

Leicester
City Council

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DECISION TIMETABLE:
Cabinet Meeting

21 July 2003

**Early Retirement Follow-up Report & Exercise of Discretionary Powers
under the Local Government Pension Scheme (LGPS)**

**Report of Town Clerk & Corporate Director of Resources, Access, and
Diversity Department**

1. Purpose of Report

- 1.1 To inform Elected Members of the outcome of the District Auditor's second review of the Council's Early Retirement Policy.
- 1.2 To ask Elected Members to agree changes to the Council's Early Retirement Policy and related Discretionary Powers policy.
- 1.3 To ask Elected Members to form a view on the admission of external bodies to the pension fund.

2. Summary

- 2.1 In 1997/1998 the District Auditor (DA) conducted an in depth case study review of the Council's planning and control of early retirement. The main conclusion of the study was that the Council was making good progress in developing its approach to early retirement. In order to support the Council a number of areas of further improvement were identified. In all the Council was asked to address 13 issues covering all aspects of the management and policy of early retirement.

In 2000/2001 the DA conducted his follow up review to assess the progress the Council had made in implementing the issues identified in the 1997/1998 case study. The main conclusions reached by the DA were that the Council had continued to make good progress in both reducing the number of early retirement cases and in developing its early retirement policy.

Early retirement is a BVPI, and the Council's management of early retirement is now in the top quartile of performance.

Furthermore the DA found that the Council had considered all of the issues that were raised in the previous study and addressed most of them.

- 2.2 The DA did however identify a number of areas for further development including clarifying policy on awarding added years in efficiency cases to achieve greater consistency with redundancy cases, and retaining the financial threshold for member involvement in decision-making.
- 2.3 In addition to addressing the above matters this report also reviews the main employer discretions under Part III of the LGPS Regulations 1997 following requests from management and the Trade Unions

3. Recommendations (or OPTIONS)

Elected Members are asked to:

- 3.1 Note the positive comments made by the DA on the progress the Council has made since 1997/1998 in both reducing the number of early retirement cases and in developing its early retirement policy.
- 3.2 Retain the financial threshold for member involvement in decision-making regarding redundancies and early retirements at £50, 000.
- 3.3 Agree to the waiving of employee contributions for employees who have 40 years LGPS membership between the ages 58 and 60.
- 3.4 Restrict the award of added years in efficiency cases to a maximum of 5 years in all cases.
- 3.5 To re-affirm the Council's existing policy of not allowing employees to retire under "Rule 85", other than in exceptional circumstances, and of not awarding additional pensions benefits to starters or leavers.
- 3.6 Note the pension implications arising from the statutory "Code of Practice on Workforce Matters in Local Authority Service Contracts" issued in March 2003.
- 3.7 Agree that the Council will not support applications for admitted body status from external organisations. The Council, will however, consider (on a case-by-case basis) admitting bodies consisting of functions which have been transferred out of the Council, where employees with existing scheme membership are involuntarily transferred. Employees subsequently recruited to the new body will not be admitted.

- 3.8 Adopt the revised policy statement and guidelines as set out in Appendices 1 and 2 of this report in order to make the above policy changes operative.

4 Headline Financial and legal Implications

4.1 Financial Implications

The financial implications below deal with the most significant aspects of pension policy.

“Pensions Holiday” for employees aged 58-60 with 40 years service

The costs of funding the “Pensions Holiday” will be in the region of £10,000 per annum.

“Rule 85”

The cost of applying the 85-year rule is significant. The UK Steering Group gave three examples of the cost of applying the 85-year rule:

Age 52 with 33 years service = 3.5 times salary.

Age 55 with 30 years service = 2.5 times salary.

Age 58 with 27 years service = 1.5 times salary.

It is therefore not inconceivable that one person could cost the pension fund in excess of £100k. The position could be much worse now because of stock market performance. The value of the Leicestershire fund has deteriorated with our contribution rate for 2003/04 (220%) being 47% higher than in 1998/9 (150%) when the discretion to allow carers who satisfied the 85-year rule was first approved.

Admitted Bodies

Costs of supporting admitted bodies would be substantial given the need for the Council to guarantee their liabilities, and the fact that such bodies could exist for only a short period and leave pension liabilities behind for many decades. If bodies were admitted, the Council could need to exercise control over pay rises to staff (particularly large awards to staff approaching retirement) and early retirement.

The costs of providing a final salary pension scheme have been increasing in recent years, as a consequence of increased longevity, tax changes affecting dividends, and general stock market performance. Consequently, large numbers of such schemes in the private sector have closed down.

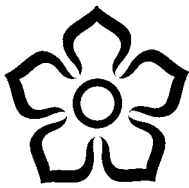
The Council should ensure that any decision to increase costs still further should be justifiable on strong grounds of merit.

4.2 Legal Implications.

Due to the complex nature of the LGPS regulations legal advice has been obtained from the Council's specialist retained solicitors Sharpe Pritchard on the following matters: the pension rights of transferred employees, the pension rights of new starters following the transfer of a service/award of a contract, and the right of the Council not to support requests from quasi-local government bodies for admitted body status where they are not transferees. The recommendations contained within this report are in line with the legal advice received. Copies of the legal advice are available from the Head of Human Resources, RAD.

5. Report Author/Officer to contact:

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FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:
Cabinet Meeting

21 July 2003

**Early Retirement Follow-up Report & Exercise of Discretionary Powers
under the Local Government Pension Scheme**

SUPPORTING INFORMATION

1. Report

1.1 Revised Policy Statement. The Council is required to issue a Policy Statement demonstrating how it intends to exercise its discretions under the various regulations of the LGPS. This was last done using "In Contacts" in 1998. It has now become necessary to revise and re-issue the Policy Statement for those regulations where requests have been made for clarification or a revision of the Council's discretion. Attached at Appendix 1 is a revised Policy Statement for Elected Members to consider. An explanation of the regulation and any changes to the regulation follows.

1.2 Waiving of Employee Contributions after 40 Years Service (Reg. 15).

Under this regulation the Council has the discretion to reduce/waive employee contributions after 40 years LGPS membership (excluding transfers in from non-LGPS schemes). This is often called the "Pensions Holiday". The reason for doing so is that such contributions are "lost" to the employee, that is, their pension is restricted to entitlement based on 40 years service.

During the last policy review it was estimated that this would cost £82,500 per annum. However, the current estimate is that the cost would be in the region of £10,000 per annum and it is unlikely that more than 5 employees would be eligible in any one year.

It is therefore recommended that the Council reverse its policy and waive employee contributions for employee's who have 40 years

LGPS membership between the ages 58 and 60, a maximum of two years. In adopting this policy it must be recognised that the employer is responsible for making good the employees share of the costs to the pension fund, as well as maintaining its own employer contributions to the pension fund, as if such a policy did not exist.

1.3 **Early Payment of Pension Scheme Benefits at the Request of a Scheme Member (Reg. 31).**

Under this regulation the Council is able to give consent to an employee retiring on or after age 50 and before age 60. This is more commonly known as Rule 85. Briefly an employee may be allowed to retire early without reduction of benefit if the sum of their age and length of membership of the fund exceeds 85, for example, age 52 plus 33 years service. If the sum of age and membership is less than 85 an actuarial reduction will apply although the Council has the discretion to waive this.

The Trade Unions have requested that the Council revisit its decision of 4 June 1998 not to operate Rule 85.

However, given the potential of significant costs as well as the detrimental impact on retention, jobs and services. **It is therefore recommended that the Council re-affirm its existing policy of not allowing employees to retire under Rule 85, other than in exceptional circumstances (these being due to the employee's caring responsibilities).**

1.4 **Augmentation, or increase of Scheme Membership (Regs 52 & 53)**

Under this regulation an employing authority has the discretion to provide additional pension scheme benefits for new employees within 6 months of joining the scheme and also provide up to an extra $6\frac{2}{3}$ years service on termination of scheme membership and employment. The Council has previously decided not award additional pensions benefits to starters or leavers because of the existence of the separate "**Added Years Policy**" and opposition from trades unions. The unions holding the view that only senior members of staff would have the bargaining power to derive a benefit. **It is therefore recommended that the Council re-affirm its existing policy.**

1.5 **Redundancy and efficiency of the service – Added Years Policy.**

Under the Discretionary Compensation Regulations 2000 councils have had discretion to award compensation by way of additional service (Added years) to employees over 50 who were retired on the grounds of redundancy or efficiency of service and who have at least 5 years membership of the LGPS. This is not part of the LGPS Regulations itself,

and the cost is met from revenue expenditure and not the pension fund. Although costs falling on the pension fund are ultimately met from revenue expenditure.

By law a maximum of 10 added years may be awarded provided the employee's membership in the LGPS would not exceed 40 years. Although where an employee is awarded more than $6\frac{2}{3}$ years service the redundancy "clawback" provisions apply to reduce all or a proportion of any redundancy payment. There is no abatement if the employee is retired on grounds of efficiency.

The DA identified an anomaly in the Council's redundancy procedure relating to the award of added years in redundancy cases (where the procedure states that a maximum of 5 added years can be awarded) and interests of efficiency service cases (where the procedure states that Elected Members may award up to 10 added years). The DA recommended that the Council should clarify its position and moreover expressed a view that the award of 10 added years in the interests of efficiency was too generous and inconsistent with practices within other councils and members of Leicestershire Fund. Research by the author has revealed that the majority of the other Leicestershire Fund members do not award any added years upon redundancy and early retirement in the interests of efficiency. Where they do, for example, at Rutland CC, it is applied on a sliding scale with a maximum award of $6\frac{2}{3}$ years. Moreover, the Audit Commission has recently challenged similar payments to Chief Officers released at Lincolnshire CC, LB of Islington, LB of Hammersmith & Fulham, and LB of Enfield.

There are also wider policy issues to be taken into account. For example, at a time when local government faces major retention problems is it sensible to make early retirement attractive? Would resources not be better spent on an effective out-placement scheme that would make leavers more marketable to new employers? This would involve a one-off cost rather than place an on-going burden on the LGPS. Similarly resources diverted into added years could be redirected into recruitment incentives.

Additionally, with proposals to abolish the statutory retirement age under discussion at a governmental level the potential impact will be to extend the working life of individuals. The LGPS "stock take" review that is being carried out by the Office of Deputy Prime Minister (ODPM) is also looking at proposals to introduce flexibility in to the LGPS. The Council's performance on early retirement is now in the upper quartile nationally and a concerted effort is needed to ensure this continues.

Finally, whilst the Leicestershire Fund remains healthier than most its future performance cannot be guaranteed. The economic recession (if this happens), and under performance of the stock market (which has happened), could have a significant detrimental effect on fund investments, its ability to meet its liabilities, and employer contribution levels. Indeed the LB of Wandsworth has recently announced that it has to raise its council tax bill in order to meet a £70m pension scheme deficit, and the Local Government Pension Committee is recommending the first rise in employee contributions since 1937.

It is therefore recommended that the payment of added years in either redundancy or interests of efficiency cases is restricted to a maximum 5 years (subject to the limitations laid down by the LGPS itself).

Further, to help Elected Members, managers and personnel sections determine the applicability of early retirement in the interests of efficiency and the exercise of discretion, it is recommended that the guidance set out in Appendix 2 be adopted.

1.6 **Pension Implications for Transferring Employees To An External Provider.**

The **Code of Practice on Workforce Matters in Local Authority service contracts** issued by the ODPM in February 2003 and included in statutory guidance from 13.3.03 requires all Local Authority contracts advertised after 13.3.03 to include in the terms of every contract for provision of a service by a private or voluntary sector partner provisions that transferring staff will have ongoing access to the LGPS or will be offered a good quality occupational pension scheme either a contracted-out final salary based defined benefit scheme or a defined contribution scheme in which the employer must match employee contributions up to 6% (although either could pay more if they wished) or a stakeholder pension scheme under which the employer will match employee contributions up to 6% (although either could pay more if they wished).

The Code covers the protection of transferred staff, but also says that service providers must offer employment to new recruits on “**fair and reasonable terms and conditions which are, overall, no less favourable than those of transferred employees**” and which offer reasonable pension arrangements. It spells out the options for pension arrangements and how the use of the Code will be enforced. These provisions are aimed at preventing exploitative wages and competition based purely on worsening pay and conditions and at ending the “two tier workforce”.

The service provider will be required to offer new recruits taken on to work on the contract beside transferees one of the following pension provision arrangements:

- Membership of the local government pension scheme, where the employer has admitted body status within the scheme and makes the requisite contributions.
- Membership of a good quality employer pension scheme, either being a contracted out, final-salary based defined benefit scheme, or a defined contribution scheme. For defined contribution schemes the employer must match employee contributions up to 6%, although either could pay more if they wished.
- A stakeholder pension scheme, under which the employer will match employee contributions up to 6%, although either could pay more if they wished.

On a re-tender of a contract to which this Code applies the new service provider will be required to offer one of these pensions options to any staff who transfer to it and who had prior to the transfer a right under the Code to one of these pension options.

It is recommended that the pension implications of “the Code of Practice on Workforce Matters in Local Authority Service Contracts” be noted.

1.7 Admitted body status for qualified Local Government bodies.

The LGPS regulations permit the Council to enter into an agreement, called an admission agreement, with certain quasi-local government bodies, to allow employees of such bodies access to the LGPS. However, there is no requirement that the Council must enter into an admission agreement.

The Council has not had a formal policy on such admissions before, but has never supported admission from any body, which has approached the Council. In fact, only one body has ever been supported, being four employees transferred out of local government services. The admission agreement was “closed”, that is, not open to new employees. Nonetheless, the Council has been approached by bodies seeking admission, and it is felt appropriate to set down a formal policy on the matter.

In light of the potential costs involved, the Council’s fiduciary responsibility to charge payers, and the risks involved in making such an agreement, **it**

is recommended that the Council will not support applications for admitted body status from external organisations. The Council, will however, consider (on a case-by-case basis) admitting bodies consisting of functions which have been transferred out of the Council, where employees with existing scheme membership are involuntarily transferred. Employees subsequently recruited to the new body will not be admitted.

FINANCIAL, LEGAL AND OTHER IMPLICATIONS

1. Financial Implications

As paragraph 4.1 above.

2. Legal Implications

As paragraph 4.2 above.

3. Other Implications

OTHER IMPLICATIONS	YES/NO	Paragraph Within Supporting information	References
Equal Opportunities	No		
Policy	Yes	All	
Sustainable and Environmental	No		
Crime and Disorder	No		
Human Rights Act	No		

4. Background Papers – Local Government Act 1972

Early Retirement Follow Up Report, Corporate Directors' Board, 17 December 2002.

District Auditors Follow up report – Ill Health Retirement Policy, January 2002.

Compensation, Severance, and Redundancy Payments: A Guide for Practitioners, Employers' Organisation, April 2001.

"The Employers' Guide to the LGPS", Employers' Organisation, 2002.

Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000, S.I. 2000, No. 1410.

“Redundancy Procedure – Guidelines for Managers and Personnel sections”, October 2000.

Pension Implications for Transferring Employees To An External Provider, Employers’ Organisation, 2000.

Local Government Pension Scheme Regulations 1997, Report to Equal opportunities and Personnel Sub-Committee, 4 June 1998.

In Contacts 21/98 and 29/98.

The Local Government Pension Scheme Regulations 1997, SI 1997 No 1612.

Various press releases issued by the Employers’ Organisation and ODPM.

5. Consultations

The Head of Legal Services and the Financial Strategy Manager.

The Chief Financial Officer.

Employers Organisation for Local Government, Pensions Secretariat.

Administration Authority, Leicestershire County Council.

Employer members of the Leicestershire Fund.

Joint Trade Unions – have been asked to comment on the policy statement and submit their views on rule 85. At the time of writing no comments have been received.

6. Report Author

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Discretionary Powers under the Local Government Pension Scheme Regulations 1997.

Revised Policy Statement.

The following statements update and clarify the Policy of Leicester City Council regarding the exercise of some of its discretions under the various regulations in Part III of the Local Government Pension Regulations 1997.

The Policy was approved by [name of Committee on insert date].

The Policy is operative from [1 month of date of Committee decision].

1. Waiving of Employee Contributions after 40 Years Service (Reg. 15).

Agree to the waiving of an employee's basic pension scheme contributions between the completion of 40 years scheme membership (which cannot be achieved until age 58) and age 60. Should employment continue after the 60th birthday, payment of pension scheme contributions would recommence.

This is a reversal of existing policy.

2. Early Payment of Pension Scheme Benefits at the Request of a Scheme Member (the Rule 85) (Reg. 31).

The Council has agreed to exercise its discretion when a scheme member makes a written request to retire before the age of 60, **only** where the following exceptional and limited criteria are met:

- Scheme member aged 55 – 59; and
- Employee is required to provide long term care, that is, potentially no less than two years, for a substantial period of each day for a dependent family member who is not terminally ill and whose incapacity and need for care is confirmed by a written medical practitioner's report that may be verified by the Council's Occupational Health Physician. The employee may also be required to provide additional evidence, such as, details of relevant welfare benefits, a report from a relevant agency (Social Services, NHS), etc.

Where the above criteria are satisfied, the Council does not to waive the actuarial reduction for employees who do not satisfy rule 85.

This is a clarification and re-statement of existing policy.

3. Augmentation, or increase of Scheme Membership (Regs 52 & 53)

An employing authority has the discretion, to provide additional pension scheme benefits for new employees within 6 months of joining the scheme and also provide up to an extra 6 $\frac{2}{3}$ years service on termination of scheme membership and employment. The Council's policy is as follows:

- **On Appointment (Reg 53)**

The Council is not prepared to grant any discretionary enhancements to pension scheme membership service on appointment of new members.

- **On Termination of Employment (Reg 52)**

The Council is not prepared to grant any discretionary enhancement, under this regulation, to an employees pension scheme membership service on their leaving employment.

This is a clarification and re-statement of existing policy.

4. Decision making and the exercise of the Council's discretion.

In its decision making and exercise of discretion under this Policy Statement the Council will adopt the following recommended good practice:

- The Council will consider all relevant factors before it exercises its discretion.
- The Council will duly record any decisions it makes with reference to the exercise of its discretion.
- The Council will act reasonably, with prudence and propriety, and transparently in the exercise of its discretion.
- The Council will act without discrimination in the exercise of its discretion.
- The Council will not fetter its discretion.

The following do not form part of the Council's Policy Statement but are issued as practice notes to help Elected Members, managers and personnel sections determine individual cases.

1. Redundancy and efficiency of the service (Reg 26).

The LGPS Regs 1997 allow for the immediate payment of pension benefits to any employee aged 50 or over who:

- Has two or more years membership in the LGPS or has less than two years membership but has had a transfer of pension rights (of any length) into the LGPS, from another scheme, and
- The reason for the retirement was his/her redundancy,

Redundancy under the LGPS is defined to include a retirement in the "interests of efficiency".

When determining "interests of efficiency" the following guidance may be of assistance in deciding whether the employee may be retired early:

- The efficiency arrangements are aimed at individual employees who, while having given valuable service in the past, are no longer capable of doing so.
- The situation may arise from new and expanding duties being placed upon the employee or from a decline in the employee's ability to perform the duties of the post due to, for example, domestic circumstances, or health reasons which are not sufficient to justify ill-health retirement.
- All alternatives should be investigated first, for example, further training, a change to suitable alternative employment in which the individual's reduced capabilities can be used, part time working, reasonable adjustments under the DDA.
- Before they exercise this discretion, the Council must be able to demonstrate that the employee's early retirement will permit or facilitate some re-organisation of their work which will bring clear, definite and tangible benefits in efficiency, in terms of:
 - Improvements in services
 - Administrative efficiency

- Cost reductions in providing the same level of service

- Further, the above benefits could not be achieved if the employee continued to work (e.g. through redeploying or retraining the employee). It would generally be expected that the value of improvements or cost reductions would be at least as great, and probably greater, than the cost of the enhancement paid to the employee taking early retirement.

- Each case must be considered separately.