

## **Ketley Parish Council 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.

This document will form **Ketley Parish Council** policies on pension and compensation discretions. It should be noted that:

- the policies will confer no contractual rights
- **Ketley Parish Council** will retain the right to change the policies at any time without prior notice or consultation but Ketley Parish Council will endeavour to discuss changes with recognised unions.
- 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><b>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.</b>  <b>[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]</b></p>	<p><b>Ketley Parish Council policy</b></p>
<p>1. Whether, at full cost to <b>Ketley Parish Council</b>, to grant extra annual pension of up to £8,344 (figure at 1 April 2024<sup>1</sup>) 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><b>Ketley Parish Council</b> will not make use of the discretion to grant extra annual pension of up to £8,344 (figure at 1 April 2024) 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>Each case will be considered on the merits of the financial and / or operational business case put forward.</p>
<p>2. Whether, where an active scheme member wishes to purchase extra annual pension of up to £8,344 (figure at 1 April 2024<sup>2</sup>) by making Additional Pension Contributions (APCs), Ketley Parish Council will voluntarily contribute towards the cost of purchasing that extra pension via a Shared Cost Additional Pension Contribution (SCAPC).</p>	<p><b>Ketley Parish Council</b> will only voluntarily contribute towards the cost of purchasing extra pension via a Shared Cost Additional Pension Contribution (SCAPC) where:</p> <ul style="list-style-type: none"> <li>- an active scheme member returns from a period of authorised leave of absence, and</li> <li>- 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</li> <li>- the member subsequently makes an election to do so whilst an active member and it can be</li> </ul>

<sup>1</sup> 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).

<sup>2</sup> 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).

	<p>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</p> <ul style="list-style-type: none"> <li>- 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 <b>Ketley Parish Council</b> may deem reasonable in any individual case.</li> </ul> <p>A decision on whether the member meets the above criteria (and on whether the 3 month period referred to should be extended in any individual case) will be taken by The Chairman and Clerk and, where it is agreed that the conditions are met, <b>Ketley Parish Council</b> will be required to contribute 2/3rds of the cost of buying back the 'lost' pension via a SCAPC.</p>
<p>3. Whether to permit flexible retirement for staff aged 55<sup>3</sup> or over who, with the agreement of <b>Ketley Parish Council</b>, reduce their working hours or grade and, if so, as part of the agreement:</p> <ul style="list-style-type: none"> <li>- 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"> <li>• all, part or none of the pension benefits they accrued after 31 March 2008 and before 1 April 2014, and / or</li> </ul> </li> </ul>	<p><u>Flexible retirement</u></p> <p><b>Ketley Parish Council</b> will not agree to flexible retirement except in circumstances where <b>Ketley Parish Council</b> considers it is in its financial or operational interests to do so. Each case</p> <ul style="list-style-type: none"> <li>- will be considered on the merits of the financial and / or operational business case put forward,</li> <li>- 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"> <li>a) all, some or none of their 1 April 2008 to 31 March 2014 benefits, and /or</li> </ul> </li> </ul>

<sup>3</sup> 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).

<ul style="list-style-type: none"> <li>• all, part or none of the pension benefits they accrued after 31 March 2014, and</li> <li>- 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)<sup>4</sup>.</li> </ul>	<p>b) all, some or none of their post 31 March 2014 benefits, and</p> <p>- will require the approval of The Chairman and Clerk.</p> <p>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, 20% e.g. the equivalent of the hours for one working day.</p> <p><u>Waiver of any actuarial reduction on flexible retirement</u> 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. <b>Ketley Parish Council</b> 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 <b>Ketley Parish Council</b> including, where the</p>
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<sup>4</sup> 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 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.

	reduction is only to be waved in part, approval for the amount of reduction to be waived.
4. Whether, as the 85 year rule does not (other than on flexible retirement – see 3 above) <u>automatically</u> apply to members who would otherwise be subject to it and who choose to voluntarily draw their benefits on or after age 55 and before age 60, to apply the 85 year rule <sup>5</sup> to such voluntary retirements.	<b>Ketley Parish Council</b> will not agree to apply the 85 year rule where members choose to voluntarily draw their benefits on or after age 55 and before age 60 except in circumstances where <b>Ketley Parish Council</b> 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 <b>Ketley Parish Council</b> .
5. For: i) active members voluntarily retiring on or after age 55 <sup>6</sup> and before Normal Pension Age who elect under regulation 30(5) of the LGPS Regulations 2013 to immediately draw benefits, and ii) deferred members and suspended Tier 3 ill health pensioners who elect under regulation 30(5) of the LGPS Regulations 2013 to draw benefits (other than on ill health grounds) on or after age 55 <sup>7</sup> and before Normal Pension Age	Where members choose to voluntarily draw their benefits on or after age 55 and before Normal Pension Age <b>Ketley Parish Council</b> will not agree to waive in whole or in part any actuarial reduction that would otherwise be applied to their benefits except in circumstances where <b>Ketley Parish Council</b> considers it is in its financial or operational interests to do so or there are compelling compassionate <sup>8</sup> reasons for doing so.

<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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.

<p>who:</p> <ul style="list-style-type: none"> <li>- were <u>not</u> members of the LGPS before 1 October 2006 [Group 4 members], whether to: <ul style="list-style-type: none"> <li>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</li> <li>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></li> </ul> </li>   <li>- <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"> <li>o waive on compassionate grounds, any actuarial reduction that would otherwise be applied to benefits accrued before 1 April <u>2016</u>, and / or</li> <li>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></li> </ul> </li>   <li>- <u>were</u> members of the LGPS before 1 October 2006 and will <u>not</u> be 60 or more on 31 March 2016 and will <u>not</u> attain age 60 between 1 April 2016 and 31 March 2020 [Group 3 members], whether to: <ul style="list-style-type: none"> <li>o waive on compassionate grounds, any actuarial reduction that would otherwise be applied to benefits accrued before 1 April <u>2014</u>, and / or</li> <li>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></li> </ul> </li> </ul>	<p>Each case</p> <ul style="list-style-type: none"> <li>- will be considered on the merits of the financial and / or operational business case put forward, or</li> <li>- will be considered on the merits of the compassionate case put forward, and</li> <li>- will require the approval of <b>Ketley Parish Council</b> including, where the reduction is only to be waved in part, approval for the amount of reduction to be waived</li> </ul>
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<p>- <u>were</u> members of the LGPS before 1 October 2006 and will <u>not</u> be 60 or more on 31 March 2016 but <u>will</u> attain age 60 between 1 April 2016 and 31 March 2020 [Group 2 members], whether to:</p> <ul style="list-style-type: none"> <li>o waive on compassionate grounds, any actuarial reduction that would otherwise be applied to benefits accrued before 1 April <u>2020</u>, and / or</li> <li>o waive, in whole or in part (on any grounds), any actuarial reduction that would otherwise be applied to benefits accrued after 31 March <u>2020</u></li> </ul>	
<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><b>Ketley Parish Council</b> will not enter into a shared cost AVC arrangement other than:</p> <ul style="list-style-type: none"> <li>a) in exceptional circumstances in which case the decision to contribute, and the amount of the contribution, will be subject to the approval of <b>Ketley Parish Council</b>.</li> </ul>
<p>7. Whether to extend the 12 month time limit within which a scheme member who has a deferred LGPS benefit in England or Wales following the cessation of an employment (or cessation of a concurrent employment) after 31 March 2014 may elect not to have the deferred benefits aggregated with their new LGPS employment (or ongoing concurrent LGPS employment) if the member has not made an election to retain separate benefits within 12 months of commencing membership of the LGPS in the new employment (or within 12 months of ceasing the concurrent membership).</p>	<p><b>Ketley Parish Council</b> 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):</p> <ul style="list-style-type: none"> <li>a) where <b>Ketley Parish Council</b> agrees that the available evidence indicates the member had not been informed of the 12 month time limit due to maladministration;</li> <li>b) where <b>Ketley Parish Council</b> 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</li> </ul>

	<p>Pension Fund administering authority (e.g. the election form was lost in the post); or</p> <p>c) where the member has pre 1 April 2014 membership and <b>Ketley Parish Council</b> 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 with <b>Ketley Parish Council</b> is, in real terms after allowing for inflation, significantly less than the whole-time equivalent pensionable pay upon which the deferred benefits were calculated).</p> <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>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><b>Ketley Parish Council</b> 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"> <li>- 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</li> </ul>

	<p>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;</p> <ul style="list-style-type: none"> <li>- where the available evidence indicates the member made an election within 12 months of joining the LGPS, but the election was not received by the Pension Fund administering authority (e.g. the election form was lost in the post);</li> </ul> <p>where the available evidence indicates the member had not been informed of the 12 month time limit due to maladministration.</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><b>Ketley Parish Council</b> will only review employees contribution bands as at 1 April each year based on prior years cumulative earnings unless there is a material change.</p> <p>New scheme members will be determined on expected earnings from information available at time of assessment.</p>
<p>10. Whether or not, when calculating assumed pensionable pay when a member (other than a returning officer<sup>9</sup>) is:</p> <ul style="list-style-type: none"> <li>- on reduced contractual pay or no pay on due to sickness or injury, or</li> </ul>	<p>In assessing Assumed Pensionable Pay (APP) <b>Ketley Parish Council</b> 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 <b>Ketley Parish Council</b>.</p>

<sup>9</sup> 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.

<ul style="list-style-type: none"> <li>- 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</li> <li>- absent on reserve forces service leave, or</li> <li>- retires with a Tier 1 or Tier 2 ill health pension, or</li> <li>- dies in service</li> </ul> <p>to include in the calculation the amount of any 'regular lump sum payment' received by the member in the 12 months preceding the date the absence began or the ill health retirement or death occurred.</p>	
<p>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>	<p>In assessing Assumed Pensionable Pay (APP) <b>Ketley Parish Council</b> will not, other than in exceptional circumstances, substitute a higher level of pensionable pay in which case the decision to will be subject to the approval of <b>Ketley Parish Council</b>.</p>

**Annex 2**

<p><b>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</b></p> <p><b>[Note that employers who were participating in the Scheme on 31 March 2014 MUST have a policy on the 4 items below]</b></p>	<p><b>Ketley Parish Council policy</b></p>
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1. Whether, on compassionate grounds <sup>10</sup> , to waive any actuarial reduction that would normally be applied to deferred benefits which are paid before age 65 <sup>11</sup> .	<b>Ketley Parish Council</b> 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 <b>Ketley Parish Council</b> .
2. Whether, on compassionate grounds <sup>12</sup> , to waive any actuarial reduction that would normally be applied to any suspended Tier 3 ill health pension benefits which are brought back into payment before age 65 <sup>13</sup> .	<b>Ketley Parish Council</b> 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 <b>Ketley Parish Council</b> .

<b>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</b>	<b>Ketley Parish Council policy</b>
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<sup>10</sup> 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.

<sup>11</sup> 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.

<sup>12</sup> 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.

<sup>13</sup> 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.

<p><b>members who ceased or will cease active membership on or after 1 April 1998)</b>  <b>[Note that employers who were participating in the Scheme on 31 March 2009 MUST have a policy on the 2 items below]</b></p>	
<p>1. Whether<sup>14</sup> to grant applications for the early payment of pension benefits on or after age 50<sup>15</sup> and before age 55 (on grounds other than permanent ill health).</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 grounds<sup>16</sup>. Each case will be considered on its merits and will be subject to the approval of <b>Ketley Parish Council</b>. 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>2. Whether, on compassionate grounds<sup>17</sup>, to waive any actuarial reduction that would normally be applied to deferred benefits which are paid before age 65<sup>18</sup>.</p>	<p><b>Ketley Parish Council</b> 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</p>

<sup>14</sup> 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).

<sup>15</sup> 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.

<sup>16</sup> 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.

<sup>17</sup> 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.

<sup>18</sup> 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 .

	65. Each case will be considered on its merits and will be subject to the approval of <b>Ketley Parish Council</b> .
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<b>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</b> <b>[Note that employers who were participating in the Scheme on 31 March 1998 are recommended to have a policy on the item below]</b>	<b>Ketley Parish Council policy</b>
1. Whether to grant applications for the early payment of deferred pension benefits on or after age 50 <sup>19</sup> and before age 65 on compassionate grounds <sup>20</sup> .	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 <b>Ketley Parish Council</b> .

### **Annex 3**

<b>Table E: Discretions to be exercised under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006</b> <b>[Note that employers, other than admission bodies, MUST have a policy on the 4 items below.]</b>	<b>Ketley Parish Council policy</b>
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<sup>19</sup> 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.

<sup>20</sup> 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.

<p><b>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 payments under the Regulations, they do not wish to have a written policy statement.]</b></p>	
<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, £643 per week (as at 6 April 2023).</p>	<p>Any redundancy payment will be calculated on an employee's actual week's pay and not limited to the statutory weeks' pay limit where pay exceeds that limit.</p> <p>Continuous local government service, as defined under the Redundancy Payments (Continuity of Employment in Local Government, etc) (Modification) Order 1999, will be taken into account in the calculation of redundancy payments.</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>Staff whose employment is terminated on the grounds of redundancy or business efficiency will receive a termination payment (to incorporate any redundancy pay) calculated using the statutory redundancy payment formula but based on actual pay, enhanced by a multiplier of 3.</p>

<p><b>Table F: Discretions to be exercised under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000</b>  <b>[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]</b></p>	<p><b>Ketley Parish Council policy</b></p>
<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><b>Ketley Parish Council</b> 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>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>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>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 years pension will only be payable to one of them (being whichever one they choose).</p>
<p>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>	<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) <b>Ketley Parish Council</b> will decide to whom and in what proportions any children's annual compensatory added years payments are to be paid as <b>Ketley Parish Council</b>, at its sole discretion, sees fit (based on the merits of the individual cases).</p>
<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>	<p><b>Ketley Parish Council</b> 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"> <li>- the annual compensation, and</li> <li>- the annual pension from the LGPS, and</li> <li>- the annual rate of pay from the new employment exceeds the pay the person would have received from the employment in</li> </ul>

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.

Where compensatory added years were awarded on or after 21 June 2000, **Ketley Parish Council** 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) to the extent necessary to secure that if:

- the period of compensatory added years granted in respect of the former employment,

plus

- 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,

exceeds

- 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),

then

- 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.

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.

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:

- 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
- 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.

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.

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.

Where compensatory added years were awarded before 21 June 2000, **Ketley Parish Council** 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.

**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

	<p><i>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.</i></p>
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<p><b>Table G: Discretions to be exercised under the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011</b></p> <p><b>[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.]</b></p>	<p><b>Ketley Parish Council policy</b></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"> <li>- suffers a reduction remuneration, or</li> <li>- 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</li> <li>- dies leaving a surviving spouse, civil partner or dependant.</li> </ul>	<p><b>Ketley Parish Council</b> 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"> <li>- suffers a reduction remuneration, or</li> <li>- 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</li> <li>- dies leaving a surviving spouse, civil partner or dependant.</li> </ul>
<p>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</p>	<p>If in exceptional circumstances Ketley Parish Council decide to make an award of an injury allowance this will be calculated as follows:</p>

<p>duties of their job and in consequence of which he / she suffers a reduction remuneration.</p>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• The allowance must cease when the reduction in remuneration ceases to apply.</li> <li>• 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: <ul style="list-style-type: none"> <li>• the degree of injury sustained or the severity of the disease contracted as assessed by an Independent Registered Medical Practitioner, and</li> <li style="padding-left: 40px;">the level of any of the following which the person may receive <ul style="list-style-type: none"> <li>• social security benefits</li> <li>• any benefit or compensation under a statutory right</li> <li>• pension benefits</li> <li>• damages recovered and any sum received by virtue of a contract of insurance.</li> </ul> </li> </ul> </li> </ul> <p>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 medicine<sup>21</sup> as to whether, in his / her</p>
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<sup>21</sup> 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

	<p>opinion, the person sustained the injury or contracted the disease in the course of carrying out his / her work.</p>
<p>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.</p> <p>-</p>	<p>If in exceptional circumstances Ketley parish Council decides to calculate an injury allowance in which the employee ceases to be employed as a result, the allowance will be calculated as follows:</p> <ul style="list-style-type: none"> <li>- 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.</li> <li>- 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.</li> <li>- 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: <ul style="list-style-type: none"> <li>the level of any of the following which the person may receive <ul style="list-style-type: none"> <li>• social security benefits</li> <li>• any benefit or compensation under a statutory right</li> <li>• pension benefits</li> <li>• damages recovered and any sum received by virtue of a contract of insurance</li> </ul> </li> </ul> </li> </ul>

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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.

	<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"> <li>- Where the employee had sustained an injury, the employer must not take into account: <ul style="list-style-type: none"> <li>• any benefit payable periodically which the person was entitled to be paid before the injury was sustained</li> <li>• any right which accrued before the injury was sustained</li> <li>• any damages or sum received by virtue of such a right.</li> </ul> </li> <li>- 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 medicine<sup>22</sup> 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 which is likely to be permanent and was caused by the injury or disease.</li> </ul>
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<sup>22</sup> 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.

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.

If in exceptional circumstances Ketley Parish Council decides to calculate an award for a surviving spouse or dependant of an employee and dies from this, the award will be calculated as follows:

- 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:
  - 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 deceased employee, if any.

## 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.