

Pensions Discretions Policy

Audience:	All Reach South Academy Trust Staff
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Contents

Section	Description	Page
1.	Scope	3
2.	Teachers Pensions Discretions	4
3.	LGPS Scheme Employer Declaration	4
4.	LGPS Regulations 2013	4

1. SCOPE

- 1.1 This Policy applies to all Administering Authorities for the various Local Government Pension Scheme (LGPS) funds where Reach South is the 'Scheme Employer' in relation to the LGPS.
- 1.2 In accordance with Regulation 60 of the LGPS Regulations 2013 (the '2013 Regulations'), Reach South will prepare a written statement of its policy in relation to the exercise of its functions under Regulations:
- (a) 16(2)(e) and 16(4)(d) (funding of additional pension);
 - (b) 30(6) (flexible retirement);
 - (c) 30(8) (waiving of actuarial reduction); and
 - (d) 31 (award of additional pension).
- 1.3 In addition and in accordance with Paragraphs 2(2) of Schedule 2 to the Local Government Pension Scheme (Transitional Provisions, Savings & Amendment) Regulations 2014 Reach South will prepare a written statement on whether, in respect of benefits relating to pre 1st April 2014 membership, to 'switch on' the 85 year rule for a member who voluntarily retires (leaves employment) and elects to draw their benefits on, or after, the age of 55 and before the age of 60 thereby agreeing to waive in full, or part, any actuarial reduction applied to the member's benefits.
- 1.4 In accordance with Regulation 14 of the Local Government Pension Scheme (Discretionary Payments) (Injury Allowances) Regulation 2011, Reach South will formulate, publish and keep under review the Policy to be applied in the exercise of its discretionary powers to make any award under the Regulations. The statements at Paragraphs 1.2., 1.3 and 1.4 are collectively the **LGPS Statement**.
- 1.5 Reach South will send a copy of our LGPS Statement to the Administering Authority and publish it on the internal website.
- 1.6 Reach South commits to keeping the LGPS Statement under review and making such revisions as appropriate following a change of policy. It will be reviewed in March each year.
- 1.7 Where a revision to the LGPS Statement is made, Reach South will send a copy of the revised version to relevant Administering Authority before the expiry of one month beginning with the date that any such revision is made. Reach South will publish the revised version.
- 1.8 In preparing, or reviewing and making revisions to the LGPS Statement, Reach South will have regard to the extent to which the exercise of its discretionary functions could lead to a serious loss of confidence in the public service.
- 1.9 Whilst it is compulsory for the employer to prepare the LGPS Statement, there are a number of other discretions available which do not require such a statement of policy

to be made. Reach South has decided to make a statement of policies in relation to these matters.

- 1.10 In addition, Reach South has added to this policy a statement about discretions associated with the Teachers' Pension Scheme.
- 1.11 Whenever a discretion is exercised in relation to the LGPS or employees eligible to join the LGPS, to the TPS or employees eligible to join the TPS, Reach South does not intend to create any custom or practice fettering our future exercise of that discretion.

2. TEACHERS' PENSIONS DISCRETIONS

- 2.1 Reach South has discretions under Part V of the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997 to pay discretionary compensation by way of an additional pension and lump sum under the TPS.
- 2.2 This discretion will be exercised on a case by case basis, in exceptional circumstances by an Executive Director and a Trustee.
- 2.3 In relation to redundancy payments to teachers, it is Reach South's Policy to pay statutory redundancy pay, capped in accordance with the Employment Rights Act 1996. Deviations from this Policy may exist where an employee has transferred to Reach South as an employer under TUPE arrangements, or as approved by the Executive Principal.

3. LGPS SCHEME EMPLOYER DECLARATION

Reach South commits to keep the LGPS Statement under review and publish the statement (and any amendments made thereto) in a place that is easily accessible to all employees eligible to join the LGPS and that it will provide to the Administering Authority the most up to date version of the statement at all times.

4. LGPS REGULATIONS 2013

4.1 Regulation 16 Funding Additional Pension Contributions

- (a) Regulation 16 allows Reach South to choose to pay Additional Pension Contributions under one of three options:
- (i) Option 1: to buy extra pension;
 - (ii) Option 2: to buy "lost" pension for unpaid leave of absence or unpaid child related leave;
 - (iii) Option 3: to buy "lost" pension due to a strike.
- (b) Reach South has considered in what (if any) circumstances it would consider funding such Additional Pension Contributions in whole or in part.



- (c) Reach South has determined that, as such funding is not mandatory and that we have a duty to use tax payers' money prudently, Reach South will not fund an Additional Pension Contribution.

4.2 **Regulation 30(6) – Flexible Retirement**

- (a) An active member who has attained the age of 55 or over and who, with the employer's agreement, reduces their working hours or grade of employment may, with further consent, elect to receive immediate payment of all or part of the retirement pension to which they would be entitled in respect of that employment as if that member were no longer an employee in local government service on the date of the reduction in hours or grade (adjusted by the amount shown as appropriate in actuarial guidance issued by the Secretary of State – (see 3.3 below)).
- (b) As part of any agreement to permit flexible retirement decisions, Reach South will consider whether, in addition to the benefits the member may have accrued prior to 1 April 2008 (which the member must draw), to permit the member to choose to draw all, part or none of the pension benefits they built up after 31 March 2008 and before 1 April 2014 and all, part or none of the pension benefits they built up after 1 April 2014.
- (c) It is Reach South's policy to consider a request for flexible retirement under the LGPS on its merits which include:
 - (i) whether the financial cost is reasonable and sustainable;
 - (ii) whether there is no detrimental impact on the service.
- (d) Approval for such flexible retirement must be given by a panel including the Headteacher and the Head of HR with an appeal against the result to the Chief Executive Officer and a Trustee.

4.3 **Regulation 30(8) – Waiving of Actuarial Reduction**

- (a) Where consent is given to flexible retirement under regulation 30(6) and to the immediate release of benefits in respect of an active member who is aged 55 or over, those benefits must be adjusted by an amount shown as appropriate in actuarial guidance issued by the Secretary of State (commonly referred to as actuarial reduction or early payment reduction).
- (b) Reach South may agree to waive in whole or in part (and at our own cost) any actuarial reduction that may be required by the Scheme Regulations.
- (c) Reach South has determined that consent will not be granted to waive the actuarial reduction (either in whole or in part).

4.4 **Regulation 31 – Award of Additional Pension**

- (a) Reach South has power to resolve to award:
- (i) an active member, or
 - (ii) a member who was an active member but dismissed by reason of redundancy, or business efficiency, or whose employment was terminated by mutual consent on grounds of business efficiency,
- additional annual pension of, in total (including any additional pension purchased by us under Regulation 16), not more than the additional pension limit (£6,500 from 1st April 2014 subject to annual increase in line with the Pensions (Increase) Act 1971).
- (b) Any additional pension awarded is payable from the same date as any pension payable under other provisions of the Regulations from the account to which the additional pension is attached.
- (c) In the case of a member falling within sub-paragraph 3.4.1 (b) above, the resolution to award additional pension must be made within 6 months of the date that the member's employment ended.
- (d) Reach South has determined that there will be no resolution to make any award of additional pension under Regulation 31.

4.5 **Regulation 9(1) & (3) – Contributions**

- (a) Where an active member changes employment or there is a material change which affects the member's pensionable pay during the course of a financial year, Reach South may determine that a contribution rate from a different band (as set out in Regulation 9(2)) should be applied.
- (b) Where such a determination is made, the member will be informed of the revised contribution rate and the date from which it is to be applied.
- (c) Reach South has determined to set employee contribution costs at 1 April each year and make no changes throughout the year (this means employees may be overpaying or underpaying).

4.6 **Regulation 17(1) – Shared Cost Additional Voluntary Contributions**

- (a) An active member may enter into arrangements to pay Additional Voluntary Contributions (AVCs) or to contribute to a Shared Cost Additional Voluntary Contribution arrangement (SCAVCs) in respect of an employment. The arrangement must be a scheme established between the appropriate administering authority and a body approved for the purposes of the Finance Act 2004, registered in accordance with that Act and administered in accordance with the Pensions Act 2004.



- (b) Reach South is required to determine whether or not contributions to such an arrangement will be made on behalf of its active members.
- (c) Reach South has determined not to make contributions to any SCAVA arrangement.

4.7 **Regulation 22 (7) and (28) – Merging of Deferred Member Pension Accounts with Active Member Pension Accounts**

- (a) A deferred member's pension account is automatically aggregated with their active member's pension account unless the member elects within the first 12 months of the new active member's pension account being opened to retain their deferred member's pension account.
- (b) The 12 month election period may be extended at the discretion of the employer.
- (c) Reach South will agree to any request by an active member provided that there is no detrimental financial impact, or risk.

4.8 **Regulation 100(6) – Inward Transfers of Pension Rights**

- (a) A request from an active member to transfer former pension rights from a previous arrangement into the LGPS as a result of their employment with an LGPS Employer must be made in writing to the administering authority and Reach South before the expiry of the period of 12 months beginning with the date on which the employee first became an active member in an employment (or such longer period as Reach South and the Administering Authority may allow).
- (b) Reach South determines that transfers will be accepted beyond the 12 month deadline where there is no detrimental financial impact, or risk, and subject to the administering authority's agreement.

4.9 **Regulation 21(5) – Assumed Pensionable Pay**

- (a) Reach South is required to determine whether or not to include in the calculation of assumed pensionable pay, any 'regular lump sum payment' received by an LGPS member in the 12 months preceding the date that gave rise to the need for an assumed pensionable pay figure to be calculated.
- (b) Assumed pensionable pay is calculated when a member:
 - (i) enters a period of reduced contractual pay or no pay due to sickness or injury;
 - (ii) is absent during a period of child related leave;
 - (iii) is absent in reserve forces service leave;
 - (iv) retires with an entitlement to a Tier 1 or Tier 2 ill health retirement; or

(v) dies in service.

(c) Reach South has determined that each case will be examined at the appropriate time subject to affordability.

4.10 **Regulation 19(2) – Exclusion of Rights of Return of Contributions**

(a) Under certain circumstances LGPS members are entitled to a refund of contributions.

(b) However, when a person leaves an employment because of an offence of a fraudulent character or because of a grave misconduct in connection with that employment, Reach South may direct payment out of the Pension Fund of a sum equal to all, or part of, the member's contributions to the member, the member's spouse, civil partner, cohabiting partner or any of the member's dependents.

(c) Reach South will consider any such situation on its merits.

4.11 **Regulation 201(b) – Meaning of Pensionable Pay**

Only payments explicitly referred to in an LGPS member's contract of employment count as pensionable emoluments.

4.12 **Regulation 37(3) & (4) – Tier 3 Ill Health Retirement**

(a) When an LGPS member becomes permanently incapable of undertaking the duties of their employment and the Independent Registered Medical Practitioner (IRMP) certifies a Tier 3 ill health retirement, the member's accrued benefits come into payment immediately, without enhancement, for up to a maximum period of three years, with a review taking place after 18 months.

(b) The LGPS member is required to inform Reach South upon starting any employment whilst those benefits are in payment and to answer any reasonable questions about the employment status including details of pay and hours worked.

(c) If it is determined that the LGPS member has entered into gainful employment or the LGPS member fails to answer the questions raised, Reach South may determine to cease payment of the Tier 3 benefit and to recover any payment made in respect of any period it determines that the member has been in gainful employment.

(d) Gainful employment means paid employment for not less than 30 hours in each week for a period of not less than 12 months.

(e) Reach South will cease such payments and to recover any payments made for gainful employment.

4.13 **Regulation 38(3) & (6) – Early payment of retirement pension on ill health grounds: deferred and deferred pensioner members**

- (a) A deferred member (or deferred pensioner member) who, because of ill health or infirmity of mind or body, becomes permanently incapable of discharging efficiently the duties of the employment they were engaged in at the date they became a deferred member and who is unlikely to be capable of undertaking gainful employment before normal pension age, or for at least three years, whichever is sooner, may ask to receive immediate payment of their deferred benefits regardless of their age.
- (b) Under these circumstances the deferred member must make a request in writing to Reach South as their former LGPS employer who, having obtained a certificate from their Independent Registered Medical Practitioner (IRMP) setting out their opinion as to whether or not the former employer meets the qualifying conditions for 'ill health retirement', may or may not agree to the release of the deferred benefits.
- (c) It is Reach South's policy to consider each request on its merits, which includes affordability.

4.14 **Regulations 91, 92, 93 & 95 – Forfeiture of pension rights after conviction for employment-related offences etc**

- (a) If an LGPS member is convicted of a relevant offence committed in connection with an employment because of which the person has left that employment, the employer may apply to the Secretary of State for the issue of a forfeiture certificate and it is Reach South's policy that to do so.
- (b) Where such a forfeiture certificate is issued, Reach South may direct that any of the member's rights under the Regulations are forfeited and will do so. A notice of the decision, to make a direction on the member, will be served.
- (c) Reach South can also decide whether to direct interim payments of the Pension Fund to anyone that they consider to be entitled to receive payment of a benefit from the LGPS as if no forfeiture direction was given.
- (d) Reach South can also consider whether or not to recover from the Pension Fund any monetary obligation or, if less, the value of the member's benefits, where the obligation was incurred as a result of a grave misconduct or a criminal, negligent or fraudulent act or omission in connection with the employment.
- (e) It is Reach South's policy is to consider each issue on its merits, which include affordability.

5. **Local Government Pension Scheme (Transitional Provisions and Savings) Regulations 2014 Schedule 2 – paragraphs 2 and 3**

- 5.1 Where an LGPS member retires or leaves employment and elects to draw their benefits at or after the age of 55 and before the age of 60 those benefits will be actuarially reduced unless Reach South agrees to meet the full or part cost of those reductions as a result of the member otherwise being protected under the 85 year rule as set out in previous LGPS Regulations.
- 5.2 So as to avoid the member suffering the full reduction to their benefits Reach South may 'switch on' the 85 year rule protections thereby allowing the member to receive fully or partly unreduced benefits, subject to Reach South paying a strain (capital) cost to the Pension Fund.
- 5.3 It is Reach South's policy not to 'switch on' the 85 year rule.
- 6. Local Government (Discretionary Payments) Injury Allowance Regulations 2011**
- 6.1 **Regulation 4(5) Discretionary Allowance for Permanent Incapacity**
- In the event that an employee to whom an allowance for permanent incapacity is paid secures gainful employment Reach South will suspend or discontinue the allowance.
- 6.2 **Regulation 6(1) Allowance for pensioners**
- Reach South will not pay an allowance on cessation of employment.
- 6.3 **Regulation 7(2) Death Benefits**
- Reach South will not make an allowance or payment of death benefits.
- 7. Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2006**
- 7.1 **Regulation 5 Statutory Redundancy Payments**
- Reach South will not increase the amount of a statutory redundancy payment to persons eligible to join the LGPS so that the limit of a week's pay used in the calculation of the redundancy payment (currently £489) is retained.
- 7.2 **Regulation 6 Discretionary Compensation**
- (a) Where an employee eligible to join the LGPS is made redundant and does not receive additional payments under the 2013 Regulations or additional membership under the Regulations Reach South has the discretion to offer up to 104 weeks' compensation.



(b) Reach South will not use this discretion.

7.3 **Regulation 74 – Applications for Adjudication of Disagreements**

[Job Title] is appointed as Adjudicator under Regulation 72 of the LGPS Regulations 2013 to consider applications from any person whose rights or liabilities under the LGPS are affected by:

- (a) a decision under regulation 72 (first instance decisions); or
- (b) any other act or omission by Reach South,

and to make a decision on such applications.