

# Agenda Item

**Executive Board**

**17 January 2007**

**TW/KJ**



## **Local Government Pension Scheme – Adopted Discretionary Powers Policy and Redundancy Policy**

### **Summary**

The Local Government Pension Scheme (LGPS) requires all admitted bodies (employers) to have a policy that identifies whether the authority will adopt certain discretions with regard to the enhancement or payment of pension benefits. This report identifies these discretions and determines whether the discretion should be used. This policy is an update of an existing policy that members approved in April 1998 and amended in December 2003. It has been amended to reflect changes to the LGPS effective April 2006 and October 2006.

The Redundancy Policy has been updated to ensure compliance with new age discrimination legislation that came into effect 1 October 2006. Both policies are attached. The main body of the report identifies specific areas of change to existing policies.

### **Recommendation**

**The Executive Board agrees the decisions that are identified under each discretionary rule.**

**The Executive Board agrees the Redundancy Policy as attached.**

#### **a) Reasons for Recommendation**

There is a statutory requirement under the Local Government Pension Scheme that the authority formally makes a decision regarding the discretionary rules.

The Redundancy Policy has been updated to ensure compliance with age discrimination regulations that came into force on 1 October 2006.

#### **b) Alternative Options**

This is a statutory requirement and therefore there are no alternative options.

The authority must comply with revised legislation concerning age discrimination and there are no alternative options.

#### **c) Risk Considerations**

The pensions administering authority (Devon County Council) would withhold pension benefits if East Devon DC has not adopted a discretionary rule policy.

The authority would be exposed to claims of age discrimination if a redundancy situation arose and the policy failed to comply with legislation.

**d) Policy and Budgetary Considerations**

There are no immediate budget considerations as costs are determined on a case by case basis and would be dependent upon the circumstances in which the policy is being applied. These could include redundancy or early retirement for example.

**e) Date for Review of Decision**

The policies may required to be reviewed if there are further changes to the LGPS that affect the discretionary rules or changes to legislation affecting the Redundancy Policy.

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**Background – Adopted Discretionary Powers Policy**

1. The LGPS is open to all employees of the Council aged between 16 and 75 years. It is known as a final salary scheme with benefits paid and administered by Devon Pensions, part of Devon County Council. The LGPS is an evolving scheme and is subject to change via statutory instruments and new Acts laid before parliament.
- 1.1 This report covers new discretionary rules or those rules which require a change to existing policy.

**Discretionary rules**

**2. Redundancy, Efficiency and Ill Health Retirements**

- 2.1 Redundancy and Efficiency retirements are applicable to employees who fall under this category and are over age 50 years. There are specific policies covering the approach and pension implications to a redundancy and efficiency situation.

***Discretionary Rule – The Council will enhance members benefits under regulation 52 as “Augmentation of Service” for retirements granted under a redundancy/efficiency rule. This enhancement of service will be in line with the table adopted under the Redundancy Policy and Procedures Document – Part B. Also see “Increasing Total Membership of Existing and New Members” below***

- 2.2 This is a change to existing policy as the rule was abolished effective 1 April 2006. This was covered under the “Compensatory Added Years Rule”. The old pension enhancements allowed for increasing benefits up to a maximum of 6 2/3<sup>rd</sup> years (redundancy) and 10yrs (Efficiency). The amount of enhancement was number of years to age 60 or the maximum, whichever was the lesser.

### 3. Flexible Retirement

- 3.1 If you are over age 50, you may take your benefits whilst still in employment in exchange for reducing your hours and/or grade. This allows for a gradual or phased retirement approach to be adopted and to allow paid work during retirement without financial penalty. This option is exercised only with the employers consent. It should be emphasised that you may receive reduced benefits if you do not meet the 85 year rule or exercise this option before age 65.
- 3.2 If you reduce your hours under the Flexible Working Policy, this does not create an automatic right to a flexible retirement and release of benefits. The council may agree to you reducing your hours but not necessarily allow a flexible retirement. Please be aware that the authority may not agree further applications for flexible retirement working if the original application has been agreed which results in the payment of pension benefits early.
- 3.3 Employers have the discretion under the regulations to waive any reductions in benefits under the regulations. This would of course increase costs for the council in allowing the benefits to be taken early.

**Discretionary Rule – *The authority will exercise its discretion to allow flexible retirement only where it is in both the employees and the authorities' interest to do so. In all cases the financial implications of allowing a flexible retirement will be the main priority.***

**Discretionary Rule – *The authority will not normally waive any reduced benefits that an employee may receive as a result of a flexible retirement and the early release of benefits.***

This is a new element of the regulations effective 1 April 2006. There was no flexible retirement discretionary rule previously. However, the rule relating to the waiver of any reduced benefits has also been applied to other discretions.

### Redundancy Policy

4. As part of the new age discrimination regulations effective 1 October 2006, the government has revised the way a Discretionary Redundancy Payment is calculated. The Council's policy has been amended to reflect this revised calculation and has adopted a multiplier approach as recommended by the Local Government Employers Organisation (LGE). In addition the Council's policy reflects the approach to be taken in a redundancy situation and the processes that would apply. The Policy is divided into 3 main parts covering the process, a general guide to redundancy payments – statutory and discretionary (Part A) and The Local Government Pension Scheme – A guide to Benefit Details (Part B).
- 4.1 As part of the new regulations all references to age and age restrictions which cannot be objectively or legally justified regarding redundancy pay have been removed from the policy.

## **Main Changes**

5. The authority has previously agreed to pay an enhanced redundancy payment if an employee is made redundant before aged 50 years OR is over age 50 years but is not a member of the Local Government Pension Scheme (LGPS). The age 50 years is the point an employee would be entitled to any pension benefits under a redundancy or efficiency situation.
- 6.1 Previously the rules stipulated that if an authority was to pay an enhanced redundancy payment in place of the statutory payment then the lesser of the following would apply:
  - (a) 66 Weeks Pay
  - (b) The period between the leaving date and the nominal normal retirement date in the LGPS (age 65), represented as weeks times weekly pay.
  - (c) Period between age at commencement of employment and current age with enhancements applied to the period, depending upon age.

These rules are age discriminatory and have been removed.

- 6.2 The LGE organisation recommended that authorities adopted a revised criterion for calculating enhanced redundancy pay, with the actual methodology at the employer's discretion. The only rules were that they would be applied to all employees equally and the value of the payment must not exceed 104 weeks pay.
- 6.3 The LGE provided a number of formulae that authorities may wish to adopt as these would comply with the new regulations. After examining and running various scenarios, to ensure fairness between the benefits that an employee would receive at age 50 with pension benefits and one at say age 49 with the same service and salary but no pension benefits, a combination of enhancing the number of weeks and enhancing the initial sum is recommended.
- 6.4 The formula that would be applied is:
  - (a) Using the statutory redundancy table the weeks would be enhanced by a factor of 2.
  - (b) The calculated initial redundancy sum would then be increased by a factor of 3.

An example of this calculation is shown in the policy under the section "Part A".

- 6.5 In addition to the revised discretionary enhanced payment all references to age limits has been removed. Employees over the age of 65 will be entitled to redundancy payment if the situation should arise.

## **Legal Implications**

The policies are intended to translate legal obligations into organisational practices. No further observations are needed at this stage.

## **Financial Implications**

No direct financial implications at this stage. Individual pension decisions will be evaluated on a case by case basis.