



PENSIONS POLICY – APPLICATION OF EMPLOYERS DISCRETION

Joint Report of the Service Director of Business Improvement & Corporate Director of Children's & Young People's Services

1. Purpose of Report

- 1.1 To update Cabinet on changes to Local Government and Teachers Pension Schemes, the impact on the Council and its employees and seek a decision on the future application of "added years" pension discretion for teachers.

2. Summary

- 2.1 Recent statutory and policy changes have created an anomaly between discretionary pensions provision between teaching and non-teaching staff. Cabinet are asked to decide on the preferred way forward.

3. Recommendations

- 3.1 Cabinet to decide on the preferred way forward to address current anomalies on the application of employer discretion for teaching and non-teaching staff in cases of early retirement for reasons of redundancy or efficiency, giving consideration to the options as set out in 6.7.

4. Consultation

- 4.1 Cabinet should note that a formal response from the Teachers Union representatives to previous consultation proposals is attached at Appendix A.

The minutes of Scrutiny Committee of 15th March referring to the Teachers Union response are set out below:

"The Corporate Director, Children and Young Peoples' Services submits a report providing the Committee with an update on the consultation process for withdrawing added years from the early retirement policy for teachers. The Committee is recommended to note the progress of the consultation process."

Minutes:

The Corporate Director of Children and Young People's Services submitted a report providing the Committee with an update on the consultation process for withdrawing added years from the early retirement policy for teachers

Comments of the teaching unions were circulated to committee members.

A member of the committee queried whether it would be possible to accede to the proposal by the teaching unions where there would be a sliding scale where more years of service meant that more added pension years would be possible. The Service Director, Business Improvement commented that the Cabinet had previously decided that it wanted consistency across the Council. Their proposal would not be in line with this approach.

The committee member commented further that it would be a good idea to develop costs for the likely further redundancies arising from New College and see the differentials between the current Cabinet approach and the teaching unions approach. He felt that it would be useful to have some form of discretionary powers available so good teachers didn't leave the area to teach where pension terms were more favourable.

In response to a question, the Service Director, Business Improvement commented that the national trend was generally to reduce the provision of discretion on added years in cases of early retirements.

Members of the Committee agreed that it was important to retain good teachers.

RESOLVED:

That the Cabinet be requested to give serious consideration to the proposal by the Teaching Unions for a sliding scale of added pension years based on years of service as this committee believes it is important to retain good teachers and there should be options available for assisting in negotiations to do this."

5. Report

- 5.1 Increasing life expectancy and changes in work organisation has led to pressures on employees occupational pension scheme. Council employees are mainly covered by the Local Government Pension Scheme (LGPS) and Teachers are covered by the Teachers Pension Scheme (TPS).
- 5.2 National consultation over the past few years has led to changes in the operation of both the LGPS and the TPS to ensure long-term affordability and a sustainable tool to support recruitment and retention of staff in local government. In addition internal Council reviews of pension scheme provision, including addressing inconsistency in the application of employer discretions has also been carried out.
- 5.3 The Council is liable for costs to the pension scheme for actuarial adjustments in cases of early pension release. These costs increase where added years or other discretionary payments are made.
- 5.4 Prior to September 2006, the Council provided for discretionary payments to Council employees in certain circumstances. The main discretion was the application of

“added years” on an employees pension in circumstances where an employee retired early for reasons of redundancy or in the efficient interests of the service. Our policy was to provide for five additional years or up to five additional years, subject to an employee meeting the qualifying conditions (e.g. aged over 50).

- 5.5 The purpose of added years was to recognise the service of the employee(s) and also to act as an incentive for volunteers to come forward where there was a surplus of employees in a group following a budget reduction and/or organisational review, supporting a policy of avoiding compulsory redundancies where possible.
- 5.6 From 1st October 2006, the facility for Councils to grant added years was terminated for age discrimination reasons. Around the same time, concern expressed by the then Members of the Employees Committee at the significant cost of the Council of “added years” led to a request for a review of Council policy.
- 5.7 National proposals at this time introduced a new discretion as an alternative to added years, a compensation payment equivalent to up to 2 years salary. Pension scheme provision also includes additional employer discretions, including “augmentation” that has the same practical effect as “added years”.
- 5.8 As a result of this review, Cabinet on 4th September 2006 agreed to remove the discretion for “added years” in the knowledge that it would be illegal with effect from October 2006 (1st November on application). They also agreed to not apply any further discretions that are available under Pension Scheme regulations (including the new compensation discretion and augmentation).
- 5.9 Consequently employees who are eligible for early retirement for reasons of redundancy or efficiency are entitled to early access to their pension with no further enhancements (they may be separately entitled to a redundancy payment under separate legislation/policy). This policy has been in practice since 1st October 2006 for employees covered by the Local Government Pension Scheme.

6. Teachers

- 6.1 The Cabinet meeting of the 4th September 2006 also agreed that in principle the decision to remove added years and not apply any alternative discretionary enhancements should also apply to teachers.
- 6.2 Because the application of discretion for teachers is covered by separate legislation and policy, a formal consultation process was required to effect change. Furthermore, whilst the removal of added years for non-teachers was duly confirmed in legislation in 2006, the same did not apply to teachers. Thus added years are still available under the Teachers Pension Scheme, although there is an obligation to review this.
- 6.3 Therefore, the Teacher Unions were subject to a period of consultation that ended in March 2007. Attached at Appendix A is the response from the Teachers Union representative to the consultation proposals. This makes the case for retention of added years for teachers, based on length of service within Leicester City based schools. This is based on the current policy as it applies to Teachers..
- 6.4 Cabinet are asked to decide how this issue should be moved forward. The current situation is that there is a clear inconsistency between the Council policy for teaching and non-teaching staff, with the associated additional costs of continued provision of added years for teachers.

- 6.5 Cabinet should note that school support staff are provided for under the Local Government Pension Scheme. Therefore they are affected quite differently from Teachers, in situations where they may be part of the same review in a school that results in redundancy and early retirement.
- 6.6 The general trend amongst local authorities is to reduce the level of benefits available through employer discretion including added years. The District Auditor has previously recommended action to ensure greater consistency on the application of Council policy in this area.
- 6.7 The policy options can be summarised as:
- a) Remove the current provision for teachers on the basis that consistency between teaching and non-teaching staff is important. This would mean that no discretion would apply in any case and therefore no “leverage” to help in the management of downsizing or displacement.
 - b) Allow the inconsistency to continue based on a policy that recognises teachers as a “special case”.
 - c) An alternative approach that might go some way to recognising the case being put by Teachers Unions, but also aiming for consistency with non-Teaching staff by the application of alternative discretions (e.g. augmentation, compensation).

7. Financial Implications

- 7.1 The costs of redundancies and premature retirements for school-based staff and certain other staff within the CYPS Department are now funded from the Dedicated Schools Grant (DSG), which is a ring-fenced grant from the Government to fund schools and certain school related costs. As such, no direct cost to the City Council's General Fund budgets arises from redundancies and early retirements of such staff, and similarly no saving would accrue to the Council's General Fund from a change in policy. There could be an impact should any staff in the Teachers' Pension Scheme who are not charged to DSG take redundancy or early retirement, although the number of these is expected to be small in most years.
- 7.2 If the current provision were to be removed, then the associated costs would no longer be incurred for new leavers. However, this could lead to consequential costs such as staffing reorganisations being frustrated by staff choosing to remain in post rather than agreeing to termination of their employment, and potentially to the City being less able to recruit the best staff due to more attractive terms and conditions elsewhere. The relative impact of these is a matter of judgement, and the overall most cost-effective way forward is not clear-cut.

Colin Sharpe, Head of CYPS Finance, x7750

8. Legal Implications

- 8.1 Cabinet resolved last year to dis-apply the discretion to pay Added Years to non-teaching staff given the changes in legislation. They also resolved to bring teaching staff in line with this decision but unfortunately as there was no legislation necessitating

that change to teachers' pensions, they should have undergone a consultation exercise before resolving to dis-apply the discretion.

- 8.2 If Cabinet resolve to dis-apply the discretion then this could amount to a change to the Terms & Conditions of the employment contract and would therefore require notice to be given of the proposed change once the consultation/negotiation period has ended.

Alison Mapp, Team Manager / Senior Solicitor, x7059

9. Conclusion

- 9.1 Cabinet should note that further changes to the LGPS are due to take effect from April 2008. A Cabinet report will therefore be needed to address any further policy changes that may be needed in response to this.

10. REPORT AUTHOR

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Response to the Consultation on the withdrawal of the discretionary power to grant Added Years to teachers.

Teachers' Negotiating Committee Teachers' Panel notes with pronounced regret the proposal by the Local Authority to withdraw the facility for teachers to be granted added years as part of their Premature Retirement Compensation package. The use of PRC with added years has served the authority and its schools well over the years, enabling changes in the number of teachers employed to be managed in a humane way and helping to avoid compulsory redundancies. This was particularly the case during the Secondary Review.

TNCTP recognises the pressures that the LA faces in terms of the financial burden that arises from PRC. TNCTP also recognises the desire of the authority to be seen to treat all of its employees equally. However, it is our view that treating all employees equally badly is a poor advertisement for the city. Furthermore, in reality employees cannot simply be seen as a totality. They have different pay and conditions arrangements which necessarily involve a range of differing entitlements. They also face differing demands in the workplace. Teaching is recognised as one of the most stressful occupations in the UK. Given this, we are disappointed that the council has so far declined to acknowledge that it is in its own interests to retain flexibility when dealing with reductions in the school workforce.

We regard having a range of options that can be deployed in the management of workforce contraction as a virtue. Having flexible arrangements enables the LA to respond to problems that arise on a case by case basis rather than on a bureaucratic, 'one size fits all' basis. It is the retention of some of that flexibility that we are seeking, whilst recognising that the current arrangements may no longer be fit for purpose and have had the effect of making what should be a discretion to offer added years into a universal entitlement. Our proposals, detailed below, will, we believe, allow the authority to continue to manage workforce contraction sensitively, to recognise loyal service to the city while at the same time not jeopardising financial stability.

One of the standard means of managing job loss is through redeployment. The Local Authority has a redeployment agreement for teachers which has been in place for many years. However, in practice this agreement is moribund. The employment of teachers in schools is determined by school governing bodies, not by the Local Authority. As a result there is no realistic prospect of redeployment for teachers. Redeployment of teachers became increasingly difficult following the introduction of

Local Management of Schools. This removed the right of a council to determine at which school a teacher was employed. Thus, during the secondary review, while schools did indeed co-operate magnificently by giving prior consideration to staff displaced by the closure of six schools, they were under no obligation to take those teachers. Since then, the situation has become more rigid, so that in practice there is no longer a redeployment scheme for teachers. Whilst the Council has indicated that it will look to redeploy teachers to other posts within the local authority, there are a number of problems with this as an option.

1. There has been very little success with redeployment from a teaching post to another type of post within the council in the past. We have specifically sought such a redeployment in collaboration with Human Resources on several occasions and been unable to find suitable alternative employment.
2. Other types of posts within the council are, by definition, not teaching posts and are therefore neither similar nor comparable to a teaching post. One of the expectations of any redeployment scheme is that staff will be offered a reasonable alternative post that is broadly comparable to the previous post held.
3. The pay and conditions arrangements for other council posts are radically different from those that pertain for teaching posts. A qualified teacher with 10 years experience can expect to be earning £34k even without any management responsibilities in the school. Thus, a teacher in his/her fifties who holds a post of responsibility in a school is likely to be earning up to £40k. The number of posts in this salary bracket that might be available in order to prevent a compulsory redundancy are few and far between.

It is our view, therefore, that teachers employed by Leicester City Council will not be subject to equal treatment by the authority under the proposed new arrangements since they will not have access to the same redeployment opportunities as most other employees. In the absence of an effective redeployment regime, all teachers will have on offer is the choice between voluntary or compulsory redundancy. We do not regard this as an acceptable state of affairs.

We believe that, over time, the absence of incentives to remain working in the city will affect the recruitment and retention of teachers to city schools which, as is well known, in many cases face challenges far greater than those in most other schools, in the county for example. If experienced teachers seek to move to an easier working environment in the knowledge that they will lose nothing by doing so then that can only exacerbate the difficulties of those schools facing the greatest challenges.

An important driver in the LA's desire to end the use of added years has been the recurring calls on the PRC budget by New College. This has been raised with us on a number of occasions by councillors. We recognise the legitimate concerns that the authority has about staff who have worked only briefly for the city benefiting from the added years arrangements. However, we do not regard the total removal of the option to grant added years as an appropriate response. This effectively penalises teachers who have given long service to this city for a situation that is not of their making.

It is worth reflecting on the continued shrinking of New College that has taken place since 1999. Beginning as a projected school of 2,300 (including the sixth form) the school has radically shrunk to the point where it now serves a little over 900 pupils. Indeed the proposed new PAL for the school is 180 giving a maximum main school of 900. If the projected size of year 7 for 2007 is anything to go by, then an intake of 120

for the next few years would be optimistic. This would imply a school of around 600 pupils. Such a dramatic reduction in rolls has inevitably led to redundancies and is likely to continue to do so.

The six teacher associations warned the Leicester City Council that the creation of New College was not only ill-advised but likely to prove a disaster. We warned of the likely consequences in terms of poor behaviour, poor results and a drift of pupils to the county from the Western Park area. We also warned that an extremely large school was unsuitable for the needs of pupils in the New Parks and Braunstone areas. It was the councillors and the LEA officers who chose to ignore our concerns – and those of parents – and proceed with New College. It is deeply regrettable that every single teacher in the city is now being penalised by the same council for one of the consequences of that mistaken and foolhardy decision.

TNC Proposal for Future Management of Early Retirement of Teaching Staff.

In Paragraph 2.2 of the current agreement 'Early Retirement for Teaching Staff'. Delete second sentence and insert.

"This will include an examination of the possibility for a teacher to be redeployed to another post within Leicester City Council.

Voluntary early retirement for reasons of redundancy will not normally attract added years. However, where a school governing body deems that a teacher who has volunteered for early retirement has made a continuing contribution to education in the city through extended loyal service they may nominate that teacher to be considered by Schools Forum for voluntary early retirement with added years.

Voluntary Early Retirement of such a teacher may attract added years on the following scale related to length of service within schools in the city:

Reckonable Service:	Added years.
5-8 years	1
8 years – under 11 years	2
11 years – under 14 years	3
14 years – under 17 years	4
17 years – and over	5

(* This is the current scale but applied only to service in city schools).

Where Schools Forum approves a proposal for an individual teacher to receive PRC with added years this remains at the discretion of Leicester City Council and can only be approved where it is manageable within the PRC budget delegated to Schools Forum or will result in other savings that are reasonably similar to the costs of the added years."

This paper is submitted by the Teachers' side of Teachers' Negotiating Committee. It has been developed and agreed by the association secretaries of ASCL, ATL, NASUWT, NUT and PAT who are all signatories to this document.

Geoff Butler – ASCL.

John Bellamy – ATL.

John Mark – NASUWT.

Jane Rolfe – NUT.

Geraldine Everett – PAT.

It has also been approved by TCC and is signed on behalf of TCC.

Peter Flack – Secretary TCC Teachers' Panel.

March 9th 2007.