Council

9th July 2014

Wards: All

Report on the Local Government Pension Scheme (LGPS) 2014 Employer Discretions

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Recommendations:

That the Council agree the following recommendations for adoption:

A. Not to exercise the discretion on Shared Cost Additional Pension Contributions – (SCAPCs) or Shared Contribution AVCs (SCAVCs) but to review annually (see paragraph 2.4 Option d)).

B. Agree to the option whereby the Council exercises the discretionary power to continue to adopt a Flexible Retirement policy from 1 April 2014 but only to exercise the discretionary power to waive the actuarial reduction in exceptional cases where the Director of Corporate Services considers it to be justified on financial, equal opportunity or other relevant grounds (see paragraph 2.19 Option c)).

C. Not to waive the actuarial reduction for early payment of pension benefits at the request of a current employee but to review annually (see paragraph 2.23 Option c)).

D. Not to exercise the discretion to ‘switch on’ the 85 year rule for members who choose to voluntarily draw their benefits from age 55 (see paragraph 2.24 Option c)) but to review annually.

E. Not to use the discretion to award additional pension contributions (see paragraph 2.25 Option c)) but to review annually.

F. To agree to continue the discretion to continue the provision for deferred benefits to be brought into payment on compassionate grounds for pre 2014 deferred members. The discretion will not normally be exercised, but the Director of Corporate Services will consider applications (see paragraph 2.28 Option b)).

Note: Under A, C, D and E, an annual review would be undertaken by CMT and the General Purposes Committee.

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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

1.1 The introduction of the new Local Government Pension Scheme (LGPS) from 1 April 2014 requires all scheme employers to review their existing discretionary pension arrangements and publish new policy statements by 30 June 2014, effective from the 1 April 2014

This report summarises the Pension Policies which need reviewing at this time and makes recommendations for the adoption of new policy statements.

The Local Government Pension Scheme (LGPS) in England and Wales was amended from 1 April 2014 applying new arrangements under the Local Government Pension Scheme Regulations 2013 and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (the latter regulations were published on 10th March 2014).

The regulations require the Council to publish its policy on the main discretions taking account of the Government Actuary Department (GAD) guidance. Guidance was only issued after the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 were issued.

1.2 The current pension policies are attached at Appendices A and B.

1.3 The Pension Regulations require that, in preparing or making revisions to its pensions policy statements, the scheme employer must have regard to the extent to which the exercise of any of its policies could lead to a serious loss of confidence in the public service. The exercise of any discretions must therefore be reasonable, affordable and justified in the circumstances and be consistently applied.

1.4 As is the case with the existing Scheme, each employer will be required to formulate, publish and keep under review a policy statement in relation to the exercise of a number of discretions under the LGPS. The LGPS Regulations 2013 stipulate this requirement in <u>four</u> areas, namely:

- Funding of additional pension via a Shared Cost Additional Pension Contribution (SCAPC) contract, either by regular on-going contribution or one-off lump sum;
- Flexible retirement;
- Waiving all or part of any actuarial reduction; and
- Award of additional pension (at whole cost to the employer).

1.5 In addition it is good practice to review existing policies and where appropriate to continue them.

1.6 A simple summary of discretions and their implications is attached at Appendix C.

2 DETAILS

2.1 **Shared Cost Additional Pension Contributions**

The LGPS regulations allow members to make additional pension contributions (APCs) to the LGPS at their own cost either by a one-off lump sum or by regular on-going contributions in order to purchase additional pension. They also allow for shared cost additional pension contributions with costs shared between the employer and employee (SCAPCs).

2.2 The regulations also allow members to make additional voluntary contributions (AVCs) to a free-standing fund provided by a body approved under the Finance Act: the Bank of Ireland is the current AVC provider for the Merton pension fund. Additional voluntary contributions can be funded by the employee (AVCs) or with costs shared between the employer and employee (SCAVCs).

2.3 The council does not currently have a policy on SCAPS or SCAVCs.

2.4 The employer costs of shared contributions could be considerable.

Note: the discretion does not relate to cases where a member has a period of authorised unpaid leave of absence (or statutory child related authorised absences) and elects within 30 days of return to work to pay a SCAPC to cover the amount of pension 'lost' during that period of absence. That is because, in those cases, the employer must contribute 2/3rds of the cost to a SCAPC; there is no discretion [regulation 15(5) of the LGPS Regulations 2013]

<u>Employer Benefits</u>

- The provision could be used as a recruitment and retention tool e.g. for hard to fill posts.

<u>Employer/Employee Disadvantages</u>

- The cost of purchasing additional pension could be substantial
- There might be potential tax implications for the member in relation to annual and lifetime allowances

Options include:

- <u>Option a)</u> <u>Not</u> to make use of the discretion on SCAPCs and/or
- <u>Option b)</u> <u>Not</u> to make use of the discretion on SCAVCs.
- <u>Option c)</u> To adopt an 'unfettered' approach as follows:

"The Council does not intend to make general use of the discretionary power on SCAPCs or SCAVCs, but may do so , where it is considered to be in the Council's operational interest, taking into account the employer cost of contributing to the additional pension. Each case will be considered on its merits. The Director of Corporate Services will consider applications".

- Option d) Not to exercise the discretion on Shared Cost Additional Pension Contributions – (SCAPCs) or Shared Contribution AVCs (SCAVCs) but to review annually.

Recommendation:

It is recommended that Option d) is adopted for SCAPCs and SCAVCs.

2.5 Flexible Retirement

2.6 The LGPS Regulations allow a member aged 55 or over who reduces their working hours or grade, with their employer's consent, to receive immediate payment of all or part of their retirement benefits. Additionally, the employer may decide to waive any actuarial reduction that applies.

2.7 The Council's current policy agreed in 2006 is to permit flexible retirement on the merit of each individual case. The Council has the discretion to waive the early retirement reduction, but has stated that it will not normally be exercised other than in exceptional circumstances.

2.8 Flexible retirement allows a pension scheme member who has attained the age of 55 to request payment of their accrued pension benefits even though they have not ceased to be employed. This request can only be considered if the member of staff either reduces their working hours and or their grade.

Payment of pension benefits under this provision is not automatic and can only be made if the Council consents to that payment. There is no provision to subsequently withdraw benefits granted under this provision. The LGPS also allows the member to build up new pension rights in the LGPS based on the new hours and or grade.

A member requesting flexible retirement is not required to draw all of the benefits due to them instead s/he may choose to receive all, some or none of the benefits built up on membership from 1 April 2008 onwards. However, s/he must draw all of the pre-April 2008 accrued benefits. As the member has a choice of partial drawdown, the cost to the employer may be affected by this choice.

Benefit to the Employer

2.9 Flexible retirement can enable the employer to retain the services of a skilled and experienced employee in a situation where the employee may, due to factors outside the workplace, have previously chosen to resign or take full retirement. It can act as a useful retention tool, particularly in hard to fill posts, as part of the Council's Corporate Workforce Strategy, particularly in areas which combine an aging workforce with recruitment and retention difficulties, and act as a beneficial enhancement to the Council's existing Flexible Working provisions.

2.10 Flexible retirement acts as a useful tool for the employer when managing organisational change or staffing reductions, and could provide an alternative solution in situations which otherwise might have involved redundancies or efficiency retirements with associated employer costs. It offers a means to manage capacity, to assist with succession planning and to potentially create career opportunities for younger employees who are currently under-represented in the workforce.

2.11 Savings can be made through a reduced salary but it would depend on the needs of the Service and individual factors which need to be taken into account when considering requests for flexible retirement as well as the budget impact and on-going revenue savings.

2.12 An option to have further employer discretion to waive the actuarial reduction where there is no 85 year rule protection on a case by case basis is currently within existing Employer discretions.

Benefit to the Employee

2.13 For the employee, it becomes possible to 'partially' retire, to draw pension benefits but in the meantime remain in employment in a changed capacity which can offer greater flexibility. The flexibility can help employees manage their work-life balance, help them step-down towards full retirement and/or help them manage commitments outside the work place. It should be noted however that any new pension scheme entitlements in the 'step down' post are built up in the new scheme LGPS 2014 and will have a later normal retirement age linked to the state pension age (SPA).

Issues for the Employer

2.14 There is a potential cost to the employer as any existing 85 year rule protections apply for flexible retirement; generally retirements over age 55 when membership of the LGPS started pre October 2006. The length of service/age will determine whether there is protection. The 85 year rule is determined by adding the employee's age to the calendar length of pensionable service in whole years and applies, prevents or limits actuarial reduction where the total exceeds 85 at retirement or before reaching normal retirement age.

Whilst Flexible Retirement can bring many benefits, there are some practical issues which could present difficulties for the employer.

2.15 Where a reduction in hours is requested this may have an impact on the delivery2of services, particularly where the request is to reduce by only a few hours per week and it is therefore difficult to recruit a replacement. A request to reduce hours may also be difficult to agree to where part-time working is not suitable in meeting business demands or where the member is already working reduced hours.

2.16 Agreement to a request to reduce grade may be dependent on whether there is suitable work available at the lower grade, and whether the duties no longer performed can be covered by other means.

2.17 Any decision to waive all or some of the actuarial reduction that may apply to the member's benefits would require the employer to meet the additional cost incurred by the pension fund. It should be noted that in all cases, once agreed, the payment of flexible retirement benefits is irrevocable regardless of whether the member resigns after only a short time in the new post.

2.18 In April 2014, 725 employees age 55+ were LGPS members, representing approximately 22 % of the scheme's (active) membership. The likely level of future take-up of flexible retirement is not known. There may be risks that should a large proportion of employees request flexible retirement there could be a detrimental impact to services although this has not been apparent in the operation of the scheme so far. On the other hand, there could be potential saving of redundancy pay.

2.19 As the level of likely take-up is not known, the potential costs are also impossible to estimate, although costs are mitigated by assessing each case on its merits e.g. cost/benefit.

The breakdown of approvals to date is as follows:

2006/7 – Nil

2007/8 – 5

2008/9 – 9

2009/10 -12

2010/11 – 6

2011/12 – 4

2012/13 – 3

2013/14 – 1

2014/15 – 1(to date)

Total: 41

Options:

- Option a) Not to continue with the discretionary power to adopt a flexible retirement scheme
- Option b) To continue to permit a flexible retirement scheme (but not to waive the actuarial reduction for the employee who does not qualify for 85 year rule protection)

  Option c) To adopt a flexible retirement scheme with employer discretion to consider each case on its merits and to exceptionally waive the actuarial reduction. The Director of Corporate Services will consider applications to waive the actuarial reduction and exercise the discretion on those which can be justified on financial, equal opportunity or other relevant grounds. This would meet the need for the discretion to be reasonable, affordable and justified in the circumstances and be consistently applied.
- Option d) To adopt a flexible retirement scheme with employer discretion to waive the actuarial reduction in all cases. This may not meet the need for the discretion to be reasonable, affordable and justified in the circumstances.

Note: It is possible to put a threshold on the number of hours an employee can request to reduce to. For example normally a minimum reduction of 30% of the original hours of the existing job. The current policy does not indicate a level of reduction, however only states that a reduction in hours is needed.

Recommendation

It is recommended that the following approach is taken:

Agree to Option c) whereby the Council exercises the discretionary power to continue to adopt a Flexible Retirement policy from 1 April 2014 but only to exercise the discretionary power to waive the actuarial reduction in exceptional cases where the Director of Corporate Services considers it to be justified on financial, equal opportunity or other relevant grounds.

2.20 Voluntary Early Retirement - Waiving actuarial reduction for early payment of pension benefits

The LGPS 2014 regulations include a significant change in that an active member of the LGPS (who gives 3 months notice) or a deferred member, can choose to retire voluntarily from age 55 without the employer's consent. Currently employer's consent is required for retirements before age 60, with no employer consent required from age 60.

Actuarial reductions will apply to pensions taken from age 55 up to normal retirement age using actuarial guidance issued by the Secretary of State.

2.21 For some members employers may agree to waive all the actuarial reduction on compassionate grounds or part of the actuarial reduction on any grounds. Waiving the reduction would require the Council to make a payment to the pension fund for the shortfall created by paying the pension early without reduction, known as a pension strain payment or employer pension cost.

For pre LGPS 2014 members with 85 year rule protections on membership to April 2014 [April 2016 if will be age 60 before this date or April 2020 if will be age 60 between April 2016 and April 2020], the Council may choose to waive all actuarial reductions applicable to this membership on the grounds of compassion.

In relation to membership built up from April 2014 [April 2016 or April 2020] onwards, the Council may choose to waive all or some of the reductions on any grounds.

2.22 Currently the policy on waiving any reduction in benefits arising from early payment is that the discretion will not normally be exercised, but the Chief Executive will consider applications supported by the Director of Corporate Services and the Head of Human Resources.

<u>Benefits to the Employer</u>

The employer costs of waiving any actuarial reduction would be the same as if an employee were to be made redundant between the ages of 55 – 60. However in circumstances where redundancy was not an immediate option, but potentially possible in the medium term, there could be a saving in cost through avoiding any future redundancy payment and mitigation of on-going salary payments.

<u>Benefits to the Employee</u>

If a request to retire early is granted without actuarial reduction, the employee receives pension as earned without the reduction ahead of normal retirement age.

2.23 Options

- Option a) Not to make use of discretion to waive all or part of the actuarial reduction
- Option b) To consider the use of the discretion to waive all the actuarial reduction on compassionate grounds (where permitted) and in other circumstances to waive all or part where it is in the operational interests of the Council. Each application will be considered on its merits (including the pension costs arising) by the Chief Executive supported by the Director of Corporate Services and the Joint Executive Head of Human Resources.
- Option c) Not to waive the actuarial reduction for early payment of pension benefits at the request of a current employee but to review annually.

Recommendation

It is recommended that Option c) is adopted.

2.24 Switching on the 85 year rule

As the 85 year rule does not (other than on flexible retirement) automatically apply to members who would otherwise be subject to it and who choose to voluntarily draw their benefits at age 55 and before 60, this provision allows the employer to switch the rule back on and thus bear the cost of this decision.

Benefits to Employer

Switching the 85 year rule back on might be a mechanism employers would wish to consider to encourage members to retire early to, for example, help achieve a balanced age profile within the workforce or to avoid possible redundancies later (which have attendant greater costs). Whilst also exercising the discretion to waive actuarial reductions would be more expensive than just switching back on the 85 year rule, it would still (in nearly all cases) be less expensive than redundancy.

Benefits to Employee

The employee avoids some or all of the actuarial reduction and receives increased pension benefits.

Issues

If the employer does agree to switch back on the 85 year rule, the employer will have to meet the cost of any strain resulting from the payment of benefits before age 60 i.e. where the member has already met the 85 year rule, or would meet it before age 60.

Options

Option a) not to make use of this discretion

Option b) To have a discretion to consider each case on its merits, exceptionally where it is in the employer's interests and taking into account the employer costs of the additional pension. It is not intended that the discretion be used routinely and each case to be agreed by xx

Option c) Not to exercise the discretion to ‘switch on’ the 85 year rule for members who choose to voluntarily draw their benefits from age 55 but to review annually.

Recommendation:

Option c) is recommended.

2.25 Additional Pension Contributions

This provision enables the employer to award an additional pension to an active member. Under the LGPS 2014 regulations, the discretion to award an additional pension of £6,500 per annum (from the previous maximum of £5,000) has been introduced.

The Council’s current policy is generally not to award additional years of service or added pension to employees. The former is no longer applicable and therefore does not need to be reviewed.

Benefits to Employer

The provision could be used in a range of circumstances, including as a recruitment and retention tool or as part of the compensation for dismissal on the grounds of redundancy (including business efficiency). In the latter case, arrangements must be made within 6 months of the date that the employee’s employment ended. Where an award is made on these grounds, no additional lump sum compensation can be paid in excess of a maximum severance payment of statutory redundancy with weekly pay limit waived.

Benefits to Employee

The employee receives an increased pension without needing to voluntarily purchase it.

Issues

The cost of awarding additional pension could be substantial (typically, approximately 15x the value of the additional pension) and once awarded the pension cannot be taken away i.e. the employee could leave with the benefits intact.

There can be potential tax implications for the member in relation to annual and lifetime allowances.

There are possible age and sex discrimination risks. The amount of employer contribution may vary in relation to the member’s normal retirement age, which may cost less for women than a comparator male due to variations in the state retirement age. Possible age discrimination risks might occur if younger employees were directly excluded or any discretion was exercised on age factors alone.

Options:

Option a) Not to make use of the discretion on additional pension contribution

Option b) To have a discretion to consider each application for additional pension on its merits, exceptionally where it is in the employer’s interests and taking into account the employer costs of the additional pension. It is not intended that the discretion be used routinely and each case to be agreed by CMT.

Option c) Not to make use of the discretion on additional pension contribution but to review annually.

Recommendation:

Option c) is recommended.

2.26 Review of existing additional discretions

In the current statement on 'Adopted Policies on the use of Discretionary Powers in the LGPS', a number are Pension Fund Administering Authority discretions, which do not require a written policy to be published as a result of LGPS 2014. These are:

- Payment of spouse's pension on remarriage or cohabitation after 1 April 1998 where the employee retired prior to that date
- Abatement of pension on re-employment

2.27 Payment of added years from the pension fund

The added years provision is now obsolete. However it is still relevant for existing awards, although it is not strictly an Employer's pension discretion for which a decision is needed at the current time.

2.28 Permitting deferred benefits to be brought into payment early

This forms an existing employer's discretion in relation to pre 2014 deferred members which will need to be reviewed.

Options:

- Option a) to discontinue the provision for deferred benefits to be brought into payment on compassionate grounds
- Option b) to continue the provision for deferred benefits to be brought into payment on compassionate grounds

Post 2014 deferred members can now apply for early payment of benefits from age 55 without employer consent but with actuarial reductions applicable (see previous discretions at paragraphs 3.20 and 3.24 re waiving actuarial reductions and switching on the 85 year rule).

Recommendation:

To agree Option b) for pre 2014 deferred members and continue with this discretion. The discretion will not normally be exercised, but the Director of Corporate Services will consider applications.

3 ALTERNATIVE OPTIONS

3.1 Alternative options have been considered in the body of the paper above.

4 CONSULTATION UNDERTAKEN OR PROPOSED

4.1 Recommendations have been shared with Staff Side.

5 TIMETABLE

5.1. Council – 9 July 2014

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

6.1 It is not possible to estimate the potential costs or savings arising from the proposed amendments in the report as it will vary according to individual circumstances. Each individual case will be considered and the financial implications calculated before agreement is made to any proposal.

7 LEGAL AND STATUTORY IMPLICATIONS

7.1 The risks and legal and statutory implications are addressed in the body of the report. The provisions of the Equality Act 2010 and other discrimination legislation are relevant to the issues under consideration.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

8.1 There are no specific known Human rights, equalities and community cohesion implications

9 CRIME AND DISORDER IMPLICATIONS

9.1 There are no known crime and disorder risk implications

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

10.1 There are no known risk management and health and safety implications.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

Appendix A - Adopted Policies on the Use of Discretionary Powers in LGPS
Appendix B - London Borough of Merton Policy Statement on Flexible Retirement
Appendix C - Summary Table showing main ‘Big 4’ employer discretions and implications

12 BACKGROUND PAPERS

LGPS Discretions Policies for Scheme Employers in England and Wales from 1 April 2014 - Employers Guide

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