

CHESHIRE EAST COUNCIL

Staffing Committee

Date of Meeting: 5th July 2016
Report of: Head of Strategic HR
Subject/Title: Revisions to Human Resources Policy:
Pension Discretions Policy (post 1st April 2014)

1.0 Report Summary

- 1.1 This report advises Staffing Committee of proposed minor changes to the current Pensions Discretion Policy. Approval is sought to the revised policy. The changes are summarised in appendix 1 attached to this report.
- 1.2 The Member and Officer Working Group, which was established for the purpose of working collectively through the options and issues around the pension discretions has put forward the recommendations contained within this report.
- 1.3 Staffing Committee should note that following approval, the Pension Discretions Policy must be published on centranet for employee's access and the revisions to the Scheme must be sent to the Pension Fund administrators within one month of its adoption. The Policy has to be published for 30 days before being actioned.

2.0 Recommendation

- 2.1 That Staffing Committee approve the revised policy document in Appendix 2.

3.0 Reasons for Recommendations

- 3.1 Employer Discretions were a new concept, introduced in the 2008 scheme which ran for 6 years (01/04/08 – 31/03/14). The concept of discretions was introduced to give employers more control and flexibility in the implementation of the Local Government Pension scheme. The current Pension Discretions Policy was first approved in June 2014 following the introduction of new pension legislation which further revised the pension scheme. As a result of the changes to the scheme, the Council is currently required to have both pre 2014 and post 2014 discretion policies in place. In addition, under the requirements of the Pension Regulations, the Council is required to update the Pension Discretions Policy on a regular basis.
- 3.3 The revisions to the policy take into account the business needs of the Council and interpretation of the pension regulations since introduction.

- 3.4 The Council is required under the Pension Scheme Regulations to publish its position in relation to five key discretions, and its position in relation to injury allowance. The recommended policy fulfils this requirement whilst also offering useful information in relation to other aspects of the scheme.
- 3.5 The recognised Trade Unions have been fully consulted and commented on the proposed draft policy, providing constructive feedback and insights which will be helpful for Officers. The Trade Unions have expressed some disappointment around the Council's decision not to exercise its discretion to contribute to the APC scheme under the APCs arrangement and the Councils continued position not to waive some or all of the actuarial reduction relating to flexible retirement.

4.0 Wards Affected

- 4.1 Not applicable

5.0 Local Ward Members

- 5.1 Not applicable

6.0 Policy Implications

- 6.1 The changes to the Pension Discretions Policy will ensure the Council has a complete set of pension discretions which reflects current practice, and supports the direction of the organisation going forward.
- 6.2 The changes ensure the Council's policy is not only effective in its usage but will also meet current pension regulations and the Pension Authorities expectations. The revised policy sets out a written statement of the Council on all the pension discretions required to be published by the scheme regulations, and also contains useful information in relation to other aspects of the scheme. The revised policy also clarifies the appeal mechanism.
- 6.3 The revisions have been shared with Cheshire Pension Fund prior to being submitted for approval to this Committee and are considered acceptable.
- 6.4 A review of the pre - 2014 discretions has been undertaken, and it has been determined that there is no requirement to make amendments to the pre 2014 document. A table outlining the changes to the discretions can be viewed in appendix 1.

7.0 Financial Implications

- 7.1 There are no noted financial implications noted.

8.0 Legal Implications

8.1 The Local Government Pension Regulations 2012 require the Council to formulate, publish and keep under review a policy statement regarding the exercise of discretions under the Local Government Pensions Scheme in respect of:

- Regulation 1- Transitional protections,
- Regulation 16- Ability to contribute to a shared cost additional pension contribution scheme,
- Regulation 30- Ability to award flexible retirement and waive actuarial reduction,
- Regulation 30- Ability to waive some or all of early retirement pension reduction on benefits if the member retires before normal pension age,
- Regulation 31- Ability to grant additional pension by reason of redundancy or business efficiency.

There is also a requirement to publish a position in relation to injury allowances.

8.2 In reviewing the policy, the Council must have regard to the extent to which the exercise of their discretionary powers (in accordance with the policy) unless properly limited, could lead to a serious loss of confidence in the public service and be satisfied that the policy is workable, affordable and reasonable, having regard to the foreseeable costs.

9.0 Risk Management

9.1 A clear and accessible Pension Discretion Policy will help mitigate the risk of the Council being challenged at appeal hearings and inform employees of the Councils policies in relation to areas that allow pension discretion.

9.2 Regular reviews of the policy ensure the Council is applying its policies correctly in relation to the ever increasing complexities of pension regulation and comply with the Cheshire Pension fund guidelines and requirements.

9.3 The controls underpinning the policy are via the Staffing Officer Panel or Voluntary Redundancy Panel, or as determined by the Council constitution.

9.4 The policy sets out the right of appeal to the Cheshire Pension Fund IDRP (Internal Dispute Resolution Procedure.)

10.0 Summary of changes

10.1 The changes to the Pension Discretions Policy are minor, and bring in line current practice with published policy. For ease of reference the changes to the existing policy have summarised as follows with further information in Appendix 1.

- Format changed to differentiate between the five compulsory discretions (including a statement in relation to injury allowances) and additional information over which the Council does not have discretion.
- Inclusion of a section on Injury Allowances and publication of Cheshire East Council's position with regards this discretion.
- Power to award additional pension and power for employer to purchase Additional Pension Contributions (APC's) - the Council is required to publish a position in relation to these discretions. The Council will not exercise these discretions as it is not likely they would be a useful tool in the organisation.
- Regulation 30 - clarification that this discretion will only be used on 'Compassionate grounds'. This aligns policy with practice and confirms the Council's position.
- Regulation 1 - this has been included as this is a key discretion where the Council is required to publish a position.
- Regulation 16 - this has been included as this is a key discretion where the Council is required to publish a position. It also includes a statement in line with the requirements of the pension scheme that the Council will ensure the employee is in good health if they want to purchase additional pension contributions (APC's). It also confirms that the Council will not contribute to APC's.
- Right of Appeal - Clarification of the employee's right of appeal to the Internal Dispute Resolution Procedure (IDRP) for any decisions made under this policy.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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APPENDIX 1

Summary of current and proposed post 2014 Pension Discretion Policy changes.

Pre 2014 discretions	Current post 2014 discretions	Proposed post 2014 discretions
Final Pay – the final pay figure used for the pension calculation will be based on the amount paid for the final 3 years salary prior to the termination date rather than 10 years	This was removed as the scheme changed to a Career Average Scheme. This meant the final salary was not used to calculate benefits, but used a calculation based on the career average salary.	No change. The basis for pay calculation in the scheme rules remains unaltered.
Power to increase total membership (augmentation) - can be used in exceptional circumstances.	This discretion was removed from the scheme as it was not included within pension regulations for the current Career Average Scheme post 2014.	No change
Power to award additional pension (up to £5,000 pa), This will not be used other than in exceptional circumstances.	Regulation 31 - This discretion remained in the discretions policy (and the upper limit had increased).	Remove. The policy previously stated this would only ever be used in exceptional circumstances.
	Regulation 31- Ability to grant additional pension to an active member or within 6 months of ceasing to be an active member by reason of redundancy or business efficiency. There is a requirement to publish our position.	State our intention that the Council will agree this provision but will not consider funding in part with the employee of wholly.
Flexible retirement - the same as current discretions	Regulation 30 - Ability to award flexible retirement on an actuarially reduced basis. This discretion was agreed subject to Staffing Officer Panel approval. There is a requirement to publish our position.	No change
Early release of pension - used the term 'compassionate grounds'	Regulation 30 - Ability to waive some or all of early retirement reduction on benefits if a member retires before normal retirement age. This discretion was exercised, with release on 'appropriate grounds'. There is a requirement to publish our position.	The discretion will remain, but the wording is to be changed to clarify it will be exercised only on 'compassionate grounds'.
Contribution bandings- as current discretions	Regulation 9 - The contributions payable by active members, or bandings allocated for contribution rates	There is no requirement to publish our position on this, but it is useful information. It has been moved to the information section. A right of appeal against the banding has also been added.
Aggregation of service - as current	Regulation 22 - Re-employed and re-joining deferred members- (aggregation of service). Aggregation of service is automatic. The employee has 12 months to action this.	No change. There is no requirement to publish our position on this, but it is useful information. It has been moved to the information section.

Pre 2014 discretions	Current post 2014 discretions	Proposed post 2014 discretions
Inward transfer of pension rights- as current	Regulation 100 - Inward transfer of pension rights. An employee has 12 months to transfer pension in to the scheme from a previous scheme.	No change. There is no requirement to publish our position on this, but it is useful information. It has been moved to the information section.
	Regulation 35 - Early leavers- ill health.	No change. There is no requirement to publish our position on this, but it is useful information. It has been moved to the information section.
		Regulation 1- Transitional protections- Power of employing authority to 'switch on' the 85 year rule for a member voluntarily drawing benefits on or after age 55 and before age 60. This has been included as there is a requirement to publish this discretion as part of transitional protections. It is proposed not to consider using this discretion.
		Regulation 16 - Ability to contribute to a shared cost additional pension contribution (APC) scheme. This has been included as there is a requirement to publish if we will exercise this discretion. It also includes scheme requirement to state the employee is in good health if they want to purchase APC's. Employer will not exercise discretion to contribute to APC's.

Appendix 2 – proposed pension Discretions Policy



Human Resources Policy

Pension Discretions Policy – Post 1st April 2014 membership of the Local Government Pension Scheme (LGPS).

Scope

This policy applies to all employees of Cheshire East Borough Council who are eligible for membership of the Local Government Pension Scheme and have membership on or after 1st April 2014.

The exercise of discretions will be subject to a decision of the Council or of a Committee or Panel with appropriate delegated powers.

Policy Statement

To operate pensions discretions in a way that is fair and equitable to employees in a way that manages the liabilities of the pension fund in the overall interests of its members and of the Council whilst ensuring that it is suitable, reasonable and affordable and fosters confidence in public service.

Principles

There is a legal requirement for the Council to publish a policy statement on its approach to specified pensions discretions.

The policy addresses the discretions available to the Council under the Local Government Pension Scheme (LGPS) Regulations 2013 and Local Government (Early Termination of Employment (England and Wales) Discretionary Compensation Regulations 2006 and also sets out the Council's approach to other specified pensions discretions.

Definitions

Active member: an employee who is currently a member of the Council's Pension Scheme.

Deferred member: an employee or former employee who has benefits in the Council's pension scheme from an earlier period of service.

In respect of retirements on the grounds of ill health, 'Gainful Employment' is defined as paid employment for a period of not less than 30 hours in each week for a period of not less than 12 months.

Normal pension age/ normal retirement age: the normal scheme retirement age is linked to your State Pension age, or age 65 if this is later.

Compassionate grounds: For the purpose of this policy, the Council will generally define 'compassionate grounds' to mean caring responsibilities where the employee/ ex employee is the sole or main carer, providing substantial caring support to a partner, dependant or close family member. The Council will require evidence to support any application made on this basis.

Controls

Each application made in relation to the discretionary aspects of the Pension Scheme will be considered in line with this Policy. Where there is a financial implication for the Council the VR or Staffing Officer Panel will consider each application on an individual basis, giving consideration to the business case presented, affordability, value for money and equality issues.

Pensions Discretions

Regulation 1- Transitional Protections

Power of employing authority to 'switch on' the 85 year rule for a member voluntarily drawing benefits on or after age 55 and before age 60.

An employee may voluntarily retire from age 55. The Council will not consider 'switching on' protection to the 85 year rule for members who retire from age 55 but before age 60, and will therefore not meet additional retirement costs under this regulation.

Regulation 16

Ability to contribute to a shared cost additional pension contribution (APC) scheme.

Employees may elect to pay additional pension contributions into a scheme established by the Pension Fund. The Council has not exercised its discretion to contribute to this APC scheme under the APCs arrangement.

Applications by employees to buy extra pension through APCs are available for scheme members. In order to comply with scheme requirements, applications must be supported by the Council to verify the employee is in good health.

Regulation 30

Ability to award flexible retirement and waive actuarial reduction.

Employees aged 55 and above may apply to reduce their hours of work and/or their pay grade and to seek agreement to early release to some, or all of their pension.

Requests will be considered if:

Either their substantive grade reduces by a minimum of 2 grades (e.g. grade 6 to grade 4) or equivalent, and/or their contract hours reduce by a minimum of 1/5th and at the same time the employee requests early release of their pension.

Where flexible retirement requests are approved and pension is released, payment of all of the pension will be on an actuarially reduced basis, unless they are in the protected group of employees as covered in the Local Government Pension Scheme Regulations.

Regulation 30

Ability to waive some or all of early retirement reduction on benefits if a member retires before Normal Pension Age (NPA)- for both active and deferred members.

Policy for Active and Deferred Members—

The Council will generally only exercise this discretion on *compassionate grounds* taking into account the economic impact on the Council. Benefits released under this discretion will be at an unreduced rate.

Regulation 31

Ability to grant additional pension to an active member or within 6 months of ceasing to be an active member by reason of redundancy or business efficiency.

The Council has agreed this provision to enable an active scheme member or a member within 6 months of leaving to purchase additional membership where their employment was terminated on the grounds of redundancy or business efficiency.

The Council will not consider funding in part with the employee or wholly an APC purchase.

Local Government (Discretionary Payments) (Injury Allowances)

Under the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011 Scheme employers must formulate, publish and keep under review a policy on:

a) whether or not to make an injury award to those who sustain an injury or contract a disease as a result of anything they were required to do in performing the duties of their job and in consequence of which they:

- suffer a reduction remuneration, or

- cease to be employed as a result of an incapacity which is likely to be permanent and which was caused by the injury or disease, or
- die leaving a surviving spouse, civil partner or dependant, and

b) if the Scheme employer has a policy to make such payments, how it will determine the amount of injury allowance to be paid

Cheshire East Council does not use the employer's discretion to make any injury allowances as outlined in the Regulations.

Additional information

The pension regulations in this section of the policy are provided for clarity only. It should be noted that the Council does not have any discretion in these areas.

Regulation 9

Contributions payable by active members

Employees will be allocated to a band once a year from 1 April and subsequently only if their contract changes permanently i.e. promotion, down grading or a change in hours of work. Where an employee receives a mid-year grade increment or a late pay award, this will be picked up when the band is reviewed in the following April.

Where employees work additional hours or overtime the Council will allocate the band by in accordance with actual earnings made in that year and again change the following 1st April.

Employees on casual contracts will be allocated an estimated banding at the beginning of their assignment based on the number of hours the employee is likely to work. The banding will be reviewed annually, or earlier at the employee's request.

Appeals against band allocation must be lodged within 6 months of the date of allocation.

Regulation 16

Applications to buy back Additional Pension Contributions (APC's) for lost pension during periods of absence.

An employee may elect, within 30 days of authorised unpaid absence, including additional child related leave, to make up lost contributions. If the election is received within 30 days of return to work the cost will be shared between the employee (1/3rd) and the employer (2/3rds)

If the absence was due to strike, or the election to pay is received after 30 days of the return to work, the full cost of purchasing lost pension will be met by the employee who must enter into an Additional Pension Contribution Agreement directly with the pensions provider.

Regulation 22

Re-employed and re-joining deferred members.

Aggregation of current and previous service will be automatic where the employee has left and re-joined in the 2014 Scheme, unless the employee chooses not to aggregate the service.

If the member does not wish to aggregate service, this decision must be made within 12 months of joining the scheme. Extensions to the 12 month period will not generally be considered, other than in exceptional circumstances.

Regulation 35

Early Leavers – Ill Health

Under this regulation, an employee must have a qualifying period of *two years* pensionable service, and be certified by an Occupational Health Practitioner as incapable of carrying out their contractual role. To be eligible an employee must be certified by an Independent Registered Medical Practitioner (IRMP) that they are, *as a result of ill-health or infirmity of mind or body, are permanently incapable of discharging efficiently the duties of their employment* and that they are *not immediately capable of undertaking any gainful employment* (whether in Local Government or otherwise).

The employee will then be entitled to one of three levels of benefit as determined by the Local Government Pensions Regulations. The employer will decide the appropriate tier after consideration of the medical information available, and according to the likelihood of the employee obtaining gainful employment as certified by the IRMP. Agreement to release of pension on these grounds will be subject to approval of the Staffing Officer Panel.

Regulation 100

Inward transfer of pension rights

An employee may elect to transfer rights from a previous pension scheme within 12 months of joining the Local Government Pension Scheme. Extension to the 12 month period to transfer pension values will not be generally considered, other than in exceptional circumstance, and will only be agreed with joint approval from the Employer and Administering Authority.

Early payment of pension on grounds of ill health- ex-employees

Requests from ex employees with deferred benefits who seek early release of their pension on the grounds of ill health will be referred to an IRMP who will certify whether or not the ex employee is permanently incapable of undertaking the duties of their former employment because of ill health and that they are incapable of immediately obtaining any gainful employment. Release of pension on these grounds is subject to approval of the Staffing Officer Panel.

Equality

Cheshire East Council will ensure that, when implementing this policy, no employee will be disadvantaged on the basis of age, disability, gender reassignment, marital status or civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation. This means that the policy may need to be adjusted to cater for the specific needs of an individual, including the provision of information in alternative formats where necessary.

Monitoring and Review

The policy will be reviewed in the light of operating experience and/or changes in legislation.

Data relating to this policy will be collated and monitored periodically to ensure that the Policy is operating fairly, consistently and effectively. Issues that are identified from the data will be dealt with appropriately.

Right of Appeal

Employees who are dissatisfied with a decision made under this scheme or that a decision has not been made under this scheme have a right to complain by using the Cheshire Pension Fund IDR (Internal Dispute Resolution Procedure).

Prepared by:	HR Policy and Strategy Team
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	July 2016 -Regs require regular review
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