



# LGPS Discretions Policy

## Coombe Academy Trust

**Equality Analysis Impact**

Title of Policy: **LGPS Discretions Policy**

**Considered at Governors' Board of Directors Resources Committee**

Most recent review: March 2019

Next review: March 2020

**Is there relevance to equality?**

- 1. Does the policy have an adverse effect on employees, pupils or the wider community and therefore have a significant effect in terms of equality? If yes, then please answer questions 2 and 3. **No**
- 2. Does the policy have an adverse effect upon a group with protected characteristics? (Age, Disability, Gender reassignment, Marriage/Civil partnership, Pregnancy/Maternity, Race, Religion or belief, Sex, Sexual orientation)
- 3. Does the policy affect one or more of the equality objectives set by the school?

If the answer to question 2 or 3 is yes, a full equality analysis will need to be completed by the SLT Lead before the next committee meeting.

Please detail the objective and explain the relevance of the policy to the objective and protected characteristics below.

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# **Coombe Academy Trust - Local Government Pension Scheme Discretions Policy**

Under the Local Government Pension Scheme (LGPS) Regulations 2013, which came into effect on 1 April 2014, Coombe Academy Trust, as a scheme employer, has the right to authorise discretion on a number of matters regarding the administration of the pension scheme.

For a number of discretions there is a statutory requirement to publicise the approach the employer will take.

The discretions under the LGPS regulations 2013 are:

- Funding of additional pension
- Flexible retirement
- Waiving of actuarial reduction
- Award of additional pension

In addition there are discretions under other regulations that may have a pension impact. These are included in this policy for completeness and are as follows:

- The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006
- The Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011.
- The Local Government Pension Scheme Regulations 1995
- The Local Government Pension Scheme Regulations 1997 and
- The Local Government Pension Scheme Benefits, Membership and Contributions) Regulations 2007 (as amended)

The approach to exercising discretion in this policy is to allow the employer to make a reasonable decision in individual cases but also to be clear as to the factors it will take into account in making that decision.

In formulating and reviewing its policy statements the employer is required to:

- 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, and,
- Be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs.

Any complaints relating to decisions in these matters would need initially to be raised under the pension scheme's Internal Disputes Resolution Procedure, details of which are available from the pension scheme administrator.

This policy confers no contractual rights.

Coombe Academy Trust retains the right to change this policy at any time.

Only the policy which is current at the time a relevant event occurs to the scheme member will be the one applied to that member.

This policy sets out how the Academy Trust will operate these provisions

### **LOCAL GOVERNMENT PENSION SCHEME (LGPS) REGULATIONS 2013**

#### **Funding of additional pension - Regulations 16(2)(e) and 16(4)(d)**

Where an active member has a reduction in contributions due to a temporary absence due to a trade dispute or unpaid approved leave of absence, the employer may fund part or all of the additional pension contributions that may become payable to recover the pension lost by the member.

#### **POLICY**

The Academy Trust will only fund additional pension contributions with the approval of the relevant Trustee Committee. The Academy Trust has no intention of making a general use of this power in the foreseeable future but may wish to consider its use in exceptional cases in the future where there is a clear financial or operational advantage. Each case will be determined on its merits.

#### **Flexible Retirement - Regulation 30(6)**

A scheme member aged 55 or more may, with their employer's consent, reduce their hours or grade and then elect to for payment of all or part their accrued retirement benefits (again requiring the employer's consent). Comment from the Department for Communities and Local Government indicates that a flexible retirement policy should be about far more than simply the cost implications to the Pension Fund. It should also need to be driven by the human resources planning needs of the Trust. The objectives of the Academy Trust in relation to human resources planning are therefore fundamental in its attitude toward the use of flexible retirement and when employed effectively, can be just one of a number of tools available in dealing with strategic decisions around the management of the workforce. There are a number of reasons that were taken account of when considering the flexible retirement policy. These included;

- enabling employees to have a smoother transition into retirement;
- retaining employees (and their skills) where they might otherwise have left and taken up employment elsewhere in order to receive their LGPS benefits;
- to provide greater flexibility in managing workforce planning decisions (skills transfers, etc.), without the need to make use of the more expensive redundancy or efficiency provisions;

There are also a number of other reasons considered as to why the Academy Trust might not wish to encourage the use of flexible retirement, for example:

- a desire to reduce staff numbers;
- the loss of resources from those that would have continued to work full time;
- the additional costs associated with recruiting and training a replacement for the residual hours of the post; and
- the loss of 'savings' to the employer as a result of allowing someone to receive
- the immediate payment of LGPS benefits where they might have been expected to retire beyond the earliest date when they could receive unreduced retirement benefits.

### **POLICY**

The Academy Trust's policy on flexible retirement is that generally an application will only be approved where there is no cost to the Trust. However, there may be instances in which the Academy Trust agrees to a request where there are clear financial or organisational benefits for the organisation. Each case will be determined on its merits by the relevant Trustee Committee taking into account the following:

- Any pension costs to The Academy Trust are considered as part of the overall decision making process for any individual making this request. (Pension estimates for flexible retirement from the Council's pension administrators will reflect this policy).
- The flexible retirement must provide benefits to The Academy Trust, for example financial savings or the facilitation of organisational or staffing changes and will not result in any detriment to the level of service.
- If the request is to work reduced hours, the Academy Trust's assessment must be that there would be no operational problems caused, or recruitment difficulty anticipated, in making up the reduced hours.
- If the request is for a move to a lower graded post, this would be subject to an appropriate vacancy arising and the operation of The Academy Trust's normal recruitment procedures in filling the post.

### **Waiving of actuarial reduction - Regulation 30(8)**

An employee aged 55 or over but not yet 65, who wishes to receive early payment of pension either due to ceasing employment or by taking flexible retirement will have the pension adjusted in accordance with actuarial guidance. The Academy Trust may agree to waive in whole or part any reduction that would be required.

### **POLICY**

The Academy Trust will only agree to the early payment of accrued pension entitlement to be paid without an actuarial reduction in exceptional cases (for example, where there is a clear financial or operational advantage to The Academy Trust as a result of the early payment of pension). Each case will be determined on its merits by the Trustee Resources Committee.

### **Awarding additional pension – Regulation 31**

The Academy Trust may award either an active member or a member whose employment is terminated by redundancy or business efficiency, additional pension of not more than £6,500 per annum (as at April 2014. This will be revalued each subsequent April).

#### **POLICY**

The Academy Trust has no intention of making use of this power in the foreseeable future but may wish to consider its use in exceptional cases where there is a clear financial or operational advantage from doing so. The relevant Trust Committee will decide whether or not such additional benefits are approved and each case will be determined on its merits.

### **Discretions in relation to the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006**

The following discretions in relation to the 2006 Early Termination Regulations may be determined by The Academy Trust.

The costs of implementing the following discretions fall entirely on The Academy Trust and not on the Pension Fund. These provisions also apply in relation to employees who are not members of the LGPS (i.e. who are eligible to be LGPS members but have chosen not to join, or have opted out). These provisions are closely related to the discretions under the LGPS Regulations in respect of award of additional pension and flexible retirement.

### **Regulation 5 – Increase to statutory redundancy payments beyond weekly limit**

When an employee is made redundant, he or she is likely to be entitled to a statutory redundancy payment under the provisions of the Employment Rights Act 1996. This Act specifies a maximum weekly pay level to be used in the calculation of a redundancy payment. Currently (from 1 February 2013) this level is £450 per week. This provision of the 2006 Early Termination Regulations permits an employer to pay compensation up to the difference between the statutory redundancy payment and the redundancy payment that would be paid, if no statutory maximum pay level existed (i.e. if actual pay were used instead).

#### **POLICY**

The Academy Trust's policy in relation to this discretion is reflected in employment contracts as follows –

- a. Staff aged 55 and over, and who are members of the Local Government Pension Scheme, who are therefore eligible to receive immediate pension benefits on Redundancy, will receive the statutory redundancy payment based on actual weekly pay.
- b. Staff who are ineligible for the immediate payment of pension benefits on redundancy (i.e. who are under age 55 or who are not members of the Pension scheme) will receive:
  - Enhanced redundancy payment based on actual pay and 2 weeks pay for each year of continuous Academy Trust service up to a maximum of 30 weeks pay.

- Statutory redundancy pay for continuous local government service not at Coombe Secondary Schools Academy Trust.
- c. Employment by an Associated Employer - It should be noted that employees who accept an offer of employment by an associated employer before their employment with this authority ceases and are able to take up the employment within 4 weeks of the date of dismissal from the Trust will not be entitled to receive a redundancy payment from the Academy Trust. Receipt of a redundancy payment in relation to a previous employment will break continuity of employment.

**Regulation 6 – General compensation for early retirement on the grounds of redundancy or in the interest of efficiency**

When an employee is made redundant or the employment is terminated in the interests of business efficiency, The Academy Trust may choose to award lump sum compensation. This payment is over and above any pension benefits that may become payable under the LGPS, but a compensation payment cannot be awarded if a scheme member has already been awarded an additional period of membership or awarded additional pension under the LGPS. The maximum amount of lump sum compensation that can be paid on termination is 104 weeks' pay (paid as a lump sum and inclusive of any statutory redundancy payment), regardless of the age of the employee. If the employee is also in receipt of a statutory redundancy payment, the amount of the redundancy payment (including the compensatory element if pay in excess of the statutory weekly pay is used) is deducted from the total calculated under this provision.

When re- considering the policy in relation to the award of lump sum compensation on redundancy or in the interests of business efficiency, The Academy Trust will have a number of specific objectives, which might include:

- ensuring that there are no unreasonable costs in applying the policy
- using the policy as an effective tool in workforce management
- ensuring equity amongst employees;
- the need to take an approach to pension matters that supports the Trust in
- employing and retaining a motivated and flexible workforce;
- rewarding long service;
- applying similar principles as have been applied in agreeing the current policy. 🎬 age discrimination, or any other elements of discrimination.

Regulation 33 of the Employment quality (Age) Regulations 2006 (SI 2006/1031) provides a specific exemption allowing for the payment of enhanced lump sums on redundancy to be calculated by either (or both) of an enhanced sliding scale or by multiplication of a fixed factor. The use of a multiplier for calculating lump sum compensation would result in the calculation being based on the same approach to that used for calculating redundancy payments. Accordingly it provides an allowance for additional fluctuating payments, such as bonus payments, paid in the weeks prior to cessation. This method provides for older workers and

those with longer service to be rewarded with fair and relative amounts and is the most favoured by local authority employers.

#### **POLICY**

The Academy Trust will not make compensatory severance payments in addition to redundancy payments.

#### **Regulation 8 – power to enable employers to decide the steps taken to recover overpayments on lump sum compensation**

Where there is an over or underpayment of lump sum compensation, the Academy Trust must, as soon as possible after the discovery, inform the individual concerned, in the case of an underpayment make the appropriate payment, and in the case of an overpayment confirm the period the employer believes is reasonable for the overpayment to be made. In the case of any overpayment The Academy Trust may take such steps as they consider appropriate to recover any overpayment that has not been repaid within the specified period. Clearly where an overpayment has been made it is necessary for The Academy Trust to take reasonable steps to recover the amount overpaid. While the ideal outcome would be that all overpayments could be recovered in full, it is possible that in some circumstances this will not be possible. Any policy, therefore, needs to reflect this situation.

#### **POLICY**

Delegated powers are given to the relevant Trustee Committee to decide in each individual case the steps to be taken, if any, to recover any outstanding overpayment.

#### **Discretions in relation to the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011**

The following discretions in relation to the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011 may be determined by The Academy Trust. The costs of implementing the following discretions fall entirely on The Academy Trust and not on the Pension Fund. These provisions also apply in relation to employees who are not members of the LGPS (i.e. who are eligible to be LGPS members but have chosen not to join).

#### **Regulation 3 –Reduction in remuneration due to injury**

If an employee suffers a reduction in remuneration due to sustaining an injury or contracting a disease while he/she is employed, The Academy Trust may pay an allowance not exceeding the difference between the reduced pay and the normal pay. If this provision is adopted, there is a further provision whereby an allowance can be paid representing the increase in pension benefits as a result of the increase that would be made to the final pay figure (as a result of the additional injury remuneration) to be used in the calculation of pension benefits.

Reductions in pay are generally covered by sick pay provisions payment and therefore it is likely there will be few occasions when an allowance under this provision will be due.

However it is practical to incorporate some flexibility in the policy to give delegated authority to an officer to make a decision when the provision could apply. Insurance cover is also likely to be in place if the reduction is due to long-term sick leave due to an injury at work.

#### **POLICY**

Generally no payments will be made under this provision, but delegated powers are given to the Trustee Resources Committee to consider on a case by case basis.

#### **Regulation 4 – Loss of employment due to injury**

According to regulation 4, if an employee sustains an injury or contracts a disease as a result of duties in connection with his or her employment and, as a result, he or she ceases employment due to that incapacity and that incapacity is likely to be permanent, The Academy Trust may award an annual allowance of up to 85% of the annual rate of his or her remuneration. The amount awarded should take into consideration and be reduced any payments from the Benefits Agency, any statutory right to compensation, any pension benefits and any damages recovered or insurance contract payment. Benefits that become payable prior to the time of the injury cannot be taken into consideration. The Academy Trust may suspend or discontinue any allowance awarded under this provision if the employee becomes capable of working again.

#### **POLICY**

The Academy Trust will provide for the injury allowance to be in accordance with the terms outlined in the regulations and be assessed by taking account of:

- Severity or level of disability
- Other regular income
- Any payments of damages / compensation etc
- Any benefits already in payment (State / Pension etc)
- Any other relevant factors
- Any pre-existing condition or contributory negligence.

Delegated powers are given to Trustee Resources Committee to determine the amount of such allowances on a case by case basis.

#### **Regulation 37 – Death benefits**

This provision permits the payment of an allowance or lump sum to a spouse dependant or nominated cohabiting partner of an employee who dies as a result of an injury or disease sustained during employment. A dependant's allowance continues for such period as The Academy Trust may determine.

#### **POLICY**

The Trust Resources Committee will decide on a case by case basis but any payments will not exceed the following:



- As surviving dependants generally receive one half (50%) of a scheme member's entitlement following death, the same proportion of the injury allowance paid should be paid under this provision.
- For dependent children the following proportion of the injury allowance paid will become payable in total:

	<b>Where no spouse's allowance is payable</b>	<b>Where a spouse's allowance is payable</b>
One dependant	1/3 of scheme member's injury allowance	¼ of scheme member's injury allowance
Two or more dependants (total of dependants' allowances)	2/3 of scheme member's injury allowance	½ of scheme member's injury allowance

The allowance will cease during a period of cohabitation or remarriage.

**Discretions in Relation to Earlier Local Government Pension Scheme Regulations** 🏢 **The Local Government Pension Scheme Regulations 1995 (as amended)** 🏢 **The Local Government Pension Scheme Regulations 1997 (as amended)** 🏢 **The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (as amended)**

The Trust is also required to have a discretions policy to deal with any requests for early payment of deferred benefits for members who left under an earlier set of LGPS Regulations. These provisions relate to “deferred members” of the scheme – i.e. people who are no longer employed by the Academy Trust.

The principle to be applied in all of these cases is that the Trust will not agree a request for early payment of deferred benefits where there is a cost to the Academy Trust of doing so.

**Regulation D11 Local Government Pension Scheme Regulations 1995 (as amended)**

This provision permits the Academy Trust, when a deferred member reaches age 55; to agree to payment of deferred benefits on compassionate grounds. In all such cases there will be a cost to the Academy Trust.

**POLICY**

The Academy Trust will not agree to payment of deferred benefits on compassionate grounds.

**Regulation 31 Local Government Pension Scheme Regulations 1997 (as amended), and Regulation 30 Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (as amended)**

These provisions apply in cases where a deferred member reaches age 55 – at that point he/she can request early payment of deferred benefits. The benefits will normally be subject to actuarial reduction. However if the member satisfies the “85 year rule” (i.e. the member’s total years’ pensionable service plus his /her age) before reaching the age of age 60, the actuarial reduction only applies up to the date at which the 8 year rule is satisfied. This would result in an employer cost. The provision also permits the employer can also agree to waive the actuarial reduction, which would again result in a cost to the Academy Trust.

**POLICY**

- The Academy Trust will not agree to a request for early payment of benefits before age 60 in any case where there is a cost to the Trust of doing so.
- The Academy Trust will not agree to waive the actuarial reduction in any such case.