

CHESHIRE EAST

CABINET

Date of meeting: 24 March 2009
Report of: Head of HR and Organisational Development
Title: Pension Discretions

1.0 Purpose of Report

- 1.1 To consider the approach to the use of the Pension Discretions in relation to the Local Government Pension Scheme for Cheshire East.
- 1.2 At a later date the Council may wish to review the Teachers Pension Scheme discretionary provisions. However, as currently only the County Council employ teachers, there is only a policy in place which can continue in the new Council. In relation to the Local Government Pension Scheme [LGPS], there are different arrangements in place and the Council needs to agree a way forward for new employees and for staff transferring into Cheshire East.

2.0 Decision Required

- 2.1 To agree the adoption of the Pension Discretions for the LGPS to apply to all non teaching employees of Cheshire East, as set out in Appendix 1 to this report.

3.0 Financial Implications for Transitional Costs

- 3.1 There will be no financial costs in 2008/9.

4.0 Financial Implications 2009/10 and beyond

- 4.1 The main cost driver relates to redundancy provisions and these have already been agreed by Cheshire East. The proposals will avoid additional costs being incurred where possible. The exception to this relates to the proposal to adopt a more generous approach to flexible retirement. The reason for this is to facilitate the relocation of staff to Cheshire East. As it is not possible to predict the number and type of cases which may occur in relation to pension discretions, it is not possible to provide a financial estimate of the impact of the proposals. It is therefore recommended that they should be kept under regular review.

5.0 Legal Implications

- 5.1 There is a legal requirement to publish a policy statement on the Council's approach to the certain specified pension discretions.
- 5.2 There is some lack of clarity around whether TUPE covers some of the application of pension discretions adopted by the existing Councils. In the end it is an issue for an Employment Tribunal to decide if a case is raised.

- 5.3 In reality it is unlikely to be a major issue as Crewe, Macclesfield and the County Council's current provisions are very similar (and what the new proposals are based on) so the question should not arise in relation to those employees. In terms of Congleton, their policy statement is out-of-date (pre age discrimination legislation and pre all the recent changes to the LGPS) - so most could not be applied and would have to be up dated. So again an argument for TUPE to apply would be difficult.
- 5.4 In any case, the proposals do allow a degree of discretion which should enable the new Council to honour any TUPE requirements should this prove necessary.

6.0 Background

- 6.1 The new Council will be required to publish a policy statement on:
- the power to increase total membership of active members (augmentation of service);
 - the power to award additional pension (of up to £5,000 per year);
 - flexible retirement ; and
 - choice of early payment of pension.
- 6.2 There is no requirement to publish a policy statement on the following discretions, but it is advisable to have an agreed approach:
- contributions payable by active members (banding policy);
 - re-employed and rejoining deferred members;
 - applications to make absence contributions;
 - inward transfer of pension rights;
 - final pay: fees;
 - early leavers – ill health; and
 - early payment of pension – ill health.
- 6.3 There are different approaches in the four existing Councils to some of these provisions. Some have set arrangements whilst others decide each individual case on its merits. There is therefore a need for the new Council to decide its policy.

7.0 Proposals and Options

- 7.1 As 85% plus of the workforce are covered by the County Council's policy on early retirement and pension discretions, using these as the basis of the new provisions has much to recommend it. It is possible to build in a discretion to vary in exceptional circumstances which should enable any TUPE related issues to be addressed should this prove necessary.
- 7.2 Attached as Appendix 1 is a suggested approach based on the County Council's approach to the discretions outlined in Paragraph 6 above.
- 7.3 As stated above, the provisions in Macclesfield and Crewe and Nantwich Borough Councils are very similar. Congleton have not reviewed their policy since the Age Discrimination legislation was passed or in the light of the changes to the LGPS in 2008. They are therefore out of date and potentially discriminatory and would require change in any case.

8.0 Trade Union Consultation

- 8.1 The trade unions have been consulted on the proposals. They have indicated that they will support the proposals provided that there is a facility to address any TUPE issues which may be deemed to apply.

9.0 Overview of Day One, Year One and Term One Issues

- 9.1 The above approach would ensure that the Council complied with the requirements to publish a policy statement and would provide an approach to dealing pension questions until a more detailed review is carried out.

10.0 Reason for recommendation

- 10.1 To ensure appropriate pension provisions are in place in the new Council.

For further information:

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Background Documents:

*Documents are available for inspection at:
Westfields, Middlewich Road, Sandbach
Cheshire CW11 1HZ*

APPROACH TO USE OF PENSION DISCRETIONS

1. **Power to increase total membership of active members (augmentation of service)**

The Council has agreed separately to adopt this provision to enable redundant employees to purchase additional service with their additional redundancy payment.

It is recommended that the power to increase total membership is not used in any other cases (for example retirement on the grounds of the efficiency of the service) except in exceptional circumstances.

2. **Power to award additional pension (of up to £5,000 per year)**

It is recommended this provision is not adopted, except in exceptional circumstances.

3. **Flexible retirement**

It is recommended that the following is adopted

Employees aged 55 and above (age 50 for employees in the scheme prior to 31 March 2008, who retire before 1 April 2010) may apply to have their hours and/or their pay grade reduced and to seek agreement to early release to some or all of their pension.

The request can be considered if;

EITHER their substantive grade reduces by a minimum of 2 grades (e.g. Grade 6 to Grade 4)

AND/OR their contract hours reduce by a minimum of 1/5

AND at the same time, the employee requests early release of their pension.

If agreed they will receive payment of all of their pension on an actuarially reduced basis, unless they are in the protected group of employees covered by what was Regulation 31

4. **Choice of early payment of pension.**

It is recommended that early release of pension to ex employees is not agreed except on compassionate grounds.

5. **Contributions payable by active members.**

It is recommend that employees are allocated to a band once a year from 1st April and subsequently only if their contract changes permanently, i.e. promotion or down grading. If an employee receives a mid year grade increment or a late pay award this to be picked up the following April.

6. **Re-employed and rejoining deferred members.**

It is recommended that extensions to the 12 month period for aggregating current membership are not generally considered, except in exceptional circumstances.

7. **Applications to make absence contributions**

It is recommended that extensions to the 30 day period for making applications to pay relevant contributions following absence are not generally considered, except in exceptional circumstances.

8. **Inward transfer of pension rights.**

It is recommended that extensions to the 12 month period transfer pension values are not generally considered, except in exceptional circumstances.

9. **Final pay: fees**

It is recommended that the discretion to allow a fee earner to average all fees in a three year period ending on 31st March in the last ten year period is not adopted and the three years prior to the termination date be used.

10. **Early leavers – ill health**

It is recommended that the following be applied:

First Tier - permanently incapable of any gainful employment but are NOT likely to work before Normal Retirement Age (100% enhancement to accrued retirement benefits).

Second Tier - permanently incapable of any alternative gainful employment within a reasonable period of time, but is likely to be so capable before the age of 65 (25% enhancement to accrued retirement benefits).

Third Tier - permanently incapable of their local authority employment but are judged by an occupational health practitioner to be capable of gainful employment within a reasonable period after leaving employment (pension equivalent to the members accrued benefits at the point of ill health retirement)

Definitions - Reasonable Period of time is defined as a period of 3 years, and,
Gainful Employment is defined as paid employment for not less than 30hrs in each week for a period of not less than 12 months.

11. **Early payment of pension – ill health.**

It is recommend that requests from ex-employees with deferred benefits who seek early release of their pension on the grounds of ill health be considered in accordance with the guidance issued by the Department of Communities and Local Government.