

**NORTH LINCOLNSHIRE COUNCIL**

**POLICY AND RESOURCES CABINET MEMBER**

**LGPS DISCRETIONARY OPTIONS AND COMPENSATION FOR TERMINATION  
OF EMPLOYMENT**

**1. OBJECT AND KEY POINTS IN THIS REPORT**

- 1.1 To outline key changes and seek approval for the pension discretions that are contained in the Local Government Pension Scheme (LGPS) 2014 Regulations

**2. BACKGROUND INFORMATION**

2.1 The revised Local Government Pension Scheme Regulations (LGPS) 2013 and the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014 require the council, as the employer, to make and publish a policy decision on each of the five discretions that are contained in the new pension scheme.

2.2 Changes to the pension scheme are effective from 1 April 2014. The council is required to make a decision on the discretionary elements contained in the regulations and to have published the changes for one month before their application by 30 June 2014.

2.3 The five discretionary areas upon which decisions must be taken are as follows:

- i. whether the council will pay towards the cost of Shared Cost Additional Pension Contributions (SCAPCs) made by an active pension scheme member to purchase extra pension benefits of up to £6,500 per annum.
- ii. whether to waive all or part of the actuarial reduction arising when an employee requests flexible retirement.

- iii. whether to agree to waive any actuarial reductions due in cases where employees retire any time after the age of 55 and pay the strain cost associated with the leaver.
- iv. whether to grant an additional pension of up to £6,500 to an active pension member or within six months of leaving to a member whose employment was terminated on the grounds of redundancy or retirement on the grounds of efficiency.
- v. whether to “switch back” on the 85-year rule for employees leaving between the ages of 55 and 60 and for the council to pay the strain cost arising from the early retirement.

2.4 The following sets out the current policy adopted by the council, along with proposals for each of the new discretionary options:

Decision 1:

Currently, the council does not contribute to the purchase of any additional pension contributions by active scheme members.

It is proposed that the council should continue with this approach and not utilise the option of contributing to the purchase of extra pension via a Shared Cost Additional Pension Contribution.

Decision 2:

Presently under flexible retirement, an employee is able to draw all or part of their pension benefits if all of the following criteria are met:

- (a) the employee agrees to permanently reduce their hours of work or grade;
- (b) the change is of demonstrable benefit to the service;
- (c) there are no costs associated with this change.

The new regulations continue to allow employees aged 55 or over, who permanently reduce their working hours or grade, to flexibly retire with the employers consent.

The employee does not have to draw on all of the benefits they have built up at the point of flexible retirement.

They have to draw:

- All of their pre 1 April 2008 benefits, plus
- All, some or none of their 1 April 2008 to 31 March 2014 benefits, plus
- All, some or none of their post 31 March 2014 benefits, plus

- Any “additional benefits” in accordance with actuarial guidance issued by the Secretary of State.

The decision to be taken is whether to waive, in whole or in part, any actuarial reductions which would otherwise be applied to the benefits taken on flexible retirement grounds by an employee before Normal Retirement Age (NRA)

It is proposed that the council should continue to allow flexible retirement for employees aged 55 or over as outlined in (a), (b) and (c) above, but that the council should not waive either in whole or in part any actuarial reduction that would result.

#### Decision 3:

Currently, the council’s policy prohibits an employee from retiring before age 60, except in the case of redundancy, efficiency of the service and flexible retirement. The new regulations allow an employee to retire at any time from age 55, without the employer’s permission. This may result in an actuarial reduction to pension benefits being made, or incur the payment of strain costs.

It is therefore proposed that the council should not agree to waive any actuarial reductions that arise from the employee’s decision, nor pay any strain costs that may arise as a result of their decision to retire earlier than their Normal Retirement Age (NRA).

#### Decision 4:

The council currently does not utilise the discretionary option of awarding employees an additional pension entitlement of up to £5,000 per annum. It is now required to decide whether to grant extra annual pension of up to £6,500 to an active scheme member or within six months of leaving to a member whose employment was terminated on the grounds of redundancy or business efficiency.

It is proposed that the council’s current practice of not utilising this discretionary option should continue.

#### Decision 5:

The new regulations require the council to decide whether to “switch back on” the 85-year rule for employees leaving between the ages of 55 and 60 and whether the council will pay the strain cost arising from the early retirement.

Should the council agree to switch back on the 85 year rule, it will have to meet the cost of any strain on fund resulting from the payment of benefits

before age 60, ie where the member has already met the 85 year rule, or would meet it before age 60.

It is proposed that the council should not switch back on the 85 year rule for those employees who retire between the ages of 55 and 60. In addition, the council will not grant access to deferred pension benefits by deferred members or suspended tier 3 health pensioners before age 60.

### **3. OPTIONS FOR CONSIDERATION**

3.1 To approve each or any of the above five proposals

3.2 To reject each or any of the above five proposals

3.3 To recommend amendments to each or any of the above five proposals.

### **4. ANALYSIS OF OPTIONS**

4.1 Under the 2014 scheme changes, the council is required to decide on each of the discretions available to it. Outlined above are the reasons for acceptance or rejection of each discretion. Agreement of the proposals will provide the council with the best business case and most cost effective approach. Making a clear decision provides all employees with fair and equitable application of the discretions available under the new scheme.

4.2 Rejecting the above proposals would open the council to possible charges resulting from actuarial reductions and strain costs. Failure to implement discretions in line with the time requirements would also leave the council in breach of its requirements under the new scheme.

4.3 Recommending further changes to the proposals would delay implementation and affect the council's ability to comply with the new legislation.

### **5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)**

5.1 There are potential costs arising from the early retirement of employees which, if not covered adequately within the new discretions, would lead to the East Riding Pension Fund levying the pension strain costs upon the council. Should an employee wish to leave the council's employment

before their normal retirement age, the approaches proposed will leave the employee bearing the costs of this decision.

**6. OUTCOMES OF INTEGRATED IMPACT ASSESSMENT (IF APPLICABLE)**

6.1 An integrated impact assessment has considered the equality implications of this policy. It is recognised that the pension regulations focus on both service and age and decisions made are based upon the regulations. The decisions made in respect of these discretions will apply to all employees and as such will be applied equally.

**7. OUTCOMES OF CONSULTATION AND CONFLICTS OF INTERESTS DECLARED**

7.1 No adverse comments have been received from the trade unions.

**8. RECOMMENDATIONS**

8.1 That the suggested discretions be approved.

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**Background Papers used in the preparation of this report:**

- Discretion Policies for Scheme Employers in England and Wales from 1 April 2014 (version 1.2), Terry Edwards, Senior Pensions Adviser, Local Government Association
- The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014
- The Local Government Pension Scheme Regulations 2013

## 1.0 INTRODUCTION

1.1 The Local Government Pension Scheme (LGPS) contains a number of provisions that can only be applied at the discretion of the employing authority i.e. North Lincolnshire Council. This policy sets out those discretionary elements that the council has chosen to adopt. For the avoidance of doubt, if an area of discretion is not explicitly mentioned below it will be deemed not to apply.

1.2 The discretions contained in this policy apply to the Local Authority Maintained schools.

1.3 This policy is applicable to all employees who are members of the LGPS.

*Note 1: \*Learning and Skills Council employees who transferred to Local Government from 1 April 2010 who were members of the Principal Civil Service Pension Scheme have special protections afforded them by the Pension Regulations and not all of the discretions listed in this document will apply.*

*Note 2: Employees who are recruited to Public Health posts following transition to the council on 1 April 2013 will be eligible to join the LGPS.*

1.4 This policy will be effective from 1 April 2014 and covers the following areas:

- Compensation for termination of employment due to redundancy.
- Compensation for termination in the interest of the efficiency of the service.
- Flexible retirement.
- Other areas of discretion.

## 2.0 BACKGROUND

2.1 This policy complies with the following regulations:

- The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014
- The Local Government Pension Scheme Regulations 2013
- The Local Government Pension Scheme (Miscellaneous) Regulations 2012.
- The Local Government Pension Scheme (Miscellaneous) Regulations 2010.
- The Local government Pension Scheme (Benefits, Membership and Contributions) Regulations 2008.

- The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007.
- The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006.
- The Equality Act 2010

### **3.0 COMPENSATION FOR TERMINATION OF EMPLOYMENT DUE TO REDUNDANCY**

3.1 Compensation for termination of employment due to redundancy is made up of two elements:

- a) Redundancy Payment
- b) Early access to a pension, where applicable.

#### **Redundancy Payment**

3.1.1 To be eligible for a redundancy payment an employee must have two years' qualifying service either with this authority or bodies named on the Redundancy Payments (Continuity of Employment in Local Government, etc) (Modification) Order 1999 (the Modification Order). Other qualifying criteria are listed in the council's Redundancy policy A.8.

3.1.2 An employee is eligible for a redundancy payment regardless of their age. There is no upper or lower age limit.

3.1.3 The redundancy payment will be calculated using an employee's actual weekly pay and completed years of continuous local government service as defined in 3.1.2 above. These values will be applied to the statutory redundancy calculator. See appendix 1.

3.1.4 For employees holding two or more contracts concurrently, the period of continuous service, including service with a Modification Order body, shall be the length of the contract being terminated unless the termination related to the final contract of a number once held. In such cases all continuous local government service will be taken into account.

*Note 3: Actual Weekly Pay is defined as the amount of a week's pay an employee is entitled to under his/her contract of employment at the date s/he is given notice. This does not include additional payments such as overtime unless the overtime forms part of the contract.*

## **Early access to a pension**

3.1.5 Where the employee is a member of the LGPS and is 55 or over then any accrued pension benefits will be brought into payment on the date the redundancy takes effect.

3.1.6 Any associated pension strain costs will be payable as defined in section 7 of this policy.

*Note 4: Reckonable service is service for which the employee has been a member of the LGPS. Reckonable service takes account of the hours worked both for part-time employees and those working term times. The reckonable service will also take into account any changes in hours of employment that the employee may have undertaken for the period of service with North Lincolnshire Council or predecessor authorities. Confirmation of this service can be obtained from the East Riding Pension Fund (ERPF).*

## **4.0 EARLY RETIREMENT IN THE INTERESTS OF THE EFFICIENCY OF THE SERVICE**

4.1 Early retirement in the interests of the efficiency of the service for employees should be viewed in a different light to redundancy. It is an option available to the council in the following exceptional circumstances where an employee:

- a) Is on a protected grade and/or the replacement will be appointed on the actual lower grade;
- b) has failing health which is not severe enough to qualify for an ill-health retirement but which nevertheless reduces his/her efficiency;
- c) is unable to cope with changes which, of necessity, occur in a dynamic organisation i.e. value for money initiatives, technological innovations, or service reorganisation;
- d) is unable to implement changes to working methods and practices required by management without causing industrial relations problems.

- 4.2 If one of the situations outlined above applies and if termination of employment on the grounds of capability or conduct is not the appropriate solution, early retirement in the interests of the efficiency of the service may be considered.
- 4.3 In such cases employees who are 55 or over and members of the LGPS will be granted early access to their pension.
- 4.4 Any associated pension strain costs will be payable as defined in section 7 of this policy.

### **5.0 FLEXIBLE RETIREMENT**

- 5.1 Flexible retirement requests will be considered for employees who are 55 or over and members of the LGPS who are making a permanent reduction to either their hours of work or grade in preparation for retirement. Each request will be considered on its merits on a case-by-case basis.
- 5.2 A person flexibly retiring does not have to draw on all of the benefits they have built up at the point of flexible retirement. They have to draw:
- All of their pre 1 April 2008 benefits, plus
  - All, some or none of their 1 April 2008 to 31 March 2014 benefits, plus
  - All, some or none of their post 31 March 2014 benefits, plus
  - Any “additional benefits” in accordance with actuarial guidance issued by the Secretary of State.

*Note 5: “Additional benefits” are added years being purchased by the member, AVC’s (if the member chooses to draw them), additional pension bought by APC and additional pension bought by ARC’s.*

- 5.3 Employees will be able to draw all or part of their benefits where all of the following criteria are met:
- (a) The employee agrees to permanently reduce either their hours of work or grade.
  - (b) The change is of demonstrable benefit to the service

- 5.4 The amount of pension benefits payable will be reduced by ERPF in line with GAD guidance, based on the number of years and days that an employee is retiring earlier than their normal pension age.
- 5.5 The council will not waive any actuarial reductions to pension benefits or incur any costs associated with an employee flexibly retiring any time after the age of 55.

*Note 6: LGPS Pension Regulation 18 does not permit employees to reduce their hours/grade in one post and then seek additional hours to compensate for this reduction.*

### **6.0 OTHER AREAS OF DISCRETION**

- 6.1 Contribution bands will be assessed at 1 April each year and include basic salary + contractual (permanent) allowances. Reassessments will take place and be applied during the year where there is a change in an employee's pensionable pay. Appeals against the allocation of a particular contribution band must be made in writing to the Assistant Director Human Resources.
- 6.2 The council will not utilise the discretionary option of awarding employees an additional pension entitlement of up to £6,500 per annum.
- 6.3 The council will not provide shared cost additional voluntary contributions nor shared cost additional pension contributions (SCAPC).
- 6.4 Employees are able to retire early and access their accrued pension benefits from the age of 55 onwards. The amount of pension benefits payable will be reduced by ERPF in line with GAD guidance, based on the number of years and days that an employee is retiring earlier than their normal pension age.
- 6.5 The council will not waive any actuarial reductions to pension benefits in the case of employees retiring any time after age 55.
- 6.6 The council has not exercised the discretionary option to apply the Rule of 85 to benefits drawn before age 60.

- 6.7 The council will not consent to the early access of frozen pension benefits for deferred pension members between the ages of 55 and 60, who have exhausted their tier 3 pension provisions.
- 6.8 All new starters who join the pension scheme will be given the opportunity to request a transfer of pension benefits that may have been accrued in another scheme. The employee will have one year from their start date with the council to apply for such a transfer. A request for a transfer after one year's employment will only be approved in exceptional circumstances and not as part of an early retirement package.
- 6.9 Employees who leave local government employment with preserved benefits and subsequently return to local government employment will be able to aggregate their preserved and new benefits. An application to aggregate benefits must be submitted no later than one year after recommencing employment with the council.
- 6.10 Employees who, due to a reduction in pensionable pay in their post have previously opted to split their pension service and create two pension records, one preserved and one current, will not be able to combine their preserved and current benefits at a later date.
- 6.11 Employees who have elected to split their pension benefits for reasons other than that at 6.7 will need to check with the East Riding Pension fund, whether it is permissible to merge the two split records. This will be for consideration on a case by case basis and must adhere to the LGPS pension regulations.

### 7.0 GOVERNANCE

- 7.1 Approval of redundancy, early retirement in the interests of the efficiency of the service, or flexible retirement is delegated to the Director. The relevant Head of HR will prepare a report for consideration by the Director. The Assistant Director Human Resources must be consulted and the Finance/Resources Manager must agree the financial implications prior to a decision being taken.
- 7.2 Employees **must not** be advised that they can be released until formal approval is obtained.

- 7.3 In the case of early retirement in the interests of the efficiency of the service and flexible retirement there must be a tangible benefit to the authority.
- 7.4 Each Head of HR is responsible for compiling a written quarterly report with full costs for each directorate for consideration by Service Management Teams and the appropriate Cabinet Member. Copies will be provided to the Assistant Director Human Resources, who will prepare a council wide report for consideration by the Policy and Resources Cabinet Member.
- 7.5 The associated pension strain costs incurred by any of the above are to be met by a single payment to the pension service in the financial year in which the cost is incurred by the employing directorate. The cost of any redundancy payment is also to be made by the directorate in the financial year in which the cost is incurred.
- 7.6 To support the decision as to whether an individual(s) can be released the Director must ensure that the pension strain and redundancy costs, where incurred are:

7.6.1 Fully affordable from existing budgets within the current financial year to satisfy paragraph 7.5.

*Note 7: A Director can use their discretion to balance payment of the costs across their whole directorate.*

7.6.2 That, in each of the following two financial years, a permanent reduction is made in the directorate budget of at least half the total of both the pension strain and redundancy costs.

*Note 8: It is possible in the management of the process to wrap together more than one such cost, offsetting the higher strain with a lower strain cost but with the same overall reduction to be achieved within the second year.*

*Note 9: In the case of redundancy the post is to be deleted from the establishment.*

- 7.7 Where compensation is paid in error including overpayment the authority will notify the individual concerned, giving notice in writing to either make a further payment to the individual or to arrange for the overpayment to be recovered. Any person receiving an overpayment must repay the sum within a specified period. This is in accordance with the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulation 2006.

### 8.0 FURTHER INFORMATION

- 8.1 Further information and guidance in implementing this policy can be obtained from HR.
- 8.2 Reckonable service information is contained on the employee's annual benefit statement provided by the ERPF. HR can also obtain details of reckonable service from the ERPF.
- 8.3 The council encourages employees to obtain independent financial advice before making any decisions that may affect their local government pension.
- 8.4 Further information on the LGPS, is available on the ERPF's website, [www.erpf.gov.uk](http://www.erpf.gov.uk), or for more general information about pensions and saving for retirement visit [www.direct.gov.uk/workplacepensions](http://www.direct.gov.uk/workplacepensions).