKNEY PENSION FUND - LGPS)



Employing Authority Statement of Policy on Discretions – effective 11 October 2018

Introduction

Hackney Council, as an employing authority in the London Borough of Hackney Pension Fund, has determined their discretionary policies in accordance with the Local Government Pension Scheme Regulations 2013 (as amended) and related legislation, and these are outlined in this statement. We will apply these policies to all current members in the Pension Fund who are employed by Hackney Council. Where relevant, these policies equally apply to members who left pensionable service prior to 1 April 2014 (albeit only in relation to discretions exercised since the effective date of these policies), to councillor members and to pension credit members.

We reviewed and updated the content of these policies in line with current legislation. These amended policies were approved by the Council's Corporate Committee on 10 October 2018 and are effective from 11 October 2018 unless stated otherwise within this statement.

We retain the right to change these policies at any time as long as we republish the amended policy at least within one month of when the change(s) we are introducing come(s) into effect.

These policies do not give, nor shall they be deemed to give, any contractual rights to any member of the Pension Fund, or to any other person whatsoever. Nothing in this document will cause Hackney Council's capacity to exercise its discretionary powers to be unlawfully fettered or restricted in any way.

We will exercise these discretions in line with the provisions of the various LGPS Regulations and other legislation. Nothing within this statement can overwrite the legal requirements within those provisions.

We will review the policies within this statement as required in the light of future changes to the LGPS legislation or other relevant legislation. It will also be reviewed at least every 3 years.

Employing Authority Discretions under the Local Government Pension Scheme

Key to changes

- **New discretion/policy or an existing provision that was not previously included**
- **Change to existing policy – explained in final column**

Ref	Regulation Reference (see key at end)	Description of Discretion	London Borough of Hackney Employer Policy	Description of Change where applicable
<i>Disputes</i>				
1	R13 - 74	Each employer must appoint a person for dealing with applications under stage one of the dispute resolution procedures.	Except in ill-health cases, the Head of Pensions Administration acts as the stage one adjudicator to consider and determine whether or not the scheme member was treated within the terms of the LGPS regulations. Where the Head of Pensions Administration has previously been involved in the case, the Head of Pension Fund Investments will carry out this role. Where the appeal relates to ill-health, the 3 rd party pension administrators, Equiniti, will carry out the stage one adjudicator role.	<i>Change in decision maker</i>

Ref	Regulation Reference (see key at end)	Description of Discretion	London Borough of Hackney Employer Policy	Description of Change where applicable
<i>Contributions and Pay</i>				
2	R13 – 9(1) and 9(3)	Determination of annual contribution rate to be paid by active members by reference to pay band and how those rates are to be reassessed.	Please see our separate Employee Contributions Policy.	
3	R13 – 20(1)(b)	Whether any benefit specified in an employee's contract should be treated as a pensionable emolument.	We do not treat any contractual benefits as pensionable emoluments other than those specified by R13 – 20(1)(a).	Amended to clarify Hackney policy to be unambiguous
4	R13 – 21(5)	For certain periods of absence on reduced pay, benefits are calculated using "Assumed Pensionable Pay" (APP). Where a lump sum has been paid in the previous 12 months, the APP figure may be increased if there is a reasonable expectation that the lump sum would be paid on a regular basis.	Only permanent, recurring, non-variable payments will be used to increase the APP.	
5	R13 – 21(5A)	Where APP applies, regulation 21(4) sets out how APP is calculated. Where the outcome of the prescribed calculation is, in the employer's opinion, materially lower than the actual level of pensionable pay the member would normally receive had they been at work, the employer may substitute a higher level of pensionable pay than the APP value.	The APP will, in such cases, be increased to reflect the level of pay the member would normally have received. This will usually be based on the pensionable pay received by the member in the previous 12 months.	New

Ref	Regulation Reference (see key at end)	Description of Discretion	London Borough of Hackney Employer Policy	Description of Change where applicable
6	TP14 – 3(6), 4(6)(c), 8(4), 10(2)(a) and 17(2)(b) B - 11(2)	Whether to allow a member to select their final pay period, where their pay consists of fees.	Where a scheme member's final pay consists of fees then the most advantageous final pay period as permitted by the relevant regulations will be used for the calculation of benefits, unless the member specifies otherwise.	Amended to refer to member selecting their own final pay period
7	TP14 - 3(1)(a) T08 – Sch1 R97- 23(4)	Whether to issue a certificate of protection of pension benefits where eligible non-councillor member fails to apply for one (pay reduction / restrictions occurring pre 1 April 2008).	The Head of Pensions Administration will decide whether to extend the period for election in exceptional circumstances on a case by case basis.	Minor amendment to Regulation reference and Change in decision maker
8	R13 – 17(1) and Sch1 TP14 – 15(1)(d) A - 25(3) B- 15(3)	Whether to establish and maintain a shared cost Additional Voluntary Contributions (SCAVC) arrangement to receive contributions by both employee and employer.	We will not establish or pay towards a SCAVC.	

Ref	Regulation Reference (see key at end)	Description of Discretion	London Borough of Hackney Employer Policy	Description of Change where applicable
9	R13 – 16(2)(e) and 16(4)(d)	<p>Whether to pay towards some or all of an Additional Pension Contract (APC) where a scheme member elects to buy up to £6,822* of annual pension.</p> <p><i>*note that this amount increases each year in line with inflation so the policy should be read as if the current valid amount is stated</i></p>	<p>We will only contribute to an APC where it is entered into in order to purchase pension lost due to a period of unpaid leave with permission (other than leave due to illness or injury, relevant child-related leave or reserve forces service leave), and where the election to buy back the lost pension was made within 30 days or such longer period as London Borough of Hackney may allow (see below).</p>	<p><i>Amended to update maximum APC amount and to update Hackney policy to be unambiguously clear on position</i></p>
10	R13 – 16(6)	<p>Whether to extend the 30 day deadline for a member to elect for a shared cost APC upon return from a period of absence from work with permission with no pensionable pay (other than leave due to illness or injury, relevant child-related leave or reserve force service leave).</p>	<p>We will generally <u>not</u> extend the 30 day deadline, except in exceptional circumstances which will be considered by the Head of HR & Electoral Services on a case by case basis.</p>	<p>New</p>
Enhancement of Benefits and Early Retirement				
11	R13 - 31	<p>Power to award additional pension to an active scheme member only or within 6 months of redundancy or leaving through business efficiency of not more than £6,822* per year.</p> <p><i>*note that this amount increases each year in line with inflation so the policy should be read as if the current valid amount is stated</i></p>	<p>We will not award additional pension to members of the scheme in any circumstance. Please also see our separate Termination on Redundancy or Business Efficiency Policy.</p>	

Ref	Regulation Reference (see key at end)	Description of Discretion	London Borough of Hackney Employer Policy	Description of Change where applicable
12	R13 – 30(6) and 30(8) TP14 – 11(2)	Flexible retirement – whether to consent to payment of benefits where there has been a reduction in hours or grade of post and whether to waive (in whole or in part) any actuarial reduction that would otherwise apply to those benefits.	Please see our separate Flexible Retirement Policy.	
13	R13 – 30(7)	Early payment of benefits on grounds of redundancy/business efficiency.	Please see our separate Termination on Redundancy or Business Efficiency Policy.	
14	R13 – 30(8)	Whether to waive, in whole or in part, any early retirement reduction that might otherwise apply to a scheme member's benefits on voluntary retirement. These provisions only apply to scheme members who have reached age 55 and also only have scheme membership after 31 March 2014.	We will not waive reductions unless the scheme member meets the criteria for compassionate grounds and, where this is so, such cases will be considered on a case by case basis in accordance with Appendix A.	Update Hackney policy to be unambiguously clear on position
15	TP14 – Sch 2, Paras 1(2) and 2(2)	Whether to allow rule of 85 protections to apply to a scheme member's benefits on voluntary retirement. In doing this some or all of the early retirement reduction would not apply. This provision can only apply to scheme members who have reached age 55.	We will not apply rule of 85 protections unless the scheme member meets the criteria for compassionate grounds and, where this is so, such cases will be considered on a case by case basis in accordance with Appendix A.	

Ref	Regulation Reference (see key at end)	Description of Discretion	London Borough of Hackney Employer Policy	Description of Change where applicable
16	<p>TP14 – 3(1), Sch 2, paras 2(1) and 2(2)</p> <p>B - 30(5) and 30A(5)</p> <p>R97 – 31(5)</p>	<p>Whether to waive any reduction to benefits that might otherwise apply. This can also apply to former Tier 3 Ill-Health members. In some circumstances there is no discretion to waive reductions where compassionate grounds do not apply.</p>	<p>We will not waive reductions unless the scheme member meets the criteria for compassionate grounds and, where this is so, such cases will be considered on a case by case basis in accordance with Appendix A.</p>	<p>Update Hackney policy to be unambiguously clear on position</p>
17	<p>R97 – 31(2)</p> <p>R95 - D11(2)(c)</p>	<p>Whether to consent to the early payment of retirement benefits for scheme members between age 50 and 55, who are deferred members and who left before 1 April 2008. For those who left on or before 1 April 1998 there is no discretion to release benefits where compassionate grounds do not apply.</p>	<p>We will not consent to the early payment of benefits prior to age 55 except on compassionate grounds where they will be considered on a case by case basis as detailed in Appendix A. It should be noted that payments made prior to age 55 will be subject to additional tax charges.</p>	<p>Amended to allow for regulation changes</p>

Ref	Regulation Reference (see key at end)	Description of Discretion	London Borough of Hackney Employer Policy	Description of Change where applicable
18	R13 – 35(1)	Where the independent registered medical practitioner (IRMP) certifies that a scheme member is permanently incapable of efficiently carrying out the duties of his/her employment, the employer may terminate the employee's employment and they will be entitled to ill-health retirement benefits.	The Ill Health Retirement Panel (consisting of the Head of HR and Electoral Services (or their representative) and the Head of Pensions Administration (or their representative)) will determine whether employment will be terminated on ill-health grounds and whether to award Tier 1, 2 or 3 ill-health benefits. When reviewing cases the Ill Health Retirement Panel will refer to the findings of the IRMP certificate and other available evidence to confirm if the scheme member meets the relevant requirements.	Change in decision makers
19	TP14 – 12(6)	Whether to use a certificate produced by an IRMP under the 2008 Scheme for the purposes of making an ill health determination under the 2014 Scheme.	We will not accept certificates produced under the 2008 Scheme for making a decision under the 2014 Scheme.	New
20	R13 – 37(3) and 37(4)	Determining whether a member receiving Tier 3 ill-health pension has started gainful employment, and whether to recover payments relating to the period of gainful employment.	Members in receipt of Tier 3 ill-health benefits will be asked to provide notification as soon as they commence gainful employment. Any payments made during a period of gainful employment will be recovered in full.	

Ref	Regulation Reference (see key at end)	Description of Discretion	London Borough of Hackney Employer Policy	Description of Change where applicable
21	R13 – 38(3) and 38(6) B - 31(4) and 31(7)	Decide whether a deferred member meets the criteria for permanent ill health. This also applies to a scheme member who was formerly in receipt of Tier 3 ill-health benefits.	The Deferred Ill Health Retirement Panel (consisting of the Head of HR and Electoral Services (or their representative) and the Head of Pensions Administration (or their representative)) will determine whether the criteria for permanent ill health has been met, taking account of the information within the IRMP medical certificate.	Change in decision makers
22	R97 – 31(7A)	Where a member opted out of the scheme before 1 April 2008 and has continued working in the same employment, whether to allow the member to draw benefits from their NRD if still working at that date.	We will generally allow the employee to draw their benefits at NRD, except in exceptional circumstances which will be considered by the Head of HR & Electoral Services on a case by case basis.	New
Transferring or Linking Benefits				
23	R13 – 22(8)(b) and 22(7)(b) TP14 – 10(6)	Whether to extend the 12 month option period for aggregation of deferred benefits in respect of former or concurrent periods of LGPS membership.	The Head of Pensions Administration may extend the period for election in exceptional circumstances and will decide on a case by case basis.	Regulatory reference updated and Change in decision maker

Ref	Regulation Reference (see key at end)	Description of Discretion	London Borough of Hackney Employer Policy	Description of Change where applicable
24	R13 – 100(6)	Whether to extend the 12 month time limit for scheme members to elect to receive a transfer from another non-LGPS pension scheme.	We expect scheme members to request all transfers within 12 months, and will only extend the 12-month time limit in exceptional circumstances where the scheme member can demonstrate the reason for their late request was outside of their control. Where there is evidence of administrative delays the member will be given 2 additional months from the receipt of complete information outlining the transfer options. The Head of Pensions Administration will determine any such requests.	<i>Change in decision maker</i>
25	TP14 – 15(1)(b) T08 – Sch 1 R97 – 66(8) and 66(9)(b)	In certain circumstances a scheme member can use their AVC fund to buy membership in the pension scheme. Such an election should be made within 30 days of leaving, but this time limit can be extended by the employer if they wish. This only applies to AVC contracts which commenced before 13 November 2001.	The Head of Pensions Administration may decide to extend the period for election in exceptional circumstances and will decide on a case by case basis.	<i>Change in decision maker</i>

Ref	Regulation Reference (see key at end)	Description of Discretion	London Borough of Hackney Employer Policy	Description of Change where applicable
<i>Other Miscellaneous Discretions</i>				
26	R13 – 19(2), 91(1) & 91(8), 91(4), 92(1) & 92(2), 93(2) and 95 A - 47(2), 72 to 76 R97 – 88(2), 111 to 115	Whether to claim monies from a scheme member's pension benefits in cases of fraud, misconduct and other similar situations or direct those monies to another person (subject to the meeting the criteria in the regulations).	The Head of Pensions Administration and the Head of HR and Electoral Services will jointly decide how to proceed on a case by case basis.	<i>Change in decision makers</i>
27	A – 49 R97 – 92	Whether to reclaim some state related payments (contribution equivalent premiums) from the Pension Fund.	We will not reclaim these payments from the Pension Fund.	
28	R13 – Sch 2, Part 3, para 12(c)	An admission agreement must include a provision allowing outstanding pension payments to be offset against contract payments due to the transferring employer. The transferring employer must consider whether it wishes to make use of this provision.	The Council will decide on any such cases as they arise to ensure that the Pension Fund receives payments in a timely manner in accordance with the Fund's Administration Strategy.	

Ref	Regulation Reference (see key at end)	Description of Discretion	London Borough of Hackney Employer Policy	Description of Change where applicable
29	R97 - 34(1)(b) R95 – D10	Decide in the absence from a pre 1 April 2008 leaver of an election from the member within 3 months of being able to elect, which benefit is to be paid where the member would be entitled to a pension or retirement grant under 2 or more regulations in respect of the same period of Scheme membership.	The Head of Pensions Administration will decide on a case by case basis which benefits are to be paid.	Change in decision maker

Employing Authority Discretions under Discretionary Compensation Provisions

Ref	Regulation Reference (see key at end)	Description of Discretion	London Borough of Hackney Employer Policy	Description of Change where applicable
30	D06 - 5	Whether to base redundancy payments on actual week's pay where it exceeds the statutory week's pay limit.	Please see our separate Termination on Redundancy or Business Efficiency Policy.	
31	D06 - 6	Whether to award lump sum compensation of up to 104 weeks' pay in cases of redundancy, termination of employment on efficiency grounds, or cessation of a joint appointment.	Please see our separate Termination on Redundancy or Business Efficiency Policy.	

Ref	Regulation Reference (see key at end)	Description of Discretion	London Borough of Hackney Employer Policy	Description of Change where applicable
32	D06 - 8	If a lump sum compensation overpayment is made to an employee under regulation 6 above (over and above any statutory redundancy payment), whether to take such steps as are appropriate to recover the overpayment.	The Head of Pensions Administration will consider the appropriate action to be taken in any such circumstances.	Change in decision maker
33	D00 - 17	Whether and to what extent to reduce or suspend the member's annual compensatory added years payment during any period of re-employment in local government.	We will reduce or suspend these payments in accordance with regulations	
34	D00 - 19 and 22(3)	How to reduce the member's annual compensatory added years payment following the cessation of a period of re-employment in local government. We can also choose to apply this to any spouses' or children's pensions.	We will reduce or suspend these payments in accordance with regulations. The reduction or suspension will be ignored when calculating spouses' or children's pensions.	
35	D00 - 21(4)	How to apportion any surviving spouse's or civil partner's compensatory added years payment where the deceased person is survived by more than one spouse or civil partner.	The Head of Pensions Administration will decide the appropriate apportionment on a case by case basis.	Change in decision maker
36	D00 - 21(5)	If suspension rules applied under 21(7) below, whether the spouse's annual compensatory added years payment should be reinstated after the end of the remarriage, new civil partnership or cohabitation.	Not applicable as no suspension applies.	

Ref	Regulation Reference (see key at end)	Description of Discretion	London Borough of Hackney Employer Policy	Description of Change where applicable
37	D00 - 21(7)	<p>Whether to suspend an annual compensatory added years payment in respect of the spouse or civil partner of a person who ceased employment before 1 April 1998, where the spouse or civil partner remarries or cohabits or enters into a civil partnership on or after 1 April 1998.</p> <p>Further, where the remarriage, cohabitation or civil partnership is with another person who is also entitled to a spouse's or civil partners annual compensatory added years payment, the normal rule requiring one of them to forego payment whilst the period of marriage, civil partnership or co-habitation exists, could be disapplied (i.e. whether the spouse's or civil partners' annual CAY payments should continue to be paid to both of them).</p>	<p>We will not suspend payments in these circumstances.</p>	
38	D00 - 25(2)	<p>How the employer will decide to whom any children's annual compensatory added years payments are to be paid where children's pensions are not payable under the LGPS (because the employee was not a member) and in such a case how the annual compensatory added years payments will be apportioned amongst the eligible children.</p>	<p>The Head of Pensions Administration will decide these matters on a case by case basis.</p>	<p>Change in decision maker</p>
39	D11- 3 to 7	<p>Whether to award injury allowances including on reduction in pay, loss of employment or death.</p>	<p>No injury allowances will be paid.</p>	

Ref	Regulation Reference (see key at end)	Description of Discretion	London Borough of Hackney Employer Policy	Description of Change where applicable
40	D96 – 40-42	Whether to award a gratuity including on retirement, redundancy or death.	The power to award gratuities was removed from the regulations with effect from 16 January 2012. Payments will be considered on a case by case basis for any employees who have a standing contractual arrangement to receive a gratuity payment.	

***Key to Regulation References:**

- R13 – The Local Government Pension Scheme Regulations 2013
- TP14 – The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014
- A – The Local Government Pension Scheme (Administration) Regulations 2008
- B – The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007
- T08 – The Local Government Pension Scheme (Transitional Provisions) Regulations 2008
- R97 – The Local Government Pension Scheme Regulations 1997
- R95 - The Local Government Pension Scheme Regulations 1995
- D06 – The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006
- D00 - The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000
- D11 – The Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011
- D96 – The Local Government (Discretionary Payments) Regulations 1996

*Note that references to old provisions (e.g. R97) generally apply in relation to scheme members who left under those provisions.

Appendix A – Criteria and Process for Payment of Benefits on Compassionate Grounds

We may consider the early payment of benefits on compassionate grounds or applying the rule of 85 for a former scheme member or active member who leaves employment. These will be considered on a case by case basis where the following criteria are met:

- The employee left employment to care for one or more dependants
- The dependant(s) require(s) constant supervision
- There is no recourse to alternative care
- Without the award of benefits, the former employee would be suffering severe hardship, and
- As a result of the need to provide care to the dependant(s), the opportunity for employment for the former employee is severely limited

Where the employee considers he or she can demonstrate that all of the above criteria are met, the Group Director, Finance and Corporate Resources and the Head of HR and Electoral Services will jointly consider the evidence available and then determine whether benefits should be paid on compassionate grounds. Any costs to the Fund that are incurred must be paid by the service/department where the employee was employed immediately prior to ceasing employment.