

Meeting	General Purposes Committee	Agenda Item:
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Meeting Date	13 th September 2010
Report Title	Employer Pension Discretions
Portfolio Holder	Executive Member for Performance and Total Place
SMT Lead	Director of Corporate Services
Head of Service	Interim Head of Organisation Development
Lead Officer	Interim Head of Organisation Development
Key Decision	No
Classification	Open
Forward Plan	Reference number:

Recommendations	That Members agree to the amended Pension Discretions at Appendix A. Key changes are highlighted in bold.
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Purpose of Report and Executive Summary

- 1.1 This report sets out the need to update the council's policy on the employer discretions within the Local Government Pension Scheme (LGPS). The need for an update follows advice from KCC pension administrators.

2 Background

- 2.1 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 November 2009 following the major change to the pension regulations.

3 Proposal

- 3.1 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. This information is given out to all new employees at the same time as they are given the Pension Handbook and it is therefore vital that this is up-dated to reflect the changes to the scheme. The practice in previous years within SBC and most other employers in Kent have been to mirror the same discretions as Kent County Council.

- 3.2 KCC have recently given advice that the wording of the policy at regulation 16(4)ii and 83(8) could be considered to fetter the council's decision making ability and may therefore be considered to be unlawful. As the employer discretions are to enable the council to exercise judgement then they have advised that there should be some opportunity for decisions to be made in exceptional circumstances, this wording already was in existence for regulations 30(2) and (5). The draft policy at Appendix A has therefore been adapted to incorporate this.

4 Alternative Options

- 4.1 The General Purposes Committee must ensure that the Council has a policy on these employer discretions. The Committee could choose not to accept the change but this could mean that if an employee with exceptional circumstances challenged the refusal to allow them to combine other pensions with the SBC pension the Pension Ombudsman may rule that the Council had acted illegally by fettering its own decision making powers.

5 Consultation Undertaken or Proposed

- 5.1 The proposed changes have been discussed with KCC Pension Administrators.

6 Implications

Issue	Implications
Corporate Plan	High Performing Organisation
Financial, Resource and Property	There are financial implications to the pension scheme and individuals but these would not generally be material within the Medium Term Financial Strategy
Legal and Statutory	The council is required to have a discretionary policy by law.
Crime and Disorder	None as a result of this report.
Risk Management and Health and Safety	<p>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</p> <p>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.</p>
Equality and Diversity	As this policy could apply to any member of the pension scheme regardless of age, ethnicity, gender etc there are no inherent equality issues. However the ability for a discretionary judgement

	gives the Council greater scope to address an inequality if it should arise.
Sustainability	None as a result of this report.

7 Appendices

7.1 The following documents are to be published with this report and form part of the report

- Appendix I: Proposed LGPS Employer Discretions 2010
- Appendix II: Current LGPS Employer Discretions 2010

8 Background Papers

8.1 Local Government Pension Scheme

Appendix I

Swale Borough Council Policy and Procedural Issues Local Government Scheme Regulations Employer Discretions 2010

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)ii**¹

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. **If the 12 month period has elapsed then the member may make a case for any exceptional circumstances to be considered by the Head of Human Resources, the Head of Finance and the relevant Director.**

- 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. **If the 12 month period has elapsed then the member may make a case for any exceptional circumstances to be considered by the Head of Human Resources, the Head of Finance and the relevant Director**

Appendix II

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

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