

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

CABINET – 24 JUNE 2014

Title of report	REVIEW OF PENSIONS DISCRETIONS
Key Decision	a) Financial No b) Community No
Contacts	Councillor Nick Rushton 01530 412059 nicholas.rushton@nwleicestershire.gov.uk Deputy Chief Executive 01530 454555 steve.bambrick@nwleicestershire.gov.uk Human Resources Manager 01530 454518 mike.murphy@nwleicestershire.gov.uk
Purpose of report	To review the Council discretions in relation to the Local Government Pensions Scheme. (LGPS) in the light of changes to the National Scheme Regulations.
Reason for Decision	There is a legal requirement to review the policies that the Council has in place in relation to the exercise of discretionary functions under the Local Government Pension Scheme Administration Regulations by the end of June 2014.
Council Priorities	Value for Money
Implications:	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.”
Financial/Staff	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
Risk Management	No risks.
Equalities Impact Assessment	Has been completed, held with Background papers.

Human Rights	No issues.
Transformational Government	Not Applicable.
Comments of the Deputy Head of Paid Service	As author, the report is satisfactory.
Comments of Section 151 Officer	The report is satisfactory.
Comments of 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. Any responses will be reported to the Cabinet meeting as required.
Background papers	None
Recommendations	<p>1. THAT CABINET ACCEPTS THE RECOMMENDATIONS OF THE REVIEWED PENSION POLICIES AS SET OUT IN APPENDIX 1 OF THIS REPORT.</p> <p>2. THAT CABINET ENDORSES THE DECISION DELEGATION ARRANGEMENTS AS DETAILED IN PARAGRAPH 2.2 OF THIS REPORT.</p>

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 (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".
- 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. There is a requirement for the Council to exercise its discretion on a case-by-case basis, not just by the implementation of a blanket policy, so it is suggested that this should be linked to demonstrable financial or operational benefit.
- 1.3 Significant changes made to the Local Government Pension Scheme from April 2014 mean that it now necessary to review the discretionary aspects of the scheme that are the responsibility of this Council as the Employing body. The Scheme is no longer a final salary pension scheme as a result of the changes – it has become a "Career Average

Revalued Earnings” scheme. There are protections included in the Regulations for members who have pre April 1 2014 final salary rights.

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 on 25 March 2014. There is no requirement to amend the Council’s Pay Policy statement as a result of the proposed changes because, if adopted, these discretions will apply to all employees (and in some cases former employees) irrespective of their seniority within the workforce. It is relevant to note the link between the Pay Policy Statement and the changes proposed in this report.

2.2 It is suggested that the delegation arrangements for decisions in relation to the pensions discretions in this report should remain as determined previously by Cabinet, 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 the Deputy Chief Executive or one of the statutory officers. All applications will be considered with appropriate Human Resources advice.”

2.3 The Pension Discretions outlined in this report replace any previous discretionary policies agreed by the Council.

APPENDIX 1.

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

Explanation	Recommended Council Policy	Comments
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.	There is no suggested change to the Council's current policy. However, the amount of pension that can be awarded as an additional pension has increased with the 2013 Regulations from £5,000 to £6,500

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

Explanation	Recommended Council Policy	Comments
<p>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.</p> <p>Such costs may be funded in whole or in part by the member's scheme employer.</p> <p>The Employer will need to determine a policy on whether it will make a contribution towards the purchase of extra pension.</p> <p>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.</p>	<p>The Council will not fund additional pension unless there is a clear financial or operational benefit to the Council.</p>	<p>This is a new discretion.</p> <p>If this discretion was agreed there would be additional employer costs, so this approach would be consistent with the decision in Regulation 31 above to not award additional pension.</p>

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

Explanation	Recommended Council Policy	Comments
<p>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.</p> <p>As an employer there is a requirement to determine the conditions under which a flexible retirement might be approved.</p>	<p>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.</p>	<p>This discretion was previously adopted by the Council, and the recommendation is no change to the current discretion.</p> <p>This policy was adopted in 2012 and has already proved to be a useful option in retaining employees with valuable skills in the lead up to full retirement while achieving salary savings.</p>

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	Recommended Council Policy	Comments
<p>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.</p> <p>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.</p> <p>The employer has the discretion to “switch on” the 85 year rule for such member.</p> <p>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.</p>	<p>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).</p>	<p>This is a new discretion. The capital costs associated with the “switching on” the 85 year rule could be significant, but there may be situations where the Council might wish to do this if there was a supporting business case. This might be used as a mechanism to encourage members to retire early to help achieve a balanced age profile or to enable career succession, or to avoid possible redundancies at a later stage in the event of challenging financial conditions.</p>

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

Explanation	Recommended Council Policy	Comments
<p>An employer has the discretion, under a number of retirement scenarios, to waive actuarial reductions on compassionate grounds.</p> <p>The cost of the pension capitalisation will fall on the Council in such situations.</p> <p>This may be on “compassionate grounds” as an example, which is not defined in the regulations.</p>	<p>The Council will not apply either discretion unless there are exceptional circumstances and there is a clear financial or operational benefit to the Council.</p>	<p>These are new, more general requirements.</p> <p>Each case will be considered on its merits taking into account the financial costs/benefits associated with any application.</p> <p>This might apply in cases of an ex-employee requesting payment of the pension after age 55 or in cases of flexible retirement, for example.</p>

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, it is recommended that members should endorse a consistent approach to the discretions as detailed below:-

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

Explanation	Recommended Council Policy	Comments
<p>This discretion allows the Employer to maintain and contribute to an employee's Additional Voluntary Contribution Scheme.</p>	<p>The Council has not adopted this discretion.</p> <p>This will not have any effect on the existing AVC facility available where the employee only is able to make such contributions.</p>	<p>This discretion was previously adopted by the Council, and the recommendation is no change to the current discretion.</p>

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

Explanation	Recommended Council Policy	Comments
<p>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</p>	<p>The Council will not normally allow an extension of the 12 month limit</p> <p>Extenuating circumstances may apply and this would include</p> <ul style="list-style-type: none"> • 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 	<p>Accepting an option after 12 months can result in additional costs to the employer (e.g. when an employee opts to transfer in prior to a large salary rise / promotion / regrading if the member has any pre 1 April 2014 membership).</p>

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

Explanation	Recommended Council Policy	Comments
<p>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</p>	<p>The Council will not normally extend this 12 month time limit</p> <p>Extenuating circumstances may apply and this would include</p> <ul style="list-style-type: none"> • 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 	<p>Extending the time limit may lead to additional costs to the employer, so it is recommended that this should only be permitted in the suggested extenuating circumstances.</p>

4. LGPS Regulations 2013 - Regulation 9 – allocation of contribution band

Explanation	Recommended Council Policy	Comments
<p>This discretion allows the Employer to determine which contribution band is allocated on joining the scheme and at each April. It also determines the circumstances when an employee's band may be reviewed.</p>	<ul style="list-style-type: none"> • Base pay on actual pay in April plus previous years overtime • Run an exercise half yearly as a check and re-band up or down where necessary • Re-band on all <u>contractual</u> changes, but not ad hoc hours changes and re-band upon a pay award. 	<p>Under the CARE scheme, the Council is required to determine its approach to banding to ensure a consistent approach, as this will affect the contribution rates and future pension entitlement for members.</p>

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

Explanation	Recommended Council Policy	Comment
<p>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".</p> <p>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.</p>	<ul style="list-style-type: none"> • 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. 	<p>No further comments.</p>

6. 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	Recommended Council Policy	Comments
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.	This is the current policy, no changes are recommended.

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

Regulation 6: Discretionary Compensation.

Explanation	Recommended Council Policy	Comments
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.	The redundancy multiplier factor aspect of the Councils policy is unchanged. However the option of converting compensation payments into additional pensionable service has been removed, so this is no longer an option for redundant employees. (This was previously included in the Council's discretions, but it should be noted that this has never been used).

End