

# London Borough of Merton

## Employer Pensions Discretion Policy

Merton Pension Fund section  
of the Local Government Pension Scheme

[June 2023]

## **Discretionary policies under the Local Government Pension Scheme**

### **Background**

The Local Government Pension Scheme (LGPS) is made up of a number of schemes. As the schemes have been amended over time (such as when new schemes were introduced in 1997, 2008 and, most recently, on 1 April 2014 when the career average re-valued earnings (CARE) scheme was introduced), existing active (contributing members) are moved to the latest scheme. Under each scheme, a member's scheme employer must prepare a statement of discretionary policies setting out how it would exercise its discretion in respect of certain specified benefits. In addition, a scheme employer may also choose to prepare a statement of its policy voluntarily for other benefits. Most discretions will apply to active members in the current CARE scheme, but the provisions of the earlier schemes will continue to apply to the members who ceased to be active members when those schemes were in force.

### **Preparing a discretionary policy**

Discretions are powers that enable scheme employers such as the London Borough of Merton (Merton) some flexibility in choosing how to apply the rules of the LGPS in respect of certain benefits. It is important to be aware that Merton keeps its discretionary policy under review and therefore its policies are subject to change from time to time.

When it determines (or reviews) a discretionary policy, Merton must have regard to the extent to which the exercise of the discretions could lead to a serious loss in confidence in the public service.

Amongst Merton's considerations when formulating or reviewing its policy, are the following:

- *Cost*

There is usually a cost associated with a discretionary power. Therefore, any exercise of a discretionary power must be affordable and not in any way lead to a loss of confidence in public services.

- *The basis on which decisions are made under the discretionary policy*

Policies should not be drafted in such a way that they restrict Merton's ability to exercise the discretion where, on occasion, there is merit in exercising it;

- *Equality*

Any policy should avoid using criteria that discriminates either directly or indirectly i.e. for example, a policy which benefits one gender or an age group.

It is important to note that nothing in this statement creates any right for any person or an expectation that a discretion will or will not be exercised. The Policy can be amended at any time and whether a discretion is exercised is Merton's decision alone.

When reviewing the discretions below, it is important to note that the application of any discretionary policy will depend on when the member left active membership. The headings to each section will assist you to identify which discretions apply in an individual case.

### **Merton's discretionary policies**

Discretionary policies fall in broadly two categories – policies that Merton is required to publish (mandatory) and ones that are not (non-mandatory). The mandatory policies are summarised in the tables below by reference to a member's date of leaving.

In addition, Merton has set out its policy in respect of several non-mandatory discretions in the tables below. These are discretions that Merton is asked to exercise on a frequent basis.

### **Abbreviations and terms used in this policy**

**"LGPS"** means the Local Government Pension Scheme

**"AVCs"** means additional voluntary contributions

**"APC"** means an additional pension contribution

**"85-year rule"** or **"Rule of 85"** was a method by which members of the LGPS that have sufficient service and age could elect to draw their benefits before age 65 without the benefits being reduced for early payment. A member would satisfy the Rule of 85 if their age and scheme membership add up to 85 or more. From 1 October 2006, the 85-year rule has been phased out, but anyone with LGPS service before this date may still have some protections.

**Summary of discretionary policies in respect of member benefits under the Local Government Pension Scheme**

**List of discretionary policies applicable from 1 April 2014 in relation to post-31 March 2014 active members (excluding councillor members) and post-31 March 2014 leavers (excluding councillor members)**

**Mandatory policies**

| <b>Discretion</b>                      | <b>Legislative provision</b>   | <b>Summary of discretion</b>  | <b>Merton's policy</b>  |
|--|--|---|---|
| <b>Provision of additional pension</b> | Regulations 16(2)(e) & 16(4)(d) of the Local Government Pension Scheme Regulations 2013 [SI 2013/2356]   | This discretion is whether to contribute to some or all of the purchase of additional pension by an active member, either by regular contributions or lump sum.<br><br>Where a Council contributes to some of the purchase, this is often known as a shared cost APC. | Merton's policy is that a decision to contribute to the cost of any additional pension will only be considered where there will be a financial or other benefit to the employer.  |
| <b>Flexible retirement</b>             | Regulation 30(6) of the Local Government Pension Scheme Regulations 2013 [SI 2013/2356]<br><br>Regulation 11(2) of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 [SI 2014/525] | This discretion is whether to allow an active member aged 55 or over who reduces their working hours or grade of their employment to elect to receive immediate payment of all or part of their pension.  | Merton will consider each request for early retirement on its merits.<br><br>Merton's policy is to agree to individual applications for flexible retirement where there are no financial costs to Merton and there is no detrimental effect on service delivery and in accordance with Merton's Flexible Retirement policy. |
| <b>Waiving actuarial reduction</b>     | Regulation 30(8) of the Local Government Pension Scheme Regulations 2013 [SI 2013/2356]  | This discretion is whether to waive in whole or in part an actuarial reduction in respect of: <ul style="list-style-type: none"> <li>a member who has been permitted to take flexible retirement and is not protected by the 85-year rule; or</li> </ul>              | Merton's policy is that a decision to waive any actuarial reduction in the case of flexible retirement will only be considered where there will be a financial or other benefit   |

| Discretion                                   | Legislative provision   | Summary of discretion  | Merton's policy  |
|--|---|--|--|
|  |   | <ul style="list-style-type: none"> <li>a member who, having reached age 55 but not their normal retirement age and who is no longer working in the employment in which their pension benefits were earned, elects to receive early payment of those benefits</li> </ul>  | to the employer or, in very exceptional circumstances, on compassionate grounds.   |
| <b>Award of additional pension</b>           | Regulation 31 of the Local Government Pension Scheme Regulations 2013 [SI 2013/2356]  | <p>This discretion is whether to award additional pension (of up to £6,500* pa at 1 April 2014) to:-</p> <ul style="list-style-type: none"> <li>an active member; or</li> <li>an active member who was dismissed on the grounds of redundancy or business efficiency, or whose employment was terminated by mutual consent on the grounds of business efficiency.</li> </ul> <p>*Note - this figure is revalued annually</p>   | Merton's policy is that a decision to award any additional pension will only be considered where there will be a financial or other benefit to the employer.                             |
| <b>Early retirement and the 85-year rule</b> | Paragraph 1(1)(c) and 1(2) of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 [SI 2014/525] | <p>This discretion is whether to allow the rule of 85 to apply to a member who has otherwise qualified for the rule, and who is voluntarily electing to retire at or after reaching age 55 and before reaching age 60 under</p> <ul style="list-style-type: none"> <li>regulation 30(5) (early retirement) of the LGPS Regulations 2013; or</li> <li>regulation 30(1) (choice of early pension), or regulation 30A (choice of payment of pension: pensioner member with deferred benefits) of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007</li> </ul> <p>Use of the discretion waives the actuarial reduction that would otherwise arise.</p> | Merton's policy is that a decision to 'switch on' the 85-year rule (for scheme members aged between 55 and 60) is only made where there would be a financial or other benefit to Merton. |
| <b>Waiving actuarial reduction (on</b>       | Regulation 3(1) and paragraph 2(1),   | Whether to waive any actuarial reduction for a member voluntarily drawing benefits before  | Merton's policy is that a decision to waive any  |

| Discretion                           | Legislative provision  | Summary of discretion  | Merton's policy  |
|--------------------------------------|--|--|--|
| <p><b>compassionate grounds)</b></p> | <p>Schedule 2, Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 [SI 2014/525]</p> <p>Regulations 30(5) and 30A(5) of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 [SI 2007/1166]</p> | <p>normal pension age other than on the grounds of flexible retirement (where the member has both pre-1 April 2014 and post-31 March 2014 membership):</p> <ol style="list-style-type: none"> <li>1. on compassionate grounds (pre-1 April 2014 membership) and in whole or in part on any grounds (post-31 March 2014 membership) if the member was not in the LGPS before 1 October 2006</li> <li>2. on compassionate grounds (pre-1 April 2014 membership) and in whole or in part on any grounds (post-31 March 2014 membership) if the member was in the LGPS before 1 October 2006, will not be 60 by 31 March 2016 and will not attain 60 between 1 April 2016 and 31 March 2020 inclusive, if it is agreed to apply the 85-year rule</li> <li>3. on compassionate grounds (pre-1 April 2016 membership) and in whole or in part on any grounds (post 31 March 2016 membership) if the member was in the LGPS before 1 October 2006 and will be 60 by 31 March 2016</li> <li>4. on compassionate grounds (pre-1 April 2020 membership) and in whole or in part on any grounds (post 31 March 2020 membership) if the member was in the LGPS before 1 October 2006, will not be 60 by 31 March 2016 and will attain 60 between 1 April 2016 and 31 March 2020 inclusive</li> </ol> | <p>actuarial reduction will only be considered where there will be a financial or other benefit to the employer or, in very exceptional circumstances, on compassionate grounds.</p> |

**List of discretionary policies in relation to scheme members (excluding councillor members) who ceased active membership on or after 1 April 2008 and before 1 April 2014**

| Discretion   | Legislative provision   | Summary of discretion  | Merton's policy  |
|--|---|--|--|
| <b>Early retirement and the 85-year rule</b>   | Paragraphs 1(2) and 1(1)(c) of Schedule 2 of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 [SI 2014/525]  | Whether to apply the 85-year rule for a member voluntarily drawing benefits on or after age 55 and before age 60.  | Merton's policy is that a decision to 'switch on' the 85-year rule (for scheme members aged between 55 and 60) is only made where there would be a financial or other benefit to Merton.                   |
| <b>Waiving actuarial reduction</b>   | Regulation B30(5) of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (as amended) [SI 20071166] and Paragraph 2(1) of Schedule 2 of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 [SI 2014/525] | Whether to waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early under Regulation B30.                        | Merton's policy is that a decision to waive any actuarial reduction will only be considered where there will be a financial or other benefit to the employer.  |
| <b>Early retirement and the 85-year rule for pensioner member with deferred benefits</b> | Paragraphs 1(2) and 1(1)(c) of Schedule 2 of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 [SI 2014/525]  | Whether to apply the 85-year rule for a pensioner member with deferred benefits voluntarily drawing benefits on or after age 55 and before age 60        | Merton's policy is that a decision to allow the early payment of deferred benefits to former members of the LGPS will only be considered where there will be a financial or other benefit to the employer. |
| <b>Waiving actuarial reduction (on compassionate grounds)</b>                            | Regulation 30A(5) of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (as amended) [SI 2007/1166] , Paragraphs   | Whether to waive, on compassionate grounds, the actuarial reduction applied to benefits paid early under B30A (pensioner member with deferred benefits). | Merton's policy is that a decision to waive any actuarial reduction will only be considered where there will be a financial or other benefit to the employer.  |

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|  | 2(1) of Schedule 2 of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 [SI 2014/525] |  |  |
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**Non-mandatory policies (not exhaustive)**

| Discretion   | Legislative provision   | Summary of discretion   | Merton's policy  |
|--|---|---|--|
| <p><b>Extension of 30-day period for member to elect for a shared cost APC on return from leave of absence</b></p> | <p>Regulation 16(16) of the Local Government Pension Scheme Regulations 2013</p>                          | <p>Whether to extend 30-day deadline for member to elect for a shared cost APC upon return from a period of absence from work with permission with no pensionable pay (otherwise than because of illness or injury, relevant child-related leave or reserve forces service leave)</p> | <p>Merton will only extend the 30-day deadline where:</p> <ul style="list-style-type: none"> <li>a) 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;</li> <li>b) the member subsequently makes an election to do so 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</li> <li>c) the election is made no more than 6 months after the member returns from the period of leave of absence or such longer period as the Councils may deem reasonable in any individual case.</li> </ul> <p>A decision on whether the member meets the above criteria will be taken by the Senior LGPS Officer.</p> |
| <p><b>Shared cost additional</b></p>   | <p>Regulation 17 of the Local Government Pension Scheme Regulations 2013 and Regulation 15(2A) of the</p> | <p>Whether, how much, and in what circumstances to contribute to a Shared Cost AVC arrangement.</p>   | <p>Merton will pay shared cost AVCs only where a member has elected to pay AVCs by salary</p>  |

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| <p><b>voluntary contributions</b></p>   | <p>Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014</p> |  | <p>sacrifice. The amount of these employer shared cost AVCs will not exceed the amount of salary sacrificed by the member. The exercise of this discretion is subject to the employee meeting the Councils' conditions for acceptance into the salary sacrifice shared cost AVC scheme and access may be withdrawn or changed at any time.</p>   |
| <p><b>Extension of time to transfer pension rights from another registered pension scheme</b></p> | <p>Regulation 100(6) of the Local Government Pension Scheme Regulations 2013</p>                         | <p>Whether, with the agreement of the administering authority (also Merton), to permit a member to elect to transfer pension rights from another registered pension scheme into the LGPS, if they had not made such an election to do so within 12 months of first joining the LGPS in that employment</p> | <p>Merton will only extend the 12-month deadline where one of these circumstances apply:</p> <ul style="list-style-type: none"> <li>a) the member asked for transfer investigations to be commenced within 12 months of joining the LGPS but a quotation of what the transfer value will purchase in the LGPS had not been provided to the member;</li> <li>b) where the available evidence indicates the member made an election within 12 months of joining the LGPS, but the election was not received by the Pension Fund administering authority;</li> <li>c) where the available evidence indicates the member had not been informed of the 12 month time limit</li> </ul> <p>A decision on whether the member meets the above</p> |

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|  |  |  | criteria will be taken by the Senior LGPS Officer. |
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**List of discretionary policies in relation to scheme members who ceased active membership on or after  
1 April 1998 and before 1 April 2008**

| <b>Discretion</b>                            | <b>Legislative provision</b>  | <b>Summary of discretion</b>  | <b>Merton's policy</b>   |
|--|---|---|--|
| <b>Allow early retirement</b>                | Regulation 31(2) of the Local Government Pension Scheme Regulations 1997  | Grant application for early payment of deferred benefits on or after age 50 and before age 55.  | Merton's policy is that a decision to allow the early payment of deferred benefits to former members of the LGPS will only be considered where there will be a financial or other benefit to the employer. |
| <b>Early retirement and the 85-year rule</b> | Paragraphs 1(2) & 1(1)(f) of Schedule 2 of the & Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 [SI 2014/525]<br>Regulation 60 of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (as amended) [SI 20071166] | Whether to apply the 85-year rule for a member with deferred benefits voluntarily drawing benefits on or after age 55 and before age 60 | Merton's policy is that a decision to 'switch on' the 85-year rule (for scheme members aged between 55 and 60) is only made where there would be a financial or other benefit to Merton.                   |
| <b>Waiving actuarial reduction</b>           | Regulation 31(5) of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (as amended) [SI 20071166] and Paragraph 2(1) of Schedule 2 to the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 [SI 2014/525]          | Waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early  | Merton's policy is that a decision to waive any actuarial reduction will only be considered where there will be a financial or other benefit to the employer.  |
| <b>Early retirement on</b>                   | Regulation 3(5A)(vi) of the Local Government Pension Scheme (Transitional   | Grant application for early payment of deferred benefits on or after age 50 on  | Merton's policy is that a decision to allow the early payment of deferred benefits to former   |

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| <p><b>compassionate grounds</b></p> | <p>Provisions, Savings and Amendment Regulations 2014 [SI 2014/525],</p> <p>Regulation 4 of the Local Government Pension Scheme Regulations 1997 [SI 1997/1613],</p> <p>Regulation 106(1) of the Local Government Pension Scheme Regulations 1997</p> <p>Regulation 11(2)(c) of the Local Government Pension Scheme Regulations 1995 (as amended) [SI 1995/1019]</p> | <p>compassionate grounds. Although the common provisions of the 1997 Transitional provisions regulations do not specify regulation D11(2)(c), the intention was that it should apply to this regulation.</p> | <p>members of the LGPS will only be considered where there will be a financial or other benefit to Merton.</p> |
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**List of discretionary policies in relation to scheme members who ceased active membership before 1 April 1998**

| Discretion  | Legislative provision   | Summary of discretion   | Merton's policy   |
|---|---|---|---|
| <p><b>Early retirement on compassionate grounds</b></p> | <p>Regulation 3(5A)(vi) of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment Regulations 2014 [SI 2014/525]</p> <p>Regulation 4 of the Local Government Pension Scheme (Transitional Provisions) Regulations 1997 [SI 1997/1613]</p> <p>Regulation 106(1) of the Local Government Pension Scheme Regulations 1997 [SI 1997/1612] (as amended)</p> <p>Regulation D11(2) of the Local Government Pension Scheme Regulations 1995 [SI 1995/1019]</p> | <p>Grant application for early payment of deferred benefits on or after age 50 on compassionate grounds. Although the common provisions of the 1997 Transitional provisions regulations do not specify regulation D11(2)(c), the intention was that it should apply to this regulation.</p> | <p>Merton's policy is that a decision to allow the early payment of deferred benefits to former members of the LGPS will only be considered where there will be a financial or other benefit to Merton.</p> |