

Age UK Shropshire Telford & Wrekin discretionary policies under the Local Government Pension Scheme Regulations and other related Regulations

Summary

1. This report makes recommendations for **Age UK Shropshire Telford & Wrekin** policies on discretions to be exercised:
 - i) under the LGPS Regulations 2013 from 1 April 2014 in respect of members of the Career Average Revalued Earnings (CARE) scheme,
 - ii) under earlier LGPS Regulations in respect of former employees who were members of the LGPS and who left prior to 1 April 2014,

Background

2. In March 2011, the Independent Public Service Pensions Commission, chaired by Lord Hutton, published its final report of the review of public service pensions. The report made clear that change was needed to “make public service pension schemes simpler and more transparent, [and] fairer to those on low and moderate earnings”.
3. As a result, it was decided that the Local Government Pension Scheme (LGPS) should be reformed so that, from 1 April 2014, benefits accrue on a Career Average Revalued Earnings (CARE) basis rather than on a final salary basis.
4. The provisions of the CARE scheme, together with the protections for members’ accrued pre 1 April 2014 final salary pension rights, are contained in the Local Government Pension Scheme Regulations 2013 and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014.
5. As a result of the changes, **Age UK Shropshire Telford & Wrekin** is legally required to formulate, publish and send to the LGPS pension fund administering authority a written Statement of Policy on certain discretions under the LGPS which **Age UK Shropshire Telford & Wrekin** has the power to exercise on and from 1 April 2014 in relation to members of the CARE scheme.
6. **Age UK Shropshire Telford & Wrekin** is also legally required to (or where there is no requirement, is recommended to) formulate, publish and keep under review a Statement of Policy on certain other discretions it may exercise:
 - i) under earlier LGPS Regulations in respect of former employees who were members of the LGPS and who left prior to 1 April 2014,

7. Any amended policy under paragraph 6(i) above must be published and sent to the LGPS pension fund administering authority within one month of the date the revisions to the policy were made.
8. Overall, **Age UK Shropshire Telford & Wrekin** is:
- i) required to formulate, publish and keep under review a written Statement of Policy on certain discretions in accordance with:
 - regulation 60 of the Local Government Pension Scheme Regulations 2013,
 - paragraph 2(2) of Schedule 2 to the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014,
 - regulation 66 of the Local Government Pension Scheme (Administration) Regulations 2008 (in respect of former employees who were members of the LGPS and who left between 1 April 2008 and 31 March 2014),
 - regulation 106 of the Local Government Pension Scheme Regulations 1997 (in respect of former employees who were members of the LGPS and who left between 1 April 1998 and 31 March 2008), and
 - ii) recommended to formulate, publish and keep under review a written Statement of Policy on one discretion under the Local Government Pension Scheme Regulations 1995 (in respect of leavers before 1 April 1998).
9. In formulating and reviewing its policies under the LGPS Regulations referred to in paragraphs 6(i) above **Age UK Shropshire Telford & Wrekin** is required to have regard to the extent to which the exercise of its discretionary powers might lead to a serious loss of confidence in the public service.

Decisions required

10. **The Trustee Board** is asked:
- i) to approve the policies on the discretions to be exercised under the LGPS Regulations in respect of those employees who are active scheme members after 31 March 2014 and members and who cease active membership after 31 March 2014, as set out in the table at Annex 1, and
 - ii) to approve the policies on the discretions to be exercised under the LGPS Regulations in respect of former employees who were scheme members and who left prior to 1 April 2014, as set out in the table at Annex 2, and

Effective date of policies

11. The policies on discretions to be exercised under the LGPS Regulations 2013 take immediate effect from the date **Age UK Shropshire Telford & Wrekin** agrees the policies. Any change to the policies on existing discretions to be exercised under the LGPS Regulations in respect of former employees who were members of the scheme and who left pre 1 April 2014 take immediate effect from the date **Age UK Shropshire Telford & Wrekin** agrees the policies.

Non-fettering of discretions

12. The recommendations contained within this report, if approved, will form **Age UK Shropshire Telford & Wrekin** policies on pension and compensation discretions. It should be noted that:

- the policies will confer no contractual rights
- subject to paragraphs 20 to 22, **Age UK Shropshire Telford & Wrekin** will retain the right to change the policies at any time without prior notice or consultation and
- only the policy which is current at the time a relevant event occurs to an employee / scheme member will be the one applied to that employee / member.

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5/8/16

Fettering Discretion

When considering the options in the following tables it will be necessary to have regard to the question of fettering of discretion.

There are two trains of thought on this particular subject.

The first is that, in order not to be seen to fetter in any way an employer's discretion, the policy should state that each case will be determined based on its circumstances and merits and, if relevant to the discretion in question, up to a maximum of **XX** will be awarded. The policy should set out the criteria upon which the discretion will be based.

It is argued that constructing a policy in this way helps to satisfy the requirements set out in paragraphs 15 to 17 above.

The second type of approach is that, for a particular discretion, an employer might wish to adopt a standard policy (e.g. all redundancy payments will be based on an actual week's pay where this exceeds the statutory week's pay for redundancy payments) but make it plain in the policy statement that:

- the policy confers no contractual rights
- subject to paragraphs 20 to 22 above, the employer retains the right to change the policies at any time without prior notice or consultation, and
- only the policy which is current at the time a relevant event occurs to an employee / scheme member will be the one applied to that employee / member.

It may be argued that the employer is not fettering its discretion because it retains the right to amend/change the policy at any time and that the approach is seen to be fairer in that the policy is applied consistently across all employees. However, it can also be argued that such policies do fetter an employer's discretion (because they leave no scope to deal with individual, perhaps exceptional, cases) and may not adequately take into account the requirements set out in paragraphs 15 to 17 above.

A view given by the Pensions Ombudsman is that:

- where regulations allow an employer to exercise discretion a policy should be in place to set out how to exercise that discretion
- a policy is there to guide the decision-maker on how to exercise discretion
- an employer cannot generally bind itself as to how it will exercise discretion – fettering discretion is unlawful
- every case should be considered on its merits; a decision is to be made on whether to follow the policy or make an exception
- policies do not override the law; they should not apply a stricter test

Annex 1

Table A: Discretions to be exercised on and after 1 April 2014 under the LGPS Regulations 2013 in relation to active scheme members (other than local authority councillor members) and members who cease active membership after 31 March 2014 (other than local authority councillor members).	Age UK Shropshire Telford & Wrekin policy
<p>1. Whether, at full cost to Age UK Shropshire Telford & Wrekin, to grant extra annual pension of up to £6,675 (figure at 1 April 2015) to an active scheme member or, within 6 months of leaving, to a member who is dismissed by reason of redundancy or business efficiency or whose employment is terminated by mutual consent on the grounds of business efficiency.</p>	<p>Age UK Shropshire Telford & Wrekin will not make use of the discretion to grant extra annual pension of up to £6,675 (figure at 1 April 2015) to an active Scheme member except in exceptional circumstances where Age UK Shropshire Telford & Wrekin considers it is in its financial or operational interests to do so. Each case will be considered on the merits of the financial and / or operational business case put forward.</p>
<p>2. Whether, where an active scheme member wishes to purchase extra annual pension of up to £6,675 (figure at 1 April 2015¹) by making Additional Pension Contributions (APCs), Age UK Shropshire Telford & Wrekin will voluntarily contribute towards the cost of purchasing that extra pension via a Shared Cost Additional Pension Contribution (SCAPC).</p>	<p>Age UK Shropshire Telford & Wrekin will only voluntarily contribute towards the cost of purchasing extra pension via a Shared Cost Additional Pension Contribution (SCAPC) where:</p> <ul style="list-style-type: none"> - an active scheme member returns from a period of authorised leave of absence, and - the member does not, within 30 days of returning from the leave of absence, make an election to buy-back the amount of pension 'lost' during that period of leave of absence, and

	<ul style="list-style-type: none"> - the member subsequently makes an election to do so whilst an active member and it can be demonstrated that the reason for the member missing the original 30 day deadline was because the member had not been made aware of that deadline, and - the election is made no more than 3 months after the member returns from the period of leave of absence or such longer period as Age UK Shropshire Telford & Wrekin may deem reasonable in any individual case. <p>A decision on whether the member meets the above criteria (and on whether the 3 month period referred to should be extended in any individual case) will be taken by The Trustee Board and, where it is agreed that the conditions are met, Age UK Shropshire Telford & Wrekin will be required to contribute 2/3rds of the cost of buying back the 'lost' pension via a SCAPC.</p> <p>Secondly, in exceptional circumstances where Age UK Shropshire Telford & Wrekin considers it is in its financial or operational interests to do so. Each case to contribute to a SCAPC (and a decision on the amount to be contributed) will be considered on the merits of the financial and / or operational business case put forward.</p>
<p>3. Whether to permit flexible retirement for staff aged 55 or over who, with the agreement of Age UK Shropshire Telford & Wrekin, reduce their working hours or grade and, if so, as part of the agreement:</p>	<p><u>Flexible retirement</u></p> <p>Age UK Shropshire Telford & Wrekin will not agree to flexible retirement except in circumstances where Age UK Shropshire Telford & Wrekin considers it is in its</p>

<ul style="list-style-type: none"> - whether, in addition to the benefits the member has accrued prior to 1 April 2008 (which the member must draw if flexible retirement is agreed), to permit the member to choose to draw <ul style="list-style-type: none"> • all, part or none of the pension benefits they accrued after 31 March 2008 and before 1 April 2014, and / or • all, part or none of the pension benefits they accrued after 31 March 2014, and - whether to waive, in whole or in part , any actuarial reduction which would otherwise be applied to the benefits taken on flexible retirement before Normal Pension Age (NPA)². 	<p>financial or operational interests to do so. Each case</p> <ul style="list-style-type: none"> - will be considered on the merits of the financial and / or operational business case put forward, - will set out whether, in additional to any pre 1 April 2008 benefits, the member will be permitted, as part of the flexible retirement agreement, to take <ul style="list-style-type: none"> a) all, some or none of their 1 April 2008 to 31 March 2014 benefits, and /or b) all, some or none of their post 31 March 2014 benefits, and - will require the approval of The Trustee Board <p><u>Waiver of any actuarial reduction on flexible retirement</u></p> <p>Where flexible retirement is agreed, the benefits payable will be subject to any actuarial reduction applicable under the Local Government Pension Scheme Regulations and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014. Age UK Shropshire Telford & Wrekin will only waive any such reduction, in whole or in part, where it considers it is in its financial or operational interests to do so. Each case will be considered on the merits of the financial and / or operational business case put forward and will require the approval of The Trustee Board including, where the reduction is only to be waved in part, approval for the amount of reduction to be waived.</p>
<p>4. Whether, as the 85 year rule does not (other than on flexible retirement – see 3 above) <u>automatically</u> apply to members who would otherwise be subject to it and who choose to voluntarily draw their benefits on or after age 55 and before age 60, to apply the 85 year rule to such voluntary retirements.</p>	<p>Age UK Shropshire Telford & Wrekin will not agree to apply the 85 year rule where members choose to voluntarily draw their benefits on or after age 55 and before age 60 except in circumstances where Age UK Shropshire Telford & Wrekin</p>

	<p>considers it is in its financial or operational interests to do so. Each case</p> <ul style="list-style-type: none"> - will be considered on the merits of the financial and / or operational business case put forward, and - will require the approval of The Trustee Board
<p>5. For:</p> <ul style="list-style-type: none"> i) active members voluntarily retiring on or after age 55 and before Normal Pension Age who elect under regulation 30(5) of the LGPS Regulations 2013 to immediately draw benefits, and ii) deferred members and suspended Tier 3 ill health pensioners who elect under regulation 30(5) of the LGPS Regulations 2013 to draw benefits (other than on ill health grounds) on or after age 55 and before Normal Pension Age <p>who:</p> <ul style="list-style-type: none"> - were <u>not</u> members of the LGPS before 1 October 2006 [Group 4 members], whether to: <ul style="list-style-type: none"> o waive on compassionate grounds, any actuarial reduction that would otherwise be applied to benefits, if any, accrued before 1 April <u>2014</u>, and / or o waive, in whole or in part (on any grounds), any actuarial reduction that would otherwise be applied to benefits accrued after 31 March <u>2014</u> - <u>were</u> members of the LGPS before 1 October 2006 and <u>will</u> be 60 or more on 31 March 2016 [Group 1 members], whether to: <ul style="list-style-type: none"> o waive on compassionate grounds, any actuarial reduction that would otherwise be applied to benefits accrued before 1 April <u>2016</u>, and / or o waive, in whole or in part (on any grounds), any actuarial reduction that would otherwise be applied to 	<p>Where members choose to voluntarily draw their benefits on or after age 55 and before Normal Pension Age Age UK Shropshire Telford & Wrekin will not agree to waive in whole or in part any actuarial reduction that would otherwise be applied to their benefits except in circumstances where Age UK Shropshire Telford & Wrekin considers it is in its financial or operational interests to do so or there are compelling compassionate reasons for doing so.</p> <p>Each case</p> <ul style="list-style-type: none"> - will be considered on the merits of the financial and / or operational business case put forward, or - will be considered on the merits of the compassionate case put forward, and - will require the approval of The Trustee Board including, where the reduction is only to be waived in part, approval for the amount of reduction to be waived

<p>benefits accrued after 31 March <u>2016</u></p> <ul style="list-style-type: none"> - <u>were</u> members of the LGPS before 1 October 2006 and will <u>not</u> be 60 or more on 31 March 2016 and will <u>not</u> attain age 60 between 1 April 2016 and 31 March 2020 [Group 3 members], whether to: <ul style="list-style-type: none"> o waive on compassionate grounds, any actuarial reduction that would otherwise be applied to benefits accrued before 1 April <u>2014</u>, and / or o waive, in whole or in part (on any grounds), any actuarial reduction that would otherwise be applied to benefits accrued after 31 March <u>2014</u> - <u>were</u> members of the LGPS before 1 October 2006 and will <u>not</u> be 60 or more on 31 March 2016 but <u>will</u> attain age 60 between 1 April 2016 and 31 March 2020 [Group 2 members], whether to: <ul style="list-style-type: none"> o waive on compassionate grounds, any actuarial reduction that would otherwise be applied to benefits accrued before 1 April <u>2020</u>, and / or o waive, in whole or in part (on any grounds), any actuarial reduction that would otherwise be applied to benefits accrued after 31 March <u>2020</u> 	
<p>6. Whether, how much, and in what circumstances to contribute to a shared-cost Additional Voluntary Contribution (SCAVC) arrangement entered into on or after 1 April 2014 and whether, how much, and in what circumstances to continue to contribute to any shared cost Additional Voluntary Contribution (SCAVC) arrangement entered into before 1 April 2014.</p>	<p>Age UK Shropshire Telford & Wrekin will not enter into a shared cost AVC arrangement other than:</p> <ul style="list-style-type: none"> a) in exceptional circumstances in which case the decision to contribute, and the amount of the contribution, will be subject to the approval of The Trustee Board

<p>7. Whether to extend the 12 month time limit within which a scheme member who has a deferred LGPS benefit in England or Wales following the cessation of an employment (or cessation of a concurrent employment) after 31 March 2014 may elect not to have the deferred benefits aggregated with their new LGPS employment (or ongoing concurrent LGPS employment) if the member has not made an election to retain separate benefits within 12 months of commencing membership of the LGPS in the new employment (or within 12 months of ceasing the concurrent membership).</p>	<p>Age UK Shropshire Telford & Wrekin chooses not to exercise this discretion. As the LGPS Scheme has been closed to new members since 1st April 2004; this is no longer relevant.</p>
<p>8. Whether, with the agreement of the Pension Fund administering authority, to permit a Scheme member to elect to transfer other pension rights into the LGPS if he / she has not made such an election within 12 months of joining the LGPS.</p>	<p>Age UK Shropshire Telford & Wrekin chooses not to exercise this discretion. The LGPS scheme has been closed to new members since 1st April 2004; this is no longer relevant</p>
<p>9. How the pension contribution band/rate to which an employee is to be allocated will be determined on joining the Scheme and at each subsequent April, and the circumstances in which the employer will, in addition to the review each April, review the pension contribution band/rate to which an employee has been allocated consequent upon a material change which affects the member's pensionable pay in the course of a Scheme year (1 April to 31 March).</p>	<p>Age UK Shropshire Telford & Wrekin will review all employees contribution bands as at 1st April each year based on cumulative earnings unless there is a material change. Hence, when a member salary or hours change (temporary or permanently) during the year the member will remain on the same employee contribution rate until the following April.</p>
<p>10. Whether or not, when calculating assumed pensionable pay when a member (other than a returning officer³) is:</p> <ul style="list-style-type: none"> - on reduced contractual pay or no pay on due to sickness or injury, or - absent during ordinary maternity, paternity or adoption leave or paid shared parental leave, or during paid additional maternity or adoption leave 	<p>In assessing Assumed Pensionable Pay (APP) Age UK Shropshire Telford & Wrekin will not, other than in exceptional circumstances, include in the calculation any 'regular lump sum payments' in which case the decision to include the 'regular lump sum payment' will be subject to the approval of The Trustee Board.</p>

<p>(other than any part of that leave where the pensionable pay received is greater than the assumed pensionable pay for that part of the leave period), or</p> <ul style="list-style-type: none"> - absent on reserve forces service leave, or - retires with a Tier 1 or Tier 2 ill health pension, or - dies in service <p>to include in the calculation the amount of any 'regular lump sum payment' received by the member in the 12 months preceding the date the absence began or the ill health retirement or death occurred.</p> <p>-</p>	
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Annex 2

Table B: Discretions to be exercised on and after 1 April 2014 under the LGPS Regulations in relation to scheme members who ceased active membership between 1 April 2008 and 31 March 2014 (other than local authority councillor members)	Age UK Shropshire Telford & Wrekin policy
<p>1. Whether to grant applications for the early payment of deferred pension benefits on or after age 55 and before age 60 (on grounds other than permanent ill health).</p> <p>- .</p>	<p>Where a former scheme member who left the scheme between 1 April 2008 and 31 March 2014 requests early release of deferred benefits on or after age 55 and before age 60 (on grounds other than permanent ill health), approval will only be given if there is no cost to Age UK Shropshire Telford & Wrekin</p>
<p>2. Whether, on compassionate grounds⁴, to waive any actuarial reduction that would normally be applied to deferred benefits which are paid before age 65⁵.</p>	<p>Age UK Shropshire Telford & Wrekin will not waive, on compassionate grounds, any actuarial reduction that would normally be applied to deferred benefits which are paid before age 65.</p>
<p>3. Whether to grant applications for the early payment of a suspended Tier 3 ill</p>	<p>Where a former scheme member who left the scheme between 1 April 2008</p>

health pension on or after age 55 ⁶ and before age 60 (on grounds other than permanent ill health).	and 31 March 2014 requests early release of deferred benefits on or after age 55 and before age 60 (on grounds other than permanent ill health), approval will only be given if there is no cost to Age UK Shropshire Telford & Wrekin
4. Whether, on compassionate grounds, to waive any actuarial reduction that would normally be applied to any suspended Tier 3 ill health pension benefits which are brought back into payment before age 65.	Age UK Shropshire Telford & Wrekin will consider an application to waive, on compassionate grounds, any actuarial reduction that would normally be applied to a suspended Tier 3 ill health pension which is brought back into payment before age 65. Each case will be considered on its merits and will be subject to the approval of The Trustee Board .

Table C: Discretions to be exercised on and after 1 April 2014 under the LGPS Regulations in relation to scheme members who ceased active membership between 1 April 1998 and 31 March 2008 (and in relation to local authority councillor members who ceased or will cease active membership on or after 1 April 1998)	Age UK Shropshire Telford & Wrekin policy
1. Whether to grant applications for the early payment of pension benefits on or after age 50 and before age 60 (on grounds other than permanent ill health).	Where a former scheme member who left the scheme between 1 April 1998 and 31 March 2008 (or a local authority councillor member who left the scheme on or after 1 April 1998) requests early release of deferred benefits on or after age 50 and before age 60 (on grounds other than permanent ill health), approval will only be given if there is no cost to Age UK Shropshire Telford & Wrekin.
2. Whether, on compassionate grounds, to waive any actuarial reduction that would normally be applied to deferred benefits which are paid before age 65.	Age UK Shropshire Telford & Wrekin will not waive, on compassionate grounds, any actuarial reduction that

	would normally be applied to deferred benefits which are paid before age 65.
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Table D: Discretions to be exercised on and after 1 April 2014 under the LGPS Regulations in relation to scheme members who ceased active membership before 1 April 1998	Age UK Shropshire Telford & Wrekin policy
1. Whether to grant applications for the early payment of deferred pension benefits on or after age 50 ⁷ and before age 65 on compassionate grounds.	Where a former scheme member who left the scheme before 1 April 1998 requests early release of deferred benefits on or after age 50 and before age 65 on compassionate grounds, approval will not be given.

