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GENERAL PURPOSES AND LICENSING COMMITTEE – 21 JULY 2008

FLEXIBLE RETIREMENT FOR ALL EMPLOYEES – INCLUDING MEMBERS OF THE LOCAL GOVERNMENT PENSION SCHEME

1. Introduction

- 1.1 Changes to the Local Government Pension Scheme (LGPS) from 6 April 2006 introduced a new retirement category of 'Flexible Retirement' for non-teaching staff. This report sets out issues for consideration by the Council in the light of those changes, and subsequent changes which came into effect from 1 April 2008.
- 1.2 The Pension scheme in 2006 introduced the new category of 'Flexible Retirement' however the detail of what the policy could entail has only recently been made available.

2. Background

- 2.1 The Pension regulations have been implemented over a period of two years, with the final details now in place from 1 April 2008.
- 2.2 All authorities across Hampshire, have taken the opportunity to review their early retirement policies, in light of age legislation, the new pension regulations and increasing budgetary pressures.
- 2.3 We currently have early retirement policies in place for redundancy, early retirement on efficiency grounds and ill health grounds, these policies will be reviewed and considered by EMT by 31 December 2008, to ensure that the new policies can be implemented from 1 April 2009.
- 2.4 The Council does not currently have a policy on Flexible Retirement, therefore a new Flexible Retirement Policy is proposed.

3. Statutory powers

- 3.1 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.
- 3.2 The LGPS was amended from 6 April 2006 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

NOTE: Flexible Retirement is now only available to those aged 55 and above however there is some protection for those aged over 50 that are existing members of the LGPS on 31 March 2008 who are leaving before 31 March 2010.

- 3.3 Every employer operating the LGPS is required to formulate, publish and keep under review their policy on flexible retirement.
- 3.4 If a person is granted flexible retirement between the ages of 55 and 65 and the 'rule of 85' (service and age in complete years totalling 85) is not satisfied, their pension benefits will be reduced.
- For those aged over 60, there will be no cost to the employer as no strain on the Pension Fund is incurred.
 - For those aged between 55 and 60, there will be a cost to the authority to cover the strain on the pension fund.
- 3.5 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.
- 3.6 If the person is aged between 55 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.
- 3.7 If the person is over 60 and satisfies the rule of 85, there will be no strain on the Pension Fund so there is no cost to the employer and the employee will receive unreduced benefits. The employee must still seek the employer's consent for flexible retirement in this instance.
- 3.8 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, at which point the normal retirement process will be initiated.
- # 3.9 A flowchart showing all the different variations and cost implications is attached as Appendix A.

4. Benefits of Flexible Retirement

- 4.1 Flexible retirement can bring benefits for both the employer and employee.
- 4.2 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.

- 4.3 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.
- 4.4 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.

5. Financial Implications

- 5.1 Where a person is between the ages of 55 and 65 and has not satisfied the 'rule of 85', then pension benefits must be reduced on flexible retirement as with other early retirements. For those aged 60 and over this will fully offset the strain on the Pension Fund. For those aged 55 to 60 there will be a strain on the pension fund and therefore a cost to NFDC.
- 5.2 Where a person is between the ages of 55 and 60 and either already satisfies the LGPS 'rule of 85', or would do before age 60, a strain will be placed upon the Pension Fund by the payment of pension benefits on flexible retirement prior to age 60. In this case, the Council would have to make an additional payment to the Pension Fund.
- 5.3 The Council can decide to waive the reduction in pension benefits and pay the strain on the Pension Fund of doing so.
- 5.4 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 Council's consent for flexible retirement in this instance.

6. Other Matters for Consideration

- 6.1 The Council has a range of other matters to consider when deciding on whether or not to approve requests for flexible retirement. These are as follows:
 - 6.1.1 The implications for the service, in particular the resourcing impact from a person's reduction in working hours or level of responsibility, must be considered in all cases.
 - 6.1.2 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. Nevertheless, the Council could decide to only agree to flexible retirement if the reduction in hours or grade was sufficient to ensure the person is not, overall, better off than before flexible retirement. This could be achieved by implementing a

policy requiring a minimum reduction in salary of say 40% in most cases. Furthermore, the Council has a responsibility to act in a prudent manner and the public perception of workers receiving pension benefits while continuing to receive close to full salary must also be taken into account.

- 6.1.3 The Council could be open to a challenge on age discrimination grounds if 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. 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.

7. Proposed policy

- 7.1 Taking account of costs and other considerations the proposed policy is that the Council will:
- 7.1.1 Consider all written requests for flexible retirement.
 - 7.1.2 Approve requests only when it is in the Council's interests to do so. All costs falling on the Council as an employer must be affordable. Only where proposals are fully supported by a business case, where a payback period of no more than three years or less, is achievable.
 - 7.1.3 A request should typically involve a reduction in salary of 40%, either through reduced hours or level of responsibility (grade). Any change is to be made on a permanent basis.
 - 7.1.4 The Council will not provide automatic replacement employment for the reduction in an individual's pay.
 - 7.1.5 The employee's contract of employment will be amended by mutual agreement to reflect the new hours or grade, as agreed, and continuity of service will be preserved for terms and conditions purposes. They can continue in employment until they achieve the Council's Normal Retirement Age, at which point the Planned Retirement process will be initiated.
 - 7.1.6 The waiving of pension benefit reductions will only be considered in exceptional circumstances. See Appendix A.

7.1.7 Flexible retirements will be approved by:

- **For all employees, except Heads of Service and EMT:**
All cases will clearly detail the impact on the delivery of the service and must be supported by the Head of Service. The Head of Service must consult with the Head of Human Resources, who will ensure that a consistent approach is taken and that decisions are in line with the policy. If there is no financial impact, the case may be approved by the Head of Service and the Head of Human Resources. Where there is a Pension Fund strain charge, and therefore a cost to the authority, the business case must also be approved by the Executive Director (Section 151 Officer).
- **For Heads of Service and EMT Members**
All cases will need to be approved by Cabinet. Cases for Heads of Service will need to be supported by the appropriate EMT member, in consultation with the Head of Human Resources, and in cases where there is a financial impact approval must also be given by the Executive Director (Section 151 Officer).

7.1.8 Any employee who wishes to appeal against a business decision not to allow them flexible retirement should use the Council's Grievance Procedure.

7.1.9 The policy on flexible retirement will be reviewed on an annual basis, with regular monitoring reports presented to EMT / IRC.

8. Environmental Implications

8.1 There are no Environmental implications arising from this report

9. Crime and Disorder Implications

9.1 There are no Crime and Disorder implications arising from the report.

10. Equality and Diversity Implications

10.1 The equality implications of this report are referred to in 6.1.3.

11. Employee Side Comments

11.1 The potential of this change is welcomed by Employees Side, any flexibility in allowing staff to wind down gradually to permanent retirement whilst allowing younger employees to shadow them or allow new people to start is a benefit to all.

- 11.2 In paragraph 3.4 there is a reduction in pension if 85 year rule is not satisfied and staff leave between 55 and 65, what is the reduction?
- 11.3 In paragraph 3.5 there is a suggestion that the Council could waive the reduction to an employee in the above circumstances. What would those circumstances be?
- 11.4 The benefits in paragraph 4.2 and 4.3 are accepted and recognised as valuable reasons for the introduction and merits of this scheme.
- 11.5 In paragraph 5.4 the person identified in this situation who can leave but goes for flexible retirement, must still seek the Council's consent. Is this because of the business needs of the postholder/service? A refusal to not allow in this situation may well lead to an employee seeking redress of the grievance procedure.
- 11.6 In paragraph 6.1.2 it states that staff should have a reduction in pay either through grade or hours. A reduction in grade may be challenged, employee side envisage the scenario of someone who satisfies the 85 year rule, may be entitled to full pension and wishes to reduce time to a three or two and a half day week. The situation above may apply to a senior manager who is vital because of his expertise and is requested to stay on. In the three day situation with pay and pension he would be on more money however it is not felt this would be deemed to lack prudence just a business led decision to suit the needs of the Council. The public perception need not come into the arguments regarding this because it is a personal and Council decision.
- 11.7 Employee side see benefits to both employee and employer over the introduction of this scheme, by its very name flexible it can be used in a positive way to assist in giving the Council greater scope when staff leave.
- 11.8 It is felt reductions in grade would be contested and shorter weeks would be the requirement from staff.

12. Recommendations

- 12.1 That the General Purposes and Licensing Committee recommend to Council that the proposed Flexible Retirement Policy be adopted with effect from 1 August 2008; and
- 12.2 That Human Resources produce a Management Advice Note and other related documents to enable the policy to be implemented within the authority.

Further Information

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Background Papers

Local Government
 Pension Scheme

Pension Costs – Flexible Retirement

* Applies to age 50 for existing members of the LGPS on 31st March 2008 leaving before 31 March 2010.

