

**Agenda Item No:** 11 **Report No:** 193/07  
**Report Title:** Flexible Retirement Policy  
**Report To:** Employment Committee **Date:** 15 October 2007  
**Ward(s) Affected:** All  
**Report By:** Head of Business Services  
**Contact Officer(s):** John Clark, Head of Business Services

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### **Purpose of Report:**

Changes to the Local Government Pension Scheme (LGPS) have introduced a new retirement category of 'Flexible Retirement' for staff. This report sets out the issues arising from this change and recommends a new policy for the committee to adopt.

### **Officers Recommendation(s):**

- 1 That the Flexible Retirement Policy at Appendix A is adopted

### **Information**

- 1 Her Majesty's Revenue and Customs (HMRC) amended its overriding rules for all pension schemes from 6 April 2006. HMRC rules had previously required a person to retire / leave their employment before pension benefits could be paid. The new rules however, allow scheme members to receive their pension benefits while continuing in employment.
- 2 The LGPS has been amended to allow 'Flexible Retirement', from age 50, with the payment of accrued pension benefits, if the employer consents to:
  - Hours of employment or responsibility (grade) being reduced.
  - Release of the accrued pension benefits
- 3 Every employer operating the LGPS is required to formulate, publish and keep under review their policy on flexible retirement.
- 4 A person can remain in the LGPS following flexible retirement and accrue further benefits in the continuing employment. They can continue in employment until they achieve the Council's Normal Retirement Age.

### **Benefits of Flexible Retirement**

- 5 Flexible retirement can bring benefits for both the employer and employee.
- 6 For the employer, flexible retirement enables retention of valuable experience and knowledge which would otherwise be lost if an employee were to retire or leave. It also offers an effective means to reduce capacity and increases opportunities for succession planning.

- 7 For the employee it enables a step down towards retirement and allows them to make a gradual adjustment to life without paid employment and to break free of the routine and habits of work.
- 8 Any benefits paid as a result of flexible retirement are not subject to abatement (i.e. liable to reduction or suspension if the new pay plus pension exceed the earnings at retirement) during such time as the person remains with the same employer.
- 9 **Costs**
- 10 If a person is granted flexible retirement between the ages of 50 and 65 and the 'rule of 85' (service and age in complete years totalling 85) is not satisfied, their pension benefits will be reduced. In this case there will be no cost to the employer as no strain on the Pension Fund is incurred.
- 11 However, the employer could chose to waive the reduction in pension benefits, either in whole or in part. By doing so it must make a payment to the Pension Fund to cover the fund strain. This can be paid over three years with the addition of interest.
- 12 If the person is aged between 50 and 60 and satisfies the rule of 85, or would do so before age 60, there will be a cost to the employer to cover the strain on the Pension Fund. If the employer consents to flexible retirement in this case, the employee will receive unreduced benefits.
- 13 If the person is over 60 and satisfies the rule of 85, there will be no strain on the Pension Fund and the employee will receive unreduced benefits. The employee must still seek the employer's consent for flexible retirement in this instance.

### **Other Considerations**

- 14 There are a range of matters to consider when deciding on whether or not to approve requests for flexible retirement. These are as follows:
- 15 The Council could decide to have a policy not to approve any requests for flexible retirement. However, in doing so the Council would be ignoring the potential benefits that flexible retirement can bring for both the employee and the Council.
- 16 The implications for the service, in particular the staffing impact from a person's reduction in working hours or level of responsibility, must be considered in all cases.
- 17 In particular, the Council should consider whether or not to require a minimum reduction in hours or grade. The LGPS Regulations do not specify a minimum and there is nothing to prevent a person being in receipt of a greater income, by way of combined pay and pension following flexible retirement, than they received prior to retirement. But it is recommended that we have a policy requiring a minimum reduction in salary of 40% in most cases. This is because we expect that most requests will arise from a desire to reduce hours of work

and it will be difficult for departments to fill the resultant vacant hours if they are less than 15 a week.

- 18** The Council could require that flexible retirement requests are granted only when the employee commits to a reduction in hours or grade for a minimum period of time (say six months) or commits to remain in employment for a minimum period of time (say 1 year or to age 60). However, this could prove difficult in practice as the Council would have no real recourse if the employee applied for and obtained a new post on a higher grade or higher hours within the specified period, or if they broke their commitment to remain employed for a minimum period of time. Therefore such a requirement is not recommended.
- 19** The Council could be open to a challenge on age discrimination grounds if it had a requirement that it only agrees to flexible retirement requests that do not incur a strain on the Pension Fund (i.e. requests made on or after age 60 or requests made prior to age 60 where the person has not already met the 'rule of 85' and would not have met it before age 60). This is because the Council's decision would be based on whether or not the person has met the 85 year rule, which the High Court has already determined is discriminatory on age grounds.
- 20** Economic factors such as business needs and considerations of efficiency may be legitimate aims but discrimination cannot be justified merely because it would be more expensive not to discriminate. The Council must therefore ensure that every request for flexible retirement is considered by taking account of the whole range of relevant business factors, rather than just on cost factors alone and therefore such a requirement is not recommended.
- 21** As this is a new policy and the implications can not be fully seen it will be kept under review and further reports brought back to the committee if adjustments are needed.

## **Appendices**

Appendix A – Draft Flexible Retirement policy