

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

COUNCIL – TUESDAY, 11 SEPTEMBER 2018

Title of report	REVIEW OF PENSIONS DISCRETIONS
Contacts	Councillor Richard Blunt 01530 454510 richard.blunt@nwleicestershire.gov.uk Chief Executive 01530 454500 bev.smith@nwleicestershire.gov.uk Head of Human Resources and Organisation Development 01530 454518 mike.murphy@nwleicestershire.gov.uk
Purpose of report	To review the Council discretions in relation to the Local Government Pensions Scheme- (LGPS) to ensure they are fit for purpose.
Implications: Financial/Staff Risk Management Equalities Impact Screening Human Rights Transformational Government	The Council is required to determine its approach to the exercise of various discretionary functions as prescribed in the LGPS. In formulating its policy on Pension provisions, the Council is required by the Regulations to (1) “have regard to the extent to which the exercise of the discretionary powers (in accordance with the policy), unless properly limited, could lead to a serious loss of confidence in the public service; and (2) “be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs.” (Regulation 60 LGPS Regulations 2013 and Regulation 14 Local Government (Discretionary Payments)(Injury Allowances) Regulations 2011 and Regulation 7 Local Government (Early Termination of Employment) (Discretionary Compensation)(England and Wales) Regulations 2006 The decision made by Cabinet will impact on the future financial retirement arrangements of employees and former employees who are, or have previously been, members of the Leicestershire LGPS No risks. N/A N/A N/A

Comments of the Head of Paid Service	The report is satisfactory
Comments of Section 151 Officer	The report is satisfactory
Comments of Deputy Monitoring Officer	The report is satisfactory
Consultees	All of the Council's recognised Trade Unions have been given the opportunity to respond to a consultation on the proposals. A supportive response has been received from UNISON, this is attached at Appendix 3.
Background papers	Papers are held in the office of the Head of Human Resources and Organisation Development. (Room 132 Council Offices, Coalville)
Recommendations	THAT COUNCIL ADOPTS THE PROPOSED REVISIONS TO THE PENSIONS DISCRETIONS AS DETAILED IN APPENDIX 1 WITH EFFECT FROM 19 SEPTEMBER 2018.

1.0 BACKGROUND

- 1.1 The Council is required to determine its approach to a number of defined pension provisions in the Local Government Pensions scheme. Some of the pension's discretions can assist both the Council and employees in a variety of situations in redundancy / efficiency situations or as a lead-in to retirement. In formulating its policies on Pension provisions, the Council is required to determine its policy position on a number of defined pensions provisions in the local government pension scheme.
- 1.2 A number of the discretions, if adopted, could lead to significant pension capital costs being incurred by the Council (depending on the age and service of the employee). The proposed discretions have been written to minimise the possibility of the Council facing substantial pension capital costs in the future, but to allow those discretions where there may be a "win-win" situation for the employee and the Council.
- 1.3 There is requirement for the Council to consider each request on a case by case basis, not just in the implementation of a blanket policy. So, whilst the Council has determined its overall policy steer, each case requires the exercise of a general discretion which will also be linked to demonstrable financial or operational benefit. This means that there will be cases where the Council grants an application under one of the policies and cases where the Council declines an application. The relevant decision maker under the Councils constitution is the Chief Executive in her role as Head of Paid Service.
- 1.4 Significant changes were made to the Local Government Pension Scheme in April 2014 which meant the Scheme ceased to be a final salary pension scheme and is now a "Career Average Revalued Earnings" scheme.
- 1.5 A number of changes are proposed to the discretions to allow the Council to have more flexibility to manage partial (flexible) or other retirement situations in circumstances where the Council may seek to manage workforce reductions. Broadening the discretions will

potentially lead to more pension capitalisation costs for the Council, but these will be managed and assessed on a case-by-case basis.

- 1.6 A suggested change detailed below under Regulation 6 would involve an amendment to the Council's Employment Stability Policy. The proposals provide for an enhanced payment to the employee in a voluntary redundancy situation. The proposed change will provide important flexibility to manage future workforce reductions where the employee is not in the pension scheme or has limited service. This will not apply in every redundancy situation as there will be a balanced consideration of pension enhancement possibilities (if applicable) to each individual's circumstances.
- 1.7 We have been advised of a change to the Pensions regulations by the County Council Pensions office on 14 August 2018, after this Pensions discretions report had been considered by the Policy Development Group. This report has been accordingly updated to take account of the further changes, and these are detailed in 4 (a) of Appendix 1.
- 1.8 The new regulations have expanded the period in which many deferred members can claim their pension without the need for employer consent. Since 2014, members who leave and are over age 55 may claim an actuarially reduced pension benefit if they wish *without* the consent of their employer. However this ease of access *was not* extended to those who had already left the pension scheme before 1 April 2014 – until now. It has now been extended to all deferred leavers between 1.4.1998 and 31.3.2014. This new discretion could lead to capital costs being payable by this Council to the pension fund, so each case would be considered on its financial and any other relevant merits.

2.0 COUNCIL PAY POLICY CONSIDERATIONS

- 2.1 Members may recall that the Council was required to produce, under the Localism Act, a Pay Policy Statement. The latest version of this was considered and agreed by Council 20 March 2018. The Pay Policy statement will be updated if the proposals are agreed by Council. If adopted, these discretions will apply to all employees (and in some cases former employees) irrespective of their seniority within the workforce.
- 2.2 It is suggested that the delegation arrangements for decisions in relation to the pensions discretions in this report should remain as previously noted by Cabinet in January 2012, namely that:-

“In line with the current constitutional authority the process of dealing with an application under one of the pension discretions rests with the Head of Paid Service. This function may be delegated by the Head of Paid Service to another officer. Where the Head of Paid Service considers that she is unable to deal with a particular application, for example due to a previous involvement in the case or absence/unavailability, she has decided that she will delegate responsibility for determining the application to a Director or one of the statutory officers. All applications will be considered with appropriate approval from the Head of Human Resources and Organisation Development.”
- 2.3 The Pension Discretions outlined in this report replace any previous discretionary policies agreed by the Council. The current policy discretions are attached at Appendix 2 for purposes of comparison.

APPENDIX 1

PROPOSED PENSION DISCRETIONS

1. LGPS Benefits Regulations - Regulation 31: Power of employer to award additional Pension.

Explanation	Proposed Council Policy	Explanation of changes
An employer may resolve to award a member additional pension of not more than £6,822 (figure as at 1 April 2018) a year within 6 months of leaving to a member whose employment was terminated on the grounds of redundancy or business efficiency.	The Council is prepared to consider the award of additional pension under this regulation if there is a clear financial or operational benefit to the Council.	The wording of this discretion has been broadened to allow greater flexibility to potentially provide for a situation where a retiring employee may benefit from the award of additional pension and there is a clear payback, salary saving or other benefit to the Council.

2 LGPS Benefits Regulations - Regulation 16 (2) (e) and 16 (4) (d): Funding of additional Pension's contributions (shared cost)

Explanation	Proposed Council Policy	Explanation of changes
An active member in the main section of the scheme may enter into an arrangement to pay additional pension contributions (APC's) by regular contributions or a lump sum. Such costs may be funded in whole or in part by the member's scheme employer. The Employer will need to determine a policy on whether it will make a contribution towards the purchase of extra pension. This does not relate to cases where a member has a period of authorised unpaid leave of absence and elects within 30 days of return to work to pay a shared cost APC to cover the amount of pension "lost" during that period of absence. In these cases the employer must contribute 2/3 rds of the cost (Regulation 15 (5) of the LGPS Regulations 2013.	The Council will not fund additional pension unless there is a clear financial or operational benefit to the Council.	No proposed changes

3. LGPS Regulations – Regulation 30 (6) Flexible Retirement

Explanation	Proposed Council Policy	Explanation of changes
An active member who has attained the age of 55 or over who reduces working hours or grade of employment may, with the Scheme Employers consent, elect to receive immediate payment of all or part of the retirement pension to which that member would be entitled in respect of that employment if that member were not an employee in Local Government service on the date of the reduction in hours or grade, adjusted by the amount shown as appropriate in actuarial guidance issued by the Secretary of State. As an employer there is a requirement to determine the conditions under which a flexible retirement might be approved.	The Council will take all reasonable steps to accommodate an employees' request for flexible retirement. The Council has agreed to release pension where there is a clear financial or operational benefit to the Council. Under these circumstances the Council may use its discretion to waive any reduction in benefits. Employees will normally reduce their hours by a minimum of 40% and/or reduce their grade. .	This discretion has been broadened to allow greater flexibility to potentially provide for situations where employees are not at the point of wanting full retirement but may wish to work part-time to ease themselves into retirement. This can lead to on-going salary savings for the Council if a previously full-time role can be undertaken on a part-time basis. Broadening the discretion may mean there are costs to the Council in paying capital costs associated with the release of the pension, so each case would need to be looked at on its merits.

4. LGPS Regulations 2013 - Regulation (paragraph 1 (1) (c) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) regulations 2014: Switching on rule of 85.

Explanation	Proposed Council Policy	Explanation of changes
A member who has not attained normal pension age but who has attained the age of 55 or over, may elect to receive immediate payment of a retirement pension in relation to an employment if that member is not an employee in local government service in that employment, reduced by the amount shown as appropriate in actuarial guidance issued by the Secretary of State. In these circumstances (other than flexible retirement) the 85 year rule does not automatically apply to members who would otherwise be subject to it who choose to voluntarily draw their benefits on or after age 55 and before 60. The employer has the discretion to “switch on” the 85 year rule for such member. (paragraph 1(1) (c) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 If the employer does agree to switch back on the rule of 85, the cost of any strain on the fund resulting from the payment of benefits before age 60 would have to be met by the employer.	The Council may exercise these discretions if there is a justifiable business case. (E.g. as an alternative to a redundancy situation).	No proposed change

4. (a) Additional new decision required to cover former members who left after 1 April 1998 but before 31 March 2014 regarding Switching on ‘Rule of 85’

Explanation	Proposed Council Policy	Explanation of changes
A former member who has not attained normal pension age (NPA) but who has attained the age of 55 or over, may elect to receive immediate payment of a retirement pension in relation to an employment if that member is not an employee in local government service in that employment, reduced by the amount shown as appropriate in actuarial guidance issued by the Secretary of State. In these circumstances (other than flexible retirement) the 85 year rule does not automatically apply to members who would otherwise be subject to it who choose to voluntarily draw their benefits on or after age 55 and before NPA. The employer has the discretion to “switch on” the 85 year rule for such a member on compassionate grounds. If the employer does agree to switch back on the rule of 85, the cost of any strain on the fund resulting from the payment of benefits before NPA would have to be met by the employer. Note: - “compassionate grounds” is not defined in the regulations.	The Council will not normally apply this discretion unless there is a clear financial or operational benefit to the Council.	New discretion –The most recent amendments to the LGPS regulations have expanded the period in which many deferred members can claim their pension without the need for employer consent. Since 2014, members who leave and are over age 55 may claim an actuarially reduced pension benefits if they wish <i>without</i> the consent of their employer. However this ease of access <i>was not</i> extended to those who had already left the pension scheme before 1 April 2014 – until now. It has now been extended to all deferred leavers between 1.4.1998 and 31.3.2014. This new discretion could lead to a capital cost being payable by this Council to the pension fund, so each case would be considered on its merits.

5. LGPS Regulations 2013 – Regulation (paragraph 2(1) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014.

Explanation	Proposed Council Policy	Explanation of changes
An employer has the discretion, under a number of retirement scenarios, to waive actuarial reductions on compassionate grounds. The cost of the pension capitalisation will fall on the Council in such situations. This may be on “compassionate grounds” as an example, which is not defined in the regulations.	In relation to waiving any reduction which may apply on compassionate grounds, the Council may exercise this discretion on a case by case basis if there are exceptional circumstances and there is a clear financial or operational benefit to the Council.	This discretion has been broadened to allow greater flexibility to potentially provide for situations where employees are seeking to take early retirement while maximising their pension benefits.

There are a number of other discretions which Scheme Employers may exercise under the LGPS Regulations 2013 where there is no requirement to have a written policy. However, in the interests of transparency and equal treatment, members approved a consistent approach to the discretions as detailed below:-

1. LGPS Regulations 2013 – Regulation 17 - Shared Cost Additional Voluntary Contribution Facility

Explanation	Proposed Council Policy	Explanation of changes
This discretion allows the Employer to maintain and contribute to an employee's Additional Voluntary Contribution Scheme.	The Council has not adopted this discretion. This will not have any effect on the existing AVC facility available where the employee only is able to make such contributions.	No change

2. LGPS Regulations 2013 - Regulation 100 (6) – election to transfer within 12 months

Explanation	Proposed Council Policy	Explanation of changes
This discretion allows the Employer to extend the 12 month limit a member has in which to elect to transfer other pension rights into the LGPS. This has to be with the agreement of the Administering Authority	The Council will not normally allow an extension of the 12 month limit Extenuating circumstances may apply and this would include Where evidence exists that an election was made within 12 months but his was not received by the administering authority. Where evidence exists that the member was not aware of the 12 month limit due to maladministration	No changes proposed

3. LGPS Regulations 2013 - Regulation 22 (7) and (8) – election to aggregate within 12 months of commencement

Explanation	Proposed Council Policy	Explanation of changes
This discretion allows the Employer to extend the 12 month time limit a member has within which they must elect not to have deferred benefits aggregated with their new LGPS employment	The Council will not normally extend this 12 month time limit Extenuating circumstances may apply and this would include Where evidence exists that an election was made within 12 months but this was not received by the administering authority Where evidence exists that the member was not aware of the 12 month limit due to maladministration.	No changes proposed

4. LGPS Regulations 2013 - Regulation 21 – assumed pensionable pay.

Explanation	Proposed Council Policy	Explanation of Changes
This discretion allows the Employer to determine whether to include in the calculation of assumed pensionable pay the amount of any “regular lump sum payment”. This is in cases where an employee’s pay needs to be calculated where their pay has been reduced due to certain absences in order that they are not unduly advantaged or disadvantaged.	To determine in individual cases where necessary to establish in a fair, equitable and justifiable way what the members likely pay would have been but for the absence, and in cases where this pay is to be used for future enhancements whether that level of pay would have been received every year to normal retirement age.	No changes proposed.

5. The Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2006

Provisions provide local government employers with the powers to consider making a one off lump sum payment to an employee which must not exceed 104 week's pay.

Regulation 5: Power to increase statutory redundancy payments

Explanation	Proposed Council Policy	Explanation of changes
The Employer may decide to calculate a redundancy payment entitlement as if there had been no limit on the amount of a week's pay used in the calculation.	The Council uses the actual weekly pay of the employee when calculating redundancy pay and there is no limit.	No change proposed.

6. The Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2006

Regulation 6: Discretionary Compensation.

Explanation	Proposed Council Policy	Explanation of changes
A "one off" lump sum compensation payment may be awarded to an employee up to a maximum value of 104 weeks' pay, inclusive of any redundancy payment made.	Compulsory redundancy The weeks payable determined according to statutory redundancy scheme multiplied by a factor of X 1.5. Voluntary redundancy On a case by case basis, taking into account the potential capital pension costs associated with an individuals' departure, an additional payment of up to 3 months contractual pay in addition to the enhanced redundancy payment. If the total value of pension capital costs and redundancy etc. payments is in excess of £100,000, the decision will be referred to Council for decision.	No change proposed. This is a suggested new provision to help incentivise and progress voluntary redundancies where appropriate for the Council.

APPENDIX 2 - CURRENT PENSIONS DISCRETIONS

PENSION POLICY DISCRETIONS – JUNE 2014

These are the pension policy discretions of North West Leicestershire District Council as confirmed by the Cabinet on 24th June 2014.

1. LGPS Benefits Regulations - Regulation 31: Power of employer to award additional Pension.

Explanation	Council Policy
An employer may resolve to award a member additional pension of not more than £6,500 (figure as at 1 April 2014) a year within 6 months of leaving to a member whose employment was terminated on the grounds of redundancy or business efficiency.	The Council is not prepared to grant any discretionary enhancement under this regulation unless there is a clear financial or operational benefit to the Council.

- 2 LGPS Benefits Regulations - Regulation 16 (2) (e) and 16 (4) (d): Funding of additional Pensions contributions (shared cost)

Explanation	Council Policy
An active member in the main section of the scheme may enter into an arrangement to pay additional pension contributions (APC's) by regular contributions or a lump sum. Such costs may be funded in whole or in part by the member's scheme employer. The Employer will need to determine a policy on whether it will make a contribution towards the purchase of extra pension. This does not relate to cases where a member has a period of authorised unpaid leave of absence and elects within 30 days of return to work to pay a shared cost APC to cover the amount of pension "lost" during that period of absence. In these cases the employer must contribute 2/3 rds of the cost (Regulation 15 (5) of the LGPS Regulations 2013.	The Council will not fund additional pension unless there is a clear financial or operational benefit to the Council.

3. LGPS Regulations – Regulation 30 (b) Flexible Retirement

Explanation	Council Policy
An active member who has attained the age of 55 or over who reduces working hours or grade of employment may, with the Scheme Employers consent, elect to receive immediate payment of all or part of the retirement pension to which that member would be entitled in respect of that employment if that member were not an employee in Local Government service on the date of the reduction in hours or grade, adjusted by the amount shown as appropriate in actuarial guidance issued by the Secretary of State. As an employer there is a requirement to determine the conditions under which a flexible retirement might be approved.	The Council has agreed to release pension where there is no cost and there is a clear financial or operational benefit to the Council. The Council will not waive any reduction in benefits. Employees will normally reduce their hours by a minimum of 40% and/or reduce their grade. .

4. LGPS Regulations 2013 - Regulation (paragraph 1 (1) (c) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) regulations 2014:Switching on rule of 85.

Explanation	Council Policy
A member who has not attained normal pension age but who has attained the age of 55 or over, may elect to receive immediate payment of a retirement pension in relation to an employment if that member is not an employee in local government service in that employment, reduced by the amount shown as appropriate in actuarial guidance issued by the Secretary of State. In these circumstances (other than flexible retirement) the 85 year rule does not automatically apply to members who would otherwise be subject to it who choose to voluntarily draw their benefits on or after age 55 and before 60. The employer has the discretion to “switch on” the 85 year rule for such member. If the employer does agree to switch back on the rule of 85, the cost of any strain on the fund resulting from the payment of benefits before age 60 would have to be met by the employer.	The Council will not apply either discretion unless there is a clear financial or operational benefit to the Council (e.g. as an alternative to a redundancy situation).

5 LGPS Regulations 2013 – Regulation (paragraph 2(1) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014.

Explanation	Council Policy
An employer has the discretion, under a number of retirement scenarios, to waive actuarial reductions on compassionate grounds. The cost of the pension capitalisation will fall on the Council in such situations. This may be on “compassionate grounds” as an example, which is not defined in the regulations.	The Council will not apply either discretion unless there are exceptional circumstances and there is a clear financial or operational benefit to the Council.

There are a number of other discretions which Scheme Employers may exercise under the LGPS Regulations 2013 where there is no requirement to have a written policy. However, in the interests of transparency and equal treatment, members approved a consistent approach to the discretions as detailed below:-

1. LGPS Regulations 2013 – Regulation 17 - Shared Cost Additional Voluntary Contribution Facility

Explanation	Council Policy
This discretion allows the Employer to maintain and contribute to an employee's Additional Voluntary Contribution Scheme.	The Council has not adopted this discretion. This will not have any effect on the existing AVC facility available where the employee only is able to make such contributions.

2. LGPS Regulations 2013 - Regulation 100 (6) – election to transfer within 12 months

Explanation	Council Policy
This discretion allows the Employer extend the 12 month limit a member has in which to elect to transfer other pension rights into the LGPS. This has to be with the agreement of the Administering Authority	The Council will not normally allow an extension of the 12 month limit Extenuating circumstances may apply and this would include • Where evidence exists that an election was made within 12 months but his was not received by the administering authority. • Where evidence exists that the member was not aware of the 12 month limit due to maladministration

3. LGPS Regulations 2013 - Regulation 22 (7) and (8) – election to aggregate within 12 months of commencement

Explanation	Council Policy
This discretion allows the Employer to extend the 12 month time limit a member has within which they must elect not to have deferred benefits aggregated with their new LGPS employment	The Council will not normally extend this 12 month time limit Extenuating circumstances may apply and this would include • Where evidence exists that an election was made within 12 months but this was not received by the administering authority • Where evidence exists that the member was not aware of the 12 month limit due to maladministration

LGPS Regulations 2013 - Regulation 21 – assumed pensionable pay.

Explanation	Council Policy
This discretion allows the Employer to determine whether to include in the calculation of assumed pensionable pay the amount of any “regular lump sum payment”. This is in cases where an employee’s pay needs to be calculated where their pay has been reduced due to certain absences in order that they are not unduly advantaged or disadvantaged.	To determine in individual cases where necessary to establish in a fair, equitable and justifiable way what the members likely pay would have been but for the absence, and in cases where this pay is to be used for future enhancements whether that level of pay would have been received every year to normal retirement age.

4. The Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2006

Provisions provide local government employers with the powers to consider making a one off lump sum payment to an employee which must not exceed 104 week's pay.

Regulation 5: Power to increase statutory redundancy payments

Explanation	Council Policy
The Employer may decide to calculate a redundancy payment entitlement as if there had been no limit on the amount of a week's pay used in the calculation.	The Council uses the actual weekly pay of the employee when calculating redundancy pay and there is no limit.

5. The Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2006

Regulation 6: Discretionary Compensation.

Explanation	Council Policy
A "one off" lump sum compensation payment may be awarded to an employee up to a maximum value of 104 weeks' pay, inclusive of any redundancy payment made.	Redundancy weeks payable determined according to statutory redundancy scheme multiplied by a factor of X 1.5.

APPENDIX 3. RESPONSE TO THE CONSULTATION FROM THE UNION UNISON



North West Leicestershire Branch
Council Offices
Coalville
Leicestershire
LE67 3FJ

16 July 2017

FAO Mike Murphy
Head of Human Resources & Organisation Development
North West Leicestershire District Council
Council Offices
Coalville
Leicestershire
LE67 3FJ

Dear Mike

Review of Pension Discretions

Further to the consultation documents received by myself on 27 June 2018. We have consulted with our members and with branch officers and we wish to make the following comments and observations.

Regarding item 3 of the Proposed Pension Discretions the branch already identifies that we have a changing workforce where there is a requirement for employees work longer before being able to retire. Not only does this put a strain on the employee but families as a whole. Ageing employees now have the added responsibilities and care commitments from not only grandchildren but caring for elderly parents and in some cases spouses. We have seen this across the council where staff are struggling to cope with the demands and balancing family and work life.

The branch would encourage the authority to offer flexibility in pension arrangements for its members and the workforce as a whole. Providing the option for reducing the number of hours the employee works but also being able to draw upon their pension not only enables the employee to enjoy their semi-retirement but it also opens up employment opportunities internally and externally.

Regarding item 7 and Regulation 6, Discretionary Compensation, the branch is pleased that the employer proposes that there is more flexibility around voluntary redundancy in a time where staffing reductions may have to take place over coming years, introducing an incentive where staff entering their final stages of employment are provided with viable options to take voluntary redundancy without this having an detrimental impact on their final pension scheme plan.

UNISON would ask that we be consulted on any proposed workforce reductions in the future.

Thank you for giving the branch the opportunity to consult on these papers and the branch commits to working with you in the future on policy review and restructures.

Yours sincerely

Catherine Ridgway
UNISON Branch Secretary

