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## Cumbria Local Government Pension Scheme

Discretions Training

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# Agenda

- Role of the administering authority
- Mandatory duties vs discretions
- Different types of discretions
- Risks of exercising discretions
- Following the Golden Rules
- Discretions Policy
- Questions

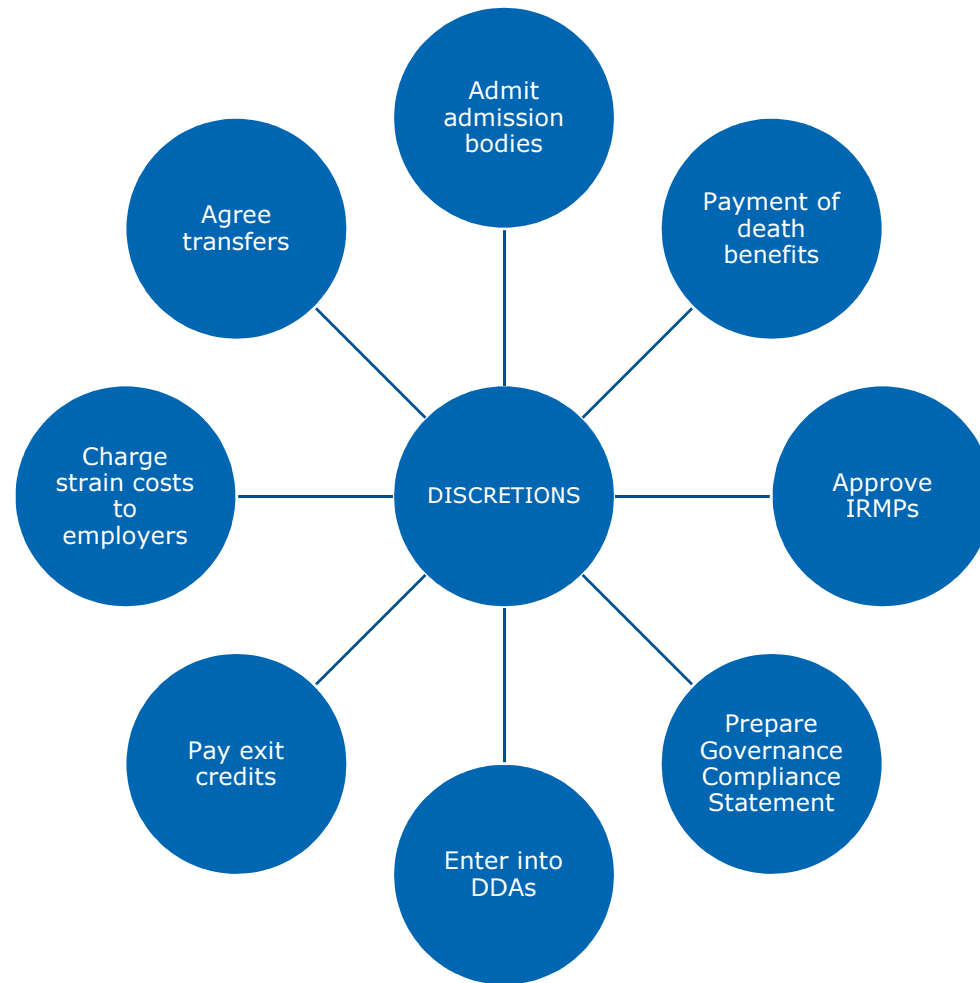
## Role of the administering authority

- To maintain, administer and invest its fund within the LGPS
- Governed by Local Government Pension Scheme Regulations 2013
- As amended from time to time!!
- Also raft of earlier LGPS regulations governing old LGPS benefits before April 2014

## Duties and decisions

- Under the Regulations there are various actions and decisions you **must** make:
  - Maintain the Fund
  - Operate pension accounts for members
  - Pay benefits when due
  - Obtain valuations of the Fund
  - Prepare annual reports and accounts
  - Have a governance compliance statement
  
- There are various actions and decisions you **may** make - discretions

# Discretions



## Exercising discretions

- Exercise of discretionary powers key area of risk for an administering authority
- Potential to upset beneficiaries or employers
- Risk of challenge
  - Pensions Ombudsman
  - Judicial Review

## Exercising discretions

Risk of challenge

- Discretionary benefits
- Regulation 40:

“The appropriate administering authority may, at its absolute discretion, pay the death grant to or for the benefit of the member's nominee, personal representatives or any person appearing to the authority to have been a relative or dependent of the member.”

- *Batten v Dorset County Council*

## Exercising discretions

Mitigating the risk of challenge

— “Golden Rules” for exercising a discretion:

- ensure discretion exercise by the correct person
- direct yourself correctly in law
- only take into consideration relevant factors
- ignore irrelevant factors
- do not reach a perverse decision
  - a decision at which no reasonable decision maker would arrive
- record reasons





## Exercising discretions

Risk of Challenge - Blanket policies

- Avoid blanket discretions
- *Kingwell v Norfolk* – old power to waive employee contribution
- Policy never to exercise this power
- Use of blanket policy = maladministration
- Fetter of a discretion not to consider it
- Document in Discretions Policy

## Discretions Policy

- Requirement for Scheme employers to have a written statement of their policy in relation to the exercise of their functions under regulations
- Administering authority must also have a policy for exercise of discretions in relation to former Scheme employers – discretions fall to the Administering Authority
- However also recommended to have a policy setting out the wider pure Administering Authority discretions too
- Helps to document how the Fund will approach its various discretions and where decisions will be referred
- Further mitigation to the risk of challenge

## Discretions Policy

- Current policy reviewed September 2018
- Number of new discretions since introduced:
  - Exit credit payments
  - Deferred debt agreements
  - Interim valuations
- Need to update and refresh current Policy



# Questions?



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