

<b>Report of:</b>	<b>Head of Human Resources</b>
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<b>Portfolio Leader:</b>	<b>Corporate Improvement</b>
<b>Key Decision:</b>	<b>No</b>
<b>Report Track:</b>	<b>Council: 12/08/15</b>

**COUNCIL  
12 AUGUST, 2015  
EMPLOYER DISCRETIONS UNDER THE LOCAL GOVERNMENT PENSION  
SCHEME**

**1 Purpose of Report**

- 1.1 The purpose of this report is to present for consideration and approval a revised policy statement of Cannock Chase Council employer discretions arising from the Local Government Pension Scheme Regulations.

**2 Recommendations**

- 2.1 That Council approves the updated pension discretions statement as set out in Appendix 1.
- 2.2 That Council approves the discontinuation of the Council's Injury Allowance Scheme.

**3 Key Issues and Reasons for Recommendation**

- 3.1 Under the Local Government Pension Scheme Regulations (LGPS) 2014 all employers are required to update and re-issue to their pension fund administrators a local policy statement on how areas of discretion within the Regulations will be applied within the organisation. This is a statutory requirement
- 3.2 Employers are also required to review and refresh their areas of discretion under previous versions of the LGPS.

**4 Relationship to Corporate Priorities**

- 4.1 This report supports the Council's Corporate Priorities as follows:
- (i) This report does not contribute directly to corporate priorities but is required for legal compliance with the LGPS 2014 Regulations.

**5 Report Detail**

- 5.1 All employers are required to produce a policy statement outlining how they will apply areas of discretion arising from the Local Government Pension Scheme Regulations 2014 and to review areas of discretion under previous versions of the LGPS. .
- 5.2 The LGPS and associated Regulations contain a large numbers of clauses where employers may exercise discretion in how the regulations are applied but for the majority of these clauses the employer has an option to create a policy statement or not. There are a small number of clauses where there is a statutory obligation to have a corporate policy statement. Those key areas are:
- Flexible retirement
  - Funding of additional pension contributions – through Shared Cost Additional Pension Contributions
  - Waiving of actuarial reduction
  - Award of additional pension
  - Application of the rule of 85
- 5.3 In addition to the policy statements that Cannock Chase Council must have there are also a number of other areas of discretion where it is useful to have policy statements for the sake of consistency and fairness in how pension matters are applied within the Council.
- 5.4 A thorough review of pension discretions has been undertaken and a policy statement produced covering a large number of discretionary areas within the pension scheme, including those that are required by statute. This review has been undertaken across both Cannock Chase Council and Stafford Borough Council in order to provide a consistent approach across both although there are some very minor differences to reflect local culture and practice.
- 5.5 The policy statement for Cannock Chase Council has been subject to consultation with the Council's Leadership Team, the Head of Financial Management, the Head of Human Resources, other managers within the organisations and trade union representatives. Any comments received during this consultation have been incorporated into the policy statement.
- 5.6 The policy statement makes no significant change to current pension, retirement and redundancy practices and effectively maintains the status quo, whilst

clarifying some areas in relation to flexible retirement that were ambiguous. Arising from this it is proposed to discontinue the Council's Injury Allowance Scheme which has been in place for a number of years but which has not been used in over 10 years. The scheme makes some allowance for a payment of an injury allowance to a person injured in the course of work. However, the scheme is extremely restricted in terms of both who would qualify and the conditions under which any payment would be made. Any payment would then be offset against any insurance claim paid out. – so in real terms is of minimal value to the injured person. In practice there are other provisions within current local and collective agreements which are much more beneficial and much more likely to be applied in the event of injury at work. These might include for example, extension of full sick pay entitlements, ill health retirement on full pension etc. No objection to discontinuance of the scheme has been received from any of those consulted.

## **6 Implications**

### **6.1 Financial**

There are no direct financial implications arising from the report.

The policy statement makes no significant change to current pension, retirement and redundancy practices and effectively maintains the status quo, whilst clarifying some areas in relation to flexible retirement that were ambiguous.

The application of the policy will therefore be contained within existing resources and/or where applicable will be subject to a valid financial business case

### **6.2 Legal**

Legal implications are contained within the main body of the report

### **6.3 Human Resources**

The policy statement outlines how the Council will deal with issues such as redundancy, flexible retirement, access to deferred benefits and ill health retirement. The provisions therein make no change to existing practices and procedures in these key areas. Having the policy statement in place will ensure fairness and consistency of treatment of all employees.

No concerns or objections have been received from the recognised trade unions. Following consultation comments received from consultees have been incorporated into the policy statement.

### **6.4 Section 17 (Crime Prevention)**

None

**6.5 Human Rights Act**

None

**6.6 Data Protection**

None

**6.7 Risk Management**

A policy statement on areas of pension discretions will ensure that employees are treated consistently – which will minimise the risk of complains of unfair treatment or discrimination.

**6.8 Equality & Diversity**

None

**6.9 Best Value**

None

**7 Appendices to the Report**

Appendix 1 – Cannock Chase Council Employer Discretions Policy Statement

**Previous Consideration****Background Papers**

### Appendix 1 - Cannock Chase Council– Employer Discretions Policy Statement 2014

The table below outlines Cannock Chase Council/ 's policy statements with regard to discretionary areas within the Local Government Pension Scheme. These are discretions applicable from 1<sup>st</sup> April 2014 in relation to active members and leavers after 31/3/14. **The discretionary policies described herein are not contractual and may be changed at any time subject to the approval of full Council.**

Reference	Discretion	Policy Statement
<b><i>Discretions requiring a written policy under the Local Government Pension Scheme Regulations 2013 (i.e. LGPS 2014 scheme) (Prefixed R) and the Local Government Pension Scheme (Transitional Provisions and Savings) Regulations 2014 (Prefixed TP)</i></b>		
<b><i>Applicable from 1<sup>st</sup> April 2014 onwards to active members and those who cease active membership after 31st March 2014</i></b>		
R 9(1) and R 9(3)	<p><b>Rates of Employee Contributions</b></p> <p>Employees will pay pension contributions on a percentage basis determined by their rate of pensionable pay. Normally the contribution rate is determined annually. However, where there is a change in employment or a material change affecting the employee's pensionable pay the employer can decide whether to amend the employee's contribution rate to reflect the change - For example where a person get's promoted onto a higher salary and this would qualify for a higher contribution rate.</p>	<p><b>Employee Contributions</b></p> <p>Cannock Chase Council will assess and determine an employee's pension contribution rate based on pensionable pay in the following circumstances</p> <ul style="list-style-type: none"> <li>• For new employees – on appointment, based on the pensionable pay as stated in their contract of employment</li> <li>• At an annual review in April each year at the start of the annual payroll cycle.</li> <li>• When there is a significant change to an individual's pay arising throughout the year.</li> </ul>
R 16(2)(e) and R 16(4)(d)	<p><b>Additional Pension Contributions (APC)</b></p> <p>A scheme member can 'buy' additional pension benefit (up to £6500 per year for 2014/15) to replace lost pension caused by authorised absence or by participating in an industrial dispute. The purchase is in the form of an APC and payment can be made either as a lump sum or over a period of time.</p> <p>Where the pension has been lost due to authorised <b>unpaid absence</b> (e.g. unpaid parental leave, maternity leave, paternity</p>	<p><b>Extension of 30 day time limit</b></p> <p>Cannock Chase Council Council will <b>not</b> ordinarily extend the 30 day time limit for employees, returning from unpaid absence to apply for a SCAPC unless it can be shown by the employee that there was some substantial and verifiable circumstance which prevented receipt of the application within the prescribed timescale. The Council will consider the individual circumstances on a case by case basis but nevertheless a late application should be made no more than 6 months after the end of the period of unpaid absence.</p>

Reference	Discretion	Policy Statement
	<p>leave, reserve forces leave etc.) the employer <b>must</b> contribute to the cost of the lost pension if the employee chooses to 'buy' back their lost pension providing they make an application for a Shared Cost APC within 30 days of returning from the unpaid leave. In a shared cost APC the employer pays 2/3 of the cost and the employee 1/3 of the cost.</p> <p>An employer has an option to voluntarily extend the 30 day time limit and to determine whether to contribute to the Shared Cost APC when the deadline has been extended.</p> <p>Where the unpaid absence is specifically due to participation in a <b>trade dispute</b> (strike) the employer is <b>not</b> required to share the cost of the lost pension and there is no time limit on the employee in which they can apply to make an APC</p>	<p><b>Whether Cannock Chase Council will contribute to the SCAPC when the deadline is extended</b></p> <p>Where it accepted that sufficient mitigation exists to justify accepting a late application for 'buying' pension then Cannock Chase Council will consider contributing 2/3 of the cost of buying back the lost pension through the SCAPC – on a case by case basis depending on the circumstances</p>
R 30(6) and TP 11(2)	<p><b>Flexible Retirement</b></p> <p>An employer has the discretion to allow flexible retirement for an employee who is aged 55 or over and (with the employers consent) reduces their working hours or their grade. Some or all of the pension benefits can be paid to the employee immediately.</p> <p>The employer <b>must</b> decide whether to allow flexible retirement.</p> <p>Where the employer allows flexible retirement the employee <b>must</b> take all of the benefits accrued up to 31<sup>st</sup> March 2008.</p> <p>The employer <b>must</b> also decide whether:</p> <ul style="list-style-type: none"> <li>• To allow the member to draw all, part of none of the pension benefits accrued between 31<sup>st</sup> March 2008 and 1<sup>st</sup></li> </ul>	<p><b>Flexible retirement for staff over 55 with reduction in hours or grade:</b></p> <p>Cannock Chase Council will give due consideration to written applications for flexible retirement (on the basis of a reduction in working hours or in grade) from eligible employees and will consider each on a case by case basis. Consideration of such requests will include (but are not limited to) factors such as:</p> <ul style="list-style-type: none"> <li>• The likely operational impact on the service</li> <li>• Whether flexible retirement will assist in retaining key skills or knowledge that would be hard to replace</li> <li>• The current financial situation within the Council as a whole.</li> <li>• Whether any efficiencies or service improvements could be made as a result of the early retirement</li> <li>• Any potential costs to the Council arising from the flexible retirement (for example where protections apply) and whether these can be accommodated within existing service budgets.</li> </ul>

Reference	Discretion	Policy Statement
	<p>April 2014</p> <ul style="list-style-type: none"> <li>To allow the member to draw all, part of none of the pension benefits accrued after 31<sup>st</sup> March 2014</li> </ul>	<p>Any change to working hours or grade made as a result of the implementation of flexible retirement will be on the basis of a permanent change to the employee's terms and conditions of employment.</p> <p>Where a flexible retirement is agreed employees will be allowed to draw <b>all</b> accrued pension benefits.</p>
R 30(8) and R 30(6)	<p><b>Flexible Retirement – Actuarial Reduction</b></p> <p>Where an employer permits flexible retirement the benefits payable to the employee will be reduced due to being paid early (subject to certain protections applicable to members in the scheme before 1<sup>st</sup> April 2014) unless the employer waives all or part of the actuarial reduction.</p>	<p><b>Flexible Retirement - Actuarial Reduction</b></p> <p>Ordinarily Cannock Chase Council will <b>not</b> waive the actuarial reduction applied to benefits payable in respect of a flexible retirement. (I.e. the employee will normally receive reduced benefits as a consequence of drawing their pension early due to flexible retirement).</p> <p>Cannock Chase Council will consider waiving the actuarial reduction in whole or in part (i.e. paying actuarial strain) where there is a strong business case for doing so. Those exceptional reasons will apply where it is in the financial and operational/efficiency interests of the Council or there are compelling compassionate grounds, or protections apply to that individual as specified in the regulations. In any such situation a full business case must be made out and approved by Cabinet.</p>
R 30(8) and R 30(5)	<p><b>Early Retirement After Age 55 but Before Normal Pension Age (NPA)</b></p> <p>A scheme member aged between 55 and their normal pension age* can opt to cease employment all together and voluntarily draw their pension benefits immediately using R 30 (5). In such circumstances the employee's pension will be reduced as a consequence of drawing it early unless the employer wishes to</p>	<p><b>Voluntary Early Retirement – Actuarial Reduction</b></p> <p>Cannock Chase Council will not ordinarily waive the actuarial reduction applied to pension benefits drawn by the employee <b>voluntarily</b> after the age of 55 and before their normal pension age. In very exceptional circumstances Cannock Chase Council may consider waiving the actuarial reduction - where it is in the financial or operational interests of the Council such that a valid business case can be made out and</p>

Reference	Discretion	Policy Statement
	<p>waive all or part of the actuarial reduction</p> <p>*The 'normal pension age' for drawing full entitlement to benefits accrued under the LGPS 2014 scheme is the same as the state pension age</p>	<p>subject to Cabinet approval.</p>
<p>TP Schedule 2, 2(2)</p>	<p><b>85 Year Rule – Voluntary Retirement between 55 and 60</b></p> <p>An employer has the option to 'switch on' the 85 year rule for people retiring voluntarily between the ages of 55 and 60.</p> <p>In simple terms if the employer switches <b>on</b> the rule it will pick up actuarial strain costs in the same way as it would have done under the 2008 scheme, where applicable. If the employer does not switch on the rule the scheme member will receive reduced benefits</p>	<p><b>85 year rule</b></p> <p>Cannock Chase Council will not ordinarily 'switch on' the 85 year rule for employees <b>voluntarily</b> retiring between the ages of 55 and 60. In exceptional circumstances Cannock Chase Council may consider switching on the rule where it is in the financial or operational interests of the Council to do so such that a valid business case can be made out and subject to Cabinet approval.</p>
<p>TP Schedule 2, 2(3)</p>	<p><b>85 Year Rule – Waiving the Actuarial Reduction</b></p> <p>If an employer does switch on the 85 year rule but there remains an actuarial reduction to the employee regardless then the employer has the discretion to waive the actuarial reduction on compassionate grounds</p>	<p><b>85 Year Rule – Actuarial Reduction</b></p> <p>As Cannock Chase Council will not ordinarily switch on the 85 year rule this area of discretion will not ordinarily arise.</p> <p>Where, in exceptional circumstances, the rule is applied (as described above) the relevant business case will consider whether compassionate grounds exist for waiving the actuarial reduction – subject to Cabinet approval</p>
<p>R 31</p>	<p><b>Award of Additional Pension</b></p> <p>An employer has the discretion to grant additional pension (up to the value of £6500 per annum for 2014/15) to an active scheme member or (within 6 months of leaving) to a member whose employment is terminated on grounds of:</p>	<p><b>Active Members</b></p> <p>Cannock Chase Council will not ordinarily grant additional pension to active scheme members.</p> <p><b>Termination on Grounds of Redundancy</b></p>

Reference	Discretion	Policy Statement
	<ul style="list-style-type: none"> <li>• Redundancy</li> <li>• Business efficiency</li> <li>• By mutual consent on grounds of business efficiency</li> </ul>	<p>Cannock Chase Council will not ordinarily grant additional pension in cases of redundancy.</p> <p><b>Efficiency</b></p> <p>Cannock Chase Council will not ordinarily grant additional pension in cases of efficiency or termination by mutual consent – but see note under CR 6 and 7 below</p>
R37 (3)	<p><b>Tier 3 Retirement Benefits</b></p> <p>Ill health pension benefits can be paid to a person for a limited period of time (up to 3 years) where it is expected that at some point they will be again able to take up 'gainful' employment. If a person takes up gainful employment they should tell their former employer of this material fact and the pension benefits should cease. Gainful employment is employment which the Council reasonably believes will last 12 months or more</p> <p>An employer can make a determination as to whether or not a person is in gainful employment and can also decide to recover pension benefits paid whilst a determination is being made</p>	<p><b>Recovery of Overpaid Tier 3 Pension Benefits</b></p> <p>Tier 3 Pension benefits will cease from the date a person takes up gainful employment. Overpaid pension benefits will be recovered from the date that gainful employment commenced.</p>
R38 (3) and R38 (6)	<p><b>Ill Health Retirement – Deferred Members</b></p> <p>A person who has ceased employment with the Council and has deferred pension benefits can apply to the Council for payment of ill health retirement benefits. The Council must decide whether or not a person meets the criteria for ill health retirement benefits but to do this must obtain a certificate from and IRMP to certify as to the person's capability or otherwise of taking up gainful employment</p>	<p><b>Ill Health Retirement – Deferred Members</b></p> <p>Cannock Chase Council/ will consider each such case on its merits taking account of any medical advice received. Any decision on such cases will be made by the Managing Director or Chief Officers as specified in the Constitution.</p>

Reference	Discretion	Policy Statement
R100 (68)	<p><b>Transfer of Accrued Pension Value into the LGPS</b></p> <p>A person can transfer the value of pension from another scheme into the Local Government Scheme providing they do so within 12 months of taking up employment and joining the Local Government Pension Scheme.</p> <p>This timescale can be increased with the agreement of the employer and the Administering Authority</p>	<p><b>Extending Timescales for Transferring Pension</b></p> <p>Cannock Chase Council/ will not ordinarily support any request to transfer previously accrued pension into the Local Government Pension Scheme outside of the prescribed 12 month time scale</p> <p>In exceptional circumstances where it can be shown by the employee that there was some substantial and verifiable circumstance which prevented receipt of the application within the prescribed timescale the Council will consider late transfer in of benefits – subject to the agreement of the Administering Authority.</p>
<p><b><i>Discretions requiring a written policy under the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (i.e. 2008 – 2014 scheme) (Prefixed B)</i></b></p> <p><b><i>Applicable from 1<sup>st</sup> April 2008 to 31<sup>st</sup> March 2014 (to scheme members leaving before 31<sup>st</sup> March 14)</i></b></p>		
B 30(2) and B 30(5)	<p><b>Early Payment of Deferred Benefits between 55 and 60</b></p> <p>Where (between 1/4/08 and 31/3/14) a member has ceased work in local government before they are eligible to draw their pension (thereby having deferred benefits) they can make a subsequent application to draw their deferred pension once they reach the age of 55. Between 55 and 60 they will need the employers consent to draw those deferred benefits. In such circumstances the employee will receive a reduced pension by virtue of receiving it early but the employer has the option to waive the actuarial reduction on compassionate grounds</p>	<p><b>Early Payment of Deferred Benefits</b></p> <p>Cannock Chase Council will generally approve applications for access to deferred benefits for people aged between 55 and 60 who ceased employment between 1/4/08 and 31/3/14 but with reduced benefits</p> <p>However, in exceptional circumstances Cannock Chase Council may consider waiving the actuarial reduction where strong compassionate grounds exist and costs can be met from within existing budgets</p>

Reference	Discretion	Policy Statement
B 30 A(3) and B 30 A(5)	<p><b>Early Payment of Suspended Tier 3 Ill Health Pension between 55 and 60</b></p> <p>A person can be ill health retired under Tier 3 benefits and receive their full unreduced pension benefits for an initial 3 year period. This temporary payment of benefits is based on a medical expectation that the person will not suffer permanently from their ill health. On this basis the former employer has an obligation to review at a specified timescale whether those benefits should cease.</p> <p>Where such ill health pension payments have ceased a person can, nonetheless, may an application for early payment of pension benefits when aged between 55 and 60. To draw such benefits the person will require the employer's consent and will receive reduced benefits unless the employer agrees to waive the actuarial reduction on compassionate grounds</p>	<p><b>Consent for Suspended Tier 3 Ill Health Pension</b></p> <p>Cannock Chase Council will not generally approve applications for access to suspended tier 3 benefits for people aged between 55 and 60 who ceased employment between 1/4/08 and 31/3/14.</p> <p>However, in exceptional circumstances Cannock Chase Council may give consent for payment of deferred benefits but will not ordinarily waive the actuarial reduction.</p>
<p><b><i>Discretions requiring a written policy under the Local Government Pension Scheme Regulations 1997 (Prefixed P)</i></b></p>		
<p><b><i>Applicable from 1<sup>st</sup> April 1998 to 31<sup>st</sup> March 2008</i></b></p>		
P31 (2) and P31 (5)	<p><b>Early Payment of Deferred Benefits between 50 and 60</b></p> <p>Where (between 1/4/98 and 31/3/08) a member has ceased work in local government before they are eligible to draw their pension they can make a subsequent application to draw their deferred pension once they reach the age of 50. Between 50 and 60 they will need the employers consent to draw those deferred benefits. In such circumstances the employee will receive a reduced pension by virtue of receiving it early but the employer has the option to waive the actuarial reduction on compassionate grounds</p>	<p><b>Consent</b></p> <p>Cannock Chase Council will generally approve applications for access to deferred benefits for people aged between 50 and 60 who ceased employment between 1/4/98 and 31/3/08 but with reduced benefits</p> <p>However, in exceptional circumstances Cannock Chase Council may consider waiving the actuarial reduction where strong compassionate grounds exist and costs can be met from within existing budgets.</p>

Reference	Discretion	Policy Statement
<b>Discretions requiring a written policy under the Local Government (Early Termination of Employment)(Discretionary Compensation)(England and Wales) Regulations 2006 (Prefix CR)</b>		
<b>Applicable to terminations after 1<sup>st</sup> October 2006</b>		
CR 5	<p><b>Definition of a Week's Pay for Redundancy Calculations</b></p> <p>An employer can decide to use an employee's own weekly rate of pay as the basis for calculating a redundancy payment rather than the statutory weekly rate, where the person's own rate of pay exceeds that statutory rate</p>	<p><b>Rate of Pay for Redundancy Calculations</b></p> <p>Where an employee is to be made redundant Cannock Chase Council will calculate redundancy pay based on the employee's actual weekly gross pay.</p>
CR 6 and 7	<p><b>Compensation for Redundancy</b></p> <p>An employer can award up to 104 weeks termination payment for redundancy (inclusive of statutory redundancy pay) and/or termination on grounds of efficiency of the service</p>	<p><b>Compensation for Redundancy</b></p> <p>Where an employee is made redundant Cannock Chase Council will award compensation for redundancy providing that:</p> <ul style="list-style-type: none"> <li>• The employee qualifies for a redundancy payment (i.e. by virtue of having at least 2 years continuous service)</li> <li>• The employee is in the Local Government Pension Scheme</li> <li>• The employee has at least 3 years continuous service with Cannock Chase Council (including TUPE transferred service)</li> </ul> <p>Compensation will be calculated by reference to the standard redundancy calculation table to determine the number of week's pay due for statutory redundancy purposes multiplied by 3 (to a maximum of 70 weeks)</p> <p>Compensation will not ordinarily be applied where employment is terminated on grounds of efficiency of the service. However, in exceptional circumstances the Authority may apply a higher multiplier (to a maximum of 70 weeks) or award additional pension to a maximum of £6500 per annum (as per R31). There must be a sound financial business case, the approach taken must be in the best</p>

Reference	Discretion	Policy Statement
		interests of the Council and must be contained within existing budgets and approved in accordance with locally delegated authority.
<b><i>Discretions requiring a written policy under the Local Government (Discretionary Payments) (Injury Allowances Regulations) 2011 (Prefix IA)</i></b>		
<b><i>Applicable in respect of leavers, deaths and reductions in pay occurring after 15<sup>th</sup> January 2012</i></b>		
IA 3(1), 4 (1), 6 (1) and 7(1)	<b>Injury or Disease or Death</b>  Employers have the discretion under these regulations to make payable an annual allowance where, by virtue of an injury or disease arising from the duties of their job, a person suffers a reduction in pay, loss of employment (due to permanent incapacity) or dies.	Cannock Chase Council has decided not to exercise its discretion in this area and to withdraw the existing Injury Allowance Policy

There are a number of other discretionary elements contained in LGPS and related regulations for which there is no specific requirement for a written policy. Any issues arising from those other discretionary clauses will be determined on a case by case basis giving due consideration of the relevant circumstances