

<b><u>COMMITTEE:</u></b> <b>Pensions Committee</b>	<b>DATE:</b> <b>16 July 2014</b>	<b>CLASSIFICATION:</b> <b>Unrestricted</b>	<b>REPORT NO.</b>	<b>AGENDA NO.</b>
<b>REPORT OF:</b> <b>Acting Corporate Director of Resources</b> <b>ORIGINATING OFFICER(S):</b> <b>Simon Kilbey</b> <b>Service Head – Human Resources &amp; Workforce Development</b>		<b>TITLE:</b> <b>Updated exercise of discretions under the Local Government Pension Scheme</b>  <b>Ward(s) affected:</b> <b>N/A</b>		

### **Reason for Urgency**

Regulation 60 of the Local Government Pension Scheme Regulations 2013 requires the Council to prepare a written statement of its policy in relation to the exercise of its functions under the Regulations before 1 July 2014. This is the first opportunity available to meet the statutory requirement. As the statutory date for approval of the policy statement has passed it is therefore necessary for the Committee to consider this matter without delay.

#### **1. SUMMARY**

- 1.1. The introduction of the new Local Government Pension Scheme (LGPS) from 1 April 2014 requires all scheme employers to review their existing discretionary pension arrangements and publish new policy statements.
- 1.2. The Pension Regulations require that in preparing or making revisions to its pensions policy statements, the scheme employer must have regard to the extent to which the exercise of any of its policies could lead to a serious loss of confidence in the public service. The exercise of any discretions must therefore be reasonable, affordable, and justified in the circumstances and be consistently applied.
- 1.3. This report summarises the Pension Policies which need reviewing at this time and make recommendations for the adoption of new policy statements. There are five discretions to consider. The first four have previously been agreed by the Authority and it is recommended to continue with these policies until a further detailed review is undertaken. The fifth is a new discretion and it is recommended, not to adopt this discretion until a detailed review is carried out.
- 1.4. The adoption of current policy in relation to the discretionary provision of the new Scheme will not prevent the Council from reconsidering any of its decisions at a later stage should it be felt prudent to do so for the proper governance of the scheme.

#### **2. DECISIONS REQUIRED**

- 2.1 The Committee is recommended to approve:-
  - (i) The employer discretions set out in Section 4 of this report, and
  - (ii) The policy statement set out at Appendix 1.

### 3. BACKGROUND

- 3.1 The cost of providing public sector pension schemes has been steadily increasing over many years and the previous Government was concerned about their long term sustainability. As a result the Government appointed Lord Hutton to chair an independent Public Services Pensions Commission to undertake a fundamental review of public sector pension provision.
- 3.2 The Government accepted the Commission's recommendations and government departments negotiated with the relevant employer representatives and trade unions, and as a result the LGPS Regulations 2013 came into force on 1st April, 2014.
- 3.3 The new regulations require all scheme employers to review their existing discretionary pension policy statements and publish new statements effective from 1st April, 2014. It is a requirement that the discretion policy statement is agreed and published before 1 July 2014 however this is the first opportunity available to meet this deadline.

### 4. DISCRETIONS TO BE REVIEWED WITHIN THE SCHEME

- 4.1 There are five 'Employer Discretions' available within the LGPS Regulations 2013 which require a decision by each employing Authority. The first four discretions have previously been agreed by the authority and it is recommended that these are continued at this time. The fifth one is a new discretion and it is recommended, not to adopt this discretion until a detailed review is carried out. This review will include the financial and strategic implications of amending any of the existing discretions or adopting the new one, plus a comparison with other London Boroughs. Full details are outlined in the Policy Statement attached at **Appendix 1** and detailed below is a summary of the options for consideration.

- 4.1.1 **Decision 1** - Employees can voluntarily choose to make Additional Pension Contributions; there is the option for the employer to share the cost, under Shared Cost Additional Pension Contributions (SCAPC).

***This discretion was not adopted on 10 March 1998 due to material cost implications. It is therefore proposed that at this time the Council will continue not to exercise this discretion and will not fund SCAPC on the basis of affordability.***

- 4.1.2 **Decision 2** - The discretion to allow Flexible Retirement.

***This discretion was adopted on 29 October 2008, and is only agreed if it is in the economic and /or operational interest of the Council's service to do so. The Council currently operates a Flexible Retirement Scheme as part of its flexible working arrangements and it is proposed that at this time this arrangement should continue.***

*This discretion has been used to help retain key skills and knowledge in essential Service areas such as Children's Social Work, where the employee would have otherwise permanently retired.*

- 4.1.3 **Decision 3** - The Council has the discretion to waive actuarial reduction to pension, the costs of which will be borne by the Council.

***This discretion was adopted on 29 October 2008, and is only agreed if it is in the economic and /or operational interest of the Council's service to do so. The Council will continue to waive reductions only in exceptional circumstances where there is a clear financial or operational advantage for the Authority in so doing or on compassionate grounds would this be considered. This would require authorisation by the Corporate Director of Resources and the Head of Human Resources & Workforce Development or their nominated representative.***

- 4.1.4 **Decision 4**- The discretion to award additional pension (whole cost to employer). There are a number of reasons to award additional pension including the recruitment and retention of employees. More often than not though, awarding additional pension occurs around the time of an employee's retirement and is used to compensate or reward the retiring employee.

***This discretion was not adopted on 29 October 2008 due to material cost implications. It is therefore proposed that at this time the Council will continue notto exercise this discretion on the basis of affordability.***

- 4.1.5 **Decision 5** - The "85 year rule" can be activated for individual employees, prior to age 60 in the case of Early Voluntary Retirement, the cost of which will be borne by the Council.

***This is a new discretion. It is therefore proposed not to adopt this discretion until a further review is undertaken. There may be some advantages for the Council in adopting this discretion but these need careful assessment.***

## **5. COMMENTS OF THE CHIEF FINANCIAL OFFICER**

- 5.1 The council is required to publish a new policy statement following the introduction of new Local Government Pension Scheme to take effect from 1st April 2014.

- 5.2 Committee members are asked to review and approve 5 employers' discretions of which 4 were previously agreed and one recently added following the changes to the LGPS. Discretion 1 and 3 were not adopted by the council in 2008 therefore, there are no further financial implications for the council. Discretion 2 and 4 were adopted however, only if it was in the economic/operational interest of the council. Discretion 5 is a new discretion. It is recommended in the report that discretion 5 is not adopted until a further review is undertaken.

- 5.3 Any additional cost of exercising the discretion that had been previously adopted by the council will be considered on each individual case as was previously agreed. In the event that the Council agrees further action in response to this report's recommendations then officers will be obliged to seek the appropriate financial approval before further financial commitments are made.

## **6. LEGAL COMMENTS**

- 6.1 The Local Government Pension Scheme Regulations 2013 came into force on 1 April 2014. They require Scheme Employers participating in the LGPS to formulate, publish and keep under review a statement of policy on certain discretions. It is a requirement that the policy statement is agreed and published before 1 July 2014 and this policy will be retrospectively applied from 1 April 2014.
- 6.2 Technically the Council is in breach of statutory duty in not approving the policy statement by 1 July 2014 although this is the first available opportunity to do so. As the policy will be applied retrospectively no one will suffer detriment as a result of the late approval of the policy statement.
- 6.3 The policies do not confer contractual rights and the employer reserves the right to change policy at any time.

## **7. ONE TOWER HAMLETS CONSIDERATIONS**

- 7.1 The Pension Fund Accounts demonstrate the financial stewardship of the scheme members and employers assets. A financially viable and stable pension fund is a valuable recruitment and retention incentive.

## **8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 8.1 There is no Sustainable Action for A Greener Environment implication arising from this report.

## **9. RISK MANAGEMENT IMPLICATIONS**

- 9.1 Accounts provide an effective mechanism to safeguard the Council's assets and assess the risks associated with its activities.

## **10. CRIME AND DISORDER REDUCTION IMPLICATIONS**

- 10.1 There are no any Crime and Disorder Reduction implications arising from this report.

## **11. EFFICIENCY STATEMENT**

- 11.1 The monitoring arrangement for the Pension Fund and the work of the Pension Fund Investment Panel should ensure that the Fund optimises the use of its resources in achieving the best returns for members of the Fund.

---

**LOCAL GOVERNMENT ACT 1972 (AS AMENDED) SECTION 100D**

LIST OF "BACKGROUND PAPERS" USED IN THE PREPARATION OF THIS REPORT

***Brief description of "background papers"***

***Name and telephone number of holder  
And address where open to inspection***

***None***

*Simon Kilbey Service Head – HR & WD  
Tel: 020 7364 4922*

**LONDON BOROUGH OF TOWER HAMLETS**

**LOCAL GOVERNMENT PENSION SCHEME REGULATIONS 2013**

**STATEMENT OF POLICY - EXERCISE OF DISCRETIONARY FUNCTIONS**

The Local Government Pension Scheme (LGPS) 2014 effective from 1 April 2014 introduces or amends a number of discretionary elements over which the Council as the employing body can exercise its discretion.

These policy discretions are, where appropriate, as close to the discretions previously applied by the Council.

In accordance with Regulation 60 of the above regulations the Council must formulate, approve, publish and keep under review changes to the Council's Policy in relation to the exercise of its employer discretions under regulations:

- 16(2)(e) and 16(4)(d) (funding of additional pension);
- 30(6) (flexible retirement);
- 30(8) (waiving of actuarial reduction); and
- 31 (award of additional pension).

In addition and in accordance with Paragraphs 2(2) of Schedule 2 to the Local Government Pension Scheme (Transitional Provisions, Savings & Amendment) Regulations 2014 the Council must also prepare a written statement on whether, in respect of benefits relating to pre 1 April 2014 membership, to 'switch on' the 85 year rule for a member who voluntarily retires (leaves employment) and elects to draw their benefits on or after the age of 55 and before the age of 60 thereby agreeing to waive in full or part any actuarial reduction applied to the member's benefits.

The Council is required to send a copy of this Statement to the Pensions Administering Authority and publish it in a place that is easily accessible to all of its eligible scheme employees. There is also the requirement to keep this Policy Statement under review and make such revisions as are appropriate following a change of policy.

Where a revision is made a copy of the revised statement must be supplied to the Pension Administering Authority before the expiry of one month beginning with the date that any such revision is made. The Council must also publish its revised statement ensuring that it is equally accessible.

In preparing, or reviewing and making revisions to its statement, the Council must have regard to the extent to which the exercise of its discretionary powers, unless properly limited, could lead to a serious loss of confidence in the public service.

This document outlines London Borough of Tower Hamlets policy on the employer discretions specified in LGPS 2014, effective from 1 April 2014.

**PART A – Formulation of COMPULSORY policy in accordance with Regulation 60 of the Local Government Pension Scheme Regulations 2013**

**Regulation 16 – Additional Pension Contributions**

Where an active Scheme member wishes to purchase extra annual pension of up to £6,500\* (figure at 1 April 2014) by making Additional Pension Contributions (APCs), the employer can choose to (voluntarily) contribute towards the cost of purchasing that extra pension via a Shared Cost Additional Pension Contribution (SCAPC)

The Scheme employer may resolve to fund in whole or in part any arrangement entered into by an active scheme member to pay additional pension contributions by way of regular contributions in accordance with *Regulation 16(2)(e)*, or by way of a lump sum in accordance with *Regulation 16(4)(d)*.

The Scheme employer may enter into an APC contract with a Scheme member who is contributing to the MAIN section of the Scheme in order to purchase additional pension of not more than the additional pension limit (£6,500 from 1 April 2014 subject to annual increase in line with the Pensions (Increase) Act 1971). The amount of additional contribution to be paid is determined by reference to actuarial guidance issued by the Secretary of State.

**London Borough of Tower Hamlets policy concerning the whole or part funding of an active member's additional pension contributions - Regulation 16(2)(e) and 16(4)(d)**

**The Council's policy is not to establish a Shared Cost Additional Pension Contribution Scheme for its employees either on the basis of regular ongoing contribution or by a one off lump sum. This would be costly and as such the Council will not exercise this discretion on the basis of affordability.**

---

**Regulation 30(6) – Flexible Retirement**

An active member who has attained the age of 55 or over and who with the agreement of their employer reduces their working hours or grade of employment may, with the further consent of their employer, elect to receive immediate payment of all or part of the retirement pension to which they would be entitled in respect of that employment as if that member were no longer an employee in local government service on the date of the reduction in hours or grade (*adjusted by the amount shown as appropriate in actuarial guidance issued by the Secretary of State – separate policy required under Regulation 30(8)*).

As part of the policy making decision the Scheme employer must consider whether, in addition to the benefits the member may have accrued prior to 1 April 2008 (which the member must draw), to permit the member to choose to draw all, part or none of the pension benefits they built up after 31 March 2008 and before 1 April 2014 and all, part or none of the pension benefits they built up after 1 April 2014.

Due consideration must be given to the financial implications of allowing an employee to draw all or part of their pension benefits earlier than their normal retirement age.

### **London Borough of Tower Hamlets policy concerning flexible retirement**

The Council currently has a policy in place to consider applications for Flexible Retirement which is linked to the Council's policies on retirement and flexible working. The Authority relies upon the knowledge and skills of its employees and as such this policy provides the opportunity for retaining skills and experience as part of a transition towards retirement.

Flexible Retirement allows scheme members age 55 and over to apply to transfer to a lower graded post or to reduce hours of employment and at the same time access their retirement benefits. Both the transfer to a lower graded post or reduction in hours of work and the early release of retirement benefits is employer discretion.

The Council currently operates a Flexible Retirement Scheme and as such this arrangement will continue.

---

### **Regulation 30(8) – Waiving of Actuarial Reduction**

Where a Scheme employer's policy is to consent to the immediate release of benefits in respect of an active member who is aged 55 or over, those benefits must be adjusted by an amount shown as appropriate in actuarial guidance issued by the Secretary of State (commonly referred to as actuarial reduction or early payment reduction).

A scheme employer (or former employer as the case may be) may agree to waive in whole or in part and at their own cost, any actuarial reduction that may be required by the Scheme Regulations.

Due consideration must be given to the financial implications of agreeing to waive in whole or in part any actuarial reduction.

### **London Borough of Tower Hamlets policy concerning the waiving of actuarial reduction**

The Council will continue to waive reductions only in exceptional circumstances where there is a clear financial or operational advantage for the Authority in so doing or on compassionate grounds would this be considered. This would require authorisation by the Corporate Director of Resources and Head of Human Resources & Workforce Development or their nominated representative.

---

### **Regulation 31 – Award of Additional Pension**

A Scheme employer may resolve to award

(a) an active member, or



(b) a member who was an active member but dismissed by reason of redundancy, or business efficiency, or whose employment was terminated by mutual consent on grounds of business efficiency, or whose employment was terminated by mutual consent on grounds of business efficiency,

additional annual pension of, in total (including any additional pension purchased by the Scheme employer under Regulation 16), not more than the additional pension limit (£6,500 from 1 April 2014 subject to annual increase in line with the Pensions (Increase) Act 1971).

Any additional pension awarded is payable from the same date as any pension payable under other provisions of the Scheme Regulations from the account to which the additional pension is attached.

In the case of a member falling within sub-paragraph (b) above, the resolution to award additional pension must be made within 6 months of the date that the member's employment ended.

### **London Borough of Tower Hamlets policy concerning the award of additional pension**

**The Council's policy is not to fund additional pension at whole cost to the employer given the substantial costs associated with introducing an equitable scheme. This would be a costly and as such the Council will continue not to exercise this discretion on the basis of affordability.**

---

### **Local Government Pension Scheme (Transitional Provisions and Savings) Regulations 2014 Schedule 2 – paragraphs 2 and 3**

Where a scheme member retires or leaves employment and elects to draw their benefits at or after the age of 55 and before the age of 60 those benefits will be actuarially reduced unless their Scheme employer agrees to meet the full or part cost of those reductions as a result of the member otherwise being protected under the 85 year rule as set out in previous regulations.

So as to avoid the member suffering the full reduction to their benefits the Scheme employer can 'switch on' the 85 year rule protections thereby allowing the member to receive fully or partly unreduced benefits but subject to the Scheme employer paying a strain (capital) cost to the Pension Fund.

### **London Borough of Tower Hamlets policy concerning the 'switching on' of the 85 year rule**

*It is proposed not to adopt this discretion until a further review is undertaken.*

---

The discretions contained within this Policy Statement are applicable to all eligible members of the Scheme. The Scheme rules allow for a revised statement to be issued at least one month in advance of the date that any new policy takes effect.

The revised statement must be sent to the Pensions Administering Authority and published in a place that is accessible to all of its eligible scheme members.

The policies made above have regard to the extent to which the exercise of the discretions could lead to a serious loss of confidence in the public service and will be exercised reasonably and only used when there is a real and substantial future benefit to the Council for incurring the extra costs that may arise.

The Council retains the right to change this Policy Statement at any time and only the version which is current at the time a relevant event occurs to an employee will be the one applied to that employee.

16 July 2014