

Discretions Policy Update

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<i>Please complete sign off boxes below prior to submission to Democratic Services</i>			
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Report Sign off	Legal	Honor Clarke	
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	Senior Manager	Chris Squire / Vicky Hayter	
	Cabinet Member	Mandy Chilcott	
	Monitoring Officer	Scott Wooldridge	
	Summary:	HR Policy Committee is asked to approve amendments to the SCC Pensions Discretions Policy.	
Recommendations:	<p>Adopt Flexible Retirement amendments/additions to both SCC Discretions Policy and Flexible Retirement Policy.</p> <p>Do not apply the 85-year rule discretion to deferred benefits and update Deferred Pensions Policy to reflect this.</p> <p>Include discretion on employee contribution bands.</p> <p>Review how /when to make future updates.</p>		
Reasons for Recommendations:	<p>All employers who participate in the Local Government Pension Scheme (LGPS) are required to formulate a discretions policy in accordance with Regulation 66 of The Local Government Pension Scheme (Administration) Regulations 2008, and Regulation 60 of the Local Government Pension Scheme Regulations 2013.</p> <p>The Policy must be published and kept under review and revised as necessary. A copy of the Discretions Policy must be sent to the Pension Fund Administrator (Peninsula Pensions) with any amendments sent to Peninsula Pensions within one month of the change.</p>		
Links to Priorities and Impact on	Given the Council's Financial Position we are likely to have increased requests under our Pensions Discretions.		

Service Plans:	
Financial, Legal and HR Implications:	<p>Discretionary powers come with a cost attached (often referred to as 'strain') and policies must not lead to a loss of confidence in public services and therefore must be affordable.</p> <p>Policies should reflect pension membership, budgetary constraints and the nature of the Council's business.</p> <p>The Council has limited resources and needs to maintain a balanced budget. Any exercise of discretion must be contained within existing service budgets; therefore, discretions are only exercised in exceptional circumstances.</p> <p>Failure to publish Discretions Policy means we are not complying with LGPS regulations.</p> <p>"Fettering" - policies should not be unnecessarily restrictive as to prevent flexibility where a possibly unanticipated situation requires it.</p>
Equalities Implications:	<p>Policies should not be discriminatory in any way and decisions must be objectively justified.</p> <p>Consider age regulations.</p> <p>Any equalities impact will be considered as part of the exceptional circumstance on a case by case basis.</p>
Risk Assessment:	<p>There are risks associated around any maladministration of the LGPS if a member's complaint is successfully upheld by the Pensions Advisory Board/Ombudsman which can include financial compensation and fines.</p> <p>Consider reviewing how amendments are agreed.</p>
Scrutiny comments / recommendation (if any):	N/A

1. Background

- 1.1. Amendments to the Local Government Pension Scheme Regulations require that we update our Discretions Policy to include new mandatory discretions and following recommendation from our Pension Provider, Peninsula Pensions, to add some additional non mandatory discretions as outlined below 1.2. to 1.5.
- 1.2. **Flexible Retirement R30(6), pg 8** – While the Council already allows Flexible Retirement there is a new requirement to state whether the Council permit Flexible Retirement and if so to publish SCC's Flexible Retirement Policy as part of our Discretions Policy and to clarify the following:

- Minimum reduction in hours or grade required
- Whether the employee should commit to the reduction for a minimum period
- Whether the employee should commit to remaining in employment for a minimum period.

1.3. 85-year rule TP1(1)(c), pg 5 – New requirement to state whether to switch on the 85-year rule for former (deferred) members who ceased active membership between 1 April 2008 and 31 March 2014 and choose to voluntarily draw their benefits on or after age 55 and before 60 as follows:

- Elect to voluntarily draw their suspended tier 3 ill health pension
- Elect to voluntarily draw any deferred benefits

1.4. Extension of time limits R22 and R27, pg 6 – Whether to extend the 12-month time limit for a member to elect **not to** or **to** aggregate deferred benefits as outlined under Reg 22 and Reg 27 in the attached Discretions Policy.

1.5. Determination of when to assess employee's contribution rates R9(1)&(3), pg 6 - this is an additional non mandatory discretion

2. Options Considered – in each case the option is to either allow or not allow the discretion.

2.1. Flexible Retirement R30(6), pg 8

We currently, and have for several years, allowed the Flexible Retirement Discretion. Employees aged 55 and over who are members of the LGPS may request payment of early retirement benefits whilst remaining in the Council's employment on reduced hours/lower grade. This is provided we agree to the member either reducing their hours or moving to a position on a lower grade based on a sound business case which is subject to the approval of the Senior Leadership Team Member and the Director of HR and OD. Each request is considered on its merits on a case-by-case basis.

Existing policy states 'Approval of any request will depend on the operational viability of the proposal set out in the business case. As a guide, where a business case for Flexible Working is minimal (e.g. less than 20%), either in terms of reduced hours or lower grade it may be more difficult to justify.'

The policy does not specifically state a period for which the reduction must apply or that the employee should commit to remaining in employment for a minimum period.

In allowing the Flexible Retirement discretion we must state the minimum requirements in our Discretions Policy. It is therefore recommended that we state the following in both the Flexible Working Policy and the Discretions Policy:

Minimum reduction in hours or grade required – **20% or 1 full grade below existing and reduction of hours equivalent to 20% reduction**

Minimum period of reduction – **Permanent**

Minimum period to remain in employment – **1 year**

We will apply the exceptional circumstances clause including where there is a clear business case to manage any exceptions to these rules.

In addition, in allowing the Flexible Retirement Discretion the Regulations require we make a statement about whether we will allow the employee to choose what proportion (all, part or none) of their post 1 April 2008 benefits to draw. If we allow this discretion any employee flexibly retiring does not have to draw on all the benefits, they have built up at the point of flexible retirement so. If the member elects to only take part of the benefits on flexible retirement, so allowing this discretion could reduce any strain costs incurred. However, as it is the members decision how much to draw down by allowing this discretion, we could risk incurring higher strain costs. It would seem prudent to apply this discretion only in exceptional circumstances or where there is a clear business benefit to the Council and that in most circumstances' employees will be expected to draw down all their benefits and bear any reduction to their pension.

- 2.2. 85-year rule TP1(1)(c), pg 5** - A member with a deferred benefit who left the scheme voluntarily between 1 April 2008 – 31 March 2014 or who ceased active membership following the suspension of their Tier 3 ill health retirement and who has subsequently become a deferred pensioner may now claim their benefits from age 55 without their employers' consent. However, these benefits will be reduced for early payment.

Where a member has reached the 85-year rule at the point of retirement, an employer can consent to switching on the 85-year rule. Any strain to the Fund will be payable immediately by the Scheme employer.

Members in this situation are ex-employees and there is no budget to offset costs. The burden of strain costs is usually met by the employing Service, in these instances the Service may no longer exist or have sufficient budget to offset costs. There would not be a clear business case or any benefit to the Council therefore it would not be considered financially prudent to switch on the 85-year rule in these circumstances.

The Council also must consider applying this discretion to existing employees and does so in exceptional circumstances which should safeguard the Council against any claims of fettering.

- 2.3. Extension of time limits to or not to aggregate deferred benefits R22 and R27, pg 6**

Members are given a 12 month time limit to consider whether they wish to or not to aggregate certain pension benefits.

There are circumstances where it would be reasonable to accept a late election to retain separate benefits or to aggregate benefits providing the available evidence indicates any of the following:

- the member made an election within 12 months of joining the LGPS, but

the election was not received by the Pension Fund administering authority (e.g. the election form was lost in the post)

- the member had not been informed of the 12-month time limit due to maladministration
- the member was not practically possible (due to a life changing event) within the 12-month time limit
- the member has final salary membership and was not informed that the implications of aggregating their benefits would cause a detriment to their pension benefits.

In the interest of fairness, it is recommended that the Council apply this discretion only in exceptional circumstances as outlined above.

2.4. Non-mandatory discretions – determination of how an employee’s contribution band will be initially determined and thereafter reviewed R9(1)&(3), pg 6

An additional statement is recommended in the Discretions Policy to explain how and when the Council determine the rate of employees’ contribution.

In addition to a review each April, the Council must state when they will review an employees allocated pension contribution band following a material change that affects the member’s pensionable pay in the course of a Scheme year (1 April to 31 March), for example, due to promotion.

SAP automatically recalculates the pension contribution % if there is a contractual change and will recalculate each month if it is backdated. If temporary pensionable allowances are paid they will be considered in the month of payment and the band changed if necessary.

It is recommended that this is stated in the Discretions Policy.

3. Consultations undertaken

- 3.1.** The suggested changes to the Discretion Policy have been sent to the Green Book Trade Union representatives in advance of the meeting on 15 January 2020. Any comments will be detailed at the Committee
- 3.2.** Consulted with Peninsula Pensions via telephone.
- 3.3.** Consulted with Strategic Manager - Pension Fund & Service Management, in December 2019.

4. Implications

- 4.1. Financial** – Allowing early access to pension benefits or enhancing pension benefits incurs a cost to the Employer or the LGPS Scheme or both. The Discretions Policy aims to safeguard the Council from significant and material cost and to consider and assess requests on a case by case basis with consideration

given to the members circumstances, the impact on existing and future budgets, workforce planning and employee relations.

Legal - LGPS regulations require that the Employer is required to have a written and published policy where a discretion has been deemed mandatory.

The Discretion Policy safeguards the Council from claims of fettering decisions

Communication – Failure to publish Discretions Policy or make amendments in a timely manner could be considered as fettering or maladministration. There may be a need to review how future amendments are agreed to mitigate against this.

5. Background papers

5.1. Appendix A – Discretion Policy Document

5.2. HR Policy Committee Reports dated September 2014, March 2016, November 2017 and September 2018.

Note: For sight of individual background papers please contact the report author.