

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO PERSONNEL COMMITTEE

Agenda Item No.

meeting date: WEDNESDAY, 3 SEPTEMBER 2014
title: LOCAL GOVERNMENT PENSION SCHEME EMPLOYER DISCRETIONS
submitted by: CHIEF EXECUTIVE
principal author: MARSHAL SCOTT

1 PURPOSE

1.1 To ask Members to agree and approve Employer discretions for the Local Government Pension Scheme.

1.2 Relevance to the Council's ambitions and priorities:

- Council Ambitions – A well-managed Council must have high calibre, committed and motivated staff. Employer discretions within the Local Government Pension Scheme can impact on the recruitment and retention of staff and in ensuring that our staffing costs are managed efficiently.
- Community Objectives – Our commitment to providing services which are accessible to all includes access to employment opportunities and levels of overall remuneration that allow individuals to enjoy an excellent quality of life within the Ribble Valley.
- Corporate Priorities – See above.
- Other considerations – None.

2. BACKGROUND

2.1 Each scheme employer within the Local Government Pension Scheme(LGPS) is advised to keep under review their policy on the exercise of their functions in awarding additional pension to members and in operating early retirement and flexible retirement provisions.

2.2 The LGPS changed in April 2014 when new regulations were introduced and employers were required to review and revise their policies in respect of mandatory requirements. We had to prepare, publish and send a 'Statement of Policy' to Lancashire County Council (the administering authority) before 1 July 2014.

2.3 The Statement is in 3 sections:

Part A – covers areas where mandatory written policy statements have to be published in relation to the requirements under the Local Government Pension Scheme regulations.

Part B – covers areas where although mandatory, written policy statements are not required; it is useful for employers to establish a clear policy intention in relation to the exercise of the employers functions under the LGPS.

Part C – covers areas where mandatory written policy statements have to be published in relation to the requirements under the Local Government discretionary payments and compensation regulations.

3 ISSUES

3.1 Lancashire County Council provided a template for employers to use, if they wished, to produce a written statement of policy in relation to its exercise of certain discretionary functions available under the pension scheme regulations.

- 3.2 Any changes to the discretions exercised under the LGPS Regulations could take immediate effect from the date the Scheme employer agreed the change.
- 3.3 Any changes to the discretions exercised under the Discretionary Compensation Regulations 2000, the Discretionary Compensation Regulations 2006 or the Injury Allowances Regulations 2011, could not take effect until one month after the date the Scheme employer published a statement of its amended policy.
- 3.4 Since the last meeting of Committee we have completed a review of our Employer Discretions and a revised Statement of Policy is attached at Appendix A for formal approval and adoption. We were required to submit the Statement of Policy to the administering authority (LCC) by the deadline date of 1 July 2014 and publish it on our website which we have done pending your approval tonight.
- 3.5 The review was carried out by a small team comprising the Director of Resources, the Head of HR and myself. In carrying out the review and formulating a policy, we were required to have regard to the extent to which the exercise of the functions could lead to a serious loss of confidence in the public service and to be satisfied that the policy was workable, affordable and reasonable, being mindful of foreseeable costs. In addition, throughout the review, we have attempted to protect the Council's interests.

A number of the discretions require approval by this Committee and therefore it is important that you are aware of and approve them.

4 RISK ASSESSMENT

- 4.1 The approval of this report may have the following implications:
- Resources – The implementation of any discretions will have cost implications on budgets for pension payments.
 - Technical, Environmental and Legal – No technical, environmental or legal implications have been identified.
 - Political – No political implications have been identified.
 - Reputation – No reputational risks have been identified.
 - Equality & Diversity – No equality and diversity issues have been identified.

5 RECOMMENDATION

- 5.1 That Members approve the Ribble Valley Borough Council 'Statement of Policy' in respect of the LGPS as outlined in Appendix A of the report.

MARSHAL SCOTT
CHIEF EXECUTIVE

JANE PEARSON
DIRECTOR OF RESOURCES

For further information please ask for Michelle Smith, ext 4402.

EMPLOYER DISCRETIONS – STATEMENT OF POLICY

EMPLOYER NAME: RIBBLE VALLEY BOROUGH COUNCIL

The employer stated above has prepared this written statement of policy in relation to its exercise of certain discretionary functions available under the above regulations.

PART A – Mandatory policy statements – Formulation of policy in accordance with:

Regulation 60 of the Local Government Pension Scheme (LGPS) Regulations 2013
Paragraph 2 (2) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014
Regulation 66 of the Local Government Pension Scheme (Administration) Regulations 2008
Regulation 106 of the Local Government Pension Scheme Regulations 1997

PART A1 – Discretions from 1 April 2014 in relation to post 31 March 2014 active members and post 31 March 2014 leavers (excluding councillor members)

Power of Scheme employer to award additional pension (Regulation 31 of the LGPS Regulations 2013)

An employer can grant extra annual pension of up to a maximum £6,500 (figure at 1 April 2014) to an active Scheme member or within 6 months of leaving to a member whose employment was terminated on the grounds of redundancy or business efficiency. This maximum figure that can be initially awarded will be index linked and the level increased on the 1st April each year.

Employer's policy:

The Council will only consider using this discretion where a sufficient benefit to the Council can be justified. Any applications under this discretion will be agreed by Personnel Committee.

Power of Scheme employer to contribute towards the cost of a member purchasing additional pension (Regulation 16 (2) (e) and 16 (4) (e) of the LGPS Regulations 2013)

Where an active Scheme member wishes to purchase extra annual pension of up to £6,500 (figure at 1 April 2014) by making Additional Pension Contributions (APCs), the employer may voluntarily contribute towards the cost of purchasing that extra pension via a Shared Cost Additional Pension Contribution. This maximum figure that can be initially purchased will be index linked and the level increased on the 1st April each year.

Employer's policy:

The Council will not fund any additional pension contributions made by scheme members.

The above discretion does not relate to cases where a member has a period of authorised absence and elects within 30 days of return to work to pay a Shared Cost Additional Pension Contribution (SCAPC) to cover the amount of pension 'lost' during that period of absence. That is because, in those cases, the employer must contribute 2/3rds of the cost to a SCAPC.

Flexible retirement (Regulation 30 (6) and (8) of the LGPS Regulations 2013, Regulations 3 (5), 11(2) and 11(3) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations

2014 and regulation 18(3) of the LGPS (Benefits, Membership and Contributions) Regulations 2007)

The Local Government Pension Scheme allows scheme members who have attained the age of 55 to draw all or part of their retirement benefits under flexible retirement arrangements even though they have not retired providing that:

- the employer consents, and
- there has been a reduction in hours, or
- a reduction in grade.

Specifically where the employer consents to flexible retirement then, in addition to the benefits the member has accrued prior to 1 April 2008 (which the member must draw), the employer can also allow the member to choose to draw all, part or none of the pension benefits they accrued after 31 March 2008.

However, benefits taken on flexible retirement will be subject to a potential actuarial reduction if they are being drawn earlier than the members normal retiring age (flexible retirement provisions may be operated for members potentially up to a member's 75th birthday). The reductions applied will be in accordance with guidance issued by the government actuary. Employers can if they choose waive, in whole or in part, any reductions that might apply.

Employer's policy:

The Council will consider each application for flexible retirement on its merits taking account of the cost to the Council and the impact on the service. Applications will be considered by the Corporate Management Team with the final decision being made by the Council's Personnel Committee.

Early retirement and waiving actuarial reductions (Schedule 2 paragraphs 1(2), 2(1), 2(2) and Regulation 3 (1) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014, Regulation 30(8) of the LGPS Regulations 2013 and regulation 30(5) and 30A(5) of the LGPS (Benefits, Membership and Contributions) Regulations 2007)

If a member leaves a local government employment before he is entitled to the immediate payment of retirement benefits, then if he is age 55 or more (or having attained age 55 and have previously been awarded deferred benefits after 01 April 2014) he may choose to receive payment of them immediately.

Any benefits payable may be reduced as appropriate in accordance with guidance issued by the Government Actuary. Employers can if they choose waive, in whole or in part, any reductions that might apply and the employer must pay to the Pension Fund a sum representing the capital cost of waiving those reductions.

Due to the complexity in the level of protected benefits that now apply to different members, establishing what level of benefits can be waived can be difficult. Appendix 1 lists the options available to employers in terms of the level of reductions that can be waived and the grounds under which they may be waived.

Employer's policy:

The Council will only waive any actuarial reduction in exceptional circumstances. In addition, applications will only be considered where there will be a financial or other benefit to the Council. Any applications for actuarial reductions to be waived will be determined by the Council's Personnel Committee.

PART A2 – Discretions in relation to scheme members who ceased active membership on or after 1 April 2008 and before 1 April 2014 (excluding councillor members)

Power of Scheme employer to award additional membership (Regulation 3 (10) of the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 and regulation 12 of the LGPS (Benefits, Membership and Contributions) Regulations 2007)

An employer can within 6 months of the date of termination grant extra membership in the pension scheme to a Scheme member whose employment was terminated before 1 April 2014 on the grounds of redundancy or business efficiency. Note that this is a time limited discretion which expires on 30 September 2014 for those whose employment is terminated on 31 March 2014.

Employer's policy:

The Council will not grant extra membership to scheme members whose employment was terminated prior to 1 April 2014.

Early release of deferred benefits with employer consent (Regulations 30(2), (5), 30A(3) and (5) of the LGPS (Benefits, Membership and Contributions) Regulations 2007)

A policy decision concerning early release of benefits needs to be made in relation to members who have left the scheme between 1 April 2008 and 31 March 2014 with deferred benefits (or suspended tier 3 benefits) who make an application to release benefits on or after age 55 and before age 60.

In addition a further policy decision is required to determine whether, on compassionate grounds, to waive any actuarial reduction that would normally be applied to deferred benefits which are paid before age 65.

Employer's policy:

Requests for early release of preserved benefits will be allowed where there is no cost to the Pension Fund.

Requests for early release of preserved benefits can also be made on compassionate grounds. Any such requests will be considered by the Council's Personnel Committee. The Council will not operate automatically the discretion to waive actuarial reduction on compassionate grounds and will only consent to such requests where there are exceptional reasons for doing so.

PART A3 – Discretions in relation to scheme members who ceased active membership on or after 1 April 1998 and before 1 April 2008 and active councillor members and councillor members who ceased active membership on or after 1 April 1998

Early release of deferred benefits with employer consent (Regulations 31(2) and (5) of the LGPS Regulations 1997)

A policy decision concerning early release of benefits needs to be made in relation to active members who have left the scheme between 1 April 1998 and 31 March 2008 with deferred benefits and councillor members who left after 1 April 1998 who make an application to release benefits on or after age 50* and before age 60.

In addition a further policy decision is required to determine whether, on compassionate grounds, to waive any actuarial reduction that would normally be applied to deferred benefits which are paid before age 65.

*It should be noted that benefits paid on or after age 50 and before age 55 would be subject to an unauthorised payments charge under the Finance Act 2004 and, where applicable, an unauthorised payments surcharge under that Act, and a Scheme sanction charge on any benefits built up after 5 April 2006.

Employer's policy:

Requests for early release of preserved benefits in respect of active members who left the scheme between 1 April 1998 and 31 March 2008 with deferred benefits, will be allowed where there is no cost to the Pension Fund.

Requests for early release of preserved benefits in respect of active members who left the scheme between 1 April 1998 and 31 March 2008 with deferred benefits, can also be made on compassionate grounds. Any such requests will be considered by the Council's Personnel Committee. The Council will not operate automatically the discretion to waive actuarial reduction on compassionate grounds and will only consent to such requests where there are exceptional reasons for doing so.

PART A4 – Discretions in relation to scheme members who ceased active membership before 1 April 1998 (Regulation D11(2) (c) of the LGPS Regulations 1995)

A policy decision concerning early release of benefits needs to be made in relation to active members who have left the scheme before 1 April 1998 who make an application on compassionate grounds to release benefits on or after age 50* and before age 60. Under these rules the sole discretion for an employing authority is that they may determine on compassionate grounds that benefits are to become payable on an unreduced basis.

*It should be noted that benefits paid on or after age 50 and before age 55 would be subject to an unauthorised payments charge under the Finance Act 2004 and, where applicable, an unauthorised payments surcharge under that Act, a Scheme sanction charge will not be payable.

Employer's policy:

Requests for early release of benefits in respect of active members who left the scheme before 1 April 1998 and who make an application on compassionate grounds to release benefits on or after age 50 and before age 60 will be considered by the Council's Personnel Committee. The Council will not operate automatically the discretion to determine on compassionate grounds, that benefits are to become payable on an unreduced basis, and will only consent to such requests where there are exceptional reasons for doing so.

PART B – Formulation of policy in accordance with further discretions under the Local Government Pension Scheme Regulations 2013

As highlighted in the employer bulletin, there are a number of other discretions which Scheme employers may exercise under the LGPS Regulations 2013. There is, however, no requirement to have a written policy in respect of these. However the following areas of discretion would be useful for scheme members, in order for them to establish the clear policy intention that the employers hold in these particular areas.

**Shared Cost Additional Voluntary Contributions (SCAVCs)
(Regulation 17 of the LGPS Regulations 2013, Regulations 15(1)(d) of the LGPS
(Transitional Provisions, Savings and Amendment) Regulations 2014, Regulation
25(3) of the LGPS (Administration) Regulations 2008 and Regulation 15(3) of the
LGPS (Benefits, Membership and Contributions) Regulations 2007)**

An active member may elect to pay AVCs into a scheme established under contract between his appropriate administering authority and a body approved for the purposes of the Finance Act 2004.

An employer can, at its discretion, contribute to the AVC scheme and where they do the AVC scheme is known as a shared cost additional voluntary contributions arrangement (SCAVC). An employer should establish whether, how much and in what circumstances to either continue with an existing SCAVC or enter into a new SCAVC.

Employer's policy:

The Council will not apply this discretion and will not therefore contribute to the AVC scheme on behalf of any employee.

**Late transfer requests
(Regulation 100(6) and 22(7) and (8) of the LGPS Regulations 2013)**

The Local Government Pension Scheme Regulations allow for the acceptance of transfer value payments into the fund (subject to the Pension Fund administering authorities approval) to enable members to transfer pension rights accrued prior to joining the scheme into the LGPS, and thereby count additional pension. This election should be made within 12 months of first joining the LGPS in the employment.

The discretion allowed under regulation 100(6) relates to the acceptance of transfers relating to non LGPS membership, where the member makes a request after the expiry of the first 12 months of joining the LGPS.

Previous LGPS rights are automatically aggregated unless an election to keep those accrued benefits separate is received. Regulations 22 (7) and (8) allow an employer to extend the 12 month time limit within which a Scheme member who has a deferred LGPS benefit in England or Wales following the cessation of employment (or cessation of a concurrent employment) to elect not to have the deferred benefits aggregated with their new LGPS employment (or on-going concurrent LGPS employment) if the member has not made an election to retain separate benefits within 12 months of commencing membership of the LGPS in the new employment (or within 12 months of ceasing the concurrent membership).

Employer's policy:

The Council will allow an active member to elect not to aggregate a deferred member's pension account to an active member's pension account beyond the 12 month deadline, only where there is no financial risk to the employer and it is of benefit to the member.

**Contributions payable by active members
(Regulation 9 and 10 of the LGPS Regulations 2013)**

An active member shall make contributions to the Scheme at the relevant contribution rate, from his pensionable pay, in each employment in which he is an active member. The contribution rate to be applied to his pensionable pay in any financial year is the rate determined by the employer with reference to the tiered contribution pay bands stated in the regulations.

Where there is a material change to a member's pensionable pay in the course of a financial year, the employer may re-determine the contribution rate to be applied.

Employer's policy:

The Council will make changes to employee contribution rates during the year from the effective date of any change in employment or material change to the rate of pensionable pay received.

**Assumed Pensionable Pay
(Regulation 21(4) and (5) of the LGPS Regulations 2013)**

Whether or not, when calculating assumed pensionable pay when a member :

- is on reduced contractual pay or no pay on due to sickness or injury, or
- is absent during ordinary maternity, paternity or adoption leave or during paid additional maternity, paternity or adoption leave, or
- is absent on reserve forces service leave, or
- retires with a Tier 1 or Tier 2 ill health pension, or
- dies in service

to include in the calculation the amount of any 'regular lump sum payment' received by the member in the 12 months preceding the date the absence began or the ill health retirement or death occurred. A 'regular lump sum payment' is a payment for which the member's employer determines there is a reasonable expectation that such a payment would be paid on a regular basis.

Employer's policy:

The Council will not include regular lump sum payments in the calculation of assumed pensionable pay.

PART C – Mandatory policy statement* – Formulation of policy in accordance with:

Regulation 7 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006
Regulation 26 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000
Regulation 14 of the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011

*The mandatory requirements for a written policy under these regulations do not extend to employers whose employees are members of the LGPS by virtue of an admission agreement however as the provisions still apply it would be deemed appropriate for a policy statement to be in place

PART C1 – Discretions in relation to the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006

**Redundancy and Compensation Payments
(Regulation 5 and 6 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006)**

These regulations provide a discretionary power to award a one-off lump sum payment of up to 2 years pay (104 weeks), inclusive of any redundancy payment made. This applies to any member who terminates their employment on the grounds of redundancy, efficiency or in the case of a joint appointment (not job shares) where termination arises because the other holder of the joint appointment has left it.

The provisions apply to all employees who are eligible for participation in the LG Pension Scheme, whether or not they are current members of the scheme.

There is also a discretionary power to waive the weekly pay ceiling placed on statutory redundancy payments and to calculate, instead, on pay up to the actual week's pay.

Employer's policy:

The Council will waive the weekly pay ceiling placed on statutory redundancy payments and will calculate redundancy payments based on actual weekly pay.

PART C2 – Discretions in relation to the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000

**Redundancy and Compensatory Added Years payments
(Regulation 17,19,21 and 25 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000)**

Prior to the 2006 discretionary regulations employers could award employees additional service following a redundancy or efficiency retirement where that employee was over age 50. Although this facility is no longer available to current active employees, there are still discretionary decisions to be made in respect of employees who are already in receipt of additional service. These include:

- How to apportion any surviving spouse's or civil partners annual compensatory added years payment where the deceased person is survived by more than one spouse or civil partner.
- How the annual added years will be apportioned amongst any eligible children.
- 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 ignored i.e. whether the spouse's or civil partner's annual compensatory added years payments should continue to be paid or if the authority's policy is to apply the normal suspension rules, whether the spouse's or civil partner's annual compensatory added years payment should be reinstated after the end of the remarriage, new civil partnership or cohabitation.
- Whether and to what extent to reduce or suspend the member's annual compensatory added years payment during any period of re-employment in local government and how to reduce the member's annual compensatory added years payment following the cessation of a period of re-employment in local government.

Employer's policy:

The Council will apportion any surviving spouses' or civil partner's annual compensatory added years (CAY) pension (where he deceased is survived by more than one spouse or civil partner) equally between eligible spouses/civil partners.

In the event of payment of children's CY pension, and assuming that it is not possible to pay in the same proportion as under the main pension scheme regulations, the Council will consider each case individually to decide to whom the pension should be paid. The overriding concern will be that the pension is paid for the benefit of the eligible child, or children, in all cases. Where there are more than two eligible children, the children's pensions shall be divided in equal shares amongst the eligible children.

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 will be ignored i.e. the spouse's or civil partner's annual compensatory added years payments will continue to be paid.

Where a person has been awarded added compensatory added years and is subsequently re-employed with an employer covered by the LGPS, the compensation payable will be subject to reduction or suspension. In general terms, this means that annual compensation will be reduced by the amount by which the sum of the statutory and the compensatory pension plus the new LGPS remuneration exceed the former level of remuneration at the point of leaving the first LGPS employment (with the former level of remuneration index linked to date).

PART C3 – Discretions in relation to the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011

Injury Allowance payments (Regulations 3 to 7 of the Local Government (Discretionary Compensation) (Injury Allowances) Regulations 2011)

Under the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011 Scheme employers must formulate, publish and keep under review a policy on:

a) whether or not to make an injury award to those who sustain an injury or contract a disease as a result of anything they were required to do in performing the duties of their job and in consequence of which they:

- suffer a reduction remuneration, or
- cease to be employed as a result of an incapacity which is likely to be permanent and which was caused by the injury or disease, or
- die leaving a surviving spouse, civil partner or dependant, and

b) if the Scheme employer has a policy to make such payments, how it will determine the amount of injury allowance to be paid

Employer's policy:

The council will not automatically make an injury award to those who sustain an injury or contract a disease as a result of anything they were required to do in performing the duties of their job and in consequence of which they:

- ***suffer a reduction remuneration, or***
- ***cease to be employed as a result of an incapacity which is likely to be permanent and which was caused by the injury or disease, or***
- ***die leaving a surviving spouse, civil partner or dependant,***

and will only make such an award where there are exceptional reasons for doing so.

Declaration

It is understood that the above discretions are applicable to all eligible members of the Scheme. In respect of the mandatory policy requirements, a written statement should be published indicating the policy which is being applied by that employer in the exercise of its functions. A copy of the scheme employer's policy decisions should be sent to Your Pension Service within one month of the date the policy is revised.

Any change to the discretions exercised under the LGPS Regulations can take immediate effect from the date the Scheme employer agrees the change.

Any change to the discretions exercised under the Discretionary Compensation Regulations 2000, the Discretionary Compensation Regulations 2006 or the Injury Allowances Regulations 2011 cannot take effect until one month after the date the Scheme employer publishes a statement of its amended policy.

The policies made above:

- i. Must have regard to the extent to which the exercise of the discretions could lead to a serious loss of confidence in the public service;
- ii. Will not be used for any ulterior motive;
- iii. Will be exercised reasonably;
- iv. Will only be used when there is a real and substantial future benefit to the employer for incurring the extra costs that may arise;
- v. Will be duly recorded when applied.

Signed on behalf of the Employing Authority:

Name in Block Capitals: MARSHAL SCOTT *M. H. Scott*

Position: Chief Executive

Employing Authority: Ribble Valley Borough Council

Date: 30 June 2014