



## FISHBOURNE PARISH COUNCIL

### EMPLOYER DISCRETIONS POLICY

**Adopted on 16 January 2018**

**Signed**

*Geoff Hand*

**Chairman**

**Minute reference: 18/11.2.2**

**Policy Reviewed on 21 May 2019 Minute Reference: 19/67.2**

#### **Aim**

The Local Government Pension Scheme (LGPS) is a statutory scheme. The rules and regulations governing the scheme are laid down under Act of Parliament. There are some provisions of the Scheme that are discretionary. Discretionary powers allow employers such as the Parish Council to choose how, or if, they apply certain provisions. This document aims to summarise the discretions that Fishbourne Parish Council (FPC) exercises as an employer in relation to the Local Government Pension Scheme.

#### **Scope**

This policy applies to all employees of Fishbourne Parish Council who are eligible to join, or have been a member of the Local Government Pension Scheme.

#### **Policy Provisions**

The discretions have been grouped under the following headings:

- [Joining Fishbourne Parish Council \(FPC\).](#)
- [During your employment with FPC.](#)
- [Leaving your employment with FPC.](#)
- [Adjustments to your pension rights following ill health.](#)
- [Early payment of deferred benefits.](#)
- [Internal Dispute Resolution Procedure.](#)
- [Loss of pension rights as a result of a fraudulent offence or grave misconduct.](#)
- [Re-employment with FPC.](#)
- [Following your death.](#)

The pension discretions within this policy were approved by the Parish Council on 16<sup>th</sup> January 2018. All pension discretions will be reviewed at least on a four yearly basis, or as and when circumstances change.

## **Joining Fishbourne Parish Council Pension Scheme**

### **How much will it cost?**

*(Determination of Pension Contributions - Regulation 9(2) & 9(3) & 9(4) & A55 (9) of the LGPS regulations 2013)*

You will pay between 5.5% and 12.5% of your actual pay which may include overtime. The rate you pay depends on the band you fall into. Assessment of pay bandings normally takes place on an annual basis each April. Your pension contributions will however be reassessed during the course of the year if you have a change in employment, or where a material change which affects your pensionable pay takes place. If your contribution rate changes as a result, your contributions will be adjusted at the point at which the change occurs.

The decision regarding the timing of the review of the bandings will be reviewed from time to time. You can find out how much you need to pay by using the LGPS contribution calculator by following the link below:

### **Contributions – how much will it cost?**

<https://www.westsussex.gov.uk/about-the-council/pensions/i-work-for-localgovernment/contributing-to-your-lgps-pension-during-201516/>

### **When will my pension contributions be deducted?**

*(Deduction of contributions from a member's pay -Regulation 85 (1) of the LGPS regulations 2013)*

They will be deducted from pay on your regular pay day.

### **What elements of my pay are pensionable?**

*(Determination of elements of pay on which pension contributions should be assessed - Regulation 20 (1) (a) & (b) of the LGPS regulations 2013)*

Pension contributions must be paid on all the salary, wages, fees and other payments you receive as an LGPS member and any benefit specified in your contract of employment as being pensionable (not including the amount paid for using your home as an office).

Any element of pay that is being paid to you and complies with the definitions as described in the LGPS 2013

Regulations listed above including non-contractual overtime will be regarded as pensionable. Certain payments such as travel and subsistence expenses and pay in lieu of notice are excluded from this. Only sums that are liable for income tax may be specified as pensionable.

### **What happens if my pay is reduced or I go on unpaid leave?**

If you have a period of reduced contractual pay or no pay due to sickness or injury or you have a period of relevant child related leave (e.g. maternity/paternity/adoption leave) or reserve forces service leave, the Parish Council needs to provide the pension fund with the "assumed pensionable pay" you would have received during that time. We will calculate what your pay would have been for the period when you were on reduced contractual pay or no pay.

The assumed pensionable pay is calculated as the average of the pensionable pay you received for the 3 months before the pay period in which you went on to reduced pay or no pay. This figure is then grossed up to an annual figure and then divided by the period of time you were on reduced pay or no pay.

If you received a lump sum payment which was pensionable within the 3-month period mentioned above, the Parish Council will decide whether or not this should be included in the assessment of your assumed pensionable pay. Each case will be assessed on its merits to ensure that your assumed pensionable pay for the period concerned is not more than you would have received had you not had a period of absence.

**Can I combine my previous pension benefits to my current period of scheme membership?**

*(Extension of period for scheme member to elect to un-aggregate former deferred Benefits -Regulation 22 (7)(b) and 22 (8)(b) and of the LGPS regulations 2013)*

If you have previous LGPS pension benefits (deferred benefits), when you re-join the LGPS you have 12 months from re-joining to ask to keep your deferred benefits separate from your new pensions account. If you do not ask to keep your deferred benefits separate, your benefits will be automatically joined with the benefits in your new pensions account (or, where the deferred benefits arose from the ending of another job you in which you were working in addition to your current job, your pension benefits will automatically be joined with the pension account from your on-going job).

The Parish Council will consider an extension to the time limit on a case by case basis if it is clear that you were unable to meet the normal time period due to circumstances beyond your control.

**Can I transfer my previous pension into the LGPS?**

*(Extension of period for a scheme member to elect to transfer previous pension rights- Regulation 100 (6) of the LGPS Regulations 2013)*

You are allowed to transfer previous pension into the LGPS. Your request to move them must be made within 12 months of starting scheme membership.

The Parish Council will consider an extension on a case by case basis if it is clear that you were unable to meet the normal time period due to circumstances beyond your control.

**During your employment with Fishbourne Parish Council:**

**Does the Parish Council have a shared cost Additional Voluntary Contribution (AVC) arrangement?**

*(Establishment of a Shared Cost AVC (SCAVC) facility -Regulation 17(1) of the LGPS regulations 2013)*

No, a shared cost AVC scheme is where the Parish Council contributes AVCs as well as yourself. The Parish Council does not intend to exercise this discretion.

The Parish Council does not operate a non-shared AVC scheme where you can invest money through an AVC provider, often an insurance company or building society

**Non-shared AVC scheme**

<http://www.lgps2014.org/content/additional-voluntary-contributions-avcs>

**Does the Parish Council have a shared cost Additional Pension Contribution (APC) arrangement?**

*(Establishment of a Shared Cost APC (SCAPC) facility – Regulation 16(2)(e) & (4)(d) of the LGPS regulations 2013)*

No, a shared cost APC scheme is where the Parish Council contributes APCs as well as yourself, when you have chosen to pay additional monies to increase your pension benefits. The Parish Council does not intend to exercise this discretion.

**Can I pay contributions following an authorised leave of absence on reduced or no pay?**

*(Extension of period for a scheme member to elect to pay for 'lost pension' where the employer contributes two thirds of the cost in respect of a period of absence -Regulation 16(16) of the LGPS regulations 2013)*

No, the Parish Council does not intend to exercise this discretion.

### **What happens if I have an industrial injury?**

*(Local Government (Discretionary Payments) (Injury Allowances) Regulations, Regulation 3 (Reduction in Remuneration), 4 (Loss of employment through permanent incapacity), 6 (Allowances for pensioners), 7 (Death benefits) and 8 (Considerations in determining amount of allowances) 2011)*

If you have an industrial injury during the course of your work and suffer a (temporary) reduction in pay or loss of employment through permanent incapacity you may be entitled to receive an industrial injury allowance. Each case will be looked at on a case by case basis. You do not have to be a member of the LGPS to receive the allowance.

The Parish Council does not intend to exercise the above discretion in the event you die as a result of an injury or disease sustained during employment. However, if you die in service and are a member of the Local Government Pension Scheme, the LGPS ensures that your family is supported. It provides:

- a lump sum death grant of three years pay, no matter how long you have been a member of the LGPS, provided you are under 75 at the date of death. For part-time employees, it is three times your actual part-time pay;
- an ongoing pension for your husband, wife, civil partner or nominated co-habiting partner. This increases every year in line with the cost of living and is payable for the rest of their life; and
- children's pensions for your eligible children. These increase every year in line with the cost of living.

If you sustain a bodily injury during the course of your work which results in death, an amount of money or benefit may be payable to you under the Fishbourne Parish Council Personal Accident Insurance.

### **Leaving your employment with Fishbourne Parish Council**

**Can I receive a refund of my contributions?** *(Contribution Equivalent Premium (CEP) in excess of the Certified Amount (CA) recovered from a refund of contributions can be recovered from the Pension Fund – Regulation 92 of the LGPS Regulations 1997 and Regulation A49(1) & (2) of the Administration Regulations 2007)*

If you are entitled under the scheme to receive a refund of contributions, this will be subject to deduction of fund tax and a Contribution Equivalent Premium (CEP) which is the payment to reinstate you into the state scheme as if you had never paid into the LGPS. This is due to you paying a lower rate of tax and National Insurance contributions whilst paying into the LGPS.

### **Can I convert scheme AVC's into membership credit?**

*(Regulation 15(1) (b) of the LGPS (Transitional Provisions and Savings) Regulations 2014 and Regulation 66(9) (b) of the 1997 Regulations)*

The Parish Council does not intend to exercise the above discretion.

### **Can I request to take partial/flexible retirement?**

*(Whether all or some benefits can be paid if an employee reduces their hours or grade Regulation 30(6) of the LGPS Regulations 2013 and Regulation 11(2) of the (Transitional Provisions and Savings) Regulations 2014 and Flexible retirement and waiving of any actuarial reduction - Regulation 30(8) of the LGPS Regulations 2013)*

The Parish Council does not intend to exercise the above discretion.

### **Can I retire early without my employer's consent?**

*(Whether to 'switch on' the 85 Year Rule for a member voluntarily drawing benefits on or after age 55 and before age 60- Schedule 2, para 2(2) of the (Transitional Provisions and Savings) Regulations 2014) and Whether to waive, on compassionate grounds, the actuarial reduction applied to benefits pre 1st April 2014 membership where the employer has 'switched-on' the 85 Year Rule – Schedule 2, para 2(3).*

Yes. The scheme now allows you to retire from age 55 without the need for our consent. However, if you retire between 55 and 60 and had protection under what is called the "85 year rule" (i.e. if you add your age and length of service in whole years and this equates to 85) this will not automatically apply in full and your benefits might therefore be subject to actuarial reduction as you will be receiving them earlier than you would have done. The regulations allow us as your employer to 'switch on' the 85 year rule. Your benefits may still be subject to an actuarial reduction however, it may be less than if the 85 year rule was not 'switched on'.

As the Parish Council would have to meet the cost of 'switching on' the 85 year rule if you chose to retire between age 55 and 60, it will only consider doing so if there are exceptional or compassionate grounds for doing so.

If the Parish Council chooses to switch on the 85 year rule in your case it then has the discretion on compassionate grounds (as defined in the new regulations) to waive the pre 1st April 2014 reduction. Where this is the case, it would be subject to the approval of the Parish Council. Any costs incurred will be paid for by the Parish Council.

### **Will my pension be reduced if I receive my pension benefits early?**

*(Whether to waive, in whole or part, actuarial reduction on benefits which a member voluntarily draws before normal pension age – Regulation 30(8) of the LGPS Regulations 2013)*

Yes. The Parish Council does not normally agree to waive the costs of your actuarial reduction, and your pension and lump sum will therefore be reduced as you will be receiving your pension earlier than you would have done.

However, there may be exceptional or compassionate grounds that may justify the Parish Council waiving the actuarial reduction. Where this is the case, the grounds for doing so must be included in the business case for the early release of pension and is subject to the relevant approval processes. The Parish Council will treat each case fairly based on the circumstances and merits of the case. Any costs will be paid for by the Parish Council.

### **Benefits reduction table**

<http://www.lgps2014.org/content/when-can-i-take-it>

### **If I am made redundant what payments will I be entitled to?**

*Regulation 5, 6 – Discretion under the local Government (Early Termination of Employment) (Discretionary Payments)*

*(England & Wales) Regulations 2006*

If you are made redundant aged 55 and over, and have at least two years' service you will be entitled to receive immediate payment of your LGPS retirement benefits. These benefits will be made without reduction. If you are aged below 55 when you are made redundant, you cannot receive the immediate payment of your LGPS benefits.

They will instead be deferred and will be increased annually in line with the cost of living increase and will become payable from your scheme's normal retirement age (State Retirement Age with a minimum age of 65).

**If my employment is terminated on the grounds of the efficiency of the service will I be entitled to compensation?**

*Regulation 6 – Discretion under the Local Government (Early Termination of Employment) (Discretionary Payments) (England and Wales) Regulations 2006*

The Parish Council does not intend to exercise the above discretion

**What happens if my lump sum compensation payment is incorrect?**

*(Power to enable employers to decide the steps taken to recover overpayments on lump sum compensation - Regulation 8 Early Terminations of Employment (Discretionary Compensation) Regulations 2006)*

If an underpayment of your lump sum has been made, immediate steps will be taken to make the appropriate payment. The Council will also seek to recover any overpayment.

**How is final pay for fee earners calculated?**

*(Final pay period to be used where a member's pay consists of fees Regulation 22(1)(b) of the LGPS Regulations 1997 and Regulation B11 (2) of the Benefit Regulations 2007 and Regulation 3(6), 4(6)(c), 8(4), 10(2)(a) and 17(2)(b) of the (Transitional Provisions and Savings) Regulations 2014.*

The Parish Council does not intend to exercise the above discretion

**Can I receive additional pension?**

*(Whether to grant additional pension to an active member or within 6 months of ceasing to be an active member by reason of redundancy or business efficiency - Regulation 31 of the LGPS Regulations 2013)*

Awarding additional pension may be used in exceptional circumstances and only where there are likely to be significant benefits to the Parish Council.

- The Parish Council can choose to award you an additional pension up to the value of £6,675.

**Adjustments to your pension following ill health**

If your employment is being terminated for reasons of ill health and you are in the pension scheme, we must decide whether or not you are entitled to an ill health retirement pension. To help us decide this we need to obtain a certificate from an independent registered medical practitioner who will assess whether “as a result of “ill health or infirmity of mind or body”, you are permanently incapable of “discharging efficiently the duties of the employment you were engaged in” and, if so, whether you are not “as a result of ill health or infirmity of mind or body”, immediately capable of undertaking any “gainful employment” (see definition below).

The LGPS has 3 tiers of ill-health provision.

- Tier 1: If you are unlikely to be capable of undertaking gainful employment before your Normal Pension Age. (State Retirement Age with a minimum age of 65)
- Tier 2: A) If you are not entitled to Tier 1 benefits. B) are unlikely to be capable of undertaking any gainful employment within three years of leaving your employment; but c) are likely to be able to undertake gainful employment before reaching Normal Pension Age.
- Tier 3: If you are likely to be capable of undertaking gainful employment within three years of leaving their employment, or before Normal Pension Age.

The following discretions relate to the LGPS ill-health provisions.

**What happens if I am able to work again or the medical advisor deems me fit to work?**

*(Determine whether a person in receipt of a Tier 3 ill health pension has started gainful employment – Regulation 37(3) & (4) of the LGPS Regulations 2013 and Recovery of payments following commencement of gainful employment - Regulation 37(3) of the LGPS Regulations 2013)*

If you have received an award under tier 3 the Parish Council has to review your award after 18 months. We cannot continue to pay you a tier 3 award for more than 3 years, (provided you are not in “gainful employment”, or considered capable of undertaking such employment).

You must inform the Parish Council immediately if you obtain ‘gainful employment’ at any time between your tier 3 ill health pension award commencing and the expiry of the three years.

For the purposes of a tier 3 award, “gainful employment” is considered to be paid employment for at least 30 hours each week for a contract period of at least 12 months.

As part of a review of a tier 3 ill health award, the Parish Council may cease payment of the award from the date you gain obtained gainful employment, or were considered by an independent medical adviser as capable of undertaking gainful employment.

Additionally, if you are still receiving your tier 3 ill health pension after you have obtained gainful employment, or where a medical advisor has determined you as capable of undertaking gainful employment, the Parish Council will seek to recover any overpayment made to you.

**What if my condition has not improved or has deteriorated?**

*(Determine whether a person in receipt of Tier 3 ill health pension following review is unlikely to be capable of undertaking gainful employment before normal pension age because of ill health – Regulation 38(3) of the LGPS Regulations 2013)*

If you have a tier 3 ill health pension and your condition has not improved, or has deteriorated, the Parish Council will decide whether you have an entitlement to a tier 2 ill health pension. A decision to convert your tier three award to a tier two award can be taken at any time and must be no later than 3 years of the date that payment of your benefits under tier 3 has stopped, or before you reach your normal retirement age.

**Early Payment of Deferred Benefits**

**Can I receive my deferred pension early?**

*(Whether to grant pre 1 April 1998 leavers early payment of their deferred benefits on or after age 50 on compassionate grounds – Regulation D11(2)(C) of the LGPS Regulations 1995) and Regulation 31(2) of the LGPS Regulations 1997 and (Whether to grant application for early payment of deferred benefits on or after age 55 and before age 60 – Regulation 30(2) & (5) of the Benefit Regulations 2007 and 30(8) of the LGPS Regulations 2013)*

**Early payment of Deferred Benefits**

Your deferred benefits are normally payable from your normal retirement age which is linked to your state retirement age, with a minimum age of 65. You can choose to take early payment of your deferred benefits from age 55 without your former employer’s consent. However, you must be aware that your benefits will normally be reduced to take into account early payment.

Fishbourne Parish Council may choose to waive, on compassionate grounds, the actuarial reduction applied to benefits payable. Each case will be considered fairly based on the circumstances and merits of the case and is subject to approval by the Parish Council.

**Can I receive my deferred pension early due to my poor health?**

*(Decide whether a deferred beneficiary meets permanent ill health and reduced likelihood of gainful employment criteria – Regulation 31(4) of the Benefits Regulations 2007 and 38(3) of the LGPS Regulations 2013)*

Fishbourne Parish Council will decide whether or not you can receive your deferred pension early. To help him/her make this decision he/she has to obtain a certificate from an independent registered medical practitioner to determine:

- Whether you are suffering from a condition that renders you “permanently incapable of discharging efficiently the duties of their former employment because of ill-health or infirmity of mind or body”

and, if so,

- Whether as a result of that condition you are “unlikely to be capable of undertaking any gainful employment” before reaching normal pension age, or for at least three years, whichever is the sooner.

### **Internal Dispute Resolution**

**What do I do if I don't agree with a decision that has been made regarding my pension?**

*(Decide procedure to be followed by adjudicator when exercising stage one IDRPs functions – Regulation 74(4) of the LGPS Regulations 2013) (Whether to extend six-month period to lodge stage one IDRPs appeal – Regulation 74(6) of the LGPS Regulations 2013)*

If we have taken a decision in relation to your membership of the LGPS which you are not satisfied with you have the right to make a formal complaint to the Chairman of the Parish Council.

### **Loss of pension rights as a result of a fraudulent offence of grave misconduct**

**Is my pension benefit affected if I leave employment due to a fraudulent offence or grave misconduct?**

*(Payment of a refund of contributions in misconduct cases and Forfeiture of pension rights as a result of offences or 2), 111(2) & (5), 112(1), 113(2), 115(2) & (3) of the LGPS 1997 Regulations and Regulation A47(2), A72(1) (3), A73(1) (2), A74(2), A76 (2) (3) of the Administrations Regulations 2008 and –*

*Regulation 19(2), 91(1) (4) (8), 92(1) (2), 93(2), 95 of the LGPS 2013 Regulations)*

If you leave your employment with Fishbourne Parish Council due to a fraudulent offence, grave misconduct, negligence, or any work related criminal offence that results in financial loss to the Parish Council, the Parish Council will, in exceptional circumstances, seek to reduce the value of your pension benefits commensurate with the offence.

There is no automatic entitlement to a refund on your pension contributions, if you leave your employment with less than 3 month's scheme membership, as a result of a fraudulent offence or grave misconduct and the Parish Council would seek to withhold any such amount where considered appropriate.

Each case will be referred to the Chairman of the Parish Council for consideration.

### **Re-employment with Fishbourne Parish Council**

**Do I still receive my annual compensation if I am re-employed by the Parish Council?**

*(Reduction of annual compensation on re-employment “abatements”-Regulation 17 Early Terminations of Employment (Discretionary Compensation) Regulations 2000)*



Your annual compensation may be adjusted or suspended throughout your re-employment with the Parish Council. This is to make sure that you are not receiving any more than the value of pay you would have received when you left your former employment.

**If I received added year's compensation will this be affected if I am re-employed by the Parish Council?**

*(Reduction of added years due to re-employment -Regulation 19 Early Terminations of Employment (Discretionary Compensation) Regulations 2000)*

When your re-employment ends, your compensatory added years will be adjusted in order that the value of any LGPS pension you are in receipt of, together with your annual compensation, does not exceed what you may have expected to receive as a benefit had you remained in continuous employment with the County Council to age 65.

**Following your death**

**If I received compensatory added years how will my surviving spouse's compensatory added years be paid?**

*(Joint entitlement to spouse's compensation (polygamous marriages). Regulation 21(4) Early Termination of Employment (Discretionary Compensation) Regulations 2000.*

Surviving spouses or civil partners annual compensation payments will be split on an equal share basis in the event that you are survived by more than one spouse or civil partner.

**Will my spouse receive annual compensation on re-marriage or cohabitation?**

*Suspension of spouse's compensation during a period of remarriage or Cohabitation. Regulation 21(5) & (7) Early Termination of Employment (Discretionary Compensation) Regulations 2000.*

The Parish Council will continue payment of a spouse's compensation to existing pensioners, as well as to new pensioners, who remarry or cohabit after 31<sup>st</sup> March 1998.

**How will my children's compensation payment pension be paid?**

*(Payment and apportionment of children's compensation -Regulation 25(2) Early Termination of Employment (Discretionary Compensation) Regulations 2000.)*

Eligible children's annual compensation payments will be paid on an equal share basis.

***Fishbourne Parish Council***

***16<sup>th</sup> January 2018***