

TO: General Purposes Committee
DATE: 23rd November 2009
SUBJECT: Employer Pension Discretions
BY: Interim Head of Organisation and Development
Classification: Unrestricted

Summary:

This report sets out the need to update the council's policy on the employer discretions within the Local Government Pension Scheme (LGPS).

Implications:

Human Resources Implications –these changes impact on all current and future employees of the Council but the changes were implemented in 2008 and this policy decision therefore reflects the existing practice..

Finance Implications – the changes will reduce the burden on the employer to augment individuals pension contribution when they leave the council by reason of redundancy, in the interests of the service or for flexible retirement.

Legal Implications – the council is required to have a discretionary policy by law.

Crime & Disorder Implications (Section 17) – none as a result of this report.

Equalities & Diversity Implications – none as a result of this report.

Sustainability Implications - none as a result of this report

Risk and Health and Safety Implications - none as a result of this report.

Corporate Plan Implications. none as a result of this report.

Decision Required:

That Members agree to the amended Pension Discretions at Appendix A. Key changes are highlighted in bold.

1. Background

1.1.1 Within the Local Government Pension Scheme regulations there are several terms about which each employer must have a policy and this should be communicated to employees within the scheme. If the employer does not have a policy then the pension scheme administrator will either refer every case separately to the employer or default to the minimums set out in the regulations. Members may recall that the last time this policy was amended was in October 2006.

1.1.2 Currently Swale Borough Council has a policy (Appendix B) for all the relevant regulations that offer discretion to the employer prior to the changes that came into force in April 2008. The practice in previous years within SBC and most other employers in Kent have been to mirror the same discretions as Kent County Council.

1.1.3 The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 amended by Statutory Instrument 2007 No. 1166 came into force on 1st April 2008 making significant changes to the LGPS. Some of these amendments affect the nature of several of the regulations where there are employer discretions. Kent County Council requires all employers to amend their policies to reflect the changes to the regulations – it is a legal requirement to have a policy that is up to date. The policy changes are set out in the paragraphs below.

1.1.4 The first major change to the LGPS is the variable rates of employee contribution depending on the earnings level of the individual. The employer has discretion to identify which aspects of pay are included in the nominal amount to determine the threshold. The Council has taken the view that this should be determined by contractual payments. The threshold for contributions at April 08 was:-

Band	Salary Range	Contribution rate
1	£0 - £12,000	5.5%
2	More than £12,000 to £14,000	5.8%
3	More than £14,000 to £18,000	5.9%
4	More than £18,000 to £30,000	6.5%
5	More than £30,000 to £40,000	6.8%
6	More than £40,000 to £75,000	7.2%
7	More than £75,000	7.5%

1.1.5 Employers must have a policy on the factors that contribute to the pensionable pay and the frequency that this level will be reviewed. We have adopted the view that this will relate only to contractual payments and that the contribution level will be reviewed annually. This follows advice from the LGPS auditors that the cost of administration of multiple pension returns will offset any minor additional input from a rise in individuals bands within the year.

1.1.6 Regulations 7(9)a, 23(4), 34(1)b and 66(9)b have been deleted and must therefore be removed from the Employer Discretions.

1.1.7 The provision to allow manual workers to retain the right to pay only 5% has gone and the policy expressed ensures that any TUPE transfers with protection also follow the rules for other manual workers.

1.1.8 The regulation numbers have changed within the new regulations and the employer discretions now reflect the correct numbers.

1.1.9 The changes to the scheme meant that any additional contribution paid by the employer had to be by augmentation rather than compulsory added years which had been the normal arrangement for Swale Borough Council.

1.1.10 The final major change to the scheme was in relation to which employees were allowed to become members. To have this entitlement an employee has to have a contract of 3 months or more and if they have a casual contract there must be 'mutuality of obligation' to enable them to be in the scheme.

1.2 Actions taken to Date

1.2.1 Although the policy has been delayed the work to implement the changes had to take place to ensure that the correct salary deductions were made from April 2008 onwards. All employees received information setting out their own personal contributions or informing them that they could not longer be part of the scheme.

1.2.2 The contribution bands were up-lifted at April 2009 and employees contributions were amended accordingly.

1.2.3 The Council has amended its redundancy terms from April 2009 to reflect the position that augmentation of pension will not be agreed.

1.3 Alternative actions and why not recommended

The General Purposes Committee must ensure that the Council has a policy on these employer discretions. There are choices to be made around the factors that account for pensionable pay and the frequency of adjustments made to the banding for each individual but the suggested policy direction mirrors that recommended by the LGE and KCC.

1.4 Risk Management

1.4.1 There are risks to the Council if it does not have a published policy; the purpose of this paper is to ensure the Council meets this legal requirement

1.4.2 There are considerable risks of a legal and financial nature if the Council does not follow the guidance of the pension administrators with the resultant possibility of making commitments that cannot be fulfilled in the pension scheme or are not legally allowable. It is for this reason the SBC has tended to follow the KCC guidance.

Appendix A

Swale Borough Council Policy and Procedural Issues Local Government Scheme Regulations Employer Discretions November 2009

This paper confirms the pension policy of Swale Borough Council as it relates to the exercise of discretions contained in the Local Government Pension Scheme Regulations 1997 (as amended), the Local Government Pension Scheme (Administration) Regulations 2007¹ and the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007².

- **Regulation 4 (1) (a)**²

The calculation of pensionable pay will include basic annual salary plus any other pensionable salary items from the following categories – Market Supplement/Premium, Contractual Overtime, Contractual Bonus, Pensionable Salary Supplement eg for Flexibility. The pensionable pay will be reviewed annually with effect from 1st April to identify the appropriate Band and Contribution percentage. If the Pay Award is not made on 1st April the review of contribution rates will be delayed until the award is applied.

- Regulation 11(2)²

Where a scheme member's pensionable pay consists of fees, it is the policy of Swale Borough Council that, if this produced a higher figure, an average of all such fees for any 3 consecutive years ending 31 March within the period of 10 years ending with the last date of active membership may be used in the calculation of benefits.

- Regulation 12 and 13²

It is the policy of the Borough Council only to grant extra pension scheme membership to employees where there is a proven total benefit to the organisation which includes any costs that might be borne by the authority. Any such granting of extra scheme membership needs to be agreed between the Head of Organisation Development and the Chief Executive. Additional service will not be granted in respect of pre April 1972 service, which at the point of retirement has not been up rated.

- **Regulation 14(3)(b)**²

A manual worker who returns to Local Government employment having left after a statutory transfer will be given the opportunity to rejoin the pension scheme and pay contributions at the protected rate of 5.25% from 01/04/08, 5.5% from 01/04/09, lesser of 6.5% or relevant figure from normal banding tables from 01/04/10 and from 01/04/11 the relevant figure from normal banding tables, following another statutory transfer. He or she must elect to do so within 30 days of the date of notification of this option sent to him or her by the Borough Council.

- Regulation 16 (4)ii¹

If a scheme member wishes to aggregate the most recent of their periods of previous scheme membership with their current membership, it is the policy of Swale Borough Council that the election must be made within 12 months of the Pension Section of

Kent County Council being notified that the employee has again become an active member.

- **Regulation 18(1)**²

It is Swale Borough Council's policy to only provide consent for flexible retirement and the immediate payment of benefits where there is no detrimental effect on the service. Any such consent requires the agreement of the Head of Organisation Development and the relevant Director.

- Regulation 18(3)²

If consent has been given under Regulation 18(1), it is not Swale Borough Council's policy to waive, in whole or part, any actuarial reduction to the scheme member's benefits.

- Regulation 22(2)¹

Employees who have the option to pay contributions in respect of a period of unpaid absence must elect to do so within 30 days of the date of the notice issued to them by the Human Resources Section stating the amount of contributions to be paid. This time limit may be extended by the Head of Organisation Development if the employee can demonstrate exceptional circumstances so as to justify an extension of time.

- Regulation 25(3)¹

It is not the current policy of the Borough Council to operate a shared cost Additional Voluntary Contribution Scheme for employees. However, this policy will be reviewed from time to time by the Head of Organisation Development in conjunction with the Chief Finance Officer, subject to Member's approval.

- Regulation 30(2) and (5)²

It is not the policy of the Borough Council to give consent to the immediate payment of benefits to employees under this regulation unless there is a demonstrable benefit to the organisation which would take full account of any extra costs to be borne by the Authority. In circumstances where a request is made for an early payment of a deferred benefit this is unlikely to be granted except in the most extreme cases of hardship. Any such consent shall be agreed by the Head of Organisation Development and the Chief Executive taking account of all the details involved in the case.

Where consent is given on the grounds of compassionate circumstances, full consideration must be given to the Kent County Council guidelines, and only after agreement between the Head of Organisation Development and the relevant Chief Executive. In compassionate circumstances the Borough Council will be responsible for any additional costs deriving from the decision to release benefits prematurely.

- Regulation 83(8)¹

If a scheme member wishes to transfer any pension benefits they have built up in other schemes to the Local Government Pension Scheme, it is the policy of Swale Borough Council that the election must be made within 12 months of the Pension Section being notified that the employee has become an active member of the Kent Scheme.

Appendix B

DISCRETIONARY PENSION POLICIES - Revised

As approved by the Executive on 1st October 2006 (Minute No. 421/10/06) and resolved by full Council on 25th October 2006 (Minute No. 445/10/06) to reflect the amendments to the LPS from 6th April 2006.

LGPS 1997 Regulation 7(9) (a)

To encourage employees to opt into the pension scheme. Employees have the opportunity to opt into the pension twice during the course of their continuous employment with the Authority. If after the second opt in, they subsequently decide to opt out again then they will not be allowed to rejoin the scheme unless the KCC Pensions Manager in consultation with the Personnel Section, considers that there are exceptional reasons to allow them to do so.

LGPS 1997 Regulation 18 (6) & (7)

To require employees who have the option to pay contributions in respect of a period of unpaid absence to elect to do so within 30 days of the date of the notice issued to them by the KCC Pensions Manager stating the amount of contributions to be paid. This time limit may be extended by the Personnel Section, in consultation with the Financial Services Manager, in exceptional circumstances.

LGPS 1997 Regulation 23 (4)

To request the issue of a Certificate of Protection of pension benefits from the KCC Pensions Manager to protect employees who suffer detriment by being required to take a cut in pay or who are prevented from having future pay increases by having their pay frozen due to reasons beyond their control. This request can be made at any time after the employee has suffered the pay cut or pay freeze.

LGPS 1997 Regulation 31 (2) & (5)

It is not the policy of Swale Borough Council to give consent to the immediate payment of benefits to employees who voluntarily retire unless there is demonstrable benefit to the organisation which would take full account of any extra cost to be borne by this authority. Any such consent to be reported to the appropriate Committee for approval. Where consent is given on the grounds of compassionate circumstances to give full consideration to the reasons for the retirement. In compassionate circumstances Swale Borough Council will be responsible for any additional costs deriving from the decision to release benefits prematurely.

LGPS 2004 Regulation 32(8)(a)

If a scheme member wishes to aggregate the most recent of their periods of previous scheme membership with their current membership, it is the policy of Swale Borough Council that the election must be made within 12 months of the KCC Pension Section being notified that the employee has again become an active member.

LGPS 1997 Regulation 34 (1) (b)

In the event that an employee is eligible for two benefits under the Pensions Scheme and they have not elected to choose one of these within 90 days (3 calendar months)

of notification of these benefits, then Swale Borough Council will select the option which is most beneficial to the employee.

LGPS 1997 Regulation 52

It is the policy of Swale Borough Council only to grant extra pension scheme membership under this Regulation, where there is a proven total benefit to the organisation which includes any costs that might be borne by the Authority. Any such granting of extra scheme membership needs to be agreed between the Head of Organisation Development and the Head of Finance. Additional service will not be granted in respect of pre-April 1972 service, which at the point of retirement has not been up-rated.

LGPS 1997 Regulations 66 (9) (b)

To require that employees who leave the pension scheme and who have the option to convert an in-house AVC to Local Government Pension Scheme Membership elect to do so within 30 days of the date of the notice issued to them by the KCC's Pensions Manager of the value of the AVC. This time limit may be extended by the KCC's Pensions Manager in consultation with Swale Borough Council in exceptional circumstances.

LGPS 1997 Regulation 67 (1)

Not to operate a shared cost additional voluntary contribution scheme for employees.

LGPS 1997 Regulation 121 (8)

In accordance with Regulation 121(8), it is the policy of Swale Borough Council to accept an employee's request to transfer any pension benefits they have built up in other schemes to the Local Government Pension Scheme provided always that the election to do so is made within 12 months of the KCC Pension Section being advised that the employee had become an action member of the Kent LGPS.

In respect of employees who were active members of the Kent scheme at 1st April 2004 the election will be accepted provided it was executed no later than March 2006.

LGPS 1997 Regulation 9 (transitional provisions)

To accept late elections from female employees to include pension scheme membership between 1st April 1972 and 5th April 1988 towards their spouses pension benefits. All such elections made by female employees to be treated as being complete, that i.e being fully paid up.