

Leicester
City Council

**FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:
CABINET** **5th SEPTEMBER 2006**

**Application of Discretion under the Local Government Pension Scheme
(LGPS)**

Report of the Corporate Director of Resources

1. Purpose of Report

- 1.1 To set out policy proposals based on discretions available to the Council under the Local Government Pension Scheme (LGPS) and related regulations.

2. Summary

- 2.1 This report puts forward a range of proposals to deal with changes in the Local Government Pension Scheme and the operation of discretion by the Council in the future.

3. Recommendations

3.1 Cabinet to agree:

- To note the position of the Trade Unions.
- The new policy proposal on “Added Years” and/or compensation as set out in the report, paragraph 1 (ii).
- Not to pursue recovery from employees who have benefited from the previous decision to waive employee pension contribution after 40 years service.
- To allow the discretion on flexible retirement but develop further criteria on the business reasons that should apply and not to fund any costs that may be incurred in allowing the discretion unless there is an agreed business case.
- To continue to apply the policy of not allowing augmentation.
- That the above changes be implemented on 6th October following a one month notice period as required under the LGPS, or earlier if changes in the law require it, to apply to all employees subject to Local Government and Teachers Pension Schemes.

4. **Headline Financial and Legal Implications**

4.1 Financial

The financial implications of this report are that savings can be made in the actuarial costs of early release of pension to redundant employees who have access to the LGPS.

Steve Charlesworth
Head of Strategy & Development – Financial Services
Ext 7495

4.2 Legal

The legal implications relate to the facility of the Council to make changes to its discretion with one months notice to employees who are members of the scheme.

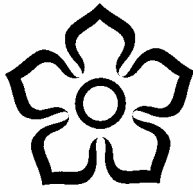
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5. **Report Author/Officer to contact:**

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DECISION STATUS

Key Decision	No
Reason	N/A
Appeared in Forward Plan	N/A
Executive or Council Decision	Executive (Cabinet)



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(LGPS)**

SUPPORTING INFORMATION

1. Report

1.1 The policy proposals are as follows:

(i) Application of Added Years in Cases of Early Severance

Our current policy can be summarised as follows: In cases of redundancy “5 added years” is awarded.

The trend amongst local authorities is to move away from any automatic entitlement of “added years” and affordability has become a real concern, with pressure to minimise pension costs.

(ii) New Policy Proposal

There are a number of main drivers to these proposals:

- (a) The concern of Elected Members for the cost associated with redundancy in employees awarded early release of pension.
- (b) The concern of the District Auditor that the application of discretion associated with early release of pension upon redundancy should be properly exercised and periodically monitored (rather than blanket application of added years).
- (c) Recent changes to the L G P S and the requirement for employers to consider applying discretion available under such changes.

New compensation regulations will replace the current “added years” facility. New local discretion to provide for up to a maximum of 2 years pay in cases of early termination of employment is due to replace the long standing discretion to provide additional years of service to an employees pension. The new regulations, due to take effect from 1st October 2006, mean that our current policy of allowing “redundancy” and “added years” payments will also have to end. The regulations state that employees who receive an enhanced

“redundancy payment” shall have the equivalent enhanced amount deducted from the compensation otherwise payable under this new regulation.

It is also noted that the proposal is consistent with national proposals.

It is therefore proposed that the following is adopted as the new Council policy:

The Council's position is that no “added years” (or additional discretionary compensation) are payable in cases of early termination of employment (including for reasons of redundancy).

In this way, some of the cost associated with early release of pension will be constrained and the possible contention associated with the negotiation of added years with individual employees, subject subsequently to approval by the Employees' Committee, in most cases, will be removed. Individual employees who might choose to come forward for redundancy, as opposed to those who wish to continue but for whom no position can be found, will then have to make their choice in the light of the new, more limited, provisions.

Note: Any redundancy or efficiency case that costs in excess of £50,000 including actuarial costs has to be approved by the Employees Committee”.

(iii) Teachers Pensions Scheme

The discretion already exists for the Authority to determine whether or what added years will be paid. At national level the scheme is being amended in line with LGPS to allow the discretion to pay a compensation payment.

The Authority is therefore able to provide equity in the policy it adopts relating to both schemes and all employees.

The funding for early retirement passed to schools as a result of national changes in funding with effect from 1.4.06. Operation of the Council's policy transfers to the Schools Forum to administer and monitor. This means that any decisions relating to expenditure of over £50,000 will be approved through Schools Forum and not by the Employee Committee due to the location of the budget.

Practical options for how this will be exercised are being considered by the Schools Forum on 21 September.

2. Other Policy Proposals

2.1 Following recent changes to the LGPS, it is necessary for the Council to decide on the application of discretionary powers that arise. These are summarised as follows:

a) Waiving of employee contributions after 40 years service

Cabinet in 2003 originally approved this discretion. It applies to a very small number of long serving employees who achieved 40 years service before the age of 60. The new regulations reinstate service that would have been

credited but also allows the employer to recover any such contributions that would otherwise have been made.

Since 2003, only 5 employees have benefited. If we were to decide to recover such contributions from these employees, that would otherwise have been made, this would amount to £9,231.

It is therefore recommended that we do not pursue recovery.

b) Flexible Retirement

There are two discretions:

- Whether, and if so in which circumstances, to give consent to an employee reducing their working hours or employment grade.
- Whether or not to fund the costs to the pension fund incurred as a result, either in whole or in part.

Estimating the potential costs of flexible retirement is difficult. However the discretion does allow for consistency with other related “flexible working” policies (e.g. job share, and other flexible hours). Therefore, it is proposed that the Council allows the discretion but develops further criteria on the business reasons that would need to be met in order for application to be considered. It is also proposed that the Council will not fund any costs that may be incurred in allowing the discretion unless there is an agreed business case.

c) Augmentation or Increase of Scheme Membership

The Councils policy has been not to apply discretion under augmentation. Instead discretion under added years has been agreed which has had a similar effect.

Because of the proposals on added years, as set out above, it is recommended that the Councils policy of not allowing augmentation continues to apply.

3. Implementation

Discretionary changes under the LGPS require one month’s notice of implementation. Therefore, it is proposed to implement the agreed changes w/e/f 6th October 2006.

However, national planned changes in the law mean that the Council will not be legally able to provide “added years” after the 30th September. Instead provision under new planned compensation regulations may well apply w/e/f 1st October 2006.

4. Financial, Legal and Other Implications

4.1 Financial Implications

That savings can be made in the actuarial cost of early release of pension to redundant employees who have access to the Local Government Pension

Scheme. The legal Implications relate to the facility of the Council to make changes to its discretion with one month's notice to employees who are members of the Scheme.

Steve Charlesworth
Head of Strategy & Development – Financial Services
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4.2 Legal Implications

The Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2000 give authorities a discretion to award added years under the LGPS in circumstances of early retirement for redundancy or on grounds of efficiency. The authority has a residual discretion to change policy in accordance with the criteria under r. 26(4) of the said Regulations.

Regulation 26(4) states:-

“In formulating and reviewing their policies the authority must -

- (a) 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
- (b) be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs.”

The authority must be satisfied that the policy is "workable, affordable and reasonable having regard to the foreseeable costs". In the recent case of John Chapman –v- South Holland District Council [2006] EWHC 27(Ch), the High Court ruled that if necessary a Council could disapply its discretionary powers in relation to severance payments made under Regulation 26. The decision permits the authority to make an immediate change to its policies if the reasons for doing so fall within its duties under Regulation 26(4) that the policy is workable, affordable and reasonable. If the authority takes the view that the current policy is no longer affordable then they can bring its application to an end. If the authority decides to change the policy, it is obliged to publish any new policy on discretionary compensation within a month of the decision and to wait another month before giving effect to it.

As the Authority's statutory powers to award Added Years are discretionary, then it can change its policy to remove the Added Years element provided that one month's notice is given etc. (as per the requirements of the Regs). Any proposed change to the policy will not amount to a breach of contract, as the right to exercise the power to have such a policy in place in the first place is discretionary as per the Regs.

It should be noted however that while the current policy with regard to Added years remains in place, the Council is obliged to follow that policy.

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5. Other Implications

OTHER IMPLICATIONS	YES/NO	Paragraph References Within Supporting Information
Equal Opportunities	Yes	The changes to the LGPS relate to changes in the law regarding age discrimination which are applicable from 1 st October 2006.
Policy	Yes	This report proposes changes to the policy of the Council relating to the redundancy of employees subject to the LGPS.
Sustainable & Environmental	No	
Crime and Disorder	No	
Human Rights Act	No	
Elderly/People on Low Income	No	

6. Risk Assessment Matrix

Nil.

7. Consultations

HR Managers
Corporate Directors' Board
Joint Trade Union Secretaries

The Secretaries of the trades unions for local government and craft services available to discuss the report have been consulted. They are opposed to the withdrawal of added years as a benefit which has been available to the workforce for a long time and which has been available to staff in the earlier phases of current Reviews. They also point out that, whilst some payments to departing senior staff have attracted attention in the past, the added years facility has also been applied to employees on modest wage levels, generating less significant payments but ones vital to those who may not be able to find work in the future.

Attention has also been drawn to the challenge taking place, through the courts, to the motivation for changing to the regulations which is related to the age legislation.

At time of writing, it has not been possible to consult representatives of school-based staff, although a meeting is scheduled before the Cabinet meeting.

8. Report Author

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