

LGPS Discretions Policy

The Keystone Academy, Shrewsbury part of The Youth Engagement Schools Trust (also referred to as the 'YES Trust' in this document) whose registered office is c/o The Fermain Academy, Beswick Street, Macclesfield, Cheshire, SK11 8JF ("the Company"), discretionary policies under the Local Government Pension Scheme Regulations and other related Regulations

1. 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,
 - iii) under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 and earlier compensation regulations,
 - iv) under the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011, and
 - v) under the Local Government Pension Scheme Regulations 1997 in respect of local authority councillor members.

[Notes:

- if the employer is an admission body:
 - (iii) above can be deleted if the employer has not made, and does not wish to make, any compensation payments under those Regulations or if, even if it wishes to use the Regulations by analogy in order to make compensation payments under the Regulations, it does not wish to have a written policy statement; and
 - (iv) above can be deleted if the employer has not made, and does not wish to make, any injury awards under those Regulations or if, even if it wishes to use the Regulations by analogy in order to make awards under the Regulations, it does not wish to have a written policy statement
- if the employer is not a local authority, (v) above should be deleted.]

This document will form **The Yes Trust** policies on pension and compensation discretions. It should be noted that:

- the policies will confer no contractual rights
- **The Yes Trust** will retain the right to change the policies at any time without prior notice or consultation.
- 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.

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

| <p>Table A: Discretions to be exercised on and after 1 April 2014 under the LGPS Regulations 2013 in relation to active scheme members and members who cease active membership after 31 March 2014.</p> <p>[Note that employers MUST have a policy on the first 5 items in this list and are recommended to have a policy on items 6 to 10]</p> | <p>The Yes Trust policy</p> <p>[The employer should choose and insert an appropriate option from the sample options shown below or insert its own wording if the sample options offered below do not suffice]</p> |
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| <p>1. Whether, at full cost to [name of employer], to grant extra annual pension of up to £7,352 (figure at 1 April 2022¹) 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>Notes:</p> <ul style="list-style-type: none"> - The maximum amount of £7,352 (figure at 1 April 2022) includes any amount of additional pension already granted by the employer under regulation 13 of the LGPS (Benefits, Membership and Contributions) Regulations 2007. - Scheme employers should, prior to 1 April 2014, already have prepared and published a policy on granting extra annual pension of up to £5,000 under the 2008 Scheme (in accordance with the LGPS (Administration) Regulations 2008). Employers may, therefore, wish to simply carry forward their existing policy (assuming they have one), but suitably amended to refer to the LGPS Regulations 2013. - The cost of any extra annual pension awarded would have to be paid to the Pension Fund by the employer as a lump sum payment unless the employer agrees with the LGPS Pension Fund administering authority to pay increased contributions to meet the cost. - The extra annual pension would form part of the Scheme member's main LGPS pension and so the member could, upon drawing pension benefits, commute up to 25% of the capital value | <p>The Yes Trust will not make use of the discretion to grant extra annual pension of up to £7,352 (figure at 1 April 2022) 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 except in exceptional circumstances where The Yes Trust 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>[Note:</p> <ul style="list-style-type: none"> - option 3 does not fetter the employer's discretion and leaves the option open for the employer to grant extra annual pension in exceptional circumstances e.g. where it is felt necessary in order to attract an employee who has the specialist skills and experience an employer needs, or where it is felt necessary in order to induce an employee with specialist skills and experience not to leave; - delete the final sentence] |

¹ The figure of £6,500 that applied at April 2014 is increased each April (starting April 2015) under the Pension (Increase) Act 1971 (as if it were a pension with a PI date of 1 April 2013).

of their LGPS pension benefits for a lump sum at the rate of £12 lump sum for each £1 of pension given up.

- Any extra annual pension granted by the employer would be subject to an actuarial reduction where, other than in a case of ill health retirement or retirement on redundancy or business efficiency grounds, that extra annual pension is drawn before the member's Normal Pension Age.
- The extra annual pension provides a benefit for the scheme member only i.e. a share does not flow through to any survivor's pension payable upon the death of the scheme member.
- The amount of extra annual pension purchased (or being purchased) by the employer under a Shared Cost Additional Pension Contributions (SCAPC) arrangement – see entry 2 below - (including a SCAPC arrangement where an employer is contributing 2/3rds of the cost of purchasing pension 'lost' during a period of absence) counts towards the £7,352 limit (figure at April 2022) of extra annual pension that the employer can award.
- Employers cannot grant extra annual pension if the employer makes an award of lump sum compensation (of up to 104 weeks' pay) under regulation 6 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (see entry 2 in Table E below).
- Employers can, however, grant extra annual pension if the employer makes an award under regulation 5 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 i.e. bases a redundancy payment on an employee's actual weeks' pay where this exceeds the statutory weeks' pay limit (see entry 1 in Table E below). The difference between the statutory redundancy payment and the redundancy payment based on the employee's actual week's pay is, in this paper, termed the discretionary redundancy payment.
- Employers considering granting extra annual pension to members of the LGPS will need to take a view on whether doing so could leave them open to challenge on age or gender discrimination grounds (e.g. if those not in the Pension Scheme tend to be younger employees and part-time female workers). Compare this to an award of lump sum compensation (see

entry 2 in Table E below) which can be awarded to not only those who are members of the LGPS but also to those who are eligible for membership of the LGPS (and so can be less open to challenge on age or gender discrimination grounds). An implication of the Equality Act 2010 and the Equality Act (Age Exceptions for Pension Schemes) Order 2010 is that all staff should be treated equally regardless of their age, unless different treatment can be objectively justified.

- If an employer wishes to award extra annual pension, the employer will need to consider the criteria for deciding to whom to grant such pension and for determining the amount of extra annual pension to grant in each case. The criteria should be included in the employer's policy statement. The policy should not use criteria that are directly or indirectly discriminatory (unless objectively justified e.g. the employer could demonstrate that the policy pursues a legitimate aim and that it is proportionate and is an appropriate and necessary means of achieving that aim).
 - An alternative approach that employers who wish to award extra annual pension could consider (for members whose employment is being terminated on the grounds of redundancy or business efficiency) is what might be termed 'extra annual pension by conversion'. In effect, the employer would have a policy that would permit the employer to:
 - award a lump sum compensation payment (of up to 104 weeks' pay) under regulation 6 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, inclusive (in redundancy cases) of any statutory redundancy payment and any increase in the redundancy payment made under regulation 5 of those Regulations (where an employee's actual weeks' pay exceeds the statutory weeks' pay limit) – (see entries 1 and 2 in Table E below)
- Or
- having considered the view of the employee, to make an award of extra annual pension that is actuarially equivalent to the lump sum compensation payment that the employer would otherwise have made.

The employer would need to reflect this in their policy in relation to a discretionary lump sum compensation payment (see entries 1 and 2 in Table E below). It is important to stress that the employee would not be sacrificing a lump sum compensation payment in return for extra annual pension in the LGPS and would not be using lump sum compensation payment that is paid or due to him/her in return for extra annual pension. Instead, the employer would, having considered the view of the employee, simply be making a determination to award extra annual pension

and not to award a lump sum compensation payment. Where the employer decides to make an award of extra annual pension, the employer would award extra annual pension that was actuarially equivalent in value to the lump sum compensation payment (in excess of any redundancy payment) that would otherwise have been payable to the employee following cessation of employment. The policy could allow only the excess above any statutory and discretionary redundancy payment to be converted in this way, in which case any statutory and discretionary redundancy payments would still be payable, or allow all of the excess above any statutory redundancy payment to be converted, in which case any statutory redundancy payment would still be payable. It should be noted, however, that the amount of extra annual pension cannot exceed £7,352 (figure at April 2022). Extra annual pension that would exceed this limit is not permitted and so conversion would not be possible if it would produce extra annual pension above that limit. It is not permissible to split the award and award part as extra annual pension (up to the aforementioned limit) and the balance as a lump sum compensation payment.

- The facility for employers to grant extra 'augmented' membership of the Pension Scheme ceased after 31 March 2014. Employers who, prior to 1 April 2014, had a policy to allow 'extra membership by conversion' to members being made redundant or being retired on business efficiency grounds i.e. granting the member extra membership equivalent to any lump sum termination payment (in excess of the statutory redundancy payment or in excess of the redundancy payment based on an actual week's pay where this exceeds the statutory weeks' pay limit) the employer would otherwise have awarded under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 are no longer be able to do so for retirements on or after 1 April 2014. Instead, the employer could grant the member extra annual pension actuarially equivalent to the value of any lump sum termination payment (in excess of the redundancy payment) the employer would otherwise have awarded under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 i.e. 'extra annual pension by conversion'.
- Employers wishing to award extra annual pension upon termination of employment on the grounds of redundancy or business efficiency might wish to consider including in their policy a clause that they will not grant extra annual pension in cases where an employee declines to accept:
 - an offer of what the employer considers to be suitable alternative employment, or
 - (for those employers who are subject to the Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order 1999 or who, whilst not subject to the Modification Order, choose to recognise service with employers on the Modification Order for redundancy payment purposes) an offer from another employer covered by the Redundancy Payments (Continuity of Employment in Local Government, etc) (Modification) Order 1999 which the current employer would consider to be suitable alternative employment and which would have started within four weeks* of the termination date.

(* If the contract ends on a Friday, Saturday, or Sunday the four weeks is counted from the following Monday.)
- An issue that potentially arises in granting extra annual pension is that, in some cases, it can result in the value of the scheme member's benefits being increased by more than the permitted standard Annual Allowance of, currently, £40,000 (2017/18). Any increase in value

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| <p>above that figure could result in a tax charge for the individual. Any additional pension granted will also count towards the capitalised value of a person's pension benefits which have to be assessed against the member's Lifetime Allowance (LTA) under the tax regime governing pension schemes. Each time a person retires and draws benefits from a pension scheme they use up a part of their LTA. If, on retirement under the LGPS, the capitalised value of their total LGPS benefits is more than the person's remaining LTA, they will have to pay tax on the excess (at the rate of 25% if the excess is paid in the form of pension and 55% if paid in the form of a lump sum). For more information see http://www.hmrc.gov.uk/manuals/rpsmmanual/RPSM06105000.htm and http://www.hmrc.gov.uk/manuals/rpsmmanual/RPSM11100000.htm</p> <p>Additional note for local authorities with staff in maintained schools:</p> <ul style="list-style-type: none"> - Although section 37 of the Education Act 2002 gives all of the Maintained Schools with a delegated budget the power to go beyond the Local Authority's policies in respect of the dismissal of, or for the purpose of securing the resignation of, any member of the school's staff, in reality, as this will entail additional cost, a community school, a community special school, a maintained nursery school, a foundation school, a foundation special school, a foundation trust school or a voluntary school is unlikely to depart from the Local Authority's policy. Nevertheless, the power to go beyond the Local Authority's policy for the purposes of the dismissal of, or securing the resignation of, any member of the school's staff exists and so the Local Authority's policy statement in relation to the ability to award extra annual pension of up to £7,352 (figure as at April 2022 -) as part of an arrangement for the dismissal of, or for the purpose of securing the resignation of, a member of staff will have to contain a modification to reflect the powers conferred by the Education Act 2002 on such Maintained Schools with a delegated budget – see Appendix A at the end of this document for additional information. | |
| <p>2. Whether, where an active scheme member wishes to purchase extra annual pension of up to £7,352 (figure at 1 April 2022²) by making Additional Pension Contributions (APCs), [name of employer] will voluntarily contribute towards the cost of purchasing that extra pension via a Shared Cost Additional Pension Contribution (SCAPC).</p> <p>Notes:</p> | <p>.</p> <p>Option 4. The Yes Trust will only voluntarily contribute towards the cost of purchasing extra pension via a Shared Cost Additional Pension Contribution (SCAPC) in two situations. Firstly, where:</p> |

² The figure of £6,500 that applied at April 2014 is increased each April (starting April 2015) under the Pension (Increase) Act 1971 (as if it were a pension with a PI date of 1 April 2013).

- This discretion does not relate to cases where a member has a period of authorised unpaid leave of absence and elects within 30 days of return to work to pay a SCAPC to cover the amount of pension 'lost' during that period of absence. That is because, in those cases, the employer must contribute 2/3rds of the cost to a SCAPC. There may be some cases, even if it is not the employer's general policy to voluntarily contribute to a SCAPC, where an employer might wish to do so (see Options 2, 3, 4 and 5 opposite).
- Any extra annual pension granted by the employer under a SCAPC arrangement would be subject to an actuarial reduction where, other than in a case of ill health retirement, that extra pension is drawn before the member's Normal Pension Age.
- It should also be noted that the amount of extra annual pension purchased (or being purchased) by the employer under a Shared Cost Additional Pension Contributions (SCAPC) arrangement (including a SCAPC arrangement where an employer is contributing 2/3rds of the cost of purchasing pension 'lost' during a period of absence) reduces the amount of extra annual pension the employer could award under entry 1 above.
- The maximum amount of £7,352 (figure at 1 April 2022) includes any amount of additional pension purchased, or being purchased, by the member under regulation 14 of the LGPS (Benefits, Membership and Contributions) Regulations 2007.

- 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
- 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 **The Yes Trust** may deem reasonable in any individual case.

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 **Chris Heptinstall, Trust Director of Business** and, where it is agreed that the conditions are met, **The Yes Trust** will be required to contribute 2/3rds of the cost of buying back the 'lost' pension via a SCAPC.

Secondly, in exceptional circumstances where **The Yes Trust** 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.

[Note:

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| | <p>- option 4 covers cases where it would be reasonable to contribute to a SCAPC to deal with an administrative error and any other exceptional cases that might arise]</p> <p>r</p> |
| <p>3. Whether to permit flexible retirement for staff aged 55³ or over who, with the agreement of [name of employer], reduce their working hours or grade and, if so, as part of the agreement:</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) ⁴. | <p>Flexible retirement</p> <p>The Yes Trust will not agree to flexible retirement except in circumstances where The Yes Trust 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, - will set out whether, in addition 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 Nic Brindle, Chief Executive Officer |

³ Age 50 for those LGPS members transferred from the Learning and Skills Council to whom regulation 16A of the LGPS (Benefits, Membership and Contributions) Regulations 2007 applies. Such members only need the employer's permission to reduce their working hours or grade but, if that permission is given, do not require their employer's permission to draw their benefits (as such members have the automatic right to take the benefits by virtue of regulation 18A of the LGPS (Benefits, Membership and Contributions) Regulations 2007 and regulation 24 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014).

⁴ NPA means the employee's individual State Pension Age at the time the employment is terminated, but with a minimum of age 65 (although, the NPA for membership accrued prior to 1 April 2014 is still linked to age 65, apart from those LGPS members transferred from the Learning and Skills Council to whom regulation 16A of the LGPS (Benefits, Membership and Contributions) Regulations 2007 applies for whom the NPA for membership accrued prior to 1 April 2014 is, by virtue of that regulation and regulation 24 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, still linked to age 60, and those LGPS members who are employees

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- Scheme employers should, prior to 1 April 2014, already have prepared and published a policy on flexible retirement for flexible retirements under the 2008 Scheme and for waiving any actuarial reduction in whole or in part (in accordance with the LGPS (Administration) Regulations 2008). Employers may, therefore, wish to simply carry forward their existing policy (assuming they have one), but suitably amended for post 31 March 2014 flexible retirements to reflect the above provisions.
- If flexible retirement is agreed for a scheme member aged 55 or over but under 60 who is subject to the 85 year rule⁵ and who, at the date of flexible retirement, has either met the 85 year rule or would have met the rule before age 60, there would be a strain on fund cost to be met by, and paid to the Pension Fund by, the employer in respect of the pension benefits paid following flexible retirement. The 85 year rule is satisfied if the person was a member of the LGPS on 30 September October 2006 and the member's age at the date they draw their benefits and their scheme membership (each in whole years) add up to 85 or more. If they are part-time, their membership counts towards the 85 year rule at its full calendar length.

[Note:

- employers might wish to include in their policy that where flexible retirement is being considered, there must be a reduction of at least one grade or, in the case of a flexible retirement due to a reduction in working hours, be a minimum reduction in hours of, say, 20% e.g. the equivalent of the hours for one working day].

Waiver of any actuarial reduction on flexible retirement

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. The Yes Trust 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 **Nic Brindle, Chief Executive Officer** including, where the reduction is only to be waved in part, approval for the amount of reduction to be waived.

of the Meat Hygiene Service in the London Pension Fund Authority fund who are covered by regulation 144B of the LGPS Regulations 1997 for whom the NPA for membership accrued prior to 1 April 2014 is, by virtue of that regulation and regulation 24 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, still linked to age 60). State Pension Age is currently age 65 for men. State Pension Age for women is currently being increased to be equalised with that for men and will reach 65 by November 2018. The State Pension Age will then increase to 66 for both men and women from December 2018 to October 2020. Under current legislation the State Pension Age is due to rise to 67 between 2026 and 2028 and to 68 between 2044 and 2046. However, the government has announced plans to link rises in the State Pension Age above age 67 to increases in life expectancy.

⁵ The 85 year rule does not apply to former members of the Metropolitan Civil Staffs Superannuation Scheme, or Meat Hygiene Service members, or civil servants transferred to the Environment Agency who by virtue of regulation 24 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 are subject to, respectively, regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997, regulation 144B of the LGPS Regulations 1997 and regulation 15 of the LGPS (Transitional Provisions) Regulations 2008.

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| <ul style="list-style-type: none"> - Where flexible retirement is agreed for an employee aged 55 or over but under Normal Pension Age the cost of waiving any actuarial reduction, in whole or in part, would have to be met by, and paid to the Pension Fund by, the employer. - Overall, the benefits of flexible retirement include: <ul style="list-style-type: none"> • it assists in reducing capacity if required, and helps avoid redundancies (and associated costs) • it can be a useful tool to support change management • it helps achieve and retain a balanced age profile within the workforce • it aids retention of required skills / knowledge / experience and enables transfer of skills / knowledge in the period leading up to an employee's full retirement • it offers a potentially acceptable solution to staff who may currently be a 'blockage' to promotion or re-organisation • it helps to alleviate 'burn out' and 'stress', improves morale, and assists in achieving Work-Life balance • it may assist a return to work after a medical related absence where ill health retirement is not appropriate • it assists employees to ease into retirement, making a gradual adjustment to full retirement. | |
| <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 rule⁶ to such voluntary retirements.</p> | <p>Option 2 The Yes Trust 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</p> |

⁶ The 85 year rule does not apply to former members of the Metropolitan Civil Staffs Superannuation Scheme, or Meat Hygiene Service members, or civil servants transferred to the Environment Agency who by virtue of regulation 24 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 are subject to,

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- If the member has met the 85 year rule or would have met it before age 60, there would be no strain on Fund cost charged to the employer unless the employer has agreed to apply the 85 year rule in the case in question. Instead, the cost would be met by an actuarial reduction to the scheme member's benefits⁷.
- If the employer does agree to apply the 85 year rule, the employer will have to meet the cost of any strain on fund resulting from the payment of benefits before age 60 i.e. where the member has already met the 85 year rule, or would meet it before age 60.
- Applying the 85 year rule might be a mechanism employers would wish to consider to encourage members to retire early to, for example, help achieve a balanced age profile within the workforce or to avoid possible redundancies later (which have attendant greater costs).
- A half-way house would be to not apply the 85 year rule but to agree to waive some of the actuarial reduction that would otherwise be applied to the member's benefits (see 5 below). In this way the cost of drawing benefits early would be met in part by the scheme member (via an actuarial reduction to their benefits) and in part by the employer (via a strain on Fund charge).
- The 85 year rule is satisfied if the person was a member of the LGPS on 30 September 2006 and the member's age at the date they draw their benefits and their scheme membership (each in whole years)

circumstances where The Yes Trust 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 **Nic Brindle, Chief Executive Officer**

respectively, regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997, regulation 144B of the LGPS Regulations 1997 and regulation 15 of the LGPS (Transitional Provisions) Regulations 2008.

⁷ There is no actuarial reduction on pre 1 April 2014 membership in the case of a former member of the Metropolitan Civil Staffs Superannuation Scheme who is aged 55 or over and has 25 years membership and who is covered by regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997.

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| <p>add up to 85 or more. If they are part-time, their membership counts towards the 85 year rule at its full calendar length.</p> <p>Additional note for local authorities with staff in maintained schools:</p> <p>Although section 37 of the Education Act 2002 gives all of the Maintained Schools with a delegated budget the power to go beyond the Local Authority's policies in respect of the dismissal of, or for the purpose of securing the resignation of, any member of the school's staff, in reality, as this will entail additional cost, a community school, a community special school, a maintained nursery school, a foundation school, a foundation special school, a foundation trust school or a voluntary school is unlikely to depart from the Local Authority's policy. Nevertheless, the power to go beyond the Local Authority's policy for the purposes of the dismissal of, or securing the resignation of, any member of the school's staff exists and so the Local Authority's policy statement in relation to the ability to apply the 85 year rule 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 as part of an arrangement for the dismissal of, or for the purpose of securing the resignation of, a member of staff will have to contain a modification to reflect the powers conferred by the Education Act 2002 on such Maintained Schools with a delegated budget – see Appendix A at the end of this document for additional information.</p> | |
| <p>5. For:</p> <p>i) active members voluntarily retiring on or after age 55⁸ and before Normal Pension Age who elect under regulation 30(5) of the LGPS Regulations 2013 to immediately draw benefits, and</p> | <p>Option 1</p> <p>Where members choose to voluntarily draw their benefits on or after age 55 and before Normal Pension Age [name of employer] will not agree to waive in whole or in part (on any grounds, including compassionate</p> |

⁸ Age 50, by virtue of regulation 24 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, for those LGPS members transferred from the Learning and Skills Council to whom regulation 16A of the LGPS (Benefits, Membership and Contributions) Regulations 2007 applies and those civil servants transferred to the Environment Agency to whom regulation 15 of the LGPS (Transitional Provisions) Regulations 2008 applies.

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| <p>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 55⁹ and before Normal Pension Age</p> <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 benefits accrued after 31 March <u>2016</u> | <p>grounds) any actuarial reduction that would otherwise be applied to their benefits. [Note: option 1 may be open to the challenge or complaint that it fetters the employer's discretion]</p> <p>Option 2 Where members choose to voluntarily draw their benefits on or after age 55 and before Normal Pension Age The Yes trust will not agree to waive in whole or in part any actuarial reduction that would otherwise be applied to their benefits except in circumstances The Yes Trust considers it is in its financial or operational interests to do so or there are compelling compassionate¹⁰ 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 Nic Brindle, Chief Executive Officer including, where the reduction is only to be waved in part, approval for the amount of reduction to be waived |
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⁹ Age 50, by virtue of regulation 24 of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, for those LGPS members transferred from the Learning and Skills Council to whom regulation 16A of the LGPS (Benefits, Membership and Contributions) Regulations 2007 applies and who are electing for early payment of a deferred benefit (but not if they are electing for early payment of a suspended Tier 3 ill health pension) and those civil servants transferred to the Environment Agency to whom regulation 15 of the LGPS (Transitional Provisions) Regulations 2008 applies and who are electing for early payment of a deferred benefit or early payment of a suspended Tier 3 ill health pension.

¹⁰ There is no definition in the Regulations of "compassionate grounds". However, one could take the view that, for example, releasing benefits because the member is short of funds / out of work would not be appropriate (as the pension scheme is not a social security scheme); whereas, for example, releasing benefits because the member has had to give up work to look after orphaned grandchildren would clearly be a case where an employer might wish to exercise compassion.

- were members of the LGPS before 1 October 2006 and will not be 60 or more on 31 March 2016 and will not attain age 60 between 1 April 2016 and 31 March 2020 [Group 3 members], whether to:
 - o waive on compassionate grounds, any actuarial reduction that would otherwise be applied to benefits accrued before 1 April 2014, 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 2014

- were members of the LGPS before 1 October 2006 and will not be 60 or more on 31 March 2016 but will attain age 60 between 1 April 2016 and 31 March 2020 [Group 2 members], whether to:
 - o waive on compassionate grounds, any actuarial reduction that would otherwise be applied to benefits accrued before 1 April 2020, 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 2020

Note:

- If the employer does agree to waive any actuarial reduction, the employer will have to meet the cost of the strain on fund resulting from that waiver.

Additional note for local authorities with staff in maintained schools:

Although section 37 of the Education Act 2002 gives all of the Maintained Schools with a delegated budget the power to go beyond the Local Authority's policies in respect of the dismissal of, or for the purpose of securing the resignation of, any member of the school's staff, in reality,

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| <p>as this will entail additional cost, a community school, a community special school, a maintained nursery school, a foundation school, a foundation special school, a foundation trust school or a voluntary school is unlikely to depart from the Local Authority's policy. Nevertheless, the power to go beyond the Local Authority's policy for the purposes of the dismissal of, or securing the resignation of, any member of the school's staff exists and so the Local Authority's policy statement in relation to the ability to waive an actuarial reduction as part of an arrangement for the dismissal of, or for the purpose of securing the resignation of, a member of staff will have to contain a modification to reflect the powers conferred by the Education Act 2002 on such Maintained Schools with a delegated budget – see Appendix A at the end of this document for additional information.</p> | |
| <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>Note:</p> <ul style="list-style-type: none"> - Scheme employers should, prior to 1 April 2014, already have prepared and published a policy on SCAVCs under the 2008 Scheme (in accordance with the LGPS (Administration) Regulations 2008). Employers may, therefore, wish to simply carry forward their existing policy (assuming they have one), but suitably amended to reflect both of the elements referred to above. | <p>Option 3</p> <p>The Yes Trust will not enter into a shared cost AVC arrangement other than:</p> <p>a) in exceptional circumstances in which case the decision to contribute, and the amount of the contribution, will be subject to the approval of Nic Brindle Chief Executive Officer</p> |
| <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</p> | <p>Option 2</p> |

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).

The Yes Trust will only 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):

- a) where **The Yes Trust** agrees that the available evidence indicates the member had not been informed of the 12 month time limit due to maladministration;
- b) where **The Yes Trust** agrees that the available evidence indicates the member had made an election within 12 months of joining the LGPS but the election was not received by the Pension Fund administering authority (e.g. the election form was lost in the post); or
- c) where the member has pre 1 April 2014 membership and **The Yes Trust** agrees the available evidence indicates that, due to maladministration, the member had not been informed of the implications of having benefits aggregated and would, in consequence, suffer a detriment to their pension benefits (for example, where member's whole-time equivalent pensionable pay on commencing **The Yes Trust** is, in real terms after allowing for inflation, significantly less than the whole-time equivalent pensionable pay upon which the deferred benefits were calculated).

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| | <p>d) Where the member did not become a member of the 2014 scheme by virtue of the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 [SI 2014/525] to elect that pre 1 April 2014 deferred benefits should be aggregated with a new employment.</p> <p>[Note: option 2 allows for circumstances where it would be reasonable to accept a late election to retain separate benefits]</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>Note:</p> <ul style="list-style-type: none"> - Scheme employers should, prior to 1 April 2014, already have prepared and published a policy on late elections under the 2008 Scheme (in accordance with the LGPS (Administration) Regulations 2008). Employers may, therefore, wish to simply carry forward their existing policy (assuming they have one). - Accepting an election after 12 months can result in additional cost to the employer (e.g. where an employee opts to transfer in prior to a large salary rise / promotion / re-grading if the member has any pre 1 April 2014 membership, or where an employee opts to transfer in prior to early retirement on the grounds of redundancy, business efficiency or ill health). - Unlike under the 2008 Scheme, where the discretion to allow a late election rested solely with the employer, under the 2014 Scheme both the employer and the Pension Fund administering authority | <p>Option 2</p> <p>The Yes Trust will only extend the 12 month time limit within which a scheme member must make an election to transfer other pension rights into the LGPS after joining the LGPS:</p> <ul style="list-style-type: none"> - where 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 has not been provided to the member within 11 months of joining the LGPS. The time limit for such a member to make a formal election to transfer pension rights into the LGPS will be extended to one month beyond the date of the letter issued by the Pension Fund administering authority notifying the Scheme member of the benefits the transfer will buy in the LGPS; - where the available evidence indicates the member made an election within 12 months of |

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| <p>have to agree to the acceptance of a late election. If one agrees, and the other does not, the late election cannot be accepted.</p> <ul style="list-style-type: none"> - Even if an election is made within 12 months of joining the LGPS, the Pension Fund administering authority can decide not to accept a transfer of pension rights into the LGPS (other than where the transfer is being made under the public service pension scheme Club rules). | <p>joining the LGPS, but the election was not received by the Pension Fund administering authority (e.g. the election form was lost in the post);</p> <ul style="list-style-type: none"> - where the available evidence indicates the member had not been informed of the 12 month time limit due to maladministration. <p>[Note: option 2 allows for circumstances where it would be reasonable to accept a late election to transfer other pension rights into the LGPS]</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>Notes:</p> <ul style="list-style-type: none"> - If an employee holds more than one employment and these are treated as separate jobs, each job (and the pensionable pay from that job) is assessed separately when determining the contribution band/rate for each job (so an employee may be paying different | <p>Members contribution rates are as advised by the Scheme at the time of joining. This will be reviewed each April.</p> |

contribution rates in each job, depending on the pay levels in those jobs).

- Any reductions in pensionable pay due to sickness, child related leave, reserve forces service leave or other absence from work are to be disregarded when assessing / reviewing the appropriate band / contribution rate.
- As from 1 April 2014, part-time members' contribution rates are assessed on actual pensionable pay rather than full-time equivalent rates of pay.
- The move to using actual pensionable pay in the assessment of the contribution band/rate within which an employee falls will necessitate employers making an assumption as to what pensionable pay a person will probably receive in the Scheme year.

This can be done in a number of ways. For example:

- the annual rate of contractual pay
 - the annual rate of contractual pay plus an estimation of the additional hours worked in excess of the contractual hours which might be worked in a full year
 - the hourly contractual rate multiplied by an estimate of the number of hours to be worked in a full year
 - the weekly contractual rate multiplied by 52.143 (or whatever multiplier an employer deems appropriate)
 - the weekly contractual rate multiplied by 52.143 (or whatever multiplier an employer deems appropriate) plus an estimate of other pensionable payments to be made in a full year
- Each employer should assess the appropriate contribution band/rate in a reasonable and consistent manner.

- Allocating employees to an appropriate band/rate is relatively straight forward where the employee is not expected to undertake any additional hours in excess of the contractual hours. However, it is less straight forward where the number of hours an employee may work in a year is not known.
- Where an employee with part-time contractual hours is likely to undertake a number of additional hours in excess of their contractual hours, the employer could:
 - i) use one of the methods in the first and fourth bullet points above i.e. allocate the employee to the band/rate applicable to their contractual hours only and subsequently review the band/rate allocation at an appropriate time (see 'Reallocation' below), or
 - ii) use one of the methods set out in the second, third or fifth bullet points above, perhaps taking account of the hours worked by the post holder in previous years or, if the member is a new employee, the hours worked by the previous holder (if any) of the post, and subsequently review the band/rate allocation at an appropriate time (see 'Reallocation' below).
- The advantage of option (i) is that it is less likely to lead to an appeal by the employee against the band/rate to which they have been allocated and the employer can, in any case, review the band/rate allocation at the following April (or attribute an employee to a different band/rate part way through the Scheme year where there is a material change which affects the member's pensionable pay).
- The disadvantage of option (i) is that it can initially result in a lesser contribution being collected from an employee's pay for a period of time than the actual hours eventually worked might have warranted.
- The advantage of option (ii) is that it results in a contribution band/rate that the employer deems reasonable based on the

employer's expectation of the number of hours to be worked by the employee. It could result in a higher or lower contribution rate than the actual hours eventually worked might have warranted (depending on how many hours the employee actually works) and this could, respectively, result in an appeal by the employee against the band/rate to which they have been allocated or result in a 'loss' to the Pension Fund (which, in turn, would become a cost to the employer).

- Matters become more complicated with employees who have no contractual hours of employment e.g. casual employees, or employees on zero hours contracts. In these cases employers will need to either:
 - - a) make a reasonable initial assessment of the number of hours the person is likely to work on an annual basis, perhaps taking account of the hours worked by the post holder in previous years or, if the member is a new employee, the hours worked by the previous holder (if any) of the post, and subsequently review the band/rate allocation at an appropriate time (see 'Reallocation' below), or
 - b) allocate the employee to the lowest band (5.5%) and subsequently review the band/rate allocation at an appropriate time (see 'Reallocation' below), or
 - c) allocate the employee to the 6.5% band (on the basis that this is the expected average contribution rate for Scheme members) and subsequently review the band/rate allocation at an appropriate time (see 'Reallocation' below).
- The advantage of option (a) is that it results in a contribution band/rate that the employer deems reasonable based on the employer's expectation of the number of hours to be worked by the employee. It could result in a higher or lower contribution rate than the actual hours eventually worked might have warranted (depending on how many hours the employee actually works) and this could,

respectively, result in an appeal by the employee against the band to which they have been allocated or result in a 'loss' to the Pension Fund (which, in turn, would become a cost to the employer).

- The advantage of option (b) is that it is less likely to lead to an appeal by the employee against the band/rate to which they have been allocated. The disadvantage of option (b) is that it can initially result in a lesser contribution being collected from an employee's pay for a period of time than the actual hours eventually worked might have warranted.
- The advantage of option (c) is that it delivers the expected average contribution rate for Scheme members (upon which the LGPS 2014 has been costed). The disadvantage is that it is perhaps more likely to lead to an appeal by the employee against the band/rate to which they have been allocated if the member believes their pay falls within a lower band/rate. Conversely, placing the member in the 6.5% band could initially result in a lesser contribution being collected from an employee's pay for a period of time than the actual hours eventually worked might have warranted (if the employee's pay turns out to fall within a higher band).
- Employers have to notify scheme members, as soon as possible, of the contribution rate the member will pay and give the member notification of their right of appeal under the Internal Disputes Resolution procedure (IDRP).

'Reallocation'

- After the initial pay band and contribution rate has been determined for an employee the employer is required to reassess the appropriate band and rate each April (in the pay period in which 1st April falls) and is permitted by the regulations to reassess the band / rate to which a member has been attributed if, during the Scheme year (1st April to 31st March), there is a material change which affects the member's

pensionable pay (e.g. on promotion, demotion, re-grading, a pay award, an increment, a variation to a member's contractual hours, a change of job, or a move from a casual post to a post with contractual hours). This can result in a retrospective reallocation to a different contribution band/rate with a consequential adjustment to the employee contributions due (e.g. where there is a retrospective pay award or retrospective re-grading) but the employer can decide to only apply the new rate from the date the pay award or re-grading is actioned on the payroll.

- However where the initial band/rate was set based on an estimated pay figure, the employer may wish to put in place a process to regularly review the actual pensionable pay being received in order to ensure the correct rate is being applied. Such a review could take place:

a) each pay period. This could be done in a number of ways. For example:

- o the pensionable pay to be paid in the pay period could be grossed up to an annual equivalent and the contribution rate for that pay period determined accordingly. However, any lump sums or retrospective payments covering more than one pay period, or any payments not paid every pay period (e.g. payments made twice a year for cutting verges) would need to be completely excluded from the calculation or, alternatively, excluded before the grossing up calculation and then added to the resultant grossed up annual rate as, otherwise, the derived annual pensionable pay figure would be overestimated. Such an approach can be software driven (i.e. automated on the payroll) and has the advantage of ensuring the annual rate of pay is assessed pay period by pay period but, ultimately, could still result in a member paying more or less in

contributions than their actual pensionable pay over the Scheme year might have otherwise warranted. For example, a member whose pay, month by month is on the cusp of a pay bands 2 and 3 might pay a contribution rate of 5.8% some months and 6.5% other months and yet, over the course of the Scheme year, the member's aggregate pensionable pay falls within pay band 2 (meaning that the member could seek to argue that they will have paid too much in contributions in some months) or the aggregate pensionable pay falls within pay band 3 (meaning that it could be argued the member has paid too little in some months), or

- the cumulative pensionable pay for the Scheme year to date, including the pensionable pay to be paid in the pay period, could be grossed up to an annual equivalent (making an appropriate adjustment for any lump sum or retrospective payments paid in the Scheme year to date) and the contribution rate for that pay period determined accordingly. This option has the same issues as described above but, perhaps, to a lesser degree.

b) each quarter (or half yearly). This could be done in a number of ways. For example:

- the pensionable pay received in the previous quarter (or previous half year) could be grossed up to an annual equivalent, making an appropriate adjustment for any lump sum or retrospective payments paid during that quarter (or half year) and the contribution rate for the next quarter (or half year) set accordingly, or
- the cumulative pensionable pay for the Scheme year to date at the end of the previous quarter (or half year) could be grossed up to an annual equivalent (making an appropriate adjustment for any lump sum or retrospective

payments made in the Scheme year to date) and the contribution rate for the next quarter (or half year) set accordingly.

Note: the issues identified in the options under (a) similarly apply to the options under (b).

c) at the end of, say, month 11 (or, say, week 48 for weekly paid employees). This could be done in a number of ways. For example:

- the cumulative pensionable pay for the Scheme year to date at the end of month 11 (or week 48) could be grossed up to an annual equivalent (making an appropriate adjustment for any lump sum or retrospective payments made in the Scheme year to date). If this indicates that the incorrect employee contribution rate had been applied during the Scheme year to date, apply a new contribution rate from the contribution table for the remaining period of the Scheme year only which will, as near as is possible, recover any 'underpaid' employee contributions or refund any 'overpaid' employee contributions. A new employee contribution rate would, of course, still need to be assessed at the beginning of the new Scheme year.

d) each year with the rate for the next Scheme year being set by reference to

- the actual pensionable pay received in the previous Scheme year, or
- the annual rate of pensionable pay at the beginning of the new Scheme year, or

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| <ul style="list-style-type: none"> ○ the expected annual pensionable pay for the new Scheme year. - Employers have to notify scheme members of any change in the contribution rate the member will pay, the date the new rate is effective from, and give the member notification of their right of appeal under the Internal Disputes Resolution procedure (IDRP). The notification has to be given to the member as soon as is reasonably practicable after the decision to change the rate has been made. <p>Further guidance</p> <ul style="list-style-type: none"> - Further guidance is available in the Appendix 1 of the guidance at http://www.lgpsregs.org/index.php/guides/hr-guide-to-the-2014-scheme | |
| <p>10. Whether or not, when calculating assumed pensionable pay when a member (other than a returning officer¹¹) 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 (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 - absent on reserve forces service leave, or - retires with a Tier 1 or Tier 2 ill health pension, or - dies in service | <p>Option 2</p> <p>In assessing Assumed Pensionable Pay (APP) The Yes Trust 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 Nic Brindle Chief Executive Officer</p> |

¹¹ i.e. a returning officer or acting returning officer at local government elections, or elections for the National Assembly of Wales, or Parliamentary elections or European Parliamentary elections.

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.

Notes:

- A 'regular lump sum payment' is a payment for which the employer determines there is a reasonable expectation that such a payment would be paid on a regular basis
- Whilst all lump sum payments are, initially, ignored when calculating assumed pensionable pay, it is entirely at the employer's discretion whether or not to include in the calculation of assumed pensionable pay 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. Take, for example, the following two situations as examples:
 - i) if a 'regular lump sum payment' is added back for a member 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, or absent on reserve forces service leave, that member can finish up with a bigger pension accrual than if the member had not been absent and had, instead, been at work. Take the case where a member receives a £1,200 annual performance payment in May 2015 and goes onto reduced contractual pay due to sickness for the period 1 November 2015 to 31 December 2015, returning to full pay from 1 January 2016. The £1,200 has already been included in the

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| <p>member's pensionable pay cumulatives for 2015/16. If it was included in assumed pensionable pay for November and December 2015, 2/12 of £1,200 (i.e. £200) would be added into the cumulative pensionable pay. If the member had not been sick, that £200 would not have been included in pensionable pay (as the member was not next due to get a lump sum annual performance payment until May 2016)</p> <p>ii) it might seem reasonable to add back any 'regular lump sum payment' received by the member in the 12 months preceding ill health retirement or death in service into the assumed pensionable pay to be used to work out the amount of enhanced pension for a member who retires with a Tier 1 or Tier 2 ill health pension, or used to work out the survivor pension and / or death grant for a member who dies in service. However, what if the member is, say, only 40 at the time of the ill health retirement / death in service? Is it likely that the employer would have paid such a lump sum to the member every year between age 40 and the member's Normal Pension Age? That, in essence, would be implied as being the case if the employer were to add the lump sum back into the assumed pensionable pay figure to be used to calculate the amount of ill health enhanced pension and / or survivor pension.</p> <p>- Any decision as to whether or not to include in the calculation of a scheme member's assumed pensionable pay 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 would need to be fair, equitable and justifiable.</p> | |
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| <ul style="list-style-type: none"> - For more information on assumed pensionable pay please see the guide at http://www.lgpsregs.org/index.php/guides/hr-guide-to-the-2014-scheme | |
| <p>11. Whether in the Employer's opinion, the pensionable pay received in relation to an employment (adjusted to reflect any lump sum payments) in the 3 months (or 12 weeks if not paid monthly) preceding the commencement of Assumed Pensionable Pay (APP), is materially lower than the level of pensionable pay the member would have normally received, decide whether to substitute a higher level of pensionable pay having had regard to the level of pensionable pay received by the member in the previous 12 months.</p> | |

Annex 2

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| <p>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</p> <p>[Note that employers who were participating in the Scheme on 31 March 2014 MUST have a policy on the 4 items below]</p> | <p>The Yes Trust policy [The employer should choose and insert an appropriate option from the sample options shown below or insert its own wording if the sample options offered below do not suffice]</p> |
| <p>1. Whether, on compassionate grounds¹², to waive any actuarial reduction that would normally be applied to deferred benefits which are paid before age 65¹³.</p> | |

¹² There is no definition in the Regulations of "compassionate grounds". However, one could take the view that, for example, waiving a reduction because the member is short of funds / out of work would not be appropriate (as the pension scheme is not a social security scheme); whereas, for example, releasing benefits because the member has had to give up work to look after orphaned grandchildren would clearly be a case where an employer might wish to exercise compassion.

¹³ Age 60 in the case of members transferred from the Learning and Skills Council to whom regulation 16A of the LGPS (Benefits, Membership and Contributions) Regulations 2007 applies, and for employees of the Meat Hygiene Service in the London Pension Fund Authority fund who are covered by regulation 144B of the LGPS

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| <p>Note:</p> <ul style="list-style-type: none"> - Scheme employers should, prior to 1 April 2014, already have prepared and published a policy on the above matter under the 2008 Scheme (in accordance with the LGPS (Administration) Regulations 2008). Scheme employers should ensure that their current policy is up to date. - If the employer does agree to waive any actuarial reduction, the employer will have to meet the cost of the strain on fund resulting from that waiver. | <p>Option 3</p> <p>The Yes Trust will consider an application to waive, on compassionate grounds, any actuarial reduction that would normally be applied to deferred benefits which are paid before age 65. Each case will be considered on its merits and will be subject to the approval of Nic Brindle Chief Executive Officer</p> |
| <p>2. Whether, on compassionate grounds¹⁴, 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 65¹⁵.</p> <p>Note:</p> <ul style="list-style-type: none"> - Scheme employers should, prior to 1 April 2014, already have prepared and published a policy on the above matter under the 2008 Scheme (in accordance with the LGPS (Administration) Regulations 2008). | <p>Option 3</p> <p>The Yes Trust 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 Nic Brindle Chief Executive Officer</p> |

Regulations 1997, and for former members of the Metropolitan Civil Staffs Superannuation Scheme and who are covered by regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997, and for former NHS Scheme members who are covered by regulation 23 of the LGPS (Transitional Provisions) Regulations 1997.

¹⁴ There is no definition in the Regulations of “compassionate grounds”. However, one could take the view that, for example, waiving a reduction because the member is short of funds / out of work would not be appropriate (as the pension scheme is not a social security scheme); whereas, for example, releasing benefits because the member has had to give up work to look after orphaned grandchildren would clearly be a case where an employer might wish to exercise compassion.

¹⁵ Age 60 in the case of members transferred from the Learning and Skills Council to whom regulation 16A of the LGPS (Benefits, Membership and Contributions) Regulations 2007 applies, and for employees of the Meat Hygiene Service in the London Pension Fund Authority fund who are covered by regulation 144B of the LGPS Regulations 1997, and for former members of the Metropolitan Civil Staffs Superannuation Scheme and who are covered by regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997, and for former NHS Scheme members who are covered by regulation 23 of the LGPS (Transitional Provisions) Regulations 1997.

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| <p>Scheme employers should ensure that their current policy is up to date.</p> <ul style="list-style-type: none"> - If the employer does agree to waive any actuarial reduction, the employer will have to meet the cost of the strain on fund resulting from that waiver. | |
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*****Section Not Required. Employer not in existence before 2015*****

| <p>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)</p> <p>[Note that employers who were participating in the Scheme on 31 March 2009 MUST have a policy on the 2 items below]</p> | <p>[The employer should choose and insert an appropriate option from the sample options shown below or insert its own wording if the sample options offered below do not suffice]</p> |
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| <p>1. Whether¹⁶ to grant applications for the early payment of pension benefits on or after age 50¹⁷ and before age 55 (on grounds other than permanent ill health).</p> <p>Note:</p> <ul style="list-style-type: none"> - Scheme employers should, prior to 1 April 2014, already have prepared and published a policy on the above matter under the 1998 Scheme (in accordance with the LGPS Regulations 1997. Scheme employers should ensure that their current policy is up to date. | <p>Option 1</p> <p>Carry forward the employer's existing policy [the details of which should be inserted here].</p> <p>Option 2</p> <p>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 55 (on grounds other than permanent ill health), approval will not be given.</p> |

¹⁶ This discretion does not apply to those LGPS members who are former members of the Metropolitan Civil Staffs Superannuation Scheme and who are covered by regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997 or to former NHS Scheme members who are covered by regulation 23 of the LGPS (Transitional Provisions) Regulations 1997 (as such members have the automatic right to take benefits on or after age 50 and before age 60).

¹⁷ It should be noted that, except in the case of LGPS members who are former members of the Metropolitan Civil Staffs Superannuation Scheme and who are covered by regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997, or former NHS Scheme members who are covered by regulation 23 of the LGPS (Transitional Provisions) Regulations 1997, benefits paid on or after age 50 and before age 55 will be subject to an unauthorised payments charge under the Finance Act 2004 and, where applicable, an unauthorised payments surcharge under that Act, and a Scheme sanction charge on any benefits built up after 5 April 2006.

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| <ul style="list-style-type: none"> - If the employer does agree to the request for early payment of deferred pension benefits on or after age 50 and before age 55, the employer will have to meet any strain on fund cost resulting from that decision. - Scheme employers have no discretion over whether or not to release deferred benefits on the grounds of permanent ill health. If a deferred member meets the criteria in the LGPS Regulations for release of benefits on the grounds of permanent ill health, the benefits are automatically payable. | <p>[Notes:</p> <ul style="list-style-type: none"> - option 2 may be open to the challenge or complaint that it fetters the employer's discretion - if the employer is not a local authority, delete the words "(or a local authority councillor member who left the scheme on or after 1 April 1998)"] <p>Option 3</p> <p>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 55 (on grounds other than permanent ill health), approval will only be given if there is no cost to [name of employer].</p> <p>[Notes:</p> <ul style="list-style-type: none"> - option 3 may be open to the challenge or complaint that it is discriminatory. This is because there would be a cost in respect of those members who meet the 85 year rule before age 60 but not for those who meet it on or after age 60 - if the employer is not a local authority, delete the words "(or a local authority councillor member who left the scheme on or after 1 April 1998)"] <p>Option 4</p> <p>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 55 (on grounds other than permanent ill health), approval will only be given on compassionate grounds¹⁸. Each case will be considered on its merits and will be subject to the approval of [enter appropriate details]. Subject to entry 2 below, the benefits payable in such circumstances will be subject to any actuarial reduction applicable under the relevant LGPS Regulations.</p> <p>[Note:</p> <ul style="list-style-type: none"> - if the employer is not a local authority, delete the words "(or a local authority councillor member who left the scheme on or after 1 April 1998)"] |
| | <p>Option 1</p> |

¹⁸ There is no definition in the Regulations of "compassionate grounds". However, one could take the view that, for example, waiving a reduction because the member is short of funds / out of work would not be appropriate (as the pension scheme is not a social security scheme); whereas, for example, releasing benefits because the member has had to give up work to look after orphaned grandchildren would clearly be a case where an employer might wish to exercise compassion.

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| <p>2. Whether, on compassionate grounds¹⁹, to waive any actuarial reduction that would normally be applied to deferred benefits which are paid before age 65²⁰.</p> <p>Note:</p> <ul style="list-style-type: none"> - Scheme employers should, prior to 1 April 2014, already have prepared and published a policy on the above matter under the 1998 Scheme (in accordance with the LGPS Regulations 1997). Scheme employers should ensure that their current policy is up to date. - If the employer does agree to waive any actuarial reduction, the employer will have to meet the cost of the strain on fund resulting from that waiver. | <p>Carry forward the employer's existing policy [the details of which should be inserted here].</p> <p>Option 2</p> <p>[Name of employer] will not waive, on compassionate grounds, any actuarial reduction that would normally be applied to deferred benefits which are paid before age 65. [Note: option 2 may be open to the challenge or complaint that it fetters the employer's discretion]</p> <p>Option 3</p> <p>[Name of employer] will consider an application to waive, on compassionate grounds, any actuarial reduction that would normally be applied to deferred benefits which are paid before age 65. Each case will be considered on its merits and will be subject to the approval of [enter appropriate details].</p> |
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| <p>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</p> <p>[Note that employers who were participating in the Scheme on 31 March 1998 are recommended to have a policy on the item below]</p> | <p>[Name of employer] policy</p> <p>[The employer should choose and insert an appropriate option from the sample options shown below or insert its own wording if the sample options offered below do not suffice]</p> |
| | <p>Option 1</p> |

¹⁹ There is no definition in the Regulations of “compassionate grounds”. However, one could take the view that, for example, releasing benefits because the member is short of funds / out of work would not be appropriate (as the pension scheme is not a social security scheme); whereas, for example, releasing benefits because the member has had to give up work to look after orphaned grandchildren would clearly be a case where an employer might wish to exercise compassion.

²⁰ Age 60 in the case of employees of the Meat Hygiene Service in the London Pension Fund Authority fund who are covered by regulation 144B of the LGPS Regulations 1997 and members who are former members of the Metropolitan Civil Staffs Superannuation Scheme and who are covered by regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997 and for former members of the Metropolitan Civil Staffs Superannuation Scheme and who are covered by regulation 144A of, and Schedule 7 to, the LGPS Regulations 1997, and for former NHS Scheme members who are covered by regulation 23 of the LGPS (Transitional Provisions) Regulations 1997 .

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| <p>1. Whether to grant applications for the early payment of deferred pension benefits on or after age 50²¹ and before age 65 on compassionate grounds²².</p> <p>Note:</p> <ul style="list-style-type: none"> - Scheme employers should, prior to 1 April 2014, already have prepared and published a policy on the above matter under the 1995 Scheme (in accordance with the LGS Regulations 1995. Scheme employers should ensure that their current policy is up to date. - If the employer does agree to the request for early payment of deferred pension benefits on or after age 50 and before age 65, the employer will have to meet any strain on fund cost resulting from that decision. - Scheme employers have no discretion over whether or not to release deferred benefits on the grounds of permanent ill health. If a deferred member meets the criteria in the LGPS Regulations for release of benefits on the grounds of permanent ill health, the benefits are automatically payable. | <p>Carry forward the employer's existing policy [the details of which should be inserted here].</p> <p>Option 2</p> <p>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. [Note: option 2 may be open to the challenge or complaint that it fetters the employer's discretion]</p> <p>Option 3</p> <p>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, the case will be considered on its merits and will be subject to the approval of [enter appropriate details].</p> |
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Annex 3

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| <p>Table E: Discretions to be exercised under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006</p> <p>[Note that employers, other than admission bodies, MUST have a policy on the 4 items below.</p> <p>Admission bodies do not have to have a policy on these items if they have not made, and do not wish to make, any compensation payments under these Regulations or if, even if they wish to use the Regulations by analogy in order to make compensation</p> | <p>The Yes Trust policy</p> |
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²¹ It should be noted that, except in the case of former NHS Scheme members who are covered by regulation 23 of the LGPS (Transitional Provisions) Regulations 1997, benefits paid on or after age 50 and before age 55 will be subject to an unauthorised payments charge under the Finance Act 2004 and, where applicable, an unauthorised payments surcharge under that Act, but there would be no Scheme sanction charge.

²² There is no definition in the Regulations of "compassionate grounds". However, one could take the view that, for example, waiving a reduction because the member is short of funds / out of work would not be appropriate (as the pension scheme is not a social security scheme); whereas, for example, releasing benefits because the member has had to give up work to look after orphaned grandchildren would clearly be a case where an employer might wish to exercise compassion.

| payments under the Regulations, they do not wish to have a written policy statement.] | |
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| <p>1. Whether to base a redundancy payment on an employee's actual weeks' pay where this exceeds the statutory week's pay limit of, currently, £571 per week (as at 6 April 2022).</p> <p>Notes:</p> <ul style="list-style-type: none"> - Scheme employers should, prior to 1 April 2014, already have prepared and published a policy on the above matter under the Discretionary Compensation Regulations 2006. Scheme employers should ensure that their current policy is up to date. - Lump sum severance / compensation payments are subject to the normal rules in relation to the taxation of severance payments. The current rules (at 1 July 2018) are that the first £30,000 of severance pay is tax-free. Generally speaking, payments counting towards the £30,000 limit would include: <ul style="list-style-type: none"> • the statutory redundancy payment and any increase in the redundancy payment where the redundancy payment is based on the employee's actual pay, rather than being limited to the statutory weeks' pay limit, • pay in lieu of notice (PILON) - but in some circumstances PILON can be fully taxable (e.g. where it is contractual, or has become an implied contractual term through custom and practice), and • a lump sum compensation payment which is being paid under the 104 weeks' pay provision (see entry 2 below), | <p>.</p> <p>Option 3</p> <p>Any redundancy payment will be calculated on an employee's weekly pay but, other than in exceptional circumstances, limited to the statutory weeks' pay limit where pay exceeds that limit.</p> <p>.</p> |

but employers should refer to HM Revenue and Customs guidance (see <https://www.gov.uk/government/publications/cwg2-further-guide-to-pay-and-national-insurance-contributions> and the detailed guidance at <http://www.hmrc.gov.uk/manuals/eimanual/EIM12800.htm>).

- Unlike an award of extra annual pension (see entry 1 in Table A above):
 - any increase in the redundancy payment where the redundancy payment is based on the employee's actual pay, rather than being limited to the statutory weeks' pay limit, and
 - any lump sum compensation payment which is being paid under the 104 weeks' pay provision (see entry 2 below)

does not count towards the members Annual Allowance or Lifetime Allowance.

Additional note for local authorities with staff in maintained schools:

- Although section 37 of the Education Act 2002 gives all of the Maintained Schools with a delegated budget the power to go beyond the Local Authority's policies in respect of the dismissal of, or for the purpose of securing the resignation of, any member of the school's staff, in reality, as this will entail additional cost, a community school, a community special school, a maintained nursery school, a foundation school, a foundation special school, a foundation trust school or a voluntary school is unlikely to depart from the Local Authority's policy. Nevertheless, the power to go beyond the Local Authority's policy for the purposes of the dismissal of, or securing the resignation of, any member of the school's staff exists and so the Local Authority's policy

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| <p>statement in relation to the ability to base a redundancy payment on an employee's actual weeks' pay where this exceeds the statutory week's pay limit as part of an arrangement for the dismissal of, or for the purpose of securing the resignation of, a member of staff will have to contain a modification to reflect the powers conferred by the Education Act 2002 on such Maintained Schools with a delegated budget – see Appendix A at the end of this document for additional information.</p> | |
| <p>2. Whether to make a termination payment (inclusive of any redundancy payment) of up to a maximum of 104 weeks' pay to employees whose employment is terminated on the grounds of redundancy or efficiency of the service.</p> <p>Notes:</p> <ul style="list-style-type: none"> - Scheme employers should, prior to 1 April 2014, already have prepared and published a policy on the above matter under the Discretionary Compensation Regulations 2006. Scheme employers should ensure that their current policy is up to date. - A decision to make a termination payment under the 104 weeks' pay provision must be made within 6 months of the date of termination of the member's employment. - A termination payment under the 104 weeks' pay provision cannot be made if the employer: <ul style="list-style-type: none"> • makes an award of extra annual pension under regulation 31 of the Local Government Pension Scheme Regulations 2013 – see entry 1 in Table A above). | <p>Option 1 Carry forward the employer's existing policy [the details of which should be inserted here].</p> <p>Option 2 The Yes Trust will not make a termination payment (inclusive of any redundancy payment) of up to a maximum of 104 weeks' pay to employees whose employment is terminated on the grounds of redundancy or efficiency of the service.</p> |

- Lump sum severance / compensation payments are subject to the normal rules in relation to the taxation of severance payments. The current rules (at 1 July 2018) are that the first £30,000 of severance pay is tax-free. Generally speaking, payments counting towards the £30,000 limit would include:
 - the statutory redundancy payment and any increase in the redundancy payment where the redundancy payment is based on the employee's actual pay, rather than being limited to the statutory weeks' pay limit (see entry 1 above),
 - pay in lieu of notice (PILON) - but in some circumstances PILON can be fully taxable (e.g. where it is contractual, or has become an implied contractual term through custom and practice), and
 - a lump sum compensation payment which is being paid under the 104 weeks' pay provision

but employers should refer to HM Revenue and Customs guidance (see <https://www.gov.uk/government/publications/cwg2-further-guide-to-pay-and-national-insurance-contributions> and the detailed guidance at <http://www.hmrc.gov.uk/manuals/eimanual/EIM12800.htm>).

- Unlike an award of extra annual pension (see entry 1 in Table A above):
 - any increase in the redundancy payment where the redundancy payment is based on the employee's actual pay, rather than being limited to the statutory weeks' pay limit (see entry 1 above), and

- any lump sum compensation payment which is being paid under the 104 weeks' pay provision does not count towards the members Annual Allowance or Lifetime Allowance.

Additional note for local authorities with staff in maintained schools:

- Although section 37 of the Education Act 2002 gives all of the Maintained Schools with a delegated budget the power to go beyond the Local Authority's policies in respect of the dismissal of, or for the purpose of securing the resignation of, any member of the school's staff, in reality, as this will entail additional cost, a community school, a community special school, a maintained nursery school, a foundation school, a foundation special school, a foundation trust school or a voluntary school is unlikely to depart from the Local Authority's policy. Nevertheless, the power to go beyond the Local Authority's policy for the purposes of the dismissal of, or securing the resignation of, any member of the school's staff exists and so the Local Authority's policy statement in relation to the ability to make a termination payment (inclusive of any redundancy payment) of up to a maximum of 104 weeks' pay as part of an arrangement for the dismissal of, or for the purpose of securing the resignation of, a member of staff will have to contain a modification to reflect the powers conferred by the Education Act 2002 on such Maintained Schools with a delegated budget – see Appendix A at the end of this document for additional information.

Table F: Discretions to be exercised under the Local Government (Early Termination of Employment)

The Yes Trust policy

| <p>(Discretionary Compensation) (England and Wales) Regulations 2000</p> <p>[Note that employers MUST have a policy on the 6 items below, but ONLY IF the employer has awarded compensatory added years under these, or earlier, Regulations]</p> | <p>[The employer should choose and insert an appropriate option from the sample options shown below or insert its own wording if the sample options offered below do not suffice]</p> |
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| <p>1. How any surviving spouse's or civil partner's annual compensatory added years pension is to be apportioned where the deceased person is survived by more than one spouse or civil partner.</p> | <p>Option 1</p> <p>The Yes Trust will apportion any surviving spouse's or civil partner's annual compensatory added years pension where the deceased person is survived by more than one spouse or civil partner in such proportions as, at its sole discretion, it sees fit (based on the merits of the individual cases).</p> |
| <p>***No employees before 2015***</p> <p>2. Whether, if the spouse or civil partner of a person who ceased employment before 1 April 1988 remarries, enters into a civil partnership or cohabits after 1 April 1998, the normal annual compensation suspension rules will be disapplied i.e. the spouse's or civil partner's annual compensatory added years pension will continue to be paid.</p> | <p>Option 1</p> <p>If the spouse or civil partner of a person who ceased employment before 1 April 1998 remarries, enters into a new civil partnership or cohabits after 1 April 1998, the normal annual compensation suspension rules will be disapplied i.e. the spouse's or civil partner's annual compensatory added years pension will continue to be paid.</p> |
| <p>3. Whether, where the spouse or civil partner of a person who ceased employment before 1 April 1998 with an award of compensatory added years remarries or cohabits or enters into a civil partnership on or after 1 April 1998 with another person who is also entitled to a spouse's or civil partner's compensatory added years pension, the normal rule requiring one of them to forego payment whilst the period of marriage, civil partnership or co-habitation lasts, should be disapplied i.e. whether the spouses' or civil partners' compensatory added years pension should continue to be paid to both of them.</p> | <p>Option 2</p> <p>If the spouse or civil partner of a person who ceased employment before 1 April 1998 with an award of compensatory added years remarries or cohabits or enters into a civil partnership on or after 1 April 1998 with another person who is also entitled to a spouse's or civil partner's compensatory added years pension, the normal rule requiring one of them to forego payment whilst the period of marriage, civil partnership or co-habitation lasts, will continue to be applied i.e. the spouses' or civil partners' compensatory added</p> |

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| | years pension will only be payable to one of them (being whichever one they choose). |
| 4. How, if compensatory added years were awarded to an employee who was not in the LGPS (because the employee had not joined or had opted out of the LGPS) the employer will decide to whom any children's annual compensatory added years payments are to be paid and, in such a case, how the annual added years will be apportioned amongst the eligible children. | <p>Option 1</p> <p>If compensatory added years were awarded to an employee who was not in the LGPS (because the employee had not joined or had opted out of the LGPS) The Yes Trust will decide to whom and in what proportions any children's annual compensatory added years payments are to be paid as The Yes Trust at its sole discretion, sees fit (based on the merits of the individual cases).</p> |
| 5. How a person's annual compensatory added years pension is to be abated during, and following the cessation of, any period of re-employment by an employer who offers membership of the LGPS to its employees, regardless of whether or not the employee chooses to join the LGPS (except where the employer is an Admitted Body, in which case abatement only applies if the person is in, or eligible to be in, the LGPS in the new employment). | <p>The Yes Trust will, during any period of re-employment in local government (see note below), abate a person's annual compensatory added years' payment by the 'excess' if the aggregate of:</p> <ul style="list-style-type: none"> - the annual compensation, and - the annual pension from the LGPS, and - the annual rate of pay from the new employment <p>exceeds the pay the person would have received from the employment in respect of which the compensatory added years were granted, based on the annual rate of pay at the date of ceasing the former employment as increased by the relevant cost of living increases (i.e. as increased by the rate at which an 'official pension' is increased under the Pensions (Increase) Act 1971). Index.</p> <p>Where compensatory added years were awarded on or after 21 June 2000, The Yes Trust will reduce a person's annual compensatory added years' payment following the cessation of a</p> |

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| | <p>period of re-employment in local government (see note below) to the extent necessary to secure that if:</p> <ul style="list-style-type: none"> - the period of compensatory added years granted in respect of the former employment, <p>plus</p> <ul style="list-style-type: none"> - the period of membership the person has accrued in the LGPS (or would have accrued had he / she joined the scheme when first eligible to do so) during the period of re-employment in local government, counted at its part-time length, if the person was part-time, <p>exceeds</p> <ul style="list-style-type: none"> - the period of membership the person would have accrued during the period from the cessation of the former employment until age 65 on the assumption that he / she had continued in that former employment to age 65 (again counted at its part-time length if the person was part-time at the date of cessation of the former employment), <p>then</p> <ul style="list-style-type: none"> - the annual pension and lump sum from the first job combined with the annual pension and lump sum from the second job (based on the assumption that the employee joined the LGPS when first eligible to do so), plus the annual compensation and lump sum compensation, shall not in aggregate exceed the pension and lump sum the person would have achieved if he / she had remained in the first job through to age 65. |
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| | <p>Where there is an excess, the annual compensation will be reduced by the excess pension and, if the annual compensation is not reduced to nil, the amount of the remaining (reduced) basic annual compensation will then be suspended until the excess lump sum (if any) is recovered.</p> <p>In calculating whether or not, in aggregate, the annual pension and lump sum from the first job, plus the annual pension and lump sum (if any) from the second job (based on the assumption that the employee joined the LGPS at the first opportunity), plus the annual compensation and lump sum compensation, exceeds the pension and lump sum the person would have achieved if he/she had remained in the first job through to age 65 it will be necessary to compare:</p> <p>a) the actual LGPS pre 1 April 2008 1/80th pension and 3/80ths lump sum, plus the actual LGPS post 31 March 2008 1/60th pension (ignoring any commutation for a lump sum), plus the actual 1/80th annual compensation and 3/80ths lump sum compensation, with</p> <p>b) the 1/80th LGPS pension and 3/80ths lump sum the member would have achieved in their first job to 31 March 2008, plus the 1/60th LGPS pension the member would have achieved in their first job (ignoring any potential commutation for a lump sum), if the member had stayed in the first job through to age 65.</p> <p>In determining the benefits, the employee could have achieved had he / she remained in the first employment through to age 65 it will be necessary to determine the pensionable pay to be used in the calculation. For this purpose, the pensionable pay figure used in the calculation of the pension benefits in the first job will be used as brought up to date by increasing it in line with the Pensions Increase (Review) Orders.</p> |
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| | <p>If a person has been awarded more than one previous period of compensatory added years, e.g. as a result of being made redundant more than once, the abatement / claw back provisions are modified. In such a case, the rules under the former Local Government (Discretionary Payments) Regulations 1996 will be applied where a person ceases a period of re-employment in local government and has previously been granted more than one period of compensatory added years, but using the pay in the first job as increased in line with inflation (i.e. ignoring regulations 18(5)(a)(ii), 18(6) and 18(7) of the Local Government (Discretionary Payments) Regulations 1996.</p> <p>Where compensatory added years were awarded before 21 June 2000, The Yes Trust will reduce a person's annual compensatory added years' payment following the cessation of a period of re-employment in local government (see note below) in accordance with the Local Government (Discretionary Payments) Regulations 1996.</p> <p>Note: 'local government' means employment with an employer who offers membership of the LGPS to its employees, regardless of whether or not the employee chooses to join the LGPS (except where the employer is an Admitted Body). Technically, an employee of an Admitted Body (i.e. a body that has applied to the administering authority to allow its employees to join the LGPS and has entered into a formal admission agreement) is only employed in 'local government' if he / she is a member of the LGPS.</p> |
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| Table G: Discretions to be exercised under the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011 | The Yes Trust policy |
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| <p>[Note that employers, other than admission bodies, MUST have a policy on the 4 items below. Admission bodies do not have to have a policy on these items if they have not made, and do not wish to make, any injury awards under these Regulations or if, even if they wish to use the Regulations by analogy in order to make awards under the Regulations, they do not wish to have a written policy statement.]</p> | <p>[The employer should choose and insert an appropriate option from the sample options shown below or insert its own wording if the sample options offered below do not suffice]</p> |
| <p>1. Whether to award an injury allowance in respect of an employee who sustains an injury or contracts a disease as a result of anything he / she was required to do in performing the duties of their job and in consequence of which he / she:</p> <ul style="list-style-type: none"> - suffers a reduction remuneration, or - ceases to be employed as a result of an incapacity which is likely to be permanent and which was caused by the injury or disease, or - dies leaving a surviving spouse, civil partner or dependant. <p>Note:</p> <ul style="list-style-type: none"> - Scheme employers might, prior to 1 April 2014, already have prepared and published a policy on the above matter under the Injury Allowances Regulations 2011. If so, they should ensure that their current policy is up to date. - An award cannot be made if, in respect of the injury or disease, the employee is entitled to an injury award under a scheme made in accordance with Section 34 of the Fire and Rescue Services Act 2004 or is entitled to injury benefits under regulations made in accordance with section 52 of the Police Act 1996. | <p>Option 3</p> <p>The Yes Trust will not, other than in exceptional circumstances, make an award of an injury allowance in respect of an employee who sustains an injury or contracts a disease as a result of anything he / she was required to do in performing the duties of their job and in consequence of which he / she:</p> <ul style="list-style-type: none"> - suffers a reduction remuneration, or - ceases to be employed as a result of an incapacity which is likely to be permanent and which was caused by the injury or disease, or - dies leaving a surviving spouse, civil partner or dependant. |

2. How to calculate an injury allowance award in respect of an employee who sustains an injury or contracts a disease as a result of anything he / she was required to do in performing the duties of their job and in consequence of which he / she suffers a reduction remuneration.

Notes:

- The employee's remuneration is treated as reduced at any time when it is lower than it would have been but for the injury or disease.
- The amount of the allowance is to be of such amount as the employer may from time to time determine but must not in any year exceed the shortfall between the person's remuneration in the employment and the remuneration he / she would have been paid if he / she had not sustained the injury or contracted the disease.
- The allowance must cease when the reduction in remuneration ceases to apply.
- In determining the amount of the allowance, the employer is to have regard to all the circumstances of the case including, but not limited to:
 - the degree of injury sustained or the severity of the disease contracted as assessed by an Independent Registered Medical Practitioner, andthe level of any of the following which the person may receive

Option 1

- The employee's remuneration is treated as reduced at any time when it is lower than it would have been but for the injury or disease.
- The amount of the allowance is to be of such amount as the employer may from time to time determine but must not in any year exceed the shortfall between the person's remuneration in the employment and the remuneration he / she would have been paid if he / she had not sustained the injury or contracted the disease.
- The allowance must cease when the reduction in remuneration ceases to apply.
- In determining the amount of the allowance, The Yes Trust will have regard to all the circumstances of the case including, but not limited to:
 - the degree of injury sustained or the severity of the disease contracted as assessed by an Independent Registered Medical Practitioner, andthe level of any of the following which the person may receive
 - social security benefits
 - any benefit or compensation under a statutory right
 - pension benefits

- social security benefits
- any benefit or compensation under a statutory right
- pension benefits
- damages recovered and any sum received by virtue of a contract of insurance

The employer might also wish to take account of the degree of contributory negligence on the part of the employee, if any.

- Where the employee had sustained an injury, the employer must not take into account:
 - any benefit payable periodically which the person was entitled to be paid before the injury was sustained
 - any right which accrued before the injury was sustained
 - any damages or sum received by virtue of such a right.
- Before making a decision over entitlement to, or the amount of, any award the employer must obtain a certificate from an Independent Registered Medical Practitioner qualified in occupational health medicine²³ as to whether, in his / her opinion, the person sustained the injury or contracted the disease in the course of carrying out his / her work.

- damages recovered and any sum received by virtue of a contract of insurance

- Where the employee had sustained an injury, The Yes Trust will not take into account:

- any benefit payable periodically which the person was entitled to be paid before the injury was sustained
- any right which accrued before the injury was sustained
- any damages or sum received by virtue of such a right.

Before making a decision over entitlement to, or the amount of, any award **The Yes Trust must obtain a certificate from an Independent Registered Medical Practitioner qualified in occupational health**

²³ Qualified in occupational health medicine means an IRMP who is registered with the General Medical Council and who holds a diploma in occupational health medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA state; and for the purposes of this definition, "competent authority" has the meaning given by section 55(1) of the Medical Act 1983; or is an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State.

3. How to calculate an injury allowance award in respect of an employee who sustains an injury or contracts a disease as a result of anything he / she was required to do in performing the duties of their job and who ceases to be employed as a result of an incapacity which is likely to be permanent and which was caused by the injury or disease.

Notes:

- The amount of the allowance is to be of such amount as the employer may from time to time determine but must not exceed 85% of the person's annual rate of remuneration at the date of cessation of employment.
- The employer can suspend or discontinue the allowance if the person secures gainful employment i.e. paid employment for not less than 30 hours in each week for a period of not less than 12 months.
- In determining the amount of the allowance, the employer is to have regard to all the circumstances of the case including, but not limited to:
 - the degree of injury sustained or the severity of the disease contracted as assessed by an Independent Registered Medical Practitioner, and

the level of any of the following which the person may receive

 - social security benefits

- The amount of the allowance is to be of such amount as The Yes Trust may from time to time determine but must not exceed 85% of the person's annual rate of remuneration at the date of cessation of employment.
- The Yes Trust can suspend or discontinue the allowance if the person secures gainful employment i.e. paid employment for not less than 30 hours in each week for a period of not less than 12 months.
- In determining the amount of the allowance, The Yes Trust will have regard to all the circumstances of the case including, but not limited to:
 - the degree of injury sustained or the severity of the disease contracted as assessed by an Independent Registered Medical Practitioner, and

the level of any of the following which the person may receive

 - social security benefits
 - any benefit or compensation under a statutory right
 - pension benefits
 - damages recovered and any sum received by virtue of a contract of insurance
- Where the employee had sustained an injury, The Yes Trust will not take into account:

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| <ul style="list-style-type: none"> • any benefit or compensation under a statutory right • pension benefits • damages recovered and any sum received by virtue of a contract of insurance <p>The employer might also wish to take account of the degree of contributory negligence on the part of the employee, if any.</p> <ul style="list-style-type: none"> - Where the employee had sustained an injury, the employer must not take into account: <ul style="list-style-type: none"> • any benefit payable periodically which the person was entitled to be paid before the injury was sustained • any right which accrued before the injury was sustained • any damages or sum received by virtue of such a right. - Before making a decision over entitlement to, or the amount of, any award the employer must obtain a certificate from an Independent Registered Medical Practitioner qualified in occupational health medicine²⁴ as to whether, in his / her opinion, the person sustained the injury or contracted the disease in the course of carrying out his / her work and had ceased to be employed as a result of an incapacity | <ul style="list-style-type: none"> • any benefit payable periodically which the person was entitled to be paid before the injury was sustained • any right which accrued before the injury was sustained • any damages or sum received by virtue of such a right. <p>Before making a decision over entitlement to, or the amount of, any award The Yes Trust must obtain a certificate from an Independent Registered Medical Practitioner qualified in occupational health</p> |
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²⁴ Qualified in occupational health medicine means an IRMP who is registered with the General Medical Council and who holds a diploma in occupational health medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA state; and for the purposes of this definition, "competent authority" has the meaning given by section 55(1) of the Medical Act 1983; or is an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State.

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| <p>which is likely to be permanent and was caused by the injury or disease.</p> | |
| <p>4. How to calculate an injury allowance or lump sum award for a surviving spouse, civil partner, nominated cohabiting partner or dependant of an employee who sustains an injury or contracts a disease as a result of anything he / she was required to do in performing the duties of their job and as a result of which he / she dies.</p> <p>Notes:</p> <ul style="list-style-type: none"> - The amount of the allowance or lump sum is to be of such amount as the employer may from time to time determine. - In determining the amount of the allowance or lump sum, the employer is to have regard to all the circumstances of the case including, but not limited to, the level of any of the following which the person may receive: <ul style="list-style-type: none"> • social security benefits • any benefit or compensation under a statutory right • pension benefits • damages recovered, and any sum received by virtue of a contract of insurance <p>The employer might also wish to take account of the degree of contributory negligence on the part of the deceased employee, if any.</p> | <p>Option 1</p> <ul style="list-style-type: none"> - The amount of the allowance or lump sum is to be of such amount as The Yes Trust may from time to time determine. - In determining the amount of the allowance or lump sum, The Yes Trust will have regard to all the circumstances of the case including, but not limited to, the level of any of the following which the person may receive: <ul style="list-style-type: none"> • the degree of injury sustained or the severity of the disease contracted as assessed by an Independent Registered Medical Practitioner, and <p>the level of any of the following which the person may receive</p> <ul style="list-style-type: none"> • social security benefits • any benefit or compensation under a statutory right • pension benefits • damages recovered and any sum received by virtue of a contract of insurance <ul style="list-style-type: none"> - Where the employee had sustained an injury, The Yes Trust will not take into account: |

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| | <ul style="list-style-type: none"> • any benefit payable periodically which the person was entitled to be paid before the injury was sustained • any right which accrued before the injury was sustained • any damages or sum received by virtue of such a right. <p>Before making a decision over entitlement to, or the amount of, any award The Yes Trust must obtain a certificate from an <u>Independent Registered Medical Practitioner qualified in occupational health</u></p> |
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Appendix A

This appendix provides information for local authorities with staff in Maintained Schools with a delegated budget on the exercise of discretions in respect of those employees.

General

Staff in community schools, community special schools, maintained nursery schools or voluntary controlled schools are employed by the Local Authority.

Staff in foundation schools, foundation special schools, foundation trust schools and voluntary aided schools are employed by the Governing Body of the school.

A Maintained School is a community school, a community special school, a maintained nursery school, a foundation school, a foundation special school, a foundation trust school, or a voluntary school.

Section 37 of the Education Act 2002 provides that the Governing Body of a Maintained School with a delegated budget shall determine whether any payment shall be made by the Local Authority in respect of the dismissal of, or for the purpose of securing the resignation of, any member of the school's staff. It is also for the Governing Body to determine the amount of the payment. However, section 37 does not apply in relation to any payment which the Local Authority is required to make by virtue of any contract, other than one made in contemplation of the impending dismissal or resignation, or under any statutory provision (e.g. the payment of a statutory redundancy payment).

Discretions policy under the LGPS Regulations 2013

Discretions under the LGPS Regulations 2013 are covered in Table A of Annex 1 of this paper.

Regulation 60 of the LGPS Regulations 2013 and paragraph 2(2) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 say that a Scheme employer must prepare and publish a written statement of its policy in relation to the exercise of its functions set out in the first 5 entries in Table A of Annex 1 of this paper.

Schedule 1 of the LGPS Regulations 2013 defines a Scheme employer as "a body listed in Schedule 2 employing an employee who is eligible to be a member and includes an admission body".

Schedule 2 includes Local Authorities and Part 4 of Schedule 2 provides that although employees in foundation schools, foundation special schools, foundation trust schools, voluntary aided schools, technical institutes and federated schools are employed by the Governing Body, the Scheme employer is deemed to be the Local Authority.

Staff in community schools, community special schools, maintained nursery schools or voluntary controlled schools are employed by the Local Authority.

Thus, the Local Authority's discretions policy will apply to employees of a community school, a community special school, a maintained nursery school, a voluntary controlled school, a foundation school, a foundation special school, a foundation trust school, a voluntary aided school, a technical institute and a federated school.

Although section 37 of the Education Act 2002 gives all of the Maintained Schools with a delegated budget the power to go beyond the Local Authority's policies in respect of the dismissal of, or for the purpose of securing the resignation of, any member of the school's staff, in reality, as this will entail additional cost, a community school, a community special school, a maintained nursery school, a foundation school, a foundation special school, a foundation trust school or a voluntary school is unlikely to depart from the Local Authority's policy. Nevertheless, the power to go beyond the Local Authority's policy for the purposes of the dismissal of, or securing the resignation of, any member of the school's staff exists and so the Local Authority's policy statement in relation to entry 1 in Table A of Annex 1 of this paper (in relation to the ability to award extra annual pension of up to £6,755 (figure as at April 2017) as part of an arrangement for the dismissal of, or for the purpose of securing the resignation of, a member of staff) will have to contain a modification to reflect the powers conferred by the Education Act 2002 on such Maintained Schools with a delegated budget.

Discretions policy under the LGPS (Administration) Regulations 2008

Discretions under the LGPS (Administration) Regulations 2008 are covered in Table B of Annex 2 of this paper.

Regulation 66 of the LGPS (Administration) Regulations 2008 says that each employing authority must prepare and publish a written statement of its policy in relation to the exercise of its functions set out in Table B of Annex 2 of this paper.

Schedule 1 of the LGPS (Administration) Regulations 2008 defines an employing authority as "a body employing an employee who is eligible to be a member".

Staff who were employed in a community school, a community special school, a maintained nursery school, or a voluntary controlled school were employed by the Local Authority (the 'employing authority') and are, therefore, subject to the Local Authority's discretions policy.

However, the position of staff in a foundation school, foundation special school, foundation trust school or voluntary aided school is slightly more convoluted. Such schools are the employer of the staff. Thus it may appear that the school is an 'employing authority' and so would have to have a discretions policy on the matters set out in Table B of Annex 2 of this paper. However, regulation 8 of the LGPS (Administration) Regulations 2008 provides that the employees of such an establishment and of a technical institute or a federated school are deemed for the purposes of the LGPS to be employees of the Local Authority (although their actual employer is the Governing Body). They are also treated as if references in the LGPS to employment by a Scheme employer and all similar expressions included them. So, as the body employing an employee who is eligible to be a scheme member has to prepare and publish a policy and, for the purposes of the LGPS, the employees are deemed to be in the employment of the Local Authority, it is considered that they will be subject to the Local Authority's policy. This is consistent with the position under the LGPS Regulations 2013 and the LGPS Regulations 1997.

Thus, the Local Authority's discretions policy will apply to those who were employees of a community school, a community special school, a maintained nursery school, a voluntary controlled school, a foundation school, a foundation special school, a foundation trust school, a voluntary aided school, a federated school or a technical institute.

Discretions policy under the LGPS Regulations 1997

Discretions under the LGPS Regulations 1997 are covered in Table C of Annex 2 of this paper.

Regulation 106 of the LGPS Regulations 1997 says that a Scheme employer must prepare a written statement of its policy in relation to the exercise of its functions set out in Table C of Annex 2 of this paper.

Schedule 1 of the LGPS Regulations 1997 defines a Scheme employer as “a resolution body listed in regulation 4(6)(a) or a body specified in Schedule 2 (but see regulation 5B(8) and Chapter I of Part IV)”.

Regulation 128, which is contained in Chapter I of Part IV of the LGPS Regulations 1997, provides that although employees who were employed in foundation schools, foundation special schools, (foundation trust schools), voluntary schools and technical institutes were employed by the Governing Body, the Scheme employer is deemed to be the Local Authority.

Staff who were employed in community schools, community special schools, maintained nursery schools or voluntary controlled schools were employed by the Local Authority.

Thus, the Local Authority’s discretions policy will apply to those who were employees of a community school, a community special school, a maintained nursery school, a voluntary controlled school, a foundation school, a foundation special school, (a foundation trust school), a voluntary aided school and a technical institute.

Discretions policy under the LGPS Regulations 1995

Discretions under the LGPS Regulations 1995 are covered in Table D of Annex 2 of this paper.

Employing authorities can grant applications for the early payment of a deferred benefit on compassionate grounds.

Schedule A1 to, and regulation B16 of, the LGPS Regulations 1995 defines an employing authority as “the body employing an employee who is eligible to be a member of the Scheme”.

Regulation B6 of, and Schedule B3 to, the LGPS Regulations 1995 provide that the employees who were employed in a voluntary school maintained but not provided by a local authority or of a technical institute are deemed for the purposes of the LGPS to be employees of the Local Authority (although their actual employer is the Governing Body). They are also treated as if references in the LGPS to employment by a Scheme employer and all similar expressions included them.

Staff who were employed in community schools, community special schools, maintained nursery schools or voluntary controlled schools were employed by the Local Authority.

Thus, the Local Authority’s discretions policy will apply to those who were employees of a community school, a community special school, a maintained nursery school, a voluntary controlled school, a voluntary aided school and a technical institute.

Discretions policy under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006

Discretions under the Discretionary Compensation Regulations 2006 are covered in Table E of Annex 3 of this paper.

Regulation 7(1) of the Discretionary Compensation Regulations 2006 says that each employing authority must prepare and publish a statement of its policy in relation to the exercise of its functions set out in Table E of Annex 3 of this paper.

Regulation 2(1) of the Discretionary Compensation Regulations 2006 defines an employing authority as:

“(a) a body listed in Part 1 of Schedule 2 (Scheme employers) to the Administration Regulations by whom the person is employed immediately before the termination date;

(b) a body listed in Part 2 of that Schedule by whom the person is employed immediately before the termination date and who has been designated by the body as being eligible for membership of the Scheme under regulation 4(3) of those Regulations; or

(c) in the case of a person who is eligible to be a Scheme member under regulation 8(1) of the Administration Regulations, the local authority local authority by whom the person is deemed to be employed under regulation 8(2) of those Regulations. “

Staff employed in a community school, a community special school, a maintained nursery school or a voluntary controlled school are employed by the Local Authority and will, therefore, be subject to the Local Authority's policies under the Discretionary Compensation Regulations 2006.

Staff employed in voluntary aided schools, foundation schools, foundation special schools, foundation trust schools, technical institutes and federated schools are deemed by virtue of regulation 2 of the Discretionary Compensation Regulations 2006 to be employed by the Local Authority. Thus, the Local Authority's policies under those Regulations apply.

Section 37 of the Education Act 2002 provides that the Governing Body of a Maintained School with a delegated budget shall determine whether any payment shall be made by the Local Authority in respect of the dismissal of, or for the purpose of securing the resignation of, any member of the school's staff. It is also for the Governing Body to determine the amount of the payment.

Although section 37 of the Education Act 2002 gives all Maintained Schools with a delegated budget the power to go beyond the Local Authority's policies, in reality, as the award of compensation will entail costs, the schools are unlikely to depart from the Local Authority's policy.

Nevertheless, the power to go beyond the Local Authority's policy exists and, in the circumstances, the Local Authority's policy statement should be modified to reflect the powers conferred on Maintained Schools with a delegated budget by the Education Act 2002.

There does, however, appear to be a slight conflict between regulations 5(3) and 6(2) of the Discretionary Compensation Regulations 2006 which say:

'5 Power to increase statutory redundancy payment

(3) The power to pay compensation is exercisable by the employing authority

6 Discretionary compensation

(2) Where this regulation applies, the employing authority may, not later than six months after the termination date, decide to pay compensation under this regulation. ...'

and section 37(1) of the Education Act 2002 which says:

'(1) it shall be for the governing body of a maintained school to determine

- a) whether any payment should be made by the Local Authority in respect of the dismissal, or for the purpose of securing the resignation, of any member of staff of the school and
- b) the amount of such payment.'

So, on the one hand, the Discretionary Compensation Regulations 2006 say that the employing authority (which is defined by regulation 2 of the Discretionary Compensation Regulations 2006 as the Local Authority) shall decide whether to pay compensation and, if so, how much to pay; and on the other hand the Education Act 2002 says that it is the governing body who shall decide whether the Local Authority should pay compensation and, if so, how much. Perhaps the only way to rationalise this apparent anomaly is if one takes the view that the Education Act 2002 gives the power to the governing body to decide whether the Local Authority should pay compensation and, if so, how much and the Local Authority must then simply exercise its discretion under regulations 5(3) and 6(2) of the Discretionary Compensation Regulations 2006 to merely pay the amount decided upon by the governing body.

Discretions policy under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000

Discretions under the Discretionary Compensation Regulations 2000 are covered in Table F of Annex 3 of this paper.

Regulation 26(1) of the Discretionary Compensation Regulations 2000 says that each employing authority must prepare and publish a statement of its policy in relation to the exercise of its functions set out in Table F of Annex 3 of this paper.

Schedule 1 of the Discretionary Compensation Regulations 2000 defines an employing authority as:

- (a) a body listed in Schedule 2 (Scheme employers) to the Pension Regulations by whom he is employed immediately before the termination date; or
- (b) a body specified in regulation 4(6) (resolution bodies)[21] of those Regulations -
 - (i) by whom he is employed immediately before the termination date; and
 - (ii) which has passed a relevant resolution, within the meaning of regulation 4(5) of those Regulations, which covers him;

Staff who were employed in a community school, a community special school, a maintained nursery school or a voluntary controlled school were employed by the Local Authority and will, therefore, be subject to the Local Authority's policies under the Discretionary Compensation Regulations 2000.

There does not appear to be any specific provision in the Discretionary Compensation Regulations 2000 stating that staff who were employed in voluntary aided schools, foundation schools, foundation special schools or foundation trust schools should be deemed to be employed by the Local Authority. However, given the provisions in the Discretionary Compensation Regulations 2006 it is reasonable to assume that the Local Authority's policies under the Discretionary Compensation Regulations 2000 should apply to them.

Discretions policy under the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011

Discretions under the Injury Allowances Regulations 2011 are covered in Table G of Annex 3 of this paper.

Regulation 14(1) of the Injury Allowances Regulations 2011 says that each LGPS employer must prepare and publish a statement of its policy in relation to the exercise of its functions set out in Table G of Annex 3 of this paper.

Regulation 2(1) of the Injury Allowances Regulations 2011 defines an LGPS employer as:

(a) a Scheme employer, being a body mentioned in regulation 8, or listed in Schedule 2 to the Administration Regulations; or

(b) a police authority in relation to a police cadet appointed under section 28 of the Police Act 1996.

Staff employed in a community school, a community special school, a maintained nursery school or a voluntary controlled school are employed by the Local Authority and will, therefore, be subject to the Local Authority's policy.

However, because of the wording in (a) above, the position of staff in a foundation school, foundation special school, foundation trust school, voluntary aided school, technical institution or federated school is slightly less clear. This is because the body mentioned in regulation 8 of the LGPS (Administration) Regulations 2008 is the foundation school, foundation special school, foundation trust school, voluntary aided school, technical institution or federated school. Thus, the school is the body referred to and is thus the body that would appear to be required to have discretions policy on the matters in Table G of Annex 3 of this paper. However, regulation 8 of the LGPS (Administration) Regulations 2008 provides that the employees of such an establishment are deemed for the purposes of the LGPS to be employees of the Local Authority (although their actual employer is the Governing Body). They are also treated as if references in the LGPS to employment by a Scheme employer and all similar expressions included them. So, is the school required to prepare and publish a policy or, as the employees are deemed to have been employees of the Local Authority, does the Local Authority's policy apply? On balance, and given the line taken in respect of all the other matters in this Appendix, it is considered that the Local Authority's policy should be applied.

Thus, the Local Authority's discretions policy will apply to those who were employees of a community school, a community special school, a maintained nursery school, a voluntary controlled school, a foundation school, a foundation special school, a foundation trust school, a voluntary aided school, a federated school or a technical institute.