

LGPS Employer Discretion Policy

Revised – December, 2018	Approved by full Council - 20 February 2019
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Introduction

1. The regulations governing the application of the Local Government Pension Scheme allow each employer to determine how certain discretionary provisions of the scheme will be applied. The following is a statement of North Yorkshire County Council's (NYCC) policy on the exercise of these discretions.

Scope and Policy

2. Due to changes of the Scheme over time, different regulations and provisions may apply to pension benefits and pensionable service accrued under different arrangements. This policy sets out the relevant discretions in different sections. At the commencement of each section the applicable Regulations are detailed.
3. The sections are as follows:

Section	Contents
Section 1	Discretions from 1.4.14. in relation to post 31.3.14. active members (excluding councillor members) and post 31.3.14. leavers (excluding councillor members)
Section 2	Discretions in relation to scheme members (excluding councillor members) who ceased active membership on or after 1.4.08 and before 1.4.14
Section 3	Discretions in relation to: <ul style="list-style-type: none"> • councillor members who ceased active membership on or after 1.4.98., and • any other scheme members who ceased active membership on or after 1.4.98. and before 1.4.08
Section 4	Discretions in relation to scheme members who ceased active membership before 1.4.98
Section 5	Discretions in relation to redundancy and compensatory payments on the early termination of employment
Section 6	Discretions in relation to any compensatory added years awarded before 1 April 2007
Section 7	Injury allowances as they apply to leavers, deaths and reductions in pay that occurred after 15 January 2012
Section 8	Injury allowances as they apply to leavers, deaths and reductions in pay that occurred before 16 January 2012

4. Unless otherwise stated, the application of these discretions will be in accordance with the Officers Delegation Scheme with advice from the Corporate Director – Strategic Resources and the Assistant Chief Executive – Business Support – who is accountable for the proper and consistent application of this policy on behalf of NYCC.

Definitions

5. Within the Regulations all discretions have a classification as follows:

Mandatory - an employer must formulate, publish and keep under review a policy on these discretions.

Recommended - there is no requirement for an employer to publish a written policy on these discretions. However, as these matters arise fairly frequently it may be appropriate so that members can be clear on your policy on these matters.

Less common - there is no requirement for employers to publish a written policy on these discretions, though they may choose to do so.

6. Within a number of the discretions, reference is made to **administrative shortcomings**. The following would be considered an administrative shortcoming:
 - A scheme member is not given appropriate advice/information to enable him/her to transfer pension rights
 - A scheme member contacts NYCC, NYPF or a previous pension scheme regarding transfer within 12 months but does not receive correct or sufficient information to enable them to make a proper decision
 - A scheme member believes that the action he/she has taken within 12 months is sufficient to have effected transfer
 - A scheme member has used his/her best endeavours to effect a transfer within 12 months of joining the scheme but the transfer has not taken place for reasons outside of his/her control, e.g. investigation into mis-selling, winding up of previous fund, etc.

Injury Allowances

7. The process for the consideration and approval of injury allowances detailed in Section 7 and Section 8 is attached as appendix 1 to this policy.

Review

8. This policy will apply from the date of approval and replaces all previous employer discretion policies from that date. The policy in force at the time a relevant event occurs will be the one that is applied.
9. This policy will be reviewed every three years or in the event of any change which makes an earlier review necessary.
10. Should any provision within this policy contradict any LGPS Regulation then the Regulation would apply.

Section One - Discretions from 1.4.14. in relation to post 31.3.14. active members (excluding councillor members) and post 31.3.14. leavers (excluding councillor members)

Applicable Regulations:

R = Local Government Pension Scheme (LGPS) Regulations 2013 (SI 2013/2356)

TP = LGPS (Transitional Provisions, Savings and Amendments) Regulations 2014

A = LGPS (Administration) Regulations 2008 (SI 2008/239)

B = LGPS (Benefits, Membership and Contributions) Regulations 2007 (as amended) (SI 2007/1166)

L = LGPS Regulations 1997 (as amended) (SI 1997/1612)

No.	Area	Discretion	Regulation	Exercised by	Key	Policy
1	Granting 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 (by up to £6,500 p.a - figure at 1 April 2014. This is inflation proofed annually)	R31	Employer	Mandatory	NYCC will not grant additional pension to a member
2	Shared cost Additional Pension Contributions (to buy additional pension)	Whether, how much and in what circumstances to contribute to a shared cost Additional Pension Contributions (APC) scheme A member can buy additional pension through an APC contract. The discretion is whether the employer will share the cost of the APC	R16(2)(e) & R16(4)(d)	Employer	Mandatory	NYCC will contribute to Shared Cost APC Schemes only when an employee has opted to buy back 'lost' pension due to a period of authorised unpaid leave (including sickness and child related leave) within 30 days of returning to work from that leave. In these circumstances, the employee will pay one third of the cost of the Shared Cost APC and the employer will pay two thirds of the cost
3a	Flexible retirement	Whether all or some benefits can be paid if an active member aged 55 or over and with at least 2 years qualifying service reduces their hours or grade (flexible retirement)	R30(6) & TP11(2)	Employer	Mandatory	NYCC will consider applications in accordance with its policy on early/flexible retirement.

No.	Area	Discretion	Regulation	Exercised by	Key	Policy
3b	Flexible retirement (cont.)	Whether to waive, in whole or in part, actuarial reduction to benefits paid on flexible retirement	R30(8)	Employer (or Admin. Authority where Employer has become defunct)	Mandatory	NYCC will not waive any actuarial reduction on benefits paid on flexible retirement. All applications for flexible retirement will be considered in line with the process and criteria set out in NYCC's policy on early/flexible retirement.
4	85 Year Rule	Whether to "switch on" the 85 year rule for a member voluntarily drawing benefits on or after age 55 and before age 60 (other than on the grounds of flexible retirement).	TPSch 2, para, 1(2) &1(1)(c)	Employer (or Admin. Authority where Employer has become defunct)	Mandatory	NYCC will not switch on the 85 Year Rule for any employee voluntarily drawing benefits on or after age 55 and before age 60
5a	Waive Reduction	<p>Whether to waive any actuarial reduction for a member voluntarily drawing benefits before normal pension age other than on the grounds of flexible retirement (where the member has both pre 1/4/14 and post 31/3/14 membership)</p> <p>a) on compassionate grounds (pre 1/4/14 membership) and in whole or in part on any grounds (post 31/3/14 membership) if the member was not in the Scheme before 1/10/06,</p> <p>b) on compassionate grounds (pre 1/4/14 membership) and in whole or in part on any grounds (post 31/3/14 membership) if the member was in the Scheme before 1/10/06, will not be 60 by 31/3/16 and will not attain 60 between 1/4/16 and 31/3/20 inclusive</p>	TP3(1), TPsch 2 para 2(1) & B30(5) & B30A(5)	Employer (or Admin. Authority where Employer has become defunct)	Mandatory	NYCC will not waive any actuarial reduction arising out of a voluntary early or flexible retirement. NYCC will pay any pension strain costs arising out of voluntary early or flexible retirement where this has been approved through its early/flexible retirement policies.

No.	Area	Discretion	Regulation	Exercised by	Key	Policy
	Waive Reduction (cont.)	<p>c) on compassionate grounds (pre 1/4/16 membership) and in whole or in part on any grounds (post 31/3/16 membership) if the member was in the Scheme before 1/10/06 and will be 60 by 31/3/16</p> <p>d) on compassionate grounds (pre 1/4/20 membership) and in whole or in part on any grounds (post 31/3/20 membership) if the member was in the Scheme before 1/10/06, will not be 60 by 31/3/16 and will attain 60 between 1/4/16 and 31/3/20 inclusive</p>				
5b		Whether to waive, in whole or in part, actuarial reduction on benefits which a member voluntarily draws before normal pension age other than on the grounds of flexible retirement (where the member only has post 31/3/14 membership)	R30(8)	Employer (or Admin. Authority where Employer has become defunct)	Mandatory	NYCC will not waive any actuarial reduction on benefits paid which a member voluntarily draws before normal pension age
6	Shared cost Additional Pension Contributions (to buy lost pension following a period of authorised unpaid absence)	<p>If a member has an authorised unpaid absence (not including illness or injury, relevant child-related leave or reserve forces service leave) and within 30 days of returning to work they elect to buy back the lost pension, the employer must share the cost (2/3rds)</p> <p>The discretion is whether to extend the 30 day deadline for a member to elect for a shared cost APC</p>	R16(16)	Employer	Recommended	NYCC will extend the deadline for a member to elect for a shared cost APC to 60 days or longer where there is evidence of administrative shortcoming.

No.	Area	Discretion	Regulation	Exercised by	Key	Policy
7	Transferring in non LGPS pension rights	Extend normal time limit for acceptance of a transfer value beyond 12 months from joining the LGPS	R100(6)	Employer and Admin. Authority	Recommended	NYCC will allow members to opt to transfer pension rights beyond the 12 month period in exceptional circumstances and/or if there is evidence of administrative shortcomings. The Administering Authority can provide guidance on individual queries.
8	Transferring in LGPS pension rights (only for pre 1.4.14 re-joiners)	Whether to extend the 12 month option period for aggregation of deferred benefits Care: This must match your existing discretion under the 2008 Scheme.	A16(4)(b)(ii)	Employer	Recommended	NYCC will only permit aggregation beyond 12 months in exceptional circumstances and/or if there is evidence of administrative shortcomings
9a	Transferring in LGPS pension rights (only for post 1.4.14 re-joiners)	Whether to extend the 12 month option period for a member to elect that deferred benefits should not be aggregated with a new employment	R22(8)(b)	Employer	Recommended	NYCC will only extend the 12 month option period beyond 12 months in exceptional circumstances and/or if there is evidence of administrative shortcomings
9b		Whether to extend the 12 month option period for a member to elect that deferred benefits should not be aggregated with an ongoing concurrent employment	R22(7)(b)	Employer	Recommended	NYCC will only extend the 12 month option period beyond 12 months in exceptional circumstances and/or if there is evidence of administrative shortcomings
10	Transferring in LGPS pension rights (i.e. final salary benefits which will buy CARE pension only for post 1.4.14 re-joiners)	Whether to extend the 12 month option period for a member (who did not become a member of the 2014 Scheme by virtue of TP5 (1)) to elect that pre 1 April 2014 deferred benefit should be aggregated with a new employment	TP10 (6)	Employer	Recommended	NYCC will only permit aggregation beyond 12 months in exceptional circumstances and/or if there is evidence of administrative shortcomings

No.	Area	Discretion	Regulation	Exercised by	Key	Policy
11	Employee contribution rate	<p>Employers to assess the relevant contribution band to determine the rate of employee contribution.</p> <p>Banded contribution rates for employees are based on actual pensionable pay received and not whole time equivalent salary. Employers to allocate appropriate band at each 1 April and determine other circumstances in which the banding will be reviewed.</p>	R9(1) & R9(3)	Employer	Recommended	<p>On 1st April each year, NYCC will allocate the appropriate band for all members' pensionable pay based on the previous years' pensionable pay and include incremental progression and cost of living increases where known as at 1 April . This will not change during the financial year unless there is a post change or cessation of salary protection arising from that change, or a pay award which cannot be applied on 1 April. This would include a pay award which is being applied retrospectively to 1 April or a pay award which applies from a date other than 1 April. For new posts commencing during the year, their band will depend on starting salary. Only permanent changes to pensionable pay will result in re banding.</p> <p>If members have variable or nil hours contracts, the relevant band will be based on an assessment of the total pensionable pay received in the previous year. For new variable or nil hours posts, banding will be based on the whole time equivalent salary, and reviewed 6 months after appointment to ensure the correct band has been allocated (based on total pensionable pay in their first 6 months). If any member believes this would be inaccurate, they should ask their Line Manager to contact ESS for further information.</p>

No.	Area	Discretion	Regulation	Exercised by	Key	Policy
12a	Assumed Pensionable Pay (APP)	In determining APP, whether a lump sum payment made in the previous 12 months is a “regular lump sum”	R21(5)	Employer	Recommended	NYCC would include lump sum payments in the calculation of APP where there is evidence that the lump sums were regularly received.
12b		Where in the employer’s opinion, the pensionable pay received in relation to an employment (adjusted to reflect any lump sum payments if appropriate) in the 3 months (or 12 weeks if not paid monthly) before the start of APP, is materially lower than the level of pensionable pay the member would have normally received The discretion is whether to substitute a higher level of pensionable pay by taking into account the pensionable pay received by the member in the previous 12 months	R21(5A) & R21(5B)	Employer	Recommended	NYCC will allow the substitution of a higher level of pensionable pay assessed over the previous 12 month period.
13	Late conversion of AVCs to service	Allow late application to convert scheme AVCs into membership credit i.e. allow application more than 30 days after cessation of active membership (where AVC arrangement was entered into before 13/11/01)	TP15(2A)(b) & L66(8) & former L66(9)(b)	Employer	Less Common	NYCC will extend the 30 day deadline if there is evidence of administrative shortcomings.
14	Shared cost AVCs	Whether, how much, and in what circumstances to contribute to shared cost AVC arrangements	R17(1) & definition of SCAVC in RSch 1	Employer	Less Common	NYCC will not enter into SCAVCs.

No.	Area	Discretion	Regulation	Exercised by	Key	Policy
15	Refund of contributions - member left due to an offence/grave misconduct	No right to return of contributions where a member left their employment due to offence of a fraudulent character or grave misconduct in connection with that employment unless employer directs a total or partial refund is to be made	R19(2)	Employer	Less Common	NYCC will consider whether or not to make a refund based on the merits of each case and in light of advice from Audit.
16	Pensionable payments	Specify in an employee's contract what other payments or benefits, other than those specified in R20(1)(a) and not otherwise precluded by R20(2), are to be pensionable	R20(1)(b)	Employer	Less Common	NYCC reserves the right to specify what, if any, other payments or benefits are to be pensionable in accordance with the Regulations and will automatically include "detriment" or "protected" pay as pensionable pay. See the NYCC Pay Policy for guidance on pensionable and non-pensionable pay.
17	T3 III health review	Determine whether person in receipt of Tier 3 ill health pension has started gainful employment	R37(3) & (4)	Employer	Less Common	NYCC will make a determination whether to suspend or cease the pension, if it is made aware that such a person has started gainful employment (more than 30 hours for more than 12 months).
18	T3 III health review overpayments	Whether to recover any overpaid Tier 3 pension following commencement of gainful employment	R37(3)	Employer	Less Common	NYCC will recover any overpaid Tier 3 pension following commencement of gainful employment.

No.	Area	Discretion	Regulation	Exercised by	Key	Policy
19	Deferred member - Ill health	Decide whether deferred beneficiary meets criteria of being permanently incapable of former job because of ill health and is unlikely to be capable of undertaking gainful employment before normal pension age or for at least three years, whichever is the sooner	R38(3)	Employer (or Admin. Authority where Employer has become defunct)	Less Common	<p>NYCC will be guided by the recommendation of an Independent Registered Medical Practitioner (IRMP)</p> <p>Applications from former employees with deferred benefits will be managed by former Service; the Service is responsible for referring the former employee to the Independent Registered Medical Practitioner (IRMP) via the Health and Wellbeing Service and notifying the former employee of the outcome of the application. Payment of pension benefits will commence from the date NYCC makes the decision that the member meets the criteria for early release of the deferred pension benefits.</p>
20	T3 Ill health recommencement	Decide whether a suspended ill health tier 3 member is unlikely to be capable of undertaking gainful employment before normal pension age because of ill health	R38(6)	Employer (or Admin. Authority where Employer has become defunct)	Less Common	<p>NYCC will be guided by the recommendation of an Independent Registered Medical Practitioner (IRMP).</p> <p>See above</p>
21a	Forfeiture certificate	Whether to apply to Secretary of State for a forfeiture certificate where member is convicted of a relevant offence (a relevant offence is an offence committed in connection with an employment in which the person convicted is a member, and because of which the member left the employment)	R91(1) & (8)	Employer	Less Common	NYCC will consider whether or not to apply for and enact a certificate based on the merits of each case and in light of advice from Audit.

No.	Area	Discretion	Regulation	Exercised by	Key	Policy
21b	Forfeiture certificate (cont.)	Where forfeiture certificate is issued, whether to direct that benefits are to be forfeited (other than rights to GMP – but see R95 below)	R91(4)	Employer	Less Common	NYCC will consider whether or not to recover and reduce benefits accordingly based on the merits of each case and in light of advice from Audit
21c		Where forfeiture certificate is issued, whether to direct interim payments out of Pension Fund until decision is taken to either apply the certificate or to pay benefits	R92(1) & (2)	Employer	Less Common	NYCC will not direct that interim payments are made from the Fund pending a decision.
22	Recovery of monetary obligation	Whether to recover from Fund any monetary obligation or, if less, the value of the member's benefits (other than benefits from transferred in pension rights or APCs or AVCs or, subject to R95 below, in respect of any GMP) 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 and as a result of which the person has left employment	R93(2)	Employer	Less Common	NYCC will consider whether or not to recover and reduce benefits accordingly based on the merits of each case and in light of advice from Audit.
23	GMP forfeiture	Whether, if the member has committed treason or been imprisoned for at least 10 years for one or more offences under the Official Secrets Acts, forfeiture under R91 or recovery of a monetary obligation under R93 should deprive the member or the member's surviving spouse or civil partner of any GMP entitlement	R95	Employer	Less Common	NYCC will consider each case on its merits.

No.	Area	Discretion	Regulation	Exercised by	Key	Policy
24	Bulk transfer	<p>Agree to bulk transfer payment</p> <p>Whether to agree to bulk transfer payment where two or more members' active membership ends on their joining a registered non local government pension scheme</p>	R98(1)(b)	Employer / Admin. Authority / trustees of new scheme	Less Common	NYCC will consider whether or not to agree on the merits of each case after consideration with the Administering Authority and after having taken appropriate actuarial advice.
25	Final pay period (fees)	Whether to allow a member to select final pay period for fees to be any 3 consecutive years ending 31st March in the 10 years prior to leaving	TP3(6), TP4(6)(c), TP8(4), TP10(2)(a), TP17(2)(b) & B11(2)	Employer	Less Common	NYCC will allow members to so choose.

Section Two - Discretions in relation to scheme members (excluding councillor members) who ceased active membership on or after 1.4.08 and before 1.4.14

Applicable Regulations:

A = LGPS (Administration) Regulations 2008

B = LGPS (Benefits, Memberships and Contributions) Regulations 2007

T = LGPS (Transitional Provisions) Regulations 2008 (SI 2008/238)

No.	Area	Discretion	Regulation	Exercised by	Key	Policy
26a	85 Year Rule	Whether to “switch on” the 85 year rule for a member voluntarily drawing benefits on or after age 55 and before age 60	TPSch 2, para, 1(2) &1(1)(c)	Employer (or Admin. Authority where Employer has become defunct)	Mandatory	NYCC will not switch on the 85 Year Rule for any deferred member voluntarily drawing benefits on or after age 55 and before age 60
26b		Whether to “switch on” the 85 year rule for a pensioner member with deferred benefits (i.e. a suspended tier 3 ill health pensioner) voluntarily drawing benefits on or after age 55 and before age 60,	TPSch 2, para, 1(2) &1(1)(c)	Employer (or Admin. Authority where Employer has become defunct)	Mandatory	NYCC will not switch on the 85 Year Rule for any deferred member voluntarily drawing benefits on or after age 55 and before age 60
26	Waive reduction	Whether to waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early under B30 (member)	B30(5) TPSch 2, para 2(1)	Employer (or Admin. Authority where Employer has become defunct)	Mandatory	Applications from deferred Pensioners will only be considered on compassionate grounds, taking into account the costs of waiving any reduction. All applications will be considered by the relevant Service Director and the Chief Executive.
27	Waive reduction	Whether to waive, on compassionate grounds, the actuarial reduction applied to benefits paid early under B30A (pensioner member with deferred benefits, i.e. a suspended tier 3 ill health pensioner)	B30A(5) TPSch 2, para 2(1)	Employer (or Admin. Authority where Employer has become defunct)	Mandatory	Applications from deferred Pensioners will only be considered on compassionate grounds, taking into account the costs of waiving any reduction. All applications will be considered by the relevant Service Director and the Chief Executive.

No.	Area	Discretion	Regulation	Exercised by	Key	Policy
28	Late conversion of AVCs to service	Allow late application to convert scheme AVCs into membership credit i.e. allow application more than 30 days after cessation of active membership (where AVC arrangement was entered into before 13/11/01)	TSch1 & L66(8) & former L66(9)(b)	Employer	Less Common	NYCC will extend the 30 day deadline if there is evidence of administrative shortcomings.
29	Refund of contributions - member left due to an offence/grave misconduct	No right to return of contributions where member left employment due to offence of a fraudulent character or grave misconduct in connection with that employment, unless employer directs a total or partial refund is to be made	A47(2)	Employer	Less Common	NYCC will consider whether or not to make a refund based on the merits of each case and in light of advice from Audit.
30a	Forfeiture certificate	Whether to apply to Secretary of State for a forfeiture certificate where member is convicted of a relevant offence (a relevant offence is an offence committed in connection with an employment in which the person convicted is a member, and because of which the member left the employment)	A72(1) & (6)	Employer	Less Common	NYCC will consider whether or not to apply for and enact a certificate based on the merits of each case and in light of advice from Audit.
30b		Where forfeiture certificate is issued, whether to direct that benefits are to be forfeited	A72(3)	Employer	Less Common	NYCC will consider whether or not to recover and reduce benefits accordingly based on the merits of each case and in light of advice from Audit
30c		Where forfeiture certificate is issued, whether to direct interim payments out of Pension Fund until decision is taken to either apply the certificate or to pay benefits	A73(1) & (2)	Employer	Less Common	NYCC will not direct that interim payments are made from the Fund pending a decision.

No.	Area	Discretion	Regulation	Exercised by	Key	Policy
31a	Recovery of monetary obligation	Whether to recover from Fund any monetary obligation or, if less, the value of the member's benefits (other than transferred in pension rights or AVCs/SCAVCs) where the obligation was incurred as a result of a criminal, negligent or fraudulent act or omission in connection with the employment and as a result of which the person has left employment	A74(2)	Employer	Less Common	NYCC will consider whether or not to recover and reduce benefits accordingly based on the merits of each case and in light of advice from Audit.
31b		Whether to recover from Fund any financial loss caused by fraudulent offence or grave misconduct of employee (who has left employment because of that fraudulent offence or grave misconduct), or amount of refund if less	A76(2) & (3)	Employer	Less Common	NYCC will consider whether or not to recover and reduce benefits accordingly based on the merits of each case and in light of advice from Audit.
32	Deferred member - Ill health	Decide whether deferred beneficiary meets permanent ill health and reduced likelihood of gainful employment criteria	B31(4)	Employer (or Admin. Authority where Employer has become defunct)	Less Common	<p>NYCC will be guided by the recommendation of an Independent Registered Medical Practitioner (IRMP)</p> <p>Applications from former employees with deferred benefits will be managed by former Service; the Service is responsible for referring the former employee to the Independent Registered Medical Practitioner (IRMP) via the Health and Wellbeing Service and notifying the former employee of the outcome of the application. Payment of pension benefits will commence from the date certified by the IRMP.</p>

No.	Area	Discretion	Regulation	Exercised by	Key	Policy
33	T3 Ill health recommencement	Decide whether a suspended ill health tier 3 member is permanently incapable of undertaking any gainful employment	B31(7)	Employer (or Admin. Authority where Employer has become defunct)	Less Common	<p>NYCC will be guided by the recommendation of an Independent Registered Medical Practitioner (IRMP).</p> <p>See above</p>

Section 3 - Discretions in relation to:

- a) **councillor members who ceased active membership on or after 1.4.98., and**
- b) **any other scheme members who ceased active membership on or after 1.4.98. and before 1.4.08**

Applicable Regulations:

L = LGPS Regulations 1997 (as amended) (SI 1997/1612)

R = LGPS Regulations 2013(SI 2013/2356)

TP = LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 (SI 2014/525)

No.	Area	Discretion	Regulation	Exercised by	Key	Policy
34	Employer consent retirement	Grant application for early payment of deferred benefits on or after age 50 and before age 55	L31(2)	Employer	Mandatory	NYCC will not grant early payment of deferred benefits before the age of 55.
35	Waive reduction	Waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early	L31(5) & TPSch 2, para 2(1)	Employer	Mandatory	NYCC will not waive actuarial reduction on deferred benefits paid early.
36	Employer consent at Normal Retirement Date for optant out	Where a member who opted out of the scheme continues to be employed by a Scheme employer, the member is only entitled to receive their benefits at NRD if their employer consents to them doing so (in respect of a member who opted out of the scheme after 31 March 1998 and before 1 April 2008).	L31(7A)	Employer	Mandatory	NYCC will agree to optants out being able to get benefits paid from their NRD.
37	85 Year Rule	Whether to “switch on” the 85 year rule for a member with deferred benefits voluntarily drawing benefits on or after age 55 and before age 60	TPSch 2, para 1(2) & 1(1)(f) & R60	Employer (or Admin. Authority where Employer has become defunct)	Mandatory	NYCC will not switch on the 85 Year Rule for any deferred member voluntarily drawing benefits on or after age 55 and before age 60

No.	Area	Discretion	Regulation	Exercised by	Key	Policy
38	No double entitlement	Decide, in the absence of an election from the member within 3 months of being able to elect, which benefit is to be paid where the member would be entitled to a pension or retirement grant under 2 or more regulations in respect of the same period of Scheme membership (i.e where a member is entitled to a the 'normal' payment of a preserved benefit and an ill health benefit from preserved status, they are not entitled to both payments. In the absence of an election from the member, the employer can decide which benefit can be paid)	L34 (1)(b)	Employer	Less Common	NYCC will choose to automatically apply the regulations of greatest benefit to the employee.
39	Refund of contributions - member left due to an offence/grave misconduct	No right to return of contributions where a member left their employment due to offence of a fraudulent character or grave misconduct in connection with that employment, unless employer directs a total or partial refund is to be made	L88(2)	Employer	Less Common	NYCC will consider whether or not to make a refund based on the merits of each case and in light of advice from Audit.
40a	Forfeiture certificate	Forfeiture of pension rights on issue of Secretary of State's certificate following a relevant offence (a relevant offence is an offence committed in connection with an employment in which the person convicted is a member, and because of which the member left the employment)	L111(2) & (5)	Employer	Less Common	NYCC will consider whether or not to apply for and enact a certificate based on the merits of each case and in light of advice from Audit.
40b		Where forfeiture certificate is issued, direct interim payments out of Pension Fund until decision is taken to either apply the certificate or to pay benefits	L112(1)	Employer	Less Common	NYCC will not direct that interim payments are made from the Fund pending a decision.

No.	Area	Discretion	Regulation	Exercised by	Key	Policy
41a	Recovery of monetary obligation	Recovery from Fund of monetary obligation owed by former employee or, if less, the value of the member's benefits (other than transferred in pension rights)	L113(2)	Employer	Less Common	NYCC will consider whether or not to recover and reduce benefits accordingly based on the merits of each case and in light of advice from Audit.
41b		Recovery from Fund of financial loss caused by employee, or amount of refund if less	L115(2) & (3)	Employer	Less Common	NYCC will consider whether or not to recover and reduce benefits accordingly based on the merits of each case and in light of advice from Audit.

Section 4 - Discretions in relation to scheme members who ceased active membership before 1.4.98

Applicable Regulations:

LGPS Regulations 1995 (as amended) (SI 1995/1019)

TL = LGPS (Transitional Provisions) Regulations 1997 (SI 1997/1613)

No.	Area	Discretion	Regulation	Exercised by	Key	Policy
42	Employer consent retirement	Grant application for early payment of deferred benefits on or after age 50 on compassionate grounds	TP3(5A)(vi) TL4 & L106(1) & D11(2)(c)	Employer (or Admin. Authority where Employer has become defunct)	Mandatory	NYCC will not grant applications for early payment of deferred benefits between the ages of 50 and 55. Over the age of 55, NYCC will consider on a case by case basis.
43	No double entitlement	Decide, in the absence of an election from the member within 3 months of being able to elect, which benefit is to be paid where the member would be entitled to a pension or retirement grant under 2 or more regulations in respect of the same period of Scheme membership (i.e where a member is entitled to the 'normal' payment of a preserved benefit and an ill health benefit from preserved status, they are not entitled to both payments. In the absence of an election from the member, the employer can decide which benefit can be paid)	D10	Employer	Less Common	NYCC will choose to automatically apply the regulations of greatest benefit to the employee.

Section 5 - Discretions in relation to redundancy and compensatory payments on the early termination of employment

Applicable Regulations:

Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (as amended) (SI 2006/2914)

	Area	Discretion	Regulation	Exercised by	Key	Policy
44	Redundancy Pay on actual week's pay	To base redundancy payments on an actual weeks pay where this exceeds the statutory week's pay limit	5	Employer	Mandatory	When calculating redundancy payments NYCC will use the employee's actual weekly pay plus the applicable employer pension contribution rate, where the total does not exceed the statutory weekly capped amount. Where these combined payments exceed the statutory weekly capped amount the higher of actual weekly pay or the statutory weekly amount will be used. These entitlements will be applied to part-time staff on a pro rata basis.
45	Lump sum compensation	To award lump sum compensation of up to 104 weeks' pay in cases of redundancy, termination of employment on efficiency grounds, or cessation of a joint appointment	6	Employer	Mandatory	NYCC will not award any lump sum compensation in any situations.

Section 6 - Discretions in relation to any compensatory added years awarded before 1 April 2007

Applicable Regulations:

Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 (as amended) (SI 2000/1410)

No.	Area	Discretion	Regulation	Exercised by	Key	Policy
46	Abatement during re-employment	Whether and to what extent to reduce or suspend the member's annual compensatory added years (CAY) payment during any period of re-employment in local government	17	Employer	Mandatory	NYCC will make a determination after consultation with the administering Authority and having regard to the date of original award.
47	Reduction following cessation of re-employment	How to reduce the member's annual CAY payment following the cessation of a period of re-employment in local government	19	Employer	Mandatory	NYCC will make a determination after consultation with the administering Authority and having regard to the date of original award.
48	Apportionment of survivor benefit	How to apportion any surviving spouse's or civil partner's annual CAY payment where the deceased person is survived by more than one spouse or civil partner	21(4)	Employer	Mandatory	NYCC will consider on a case by case basis.
49a	Effects of remarriage, new civil partnership or co-habitation on survivor's compensation payments	Whether, in respect of the spouse of a person who ceased employment before 1 April 1998 and where the spouse or civil partner remarries, enters into a new civil partnership or cohabits after 1 April 1998, the normal pension suspension rules should be disapplied i.e. whether the spouse's or civil partner's annual CAY payments should continue to be paid	21(7)	Employer	Mandatory	NYCC will consider on a case by case basis.
49b		If, under the preceding decision, the authority's policy is to apply the normal suspension rules, whether the spouse's or civil partner's annual CAY payment should be reinstated after the end of the remarriage, new civil partnership or cohabitation	21(5)	Employer	Mandatory	If NYCC determined to suspend such payment, it will reinstate after the end of the remarriage, new civil partnership or cohabitation.

No.	Area	Discretion	Regulation	Exercised by	Key	Policy
49c	Effects of remarriage, new civil partnership or co-habitation on survivor's compensation payments (cont.)	Whether, in respect of the spouse or civil partner of a person who ceased employment before 1 April 1998 and where the spouse or civil partner 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 partners annual CAY payment, 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' annual CAY payments should continue to be paid to both of them	21(7)	Employer	Mandatory	NYCC will consider on a case by case basis.

Section 7 - Injury allowances as they apply to leavers, deaths and reductions in pay that occurred after 15 January 2012

Applicable Regulations:

Discretions under the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011(SI 2011/2954)

No.	Area	Discretion	Regulation	Exercised by	Key	Policy
50a	Injury Allowances	Whether to grant an injury allowance following reduction in remuneration as a result of sustaining an injury or contracting a disease in the course of carrying out duties of the job	3(1)	Employer	Mandatory	NYCC will consider each case on its merits.
50b		Amount of injury allowance following reduction in remuneration as a result of sustaining an injury or contracting a disease in the course of carrying out duties of the job	3(4) and 8	Employer	Mandatory	Any injury allowance granted will not exceed the amount of the reduction in remuneration offset against any other benefits, payments or awards received in relation to the injury or disease.
50c		Determine whether person continues to be entitled to an injury allowance awarded under regulation 3(1) (reduction in remuneration as a result of sustaining an injury or contracting a disease in the course of carrying out duties of the job).	3(2)	Employer	Mandatory	Any injury allowance granted will cease when the employee leaves employment with NYCC. The injury allowance will be reviewed should the employee's circumstances change e.g. relation to the employee's working or earning capacity or other payments received.
50d		Whether to grant an injury allowance following cessation of employment as a result of permanent incapacity caused by sustaining an injury or contracting a disease in the course of carrying out duties of the job.	4(1)	Employer	Mandatory	NYCC will consider each case on its merits.

No.	Area	Discretion	Regulation	Exercised by	Key	Policy
50e	Injury Allowances (cont.)	Amount of injury allowance following cessation of employment as a result of permanent incapacity caused by sustaining an injury or contracting a disease in the course of carrying out duties of the job	4(3) and 8	Employer	Mandatory	Any injury allowance granted will not exceed 85% of the employee's final pensionable remuneration, offset against any other benefits, payments or awards received in relation to the injury or disease.
50f		Determine whether person continues to be entitled to an injury allowance awarded under regulation 4(1) (loss of employment through permanent incapacity)	4(2)	Employer	Mandatory	Any injury allowance granted will cease when the employee reaches their state pension age or is granted tier 1 ill-health retirement.
50g		Whether to suspend or discontinue injury allowance awarded under regulation 4(1) (loss of employment through permanent incapacity) if person secures paid employment for not less than 30 hours per week for a period of not less than 12 months.	4(5)	Employer	Mandatory	Any injury allowance granted will be reassessed or suspended if the employee becomes capable of working again.
50h		Whether to grant an injury allowance following cessation of employment with entitlement to immediate LGPS pension where a regulation 3 payment (reduction in remuneration as a result of sustaining an injury or contracting a disease in the course of carrying out duties of the job) was being made at date of cessation of employment but regulation 4 (loss of employment through permanent incapacity) does not apply	6(1)	Employer	Mandatory	NYCC will not make an injury allowance.
50i		Determine amount of any injury allowance to be paid under regulation 6(1) (payment of injury allowance following cessation of employment)	6(1)	Employer	Mandatory	NYCC will not make an injury allowance.

No.	Area	Discretion	Regulation	Exercised by	Key	Policy
50j	Injury Allowances (cont.)	Determine whether and when to cease payment of an injury allowance payable under regulation 6(1) (payment of injury allowance following cessation of employment).	6(2)	Employer	Mandatory	NYCC will not make an injury allowance.
50k		Whether to grant an injury allowance to the spouse, civil partner, co-habiting partner or dependent of an employee who dies as a result of sustaining an injury or contracting a disease in the course of carrying out duties of the job.	7(1)	Employer	Mandatory	NYCC will consider each case on its merits.
50l		Determine amount of any injury allowance to be paid to the spouse, civil partner or co-habiting partner under regulation 7(1) (employee who dies as a result of sustaining an injury or contracting a disease in the course of carrying out duties of the job).	7(2) and 8	Employer	Mandatory	Any injury allowance granted will not exceed 85% of the employee's final pensionable remuneration, offset against any other benefits, payments or awards received in relation to the injury or disease.
50m		Determine whether and when to cease payment of an injury allowance payable under regulation 7(1) (employee who dies as a result of sustaining an injury or contracting a disease in the course of carrying out duties of the job).	7(3)	Employer	Mandatory	Any injury allowance granted will cease at the date when the employee would have reached their state pension age or may be reviewed if the beneficiary remarries, enters into a new civil partnership or cohabits.

Section 8 - Injury allowances as they apply to leavers, deaths and reductions in pay that occurred before 16 January 2012

Applicable Regulations:

Discretions under the Local Government (Discretionary Payments) Regulations 1996 (as amended) (SI 1996/1680)

No.	Area	Discretion	Regulation	Exercised by	Key	Policy
52a	Injury Allowances	Suspend or discontinue injury allowance if person becomes capable of working again	34(4)	Employer	Less Common	Any injury allowance granted will be reassessed or suspended if the employee becomes capable of working again.
52b		Amount and duration of a dependant's, spouse's or civil partner's injury allowance following death of employee after sustaining an injury or contracting a disease as a result of anything required to do in carrying out duties of job	37(3), 37(6) and 38	Employer	Less Common	Any injury allowance granted will not exceed 85% of the employee's final pensionable remuneration, offset against any other benefits, payments or awards received in relation to the injury or disease. This allowance will cease at the date when the employee would have reached their state pension age or may be reviewed if the beneficiary remarries, enters into a new civil partnership or cohabits.
52c		Reinstate spouse's or civil partner's injury allowance following earlier cessation due to cohabitation, remarriage or registration of a new civil partnership	37(4)	Employer	Less Common	If NYCC determined to suspend such payment, it will reinstate after the end of the remarriage, new civil partnership or cohabitation.
52d		Amount of gratuity payable to surviving dependant, spouse or civil partner where amount of annuity payments fall short of their capital value at date of award	41(4)	Employer	Less Common	NYCC will not award a further gratuity.
52e		Amount of gratuity payable to surviving dependant, spouse or civil partner where amount of redundancy annuity payments fall short of their capital value at date of award.	42(4)	Employer	Less Common	NYCC will not award a further gratuity.

No.	Area	Discretion	Regulation	Exercised by	Key	Policy
52f	Injury allowances (cont.)	Amount of gratuity payable to any other surviving dependant, spouse or civil partner where amount of annuity payments paid under 42(4) fall short of their capital value at date of award.	42(7)	Employer	Less Common	NYCC will not award a further gratuity.

North Yorkshire County Council

Injury Allowance Payment Scheme

Guidance Notes

1. Introduction

- 1.1 Any employee who sustains an injury or contracts a disease whilst at work which results in permanent incapacity may apply to the Council for an injury allowance. In the event that an employee dies in the course of their duties, their dependents may be awarded an allowance.
- 1.2 The scheme applies the provisions of the NYCC LGPS Employer Discretion Policy and should be read in conjunction with that policy.
- 1.3 Allowances are decided and paid by the Council and any payment awarded is administered by North Yorkshire Pension Fund. The award of an allowance is not an admission of any liability.

2. Scope and Eligibility

- 2.1 Any employee of North Yorkshire County Council, who is eligible to be a member of the Local Government Pension Scheme, may apply for an allowance under this scheme. Membership of the scheme is not necessary.
- 2.2 The scheme applies where an employee sustains an injury or contracts a disease as a result of anything he or she was required to do in carrying out his or her work and, as a result, suffers permanent incapacity. Such incapacity results in the employee being unable to work again or only able to work in a reduced capacity, that is, his or her remuneration or potential remuneration is permanently reduced, or in his or her death.
- 2.3 The Council will, therefore, consider a payment of an injury allowance in the following situations:
 - Where permanent incapacity results in loss of employment
 - Where permanent incapacity results in the employee only being able to work in a reduced capacity such that their remuneration or potential remuneration is permanently reduced
 - On the death of an employee
- 2.4 To be eligible for consideration, the injury must have occurred or the disease contracted 'during the course of employment'. If the accident/injury occurred during the journey to or from work or on his/her way to a lunch break, this would not be construed as 'during the course of their employment' unless the employee was travelling in a vehicle with the Council's express permission and the vehicle was at the time being operated on behalf of the Council (other than as a public service vehicle).

3. Conditions

- 3.1 The Council may choose to review appropriate cases from time-to-time or in the event that the employee's circumstances change, for example, in relation to the employee's working or earning capacity or other payments received. The employee (or widow/widower) may also request a review on receipt of new evidence.
- 3.2 Conditions for the termination or review of payments is detailed for each type of injury allowance in sections 4 to 6 below.
- 3.3 Any award assessed will be reduced by the full amount of any other benefits or payments or awards received in relation to the injury or disease, including ill health or other pension payments (whether LGPS or otherwise), statutory benefits, compensation and damages/insurance payments. The employee must furnish the Council with documentary evidence of all of the above on request and any other income/capital that may be relevant.
- 3.4 The Council may choose to pay a lump sum or annual allowance. Any lump sum payments or awards may be taken at 1/12th of their amount to produce a comparative 'annual' income.
- 3.5 Any change in circumstances must be notified immediately to the relevant Service Director, e.g. relating to the employee's working or earning capacity or withdrawal of benefits relating to the injury or disease. If the employee fails to notify the Council of any relevant change, the Council may later seek to recover all or part of any allowance made since the change of circumstances.
- 3.6 If the Council decides there should be a regular review of the allowance, the employee will be advised of its decision and any allowance may be suspended or terminated if the employee does not comply with reasonable requests on review.

4. Loss of employment through permanent incapacity

- 4.1 Where an employee ceases employment due to permanent incapacity as a direct result of injury or disease contracted in the course of carrying out their employment, the Council will consider paying the employee an allowance not exceeding 85 per cent of the employee's annual rate of pensionable remuneration at the point the employment ceased. The allowance will be offset against other payments detailed in paragraph 3.3 above.
- 4.2 Where the employee was receiving no pay or reduced pay at the time the employment ended because of absence, the Council will assess the remuneration on the basis of the pay the employee would have received but for being absent.
- 4.3 The Council may suspend or discontinue the allowance if the former employee secures gainful employment (paid employment for not less than 30 hours in each week for a period of not less than 12 months).
- 4.4 Payment of the allowance will cease when the employee reaches their state pension age or is granted Tier 1 ill-health retirement.

5. Reduction in remuneration

- 5.1 Whilst an employee is receiving reduced pay as a direct result of an injury or disease contracted in the course of carrying out their employment, the Council may consider paying the employee an allowance while the reduction in pay continues.
- 5.2 The value of the allowance, when added to the reduced pay being received by the employee, will not be of a value that means the employee receives total pay in excess of the pay that they would normally expect to have received but for their injury or disease. The allowance will be offset against other payments detailed in paragraph 3.3 above.
- 5.3 Should the employee's remuneration change as a result of a move to another role within NYCC or due to a change in the employee's capacity, either improvement or deterioration, then their allowance will be reviewed.
- 5.4 The award will be payable from the date remuneration was reduced and may be increased in line with cost of living rises where appropriate. The allowance will cease when the employee leaves NYCC.

6. Death award

- 6.1 Where an employee dies as a direct result of injury or disease contracted in the course of carrying out their employment, the Council will consider paying an annual allowance or a lump sum to a surviving spouse, civil partner, nominated co-habiting partner, or dependant (as defined by the Regulations).
- 6.2 The Council may make an award of up to 85% of his or her final pensionable pay. Where the employee was receiving no pay or reduced pay at the date of death because of absence related to the injury or disease, the Council will assess the remuneration on the basis of the pay the employee would have received but for being absent. The allowance will be offset against other payments detailed in paragraph 3.3 above.
- 6.3 An allowance to a dependant ("an eligible child") shall continue for such period as the Council will determine and will be considered on a case-by-case basis.
- 6.4 Any allowance to widow or widower, surviving civil partner or nominated cohabiting partner will be reviewed on remarriage, civil partnership or cohabitation. An allowance will not be payable if the individual's marriage to, or civil partnership or cohabitation with, the employee took place after the event causing the injury or illness.
- 6.5 The allowance will cease at the date when the employee who have reached their state pension age.

7. Process

- 7.1 Applications under the Scheme must be made without unreasonable delay (which will depend on the specific circumstances of the case).
- 7.2 The employee is required to claim the injury allowance in writing and provide all supporting information or evidence he or she wishes to submit in support of the claim. In the event of a claim after death, this should be submitted by the Executor or

Administrator of the estate. The claim should be sent to the employee's line manager/former line manager.

- 7.3 Claims may be authorised by the relevant Service Director in conjunction with the Assistant Chief Executive (Business Support). Advice will be sought from HR and Finance (Insurance) and any other Council personnel at the discretion of the Service Director or Assistant Chief Executive (Business Support).
- 7.4 On receipt of any injury allowance claim the employee should be referred to Occupational Health. OH will refer the employee for consideration by an Independent Registered Medical Practitioner (IRMP) who will be asked to advise on:-
- Whether the injury or disease was received or contracted wholly in the execution of the employee's duties
 - The degree of disability if employment is terminated as a result of the injury or disease
 - Whether the injury or disease is likely to be temporary or permanent
 - If temporary, the possible length of the effect of the injury or disease
 - Whether the award should be subject to regular review
 - Any other matters either the Director, Occupational Health Service or the IRMP thinks appropriate
 - And to certify to the same by completing and signing the Certificate to be provided by Occupational Health Service
- 7.5 In the case of deaths, written evidence will be submitted to Occupational Health.
- 7.6 In all cases, a copy of the relevant accident reports should be supplied with the Occupational Health referral to be forwarded to the IRMP. The accident report will be an important document in determining whether an employee has an entitlement under this scheme and managers should ensure that the appropriate form or forms are completed at the time of the incident.
- 7.7 Any other correspondence or documentation relating to the event (including any insurance claims) should be provided to the relevant Service Director who may share these with OH and the IRMP if relevant to the employee's claim. If the employee was working at a site not operated or managed by the Council, the Service Director may contact a representative of the site operator, manager or owner for information.
- 7.8 Occupational Health, on the advice of the IRMP, may decide that the employee should be referred for specialist and/or up to date advice. In that case, the employee will be required to give his authority for disclosure of medical details and information and to attend for examination as reasonably requested. Should the employee refuse to give this authority the Service Director will make their decision based on the information they have available to them at the time.
- 7.9 The Service Director will notify the employee of their decision in writing. If the application is unsuccessful, the employee will be provided with reasons for this decision.

8. Appeals

- 8.1 Appeals against whether an award was made should be directed to the Chief Executive and should be submitted within 10 working days of receipt of the decision letter.

8.2 An appeal against the Chief Executive's decision can be made, in the first instant, through the Internal Disputes Resolution Procedure – see www.nypf.org.uk for application forms. There is no right of appeal against the amount of benefit awarded.