

## **Report to Pensions Committee**

**1 November 2023**

### **Review of Administering Authority Discretions**

**Director of Finance and Support Services**

---

#### **Summary**

West Sussex County Council, as Administering Authority, is able to exercise discretion on how Pension Fund Regulations should be applied in specific areas.

The Council's approach to discretions has been reviewed in full to ensure that it accurately reflects the Regulations, align with the County Council's Constitution, are not overly restrictive and clearly set out the County Council's approach. Changes have been made to:

- Bring the document up to date with the role of the Pensions Committee and senior officers as set out in the Constitution.
- Reflect current practice in terms of the management of overdue payments from employers.
- Reflect recommended practice in relation to transfers into the Scheme and arrangements for buying additional pension contributions.
- Describe processes more fully and reflect best practice in relation to the payment of monies following the death of a member.
- Add discretions previously omitted and remove out of date regulatory reference.
- Provide cross references to existing policies.

The Administering Authority Discretions policy will be kept under regular review and formally reviewed every two years.

#### **Recommendation**

- (1) That the draft Administering Authority Discretions Policy (Appendix A) is approved.
- 

#### **Proposal**

##### **1 Background and context**

- 1.1 Whilst the Local Government Pension Scheme (LGPS) is one of the largest public sector pension schemes and most arrangements are set out in

regulations, there are occasions where the Administering Authority has discretion as to how the Regulations should be applied.

- 1.2 West Sussex County Council is therefore required to maintain an up-to-date policy and to take decisions consistent with its adopted approach (the "Administering Authority Discretions").
- 1.3 Discretionary powers are typically expressed in terms of what the Administering Authority "may" or "has the power" to do – as opposed to a duty, expressed as what it "shall" or "must" do. Discretions include how lump sum death benefits are distributed, granting non-statutory transfers or trivial commutation, settling benefits for children under age 18 and arrangements relating to admission and cessation of admission to the scheme by employers.

## **2 Proposal details**

- 1.4 The Administering Authority Discretions were last reviewed in 2019, when the administration service transferred to Hampshire Pension Services. The current approved Discretions are published on the [website](#).
- 1.5 The Discretions have now been reviewed in full to ensure that they properly reflect the Regulations, align with the County Council's Constitution, are not overly restrictive and clearly set out the County Council's approach. Advice has been provided by Hymans Robertson's governance and administration team.
- 1.6 Additions compared to current approved Discretions are shown in bold and italic text, deletions are struck through)
- 1.7 The following changes are highlighted:
  - a. The role of the Pensions Committee to determine whether a separate admission agreement fund should be set up, reflecting terms within the Constitution. This is not a discretion that the Committee has used to date.
  - b. The possibility that interest may be charged on overdue payment by employers, rather than the decision to charge in all cases. This reflects recommended practice for the treatment on shorter term debt.
  - c. The insertion of the role of the Director of Finance and Support Services and Director of Law and Assurance in relation to the following discretions, in line with the Constitution:
    - i. appeals against employer decisions
    - ii. the procedure for the exercise of Internal Dispute Resolution Procedures functions
    - iii. the maintenance of a communication policy
    - iv. the preparation of a written pensions administration strategy
    - v. the arrangements to apply where a beneficiary is incapable of managing their affairs.
  - d. The insertion of the role of the Director of Finance and Support Services in relation to the following discretions, in line with the Constitution:
    - i. whether to extend normal time limit for acceptance of a transfer value beyond 12 months from joining the LGPS

- ii. whether to extend the time limits within which a member can give notice to draw benefits before normal pension age or upon flexible retirement
- iii. whether to recover outstanding employee contributions as a deduction from benefits
- e. The allowance of non-Club transfers into the scheme. There is no discretion in relation to Club schemes. This follows actuarial advice which indicated that the instances of non-club transfers resulting in extreme service credits have greatly reduced and recent changes in the SCAPE discount rate will likely lead to small service/pension credits on transfer in and which helps reduce the risk to the Fund.
- f. The wording in relation to the payment of death grant and Additional Voluntary Contributions / Shared Cost Additional Voluntary Contributions (AVC/SCAVC) monies has been clarified with supplementary wording added to describe the process more fully. The role of the Director of Finance and Support Services jointly with Director of Law and Assurance has been updated. The wording is intended to provide an appropriate degree of flexibility for the Administering Authority whilst also providing a framework within which each case will be considered.
- g. The wording in relation to the evidence required to determine financial dependence of cohabiting partner or financial interdependence of cohabiting partner has been expanded to provide a framework for the consideration by the Director of Finance and Support Services.
- h. The circumstances where a satisfactory medical report is required for additional pension contributions have been clarified. There is no longer a requirement for a medical report where a member is applying to pay an APC / SCAPC to buy back missing pension that is due to a period of unpaid authorised leave of absence, unpaid child related leave or industrial action. This reflects the risk of additional cost falling back on the employer where a member enters a contract for APCs but retires on grounds of ill health (Tier 1 or Tier 2) before the contract is paid. In these circumstances the additional pension would be awarded in full.
- i. The following have been added:
  - i. The determination of the amount of an exit credit payable to an exiting employer and any extension to the 6-month period to pay an exit credit.
  - ii. Whether to agree that an admission agreement may take effect on a date before the date on which it is executed.
  - iii. The Timing of pension increase payments by employers to fund (pre-April 2008 leavers).
  - iv. The arrangements for employer decision relating to ill health and early payment of benefits for a defunct employer.
- j. The insertion of references to the Funding Strategy Statement where it contains more information about the application of discretions.
- k. References to out-of-date regulations have been removed.

1.8 Where the County Council has exercised its discretion on a matter, the decision can be challenged by members or their beneficiaries. The powers of the Pensions Ombudsman may require the Council to reconsider a discretionary

decision where it has failed to follow due process. However, even where the Ombudsman does have the power to step in, they cannot set aside a discretionary decision and can only order the County Council to reconsider the matter (which may result in the same decision being taken).

- 4.1 To support the process, Administering Authority officers will keep complete records of the decision made and the reasons. Additional expert advice may be sought for complex cases.
- 4.2 The Administering Authority Discretions policy will be kept under regular review and formally considered every two years.
- 4.3 The LGPS regulations also allow scheme employers to exercise certain discretions to enhance the benefits of scheme members. These discretions typically involve early access to benefits or improving the benefits received by members. Employers are therefore required to maintain and review their own discretions policy.

### **3 Other options considered (and reasons for not proposing)**

N/A

### **4 Consultation, engagement and advice**

Hymans Robertson have provided advice.

### **5 Risk implications and mitigations**

Risks associated with this report are set out in the risk register for the Pension Fund which is part of the Business Plan at agenda item 6.

### **6 Policy alignment and compliance**

N/A

Taryn Eves

**Director of Finance and Support Services**

**Contact Officer:** Rachel Wood, Pension Fund Strategist,  
rachel.wood@westsussex.gov.uk

### **Appendices**

Appendix A – Administering Authority Discretions

### **Background papers**

None