

1 PURPOSE OF REPORT

1.1 The purpose of the report is to ask the Board to approve the undernoted.

- **Local Government Pension Scheme (Scotland) Regulations 2014-Regulation 58 Discretions Policy Statement**

2 MAIN REPORT

The Discretions Policy statement has been revised in line with the new Local Government Pension Scheme regulations, and will be presented to Lothian Pension Fund in accordance with Pension Scheme regulations.

3 CONSULTATION

No consultation has taken place with Unison as this is not required.

4 FINANCIAL IMPLICATIONS

4.1 There is no financial impact.

5 ENVIRONMENTAL IMPACT

5.1 There are no adverse environmental impacts arising from this report.

6 RECOMMENDATIONS

6.1 Lothian Valuation Joint Board is recommended to approve the:-

- a) Discretion Policy Statement

Appendix 1

Discretion Policy Statement

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THE LOCAL GOVERNMENT PENSION SCHEME (SCOTLAND)
REGULATIONS 2014 – Regulation 58

DISCRETION POLICY STATEMENT

Discretions Policy Statement

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Appendix 1: Definitions

1. DISCRETIONS POLICY STATEMENT

- 1.1 Under Regulation 58 of the *Local Government Pension Scheme (Scotland) Regulations 2014*, each employer who is a member of the Local Government Pension Scheme is required to have a discretions policy statement covering the various discretions that are contained in the regulations.
- 1.2 The new regulations came into effect on 1 April 2015.
- 1.3 This Discretions Policy Statement sets out which of the discretions the LVJB intends to adopt and how it will operate them. When coming to a decision about the discretions that are available, the main consideration has been how the use of a discretion would look to the general public, in terms of whether it could lead to a serious loss of confidence in the LVJB as a publicly funded body.

2. SCOPE

- 2.1 Some of the statements are compulsory, in that every member of the Local Government Pensions Scheme must publish their intentions towards some discretions. Others are optional. The Discretions Policy Statement groups the compulsory and non-compulsory discretions together under separate headings, for ease of reference.
- 2.2 LVJB's position applies to all LVJB employees who are members of the Local Government Pension Scheme.

3. DEFINITIONS

- 3.1. There is a list of definitions and an explanation of terms in Appendix 1.

COMPULSORY DISCRETIONS

4. Additional Pension Contributions (APCs) (Regulation 16(2)(e) & 16(4)(d) of the LGPS (Scotland) Regulations 2014)

4.1 LVJB Policy:

*LVJB's policy on this is **not** to enter into Shared Cost APCs with employees who wish to increase their pension because of the additional employer costs.*

Explanation

- 4.2 This regulation deals with employees buying **additional** pension contributions to increase their pension. Employees can choose to buy additional pension up to an agreed limit, which is subject to annual increase in line with the Pensions (Increase) Act 1971 (£6,500 from 1st April 2015). Pension contributions like this are called Additional Pension Contributions (APCs).
- 4.3 The Regulations allow LVJB to pay the associated employer costs, where an employee has chosen to buy additional pension. Given that this is an extra cost to LVJB, and APCs are additional pension beyond the standard pension available to all employees, LVJB's Policy is not to enter into Shared Cost APC's to increase employees' pensions.

How it works

- 4.4 The regulations allow employers to enter voluntarily into an APC contract with a pension 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.
- 4.5 The scheme member can choose to make their additional pension contributions in regular instalments (in accordance with Regulation 16(2) (e)) or as a lump sum (in accordance with Regulation 16(4) (d)).
- 4.6 Employees looking for more information about APCs should contact Lothian Pension Fund, in the first instance.

5. Early Payment of Pension on or after age 55 but before age 60 (Regulation 29(5) of LGPS (Scotland) Regulations 2014) – still in employment

5.1 LVJB Policy:

- *LVJB will **not** have a policy of granting early payment of benefits (i.e. early retirement) on or after age 55 and before age 60 to those still in employment when they make the request;*
- *Where the LVJB does agree that an employee may retire early, they will **not** have a general policy of waiving the actuarial reduction by applying the rule of 85 protections.*

Explanation

- 5.2 Employees can only retire early with LVJB's agreement. Employees can apply for early retirement and details about this can be found in the [Managing Retirement Policy](#). All requests are considered on a case-by-case basis. LVJB will only allow early retirement where a sound business case can be made for doing so or where other exceptional circumstances make payment of those benefits justifiable.

- 5.3 When employees retire early, their pensions may be subject to an actuarial reduction, to compensate for them leaving the fund earlier than expected. The 2014 Regulations give employers the discretion to turn on the rule of 85 protections (see section 8, below).

How it works

- 5.4 If LVJB agrees that an employee can retire early, LVJB has to meet the pension strain costs associated with that decision and the employee's pension is also subject to an actuarial reduction. If LVJB decides to apply the rule of 85 protection, the resulting pension strain costs that have to be met would increase. This strain cost must be included in the early retirement business case and the cost savings test will still have to be met before the case can be approved.

6. Flexible Retirement (Regulation 29(6) of the Local Government Pension Scheme (Scotland) Regulations 2014)

6.1 LVJB Policy:

LVJB has adopted this regulation and details of our flexible retirement scheme can be found in the [Managing Retirement Policy](#).

Explanation

- 6.2 Flexible retirement is where employees, who are pension members and are aged 55 or over, can ask LVJB to allow them to access their pension benefits while agreeing to work either reduced hours and/or at a lower grade.
- 6.3 Approval will be subject to it being shown that the request is operationally beneficial, will result in a clear business benefit to LVJB and the costs are affordable and can be met.

How it works

- 6.4 When pension members take flexible retirement, they must take all the pension benefits they have accrued in respect of membership before 1 April 2009.
- 6.5 For pension accrued from 1 April 2009, members can decide to:
- take all, part or none of the benefits in respect of membership from 1 April 2009 onwards;
 - take any additional benefits such as added years contracts, additional pension contracts (APCs), additional voluntary contributions (AVCs) or additional pension or membership awarded by the employer.
- 6.6 Where they decide to take part or none of the pension they have accrued since 2009, they will get access to that once they retire.

- 6.7 If the rule of 85 applies, there may still be some actuarial reduction to the member's pension. This will depend on when the member joined the LGPS and other variables.
- 6.8 Where there is an actuarial reduction, the regulations give LVJB the option to waive the reduction but this would result in LVJB having to meet that cost. LVJB does **not** have a general policy of waiving any actuarial reductions (see 7 below).

7. Waiving Actuarial Reduction on Early Retirement aged 55 and under 60 (Regulation 29(8) of LGPS (Scotland) Regulations 2014 – still in employment.

7.1 LVJB Policy:

*LVJB **will not waive** any reduction which would normally be applied to the member's benefits.*

Explanation

- 7.2 Any scheme member can ask for the early payment of their pension benefits, providing they are aged between 55 and 60. However, the benefits may be reduced for early payment.
- 7.3 LVJB allows employees to request early retirement under the [Managing Retirement Policy](#), as noted at 5, above.
- 7.4 LVJB has the discretion to waive the reduction that would apply. However, doing so would mean LVJB would be liable to cover the pension strain costs that would apply. Therefore, LVJB **has not adopted** this discretion.

8. Choice of Early Payment of Pension Schedule 2 (Paragraphs 2 & 3 of the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014)

8.1 LVJB Policy:

*LVJB **will not** have a general policy of applying the Rule of 85 in cases where early retirement is agreed. Nor will LVJB waive any reduction that would normally be applied to the benefits.*

Explanation

- 8.2 This regulation deals with applying the rule of 85 to employees retiring early under Regulation 29 (5) between age 55 and 60.

- 8.3 The rule of 85 does not automatically apply to members who voluntarily retire and take their pension benefits on or after age 55 and before age 60 (except in cases of flexible retirement). As a result, the member's benefits may be actuarially reduced.

How it works

- 8.4 The new regulations allow LVJB the discretion to apply the 85 year rule protections to avoid pension members having their benefits reduced. There is also the option of waiving part of the actuarial reduction. If LVJB agreed to do this, LVJB would then have to meet the pension strain costs. For this reason, LVJB has chosen not to adopt this discretion.

9. Award of Additional Pension (Regulation 30 of the Local Government Pension Scheme (Scotland) Regulations 2014)

9.1 LVJB Policy:

*LVJB will **not** have a general policy of awarding additional pension.*

Explanation

- 9.2 This regulation allows employers to award current members up to £5,000 additional pension. Employers can also make an award to former employees whose employment was terminated on the grounds of redundancy or the interest of efficiency, provided they do this within 6 months of the employee leaving.
- 9.3 LVJB may consider written requests on their individual merits, where there is a financial or operational advantage to LVJB and will consider individual cases on their merits.

How it works

- 9.4 An employer may award a member additional pension which would become payable from the same date as the member's normal pension. The maximum extra pension which can be awarded is £5,000. Such awards can be made to current members or, within 6 months of leaving, to members whose employment was terminated on the grounds of redundancy or the interest of efficiency. The employer must make an appropriate payment into the fund within one month of making a decision.
- 9.5 The figure of £5,000 will be increased annually each April (from April 2016) under the Pension (Increase) Act 1971.

10. Voluntary Early Retirement for Former Employees aged 55 and 60 (Regulation 29(5) of the Local Government Pension Scheme (Scotland) Regulations 2014)

10.1 LVJB Policy:

*LVJB will **not** have a general policy of allowing early payment of benefits for former employees, but will consider applications on their merits.*

Explanation

10.2 This deals with former employees of the LVJB who:

- were members of Lothian Pension Fund;
- left the Scheme after 1 April 2015; and
- want to access their pension early.

10.3 This is an option in the Scheme Regulations which allows former members of staff to access their deferred pension benefits early, provided they are at least 55 years old and have LVJB's agreement.

How it works

10.4 Where the member has left LVJB employment and is aged 55 or over and under age 60, they can ask for the early payment of their deferred pension benefits, providing they are not in local government employment. They need to get LVJB's agreement to early payment.

10.5 LVJB may wish to agree to early payment where there are financial or operational benefits in doing so. Financial hardship of the former employee will not, in itself, be considered grounds for agreement. Where early payment is agreed, LVJB will not have a general policy of applying the Rule of 85, or waiving any reduction which would normally be applied to the benefits.

11. Voluntary Early Retirement between the ages of 55 and 60 (Regulation 30 of the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008) – Former Employees

11.1 LVJB Policy:

- *LVJB will **not** have a general early release policy for former employees, but will consider applications on their merits. LVJB may agree, where it can be demonstrated as being in LVJB's financial or operational interests.*

Explanation

11.2 This regulation deals with former employees of LVJB who were members of Lothian Pension Fund, who are covered by the 2008 regulations and who want to access their pension early.

- 11.3 It applies to former employees with deferred benefits who left the Scheme before 1 April 2015. The Scheme Regulations allows former members to obtain access to their deferred benefits early provided they are at least 55 years old. Benefits would be reduced for early payment of pension. The amount of the reduction depends on the extent of the protection applicable to the member in respect of the 'Rule of 85'. The reduction is calculated in accordance with guidance issued by the Government Actuary's department.
- 11.4 Decisions to award early payment of benefits under this regulation put a strain on the pension fund, which results in a pension strain cost being passed on to LVJB. However, LVJB has the discretion to agree where it could be demonstrated that there were financial or operational benefits in doing so.

How it works

- 11.5 Any scheme member aged 55 or over, who has left their employment, can ask for the early payment of pension benefits. If the member is under age 60, it is at LVJB's discretion whether to agree to early payment. (This discretion may also apply to former members with deferred pension rights when they attain age 50, depending on when they originally joined Lothian Pension Fund).
- 11.6 If LVJB does agree, it can then go on to consider whether any actuarial reduction should be made.
- 11.7 Where there is an actuarial reduction, the regulations give LVJB the option to waive the reduction but this would result in LVJB having to meet that cost. LVJB does **not** have a general policy of waiving any actuarial reductions

DISCRETIONS - NON COMPULSORY POLICY STATEMENT

12. Establishment of shared cost AVC schemes (Regulation 17(1) of the Local Government Pension Scheme (Scotland) Regulations 2014)

12.1 LVJB Policy:

*The policy of LVJB is **not** to establish a shared cost AVC scheme.*

Explanation

- 12.2 This regulation allows LVJB to set up an additional voluntary contribution (AVC) scheme, which would require contributions from the LVJB. Scheme members already have access to an AVC arrangement, which accepts member-only contributions.

12.3 No employing authority in the UK has established a shared cost AVC scheme. To do so would result in further costs for the employer.

**13. Forfeiture of pension rights after conviction of employment related offences
(Regulation 89 of the Local Government Pension Scheme (Scotland) Regulations 2014)**

13.1 LVJB Policy:

The LVJB reserves the right to exercise this discretion, should the need arise, in the interest of maintaining confidence in the public service.

Explanation

13.2 This regulation deals with current employees, who are member of the Local Government Pension Scheme, and are convicted of serious offences. In these circumstances, LVJB can apply to the Scottish Ministers to forfeit all or part of a scheme member's pension benefits. This would only apply in cases where the conviction was for a serious offence which was either '*gravely injurious to the State*' or '*liable to lead to serious loss of confidence in the public service*'.

13.3 It is recommended by Lothian Pension Fund that all employers adopt this provision.

**14. Recovery or retention where former member has misconduct obligation
(Regulation 90 of the Local Government Pension Scheme ((Scotland) Regulations 2014)**

14.1 LVJB Policy:

LVJB reserves the right to exercise this discretion, should the need arise, in the interest of maintaining confidence in the public service.

Explanation

14.2 This regulation deals with situations where LVJB suffers a loss arising from a criminal, negligent or fraudulent act by an employee or a former employee. This provision allows LVJB to recover funds to cover that loss from the former employee's pension benefits, providing that all other efforts to recover the loss have been exhausted.

How it works

14.3 This provision allows employers to recover monies from pension benefits in respect of acts of theft or fraud carried out by an employee. For example, the theft of a substantial sum of money could be recovered from a scheme member's pension benefits. This provision can also apply to former employees by deducting this amount from a member's pension so they only receive the reduced pension when they retire. It is recommended by the Lothian Government Pension Scheme that all employers adopt this provision.

15. Inward Transfers of Pension Rights (Regulation 98 of the Local Government Pension Scheme (Scotland) Regulations 2014)

15.1 LVJB Policy:

*LVJB will **not** have a general policy of allowing late transfers to proceed in respect of the inward transfer of pension rights from schemes that the Lothian Pension Fund recognises.*

Explanation

15.2 This covers cases where new employees to LVJB want to transfer service accrued with other pension funds to the Lothian Pension Fund. Lothian Pension Fund does not, and will not, permit the inward transfer of pension rights from private sector pension schemes or personal pension arrangements.

15.3 The Scheme Regulations allow members to transfer previous pension rights into the Local Government Pension Scheme. The Regulations state that all transfers must be requested within **12 months** of the member joining the scheme. However, employers and administering authorities have the discretion to allow transfers to proceed after this time-limit has expired.

15.4 Allowing late transfers results in a cost to LVJB. This will be a particular consideration if there is a possibility that early retirement may be considered in the future, as such an increase in liabilities could give rise to increased strain on Fund costs.

How it works

15.5 Employees can apply and LVJB will consider individual applications for late transfers on their merits and may, in agreement with Lothian Pension Fund, exercise discretion to allow a late transfer to proceed where there is no financial impact on either LVJB or Lothian Pension Fund and/or if there are extenuating circumstances as to why the member did not request the transfer previously.

16. Member Contributions (Regulation 9(4) of the Local Government Pension Scheme (Scotland) Regulations 2014)

16.1 LVJB Policy:

LVJB reserves the right to exercise this discretion should the need arise providing that a consistent approach is taken, in the interest of maintaining confidence in the public service.

Explanation

16.2 This regulation covers cases where employees move to a different pay band during the financial year, which would result in a change to their pension contributions. Under this regulation, LVJB may adjust a member's contribution rate during the financial year if their pay changes.

How it works

16.3 Employers have to allocate members into the appropriate contribution bands annually. If a member's pay moves into a different band during a financial year, the employer has discretion to implement the new band immediately but may prefer to wait until the next annual review.

17. Additional Pension Contributions (Regulation 16 (16) of the Local Government Pension Scheme (Scotland) Regulations 2014)

17.1 LVJB Policy:

*Employees who have gaps in their pension contributions due to agreed unpaid leave can choose to buy back the missing element. They must decide to do this within 30 days of returning to work. LVJB will **not** generally agree to extend the 30-day time limit, but may do so exceptionally, where an employee provides evidence of extenuating circumstances.*

Explanation

17.2 This covers cases where employees have a gap in their contributions following an agreed period of absence from LVJB.

17.3 Under this regulation employees must make a written request to LVJB to buy back lost pension within 30 days of returning to work. If they decide to do so the cost of buying back the lost pension will be shared with the employer. The Regulations give the employer discretion to extend the 30-day time limit.

How it works

17.4 Where an employee decides to buy back missed pension contributions within 30 days of returning to work, the employer **MUST** pay the associated employer costs. There is no discretion around this. The

Regulations are quite clear that the employer must meet the costs if the employee's request is made within the 30-day deadline. The mechanism for these payments is a Shared Cost Additional Pension Contract.

**18. Discretionary Payments
(The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998; and the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulations 2008)**

18.1 The Discretionary Payments and Injury Benefits Regulations allow employers, such as LVJB to make discretionary payments to employees, who may also get access to their pension at the same time, in relation to:

- Injury Allowances;
- Redundancy payments;
- Awarding compensatory added years; and
- Gratuities for non-pensionable service.

18.2 Under regulation 51A, LVJB must formulate and publish a policy in relation to:

- **Regulation 4:** basing redundancy payments on an actual weeks pay where this exceeds the statutory weeks pay limit;
- **Regulation 35:** awarding compensation for redundancy payment of up to 104 weeks pay;
- **Regulation 8:** awarding compensatory added years; and
- **Regulation 49B:** ill-health gratuities.

18.3 It is up to each employer to consider how to deal with these discretions within the context of its own policies on severance, redundancy and early retirement.

18.4 In considering how it makes these payments, all employer members of the Local Government Pension Scheme must have regard to the extent to which the exercise of their discretionary powers, unless properly limited, could lead to a serious loss of confidence in the public service. All employer members are urged to ensure that they are satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs.

Calculation of Severance and Redundancy Payments

18.5 LVJB's method of calculating severance and redundancy payments can be found in the LVJBs' policies on the Intranet.

Added Years with Early Access to Pension

18.6 LVJB will **not** have a general policy of awarding added years compensation in redundancy cases where the employee is also getting access to their pension.

- 18.7 LVJB will consider each individual case on its merits and have regard to the operational benefits, the affordability of the proposal and the extent to which the case meets LVJB's cost/saving test and provides a financial benefit of 25% of basic annual pay.
- 18.8 Where added years are agreed, the employee's redundancy payment will not be enhanced i.e. it will be based on the statutory weeks pay limit multiplied by the statutory number of weeks.
- 18.9 The level of added years to be awarded in each case is determined by the statutory conditions and the local conditions applied by LVJB which:
- i) limit added years to one added year for every two years of Pension Scheme service; and
 - ii) limit the maximum award of added years to 5 years.
- 18.10 Added years will be reduced where that is necessary to ensure the required financial benefit is provided.
- 18.11 These local conditions may apply to voluntary severance/ redundancies and compulsory redundancies. An employee does **not** have the right to have an application for added years considered or approved.

III-Health Gratuities

- 18.12 Regulation 49B allows LVJB to make discretionary payments to employees who leave on the grounds of capability but who do not meet the criteria for ill-health retiral, either in terms of length of pension membership or the medical criteria for ill-health retiral. In these circumstances, LVJB has the discretion to make a payment of not more than the equivalent of 30 weeks pay.
- 18.13 Given the cost of this, LVJB **will not** pay ill-health gratuities in these circumstances.

19. Review

- 19.1 In making this Discretions Policy Statement, LVJB has referred to the statutory provisions and to advice from the City of Edinburgh Council as the Pension Scheme administering authority.
- 19.2 This Discretions Policy Statement will be kept under review and will be revised as and when necessary to reflect any changes in regulations or policy. Any changes to this Discretions Policy Statement will be advised to the administering authority and scheme members in writing within one month of the change taking effect.

DEFINITIONS/EXPLANATION OF TERMS

Actuarial reduction	If you leave the pension fund before age 65, your pension may be reduced as your pension is being paid earlier than expected and will be payable for longer. The reduction is based on factors calculated by the Government Actuary's Department.
Additional Pension Contribution (APC)	These are payments that pension fund members can make to cover some gaps in their pension contribution history or to increase their pension benefits.
APC contract	When an employee makes additional pension contributions to increase pension benefits or to make up for lost pension, these are paid over an agreed period of time, and this is known as an APC contract.
AVC	Additional voluntary contribution. LVJB staff can choose to pay these through the in-house AVC scheme with Prudential or Standard Life.
Deferred pension benefits	The pension built up by someone who has left the pension fund.
Early payment of pension/benefits	Early retirement.
LGPS	Local Government Pension Scheme – a nationwide scheme for employees working in local government. The Scheme is administered locally for participating employers through 99 regional pension funds.
LPF	Lothian Pension Fund - the regional pension fund that administers the LGPS for the LVJB.
Pension member	A member of staff (or ex-members of staff) who pays, or paid, contributions into the LGPS.
Pension strain cost	The charge that may be made by LVJB to compensate LPF if you retire early.
Rule of 85	Where your calendar length of active membership of the LGPS and your age, when added together, come to 85, you may have some protection against actuarial reduction, depending on when you joined the scheme.