

LGPS Discretions Policy

We will provide this policy on request at no cost, in large print, in Braille, on tape or in another non-written format.

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如果你向我們提出要求，我們可以為你提供本資訊的其他語言的版本，或者是盲文或磁帶。如果你需要本資訊的任何一種這些版式的版本，請聯繫我們，電話號碼是 0800 479 7979。

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Haddii aad na weydiisato waxaanu warbixintan kugu siin karaa iyadoo ku qoran luuqad kale, farta ay dadka indhaha la' akhriyaan ama cajalad ku duuban. Haddii aad jeclaan lahayd in warbixintan lagugu siiyo mid ka mid ah qaababkaas, fadlan nagala soo xidhiidh telefoonka 0800 479 7979.

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Approval body	<i>Executive Team</i>
Date of approval	<i>27 September 2022</i>
Review Year	<i>October 2025</i>
Customer engagement required	<i>No</i>
Trade union engagement required	<i>Yes - For Consultation</i>
Equality Impact Assessment	<i>No</i>

1 INTRODUCTION

This policy sets out how Wheatley Homes South Limited (WHS) will exercise the discretions it holds as an employer under the Local Government Pension Scheme (Scotland) (**LGPS**).

2 SCOPE

This policy applies to all employees and former employees who are or were members of the LGPS in Scotland and who earn or earned pension and other benefits under the LGPS in Scotland.

This policy is non-contractual and may be amended or withdrawn at any time at the discretion of WHS, and subject to the satisfaction of the procedures required by the LGPS in Scotland as are in force from time to time.

3 POLICY

3.1 The LGPS in Scotland was amended from 1 April 2015 so that benefits accruing for service after 31 March 2015 will accrue on a Career Average Revalued Earnings (CARE) basis, rather than on a final salary basis.

3.2 WHS are required to publish and keep under review a Statement Policy on certain Discretions which we have the power to exercise in relation to members of the CARE Scheme and on certain other Discretions that we may exercise in relation to members of the LGPS.

3.3 After careful consideration, WHS has decided to exercise its discretions in the following way.

3.4 **Table 1**

The following table details WHS's discretions from 01/04/2015 in relation to post 31/03/2015 active members and post 31/03/2015 leavers, being discretions under:

- *The Local Government Pension Scheme (Scotland) Regulations 2014 prefix R)*
- *The Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014 (prefix TP)*
- *The Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 (prefix A)*
- *The Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 (as amended) (prefix B)*
- *The Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008 (prefix T)*
- *The Local Government Pension Scheme (Scotland) Regulations 1998 (as amended) (prefix L)*

<u>Regulation</u>	<u>Discretion</u>	<u>WHS's Policy on the Exercise of this Discretion</u>
R9(1) to R9(4)	Determine rate of employees' contributions	Employee contribution rates will be determined in line with statutory guidance
R9(10)	Determine intervals at which employees' contributions are to be made	Intervals at which employee contributions are made will be determined in line with statutory guidance taking into account the frequency of WHS payroll
R16(2)(e) & R16(4)(d)	Whether, how much, and in what circumstances to contribute to a shared cost Additional Pension Contributions (APC) scheme	WHS <u>will not</u> operate a shared cost APC scheme
R16(16)	Whether to extend 30-day deadline for member to elect for a shared cost APC upon return from a period of absence from work with permission with no pensionable pay (otherwise than because of illness or injury, relevant child-related leave, or reserve force service leave)	WHS <u>will not</u> operate a shared cost APC scheme
R17(1) & definition of SCAVC in RSch1	Whether, how much, and in what circumstances to contribute to shared cost AVC arrangements	WHS <u>will not</u> contribute towards shared cost AVC arrangements
TP15(1)(b) & L65(8) & former L65 (9)(b)	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 30/06/05)	WHS <u>will not</u> have a general policy to allow late application to convert AVCs into membership credit but may do so if exceptional circumstances can be proved such as the member being unaware of this right. Each case will be considered on its individual merits.
R19(2)	No right to return of contributions if member left due to offence of a fraudulent character or grave misconduct unless employer directs a total or partial refund is to be made	WHS <u>will not</u> direct a return of contributions in the event of an offence of a fraudulent character or grave misconduct
R20(1)(b)	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	Elements of pay received by an employee other than those specified in these regulations and not otherwise precluded will only be pensionable if specified as such in the member's contract of employment
R21(5)	In determining Assumed Pensionable Pay, whether a lump sum payment made in previous 12 months is a 'regular lump sum'	WHS will decide if any payment made in these circumstances is a 'regular lump sum'

R22(6A)	Whether to extend the 12-month option period for a member to elect that post 2015 deferred benefits should not be aggregated with an ongoing concurrent employment	WHS <u>will not</u> extend the 12-month option period
R22(6B)	Whether to extend the 12-month option period for a member to elect that post 2015 deferred benefits should not be aggregated with a new employment	WHS <u>will not</u> extend the 12-month option period
TP10(6)	Whether to extend the 12-month option period for a member to elect that pre 2015 deferred benefits for a member who re-joined post 31 st March 2015 can be aggregated to purchase an amount of CARE pension	WHS <u>will not</u> extend the 12-month option period
R29(5) & (13)	Whether to agree to a request for early voluntary payment of benefits on or after age 55 and before age 60	WHS <u>will not</u> have a general policy of granting early payment of benefits on or after age 55 and before age 60 but will consider requests on a case-by-case basis. WHS may exercise this discretion where it is in its financial or operational interests to do so or where exceptional circumstances arise that make payment of those benefits justifiable.
R29(6) & TP11(2)	Whether all or some benefits can be paid if an employee reduces their hours or grade (flexible retirement)	WHS <u>will not</u> have a general policy of exercising this discretion but may exercise this discretion where a sound business case can be made for granting flexible retirement with immediate access to all or part of the member's benefits. WHS will consider requests on a case-by-case basis.
R29(8) and TPSch 2, para 2(1)	Whether to waive, in whole or in part, actuarial reduction on benefits paid on flexible retirement	WHS <u>will not</u> have a general policy to waive, in whole or in part, actuarial reduction on benefits paid on flexible retirement and will only do so in exceptional circumstances
TPSch 2, paras 1(2) and 2(1)	Whether to apply the 85-year rule for a member voluntarily drawing benefits, with employer consent, on or after age 55 and before age 60 (other than on grounds of flexible retirement)	WHS <u>will not</u> have a general policy to apply the 85-year rule for a member voluntarily drawing benefits, with employer consent, on or after age 55 and before age 60 (other than on the

		grounds of flexible retirement) unless there are exceptional circumstances
TP3(1), (5) and (12), TPSch 2, para 2(1)	Whether to waive, in whole or in part, any actuarial reduction on pre and post April 2015 benefits which a member voluntarily draws before normal pension age other than on the grounds of flexible retirement (where the member has both pre 1/4/15 and post 31/3/15 membership)	WHS <u>will not</u> have a general policy to waive, in whole or in part, any actuarial reduction on pre and post April 2015 benefits, which a member voluntarily draws before normal pension age other than on the grounds of flexible retirement (where the member has both pre 1/4/15 and post 31/3/15 membership) unless there are exceptional circumstances
R30	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 £5,000 p.a.)	WHS <u>will not</u> have a general policy to grant additional pension to a member (by up to £5,000 p.a.) but may consider doing so where a sound business case can be made for exercising this discretion. Each case will be considered on its individual merits
TP12(4)	Whether to use a certificate produced by an IRMP under the pre 2009 Scheme for the purposes of making an ill health determination under the 2015 Scheme	WHS <u>will</u> use a certificate produced by an IRMP for the purposes of making an ill health determination under the 2015 Scheme
R89(1) & (8) & R89(4)	Whether to apply to Scottish Ministers for a forfeiture certificate (where member is convicted of a relevant offence) and if issued, whether to direct that benefits are to be forfeited	WHS <u>will</u> apply for a forfeiture certificate where a member is convicted of a relevant offence and, following the issue of the certificate, direct that benefits are to be forfeited
R90(2)	Whether to recover from Fund any monetary obligation or, if less, the value of the member's benefits (other than, subject to R92 below, benefits in respect of any GMP) where the obligation was incurred because 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	WHS <u>will</u> recover from the Pensions Fund the amount of loss in cases of criminal, negligence, or fraudulent acts by a member.
R92	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 R89 or recovery of a monetary obligation under R90 should deprive the member or the member's	WHS <u>will</u> ask for this to be used to deprive the member or the member's surviving spouse or civil partner of any GMP entitlement

	surviving spouse or civil partner of any GMP entitlement	
R93(4A)	Decide whether to issue a Certificate of Protection if the member does not request one within 12 months of a reduction or restriction in pay	WHS <u>will</u> issue a Certificate of Protection if the member does not request one within 12 months of a reduction or restriction in pay
R96(1)(b)	Agree to bulk transfer payment	WHS <u>will only</u> decide whether to agree to bulk transfer terms once actuarial advice has been obtained from the Fund actuary
R98(6)	Extend normal time limit for acceptance of a transfer value beyond 12 months from joining the LGPS	WHS <u>will not</u> generally extend the normal time limit for acceptance of a transfer value beyond 12 months from joining the scheme but may do so where exceptional circumstances can be proved. In any event the maximum extension will be a period of two years from the member's date of joining the scheme. Each case will be considered on its individual merits.
TP3(6), TP4(6)(c), TP8(4), TP10(2)(a), TP 17(2)(b) & B11(2)	Whether to allow a member to select final pay period for fees to be any 3 consecutive years ending in the 10 years prior to leaving and ending on the anniversary of the leaving date	WHS <u>will not</u> have a general policy to allow a member to select final pay period for fees to be any 3 consecutive years ending in the 10 years prior to leaving but may exercise this discretion upon request. WHS will consider requests on a case-by-case basis.
TP3(1)(a), A43(5)	Issue a certificate of protection of pension benefits where eligible non-councillor member fails to apply for one (pay cuts / restrictions occurring pre 01/04/2015)	WHS <u>will</u> issue a certificate of protection of pension benefits if requested by the employee within twelve months of the date of reduction. A certificate may be issued on application from the member out with the 12-month period specified in the regulations if exceptional circumstances can be proved such as the employee being unaware of this facility.

3.5 **Table 2**

The following table details WHS’s discretions in relation to scheme members who ceased active membership on or after 01/04/2009 and before 01/04/2015, being discretions under:

- The Local Government Pension Scheme (Scotland) Regulations 2014 (prefix R)
- The Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014 (prefix TP)
- The Local Government Pension Scheme (Administration) (Scotland) Regulations 2008 (prefix A)
- The Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 (as amended) (prefix B)
- The Local Government Pension Scheme (Transitional Provisions) (Scotland) Regulations 2008 (prefix T)
- The Local Government Pension Scheme (Scotland) Regulations 1998 (as amended) (prefix L)

<u>Regulation</u>	<u>Discretion</u>	<u>WHS’s Policy on the Exercise of this Discretion</u>
B12	Whether, for a member leaving on the grounds of redundancy or business efficiency on or before 31 st March 2015, to augment membership (by up to 10 years). The resolution to do so would have to be made within 6 months of the date of leaving. Hence this discretion is spent entirely after 30 th September 2015	WHS <u>will not</u> have a general policy to augment membership by up to 10 years but may decide to do so where a sound business case can be made for exercising this discretion. Each case will be considered on its individual merits.
TSch1 & L65(8) & former L65(9)(b)	Allow late application to convert scheme AVCs into membership credit i.e., allow application more than 30 days after cessation of membership	WHS <u>will not</u> have a general policy to allow late applications to convert scheme AVCs into membership credit but may do so where exceptional circumstances can be proved. Each case will be considered on its individual merits
A42(2)	No right to return of contributions due to offence of a fraudulent character or grave misconduct unless employer directs a total or partial refund is to be made	WHS <u>will not</u> direct a return of contributions in the event of an offence of a fraudulent character or grave misconduct.
A43(5)	Issue a Certificate of Protection of pension benefits where eligible member fails to apply for one	WHS <u>will</u> issue a Certificate of Protection of pension benefits if requested by the employee within twelve month of the date of reduction. A certificate may be issued on application from the member out with the 12-month period specified in the regulations if

		exceptional circumstances can be proved such as the employee being unaware of this facility.
A45(1) & (2)	Contribution Equivalent Premium (CEP) in excess of the Certified Amount (CA) recovered from a refund of contributions can be recovered from the Pension Fund	WHS <u>will</u> recover finances from the Pension Fund in these circumstances
A66 (2) & (6)	Whether to apply to Scottish Ministers for a forfeiture certificate (where member is convicted of a relevant offence) and subsequently whether to direct that benefits are to be forfeited.	WHS <u>will</u> apply for a forfeiture certificate where a member is convicted of a relevant offence and, following the issue of the certificate, direct that benefits are to be forfeited.
A67 (1) & (2)	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	WHS <u>will</u> direct that interim payments are taken out of Pension Fund until decision is taken to either apply the certificate or to pay benefits
A68(2)	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	WHS <u>will</u> recover from the Fund the amount of loss in cases of criminal, negligence, or fraudulent acts by a member
A70(2) & (3)	Whether to recover from the Fund any financial loss caused by fraudulent offence or grave misconduct of employee (who has left because of that), or amount of refund if less	WHS <u>will</u> recover from the Fund the amount of loss caused by fraudulent offence or grave misconduct of an employee (who has left because of that) or the amount of refund if less
B11(2)	Whether to allow a member to select final pay period for fees to be any 3 consecutive years ending 31 st March in the 10 years prior to leaving	WHS <u>will not</u> have a general policy to allow a member to select final pay period for fees to be any 3 consecutive years ending in the 10 years prior to leaving but may exercise this discretion upon request. WHS will consider requests on a case-by-case basis.
B30(2)	Whether to grant application for early payment of deferred benefits on or after age 50/55 an before age 60	WHS <u>will not</u> have a general policy of granting early payment of benefits on or

		after age 50/55 and before age 60 but will consider requests on case-by-case basis. WHS may exercise this discretion where it is in its financial or operational interests to do so or where other exceptional circumstances arise that make payment of those benefits justifiable.
B30(5)	Whether to waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early	WHS <u>will not</u> have a general policy to waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early, but may consider doing so where a sound business case can be made for exercising this discretion. Each case will be considered on its individual merits

3.6 **Table 3**

Discretions under the Local Government Pension Scheme (Scotland) Regulations 1998 (as amended) in relation to pre 01/04/2009 scheme leavers.

<u>Regulation</u>	<u>Discretion</u>	<u>Employer’s policy on the exercise of this discretion</u>
30(2)	Grant application from a post 31/03/1998 / pre 01/04/2009 leaver for early payment of benefits on or after age 50 and before age 60	WHS <u>will not</u> have a general policy of granting early payment of benefits on or after age 50 and before age 60 but will consider requests on a case-by-case basis. WHS may exercise this discretion where it is in its financial or operational interests to do so or where other exceptional circumstances arise that make payment of those benefits justifiable
30 (5)	Waive, on compassionate grounds, the actuarial reduction applied to benefits paid early for a post 31/03/1998 / pre 01/04/2009 leaver	WHS <u>will not</u> have a general policy to waive, in whole or in part, the actuarial reduction on the benefits paid on flexible retirement, but may where the sound business case for granting payment of benefits on flexible

		retirement in 30(2) * above includes such a recommendation
30 (7A)	Pre 01/04/2009 those who opted out only get benefits paid from normal retirement age with the agreement of the employer.	WHS <u>will not</u> have a general policy to allow an employee who has opted out the LGPS, to access their benefits at normal retirement age if they continue to be employed by WHS.
33 (1)(b)	Decide, in the absence from a post 31/03/1998 / pre 01/04/2009 leaver 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	WHS <u>will</u> consider individual cases based on their merits
70(7)(a)	Consent to a member's former employer assigning to the new employer rights under any SCAVC life assurance policy	WHS <u>will</u> consider individual cases based on their merits
87 (2)	No right to return of contributions due to offence of a fraudulent character unless employer directs a total or partial refund is to be made (pre 01/04/2009 leavers)	WHS <u>will not</u> direct a return of contributions in the event of an offence of a fraudulent character or grave misconduct
91	Contribution Equivalent Premium (CEP) in excess of the Certified Amount (CA) recovered from a refund of contributions can be recovered from the Pension Fund (pre 01/04/2009 leavers)	WHS <u>will</u> recover finances from the Pension Fund in these circumstances
111(2) &(5) 112(1)	Forfeiture of pension rights on issue of Secretary of State's certificate (pre 01/04/2009 leavers) 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 (pre 01/04 /2009 leavers)	WHS <u>will</u> apply for a forfeiture certificate where a member is convicted of a relevant offence and, following the issue of the certificate, direct that benefits are to be forfeited

113(2)	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)(pre 01/04/2009 leavers)	WHS <u>will</u> recover from the Fund any obligation owed by former employee or, if less, the value of the member’s benefits (other than transferred in pension rights) (pre 01/04/2009 leavers)
115(2) & (3)	Recovery from Fund of financial loss caused by employee, or amount of refund if less (pre 01/04/2009 leavers)	WHS <u>will</u> recover from the Fund any financial owed by former employee or, if less, the value of the member’s benefits (other than transferred in pension rights) (pre 01/04/2009 leavers)

3.7 Table 4

Discretions under the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998 (as amended)

<u>Regulation</u>	<u>Discretion</u>	<u>Employer’s policy on the exercise of this discretion</u>
4	To base redundancy payments on an actual week, pay where this exceeds the statutory weeks’ pay limit	WHS <u>may</u> increase statutory redundancy payments above the weekly pay limit.
8	To award compensatory added years to a person with 5 or more years membership (or notional membership) of the LGPS in cases of redundancy, termination of employment on efficiency grounds, or cessation of a joint appointment	WHS <u>may</u> offer employees compensatory added membership in these circumstances.
35	To award lump sum compensation of up to 104 weeks’ pay in cases of redundancy or termination of employment on efficiency grounds.	WHS <u>may</u> award employees lump sum compensation in these circumstances. This will not usually exceed 52 weeks’ pay.

4 POLICY REVIEW

In making this policy, WHS has referred to the statutory provisions.

This policy will be kept under review and will be revised as and when necessary to reflect any changes in regulations or policy. Any changes to this policy will be advised to the administering authority and scheme members in writing within one month of the change taking effect.

The policy is due for formal review every three years.

5 GOVERNANCE AND REGULATION

This policy is the responsibility of the Board, acting on the advice of the **Human Resources** Department.

6 SANCTIONS

Any breaches of this policy may be subject to disciplinary action.

7 RELATED / REFERENCED POLICIES

A copy of the WHS LGPS 2008 Discretions Policy Statement, which applied until April 2015, is reproduced for completeness in the Schedule.