

**FLEXIBLE RETIREMENT**

*To:* **Cabinet**

*Date:* **24<sup>th</sup> May 2011**

*From:* **LGSS Director of HR and OD**

*Electoral division(s):* **All**

*Forward Plan ref:* **2011/039** *Key decision:* **Council Decision**

*Purpose:* **To highlight issues with the Council's Flexible Retirement policy and to seek Cabinet endorsement of proposed revisions to the policy.**

*Recommendation:* **The Cabinet is recommended to:**

- a) endorse the proposed policy revisions for onward submission to full Council.**
- b) to recommend that Council approves the Revised Flexible Retirement Policy.**

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## 1. BACKGROUND

- 1.1 The Local Government Pension Scheme (Administration) Regulation 2008 requires all employers participating in the Scheme to formulate and publish a formal written policy on Flexible Retirement. Flexible Retirement is a Local Government Pension Scheme (LGPS) Discretion.
- 1.2 In April 2009, the County Council implemented a Flexible Retirement Scheme, based on key principles laid down my Cabinet. These were that employees should have the option to request either:
- a 20% reduction in hours or more; AND/OR
  - a move to an associated role, with a substantial downgrading of duties of responsibility and grade (must be at least 2 grades lower).
- 1.3 When an employee is granted early payment of pension benefits, there are costs to the pension fund for early payment of pension, which must be recovered. Depending on the employee's age and length of scheme membership these costs are met by either (or both) of the following:
- a) By the employer in the form of capital costs AND/OR
  - b) By the employee by way of reduction for early payment to his/her benefits – This reduction is not waived.
- 1.4 Since the Scheme was introduced 34 applications for flexible retirement have been granted (17 men and 17 women). The associated capital costs of these flexible retirements total £191,390. The approximate savings to date in gross salary terms is £352,791. Offset against the capital costs this equates to approximate savings of £161,401<sup>1</sup>. A detailed breakdown of these costs can be found in **Appendix A**.
- 1.5 A number of issues have arisen with the Scheme since its introduction – see paragraph 2. These issues were raised formally with Strategic Management Team (SMT) in March 2011 and a number of proposed revisions to the policy were proposed by SMT, subject to Cabinet and full Council approval. These are detailed in paragraph 3.
- 1.6 Cabinet should note that the Government's decision to remove the default retirement age from 1<sup>st</sup> October 2011 does not impact on the current LGPS pension regulations, i.e. where an employer offers a flexible retirement scheme, individuals can continue to request to flexibly retire from age 55 onwards.

## 2. MAIN ISSUES

- 2.1 The issues that have arisen since the Scheme's implementation are outlined at 2.2 below.

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<sup>1</sup> Please note the approximate savings are based on the assumption that where an employee has reduced his/her hours these 'spare' hours have not been backfilled. Likewise it is assumed that where an employee has taken a drop in grade, the employee's substantive post has not been backfilled.

## 2.2 Cost

- 2.2.1 The current policy states that cost can not be used as factor for turning down Flexible Retirement requests. This was to minimise the risk of age discrimination claims, as the costs of flexible retirement are linked to age and length of scheme membership. However, the capital costs associated with Flexible Retirement can be significant and in the current financial climate, where the Council is having to make significant redundancies it is no longer acceptable to not consider cost as factor in agreeing or declining a request.
- 2.2.2 Since the policy was drafted, case law has ruled that cost can be considered an objective justification/material factor, if the employer can show that the treatment is a proportionate means of achieving a legitimate aim. In a recent Employment Tribunal case (Woodcock v Cumbria Primary Care Trust), the Employment Appeal Tribunal stated that cost alone may be a sufficient justifying factor where the cost of avoiding or rectifying the discriminatory impact of a measure or state of affairs would be "disproportionately high". As an employer the Council would need to provide evidence in order to demonstrate both that the aim was legitimate and that the means were proportionate when weighed against the treatment's discriminatory effect and any alternative means of achieving the same aim.
- 2.2.3 Potential justifying factors could be:
- In the current economic climate, where the Council is making ongoing workforce reductions, it is inappropriate to be spending significant sums to retain one individual. This money could result in further workplace reductions being made elsewhere.
  - The Council is not required under the pension scheme to offer flexible retirement. Therefore, it is a discretion whether or not requests for flexible retirement are granted at all.
  - The Council does not prevent individuals from phasing down into retirement, e.g. employees could still make a flexible working request to reduce their hours.
- 2.2.4 The Pension Service has confirmed that other local authorities, e.g. Peterborough City Council, have been explicit in their policies that cost will be used as a factor when considering flexible retirement requests.

## 2.3 Re-employment Earnings

The re-employment earnings test does not apply to Flexible Retirement. Therefore, under the pension regulations there is nothing to prevent current earnings plus pension exceeding previous earnings. A recent flexible retirement request highlighted an employee who would have been in receipt of more money following flexible retirement (reduced salary + pension) than before. This goes against the intended spirit of the policy, does not represent value for money or serve the best interest of the public purse, and it has been raised by the HR Operations Teams as a concern.

## 3.0 **RECOMMENDED REVISIONS TO POLICY**

In order to address these issues, SMT have proposed the following revisions to the Flexible Retirement Policy (subject to full Council approval). Cabinet

are asked to endorse these revisions and to recommend that full Council gives formal approval for their implementation.

**3.1 Revision 1**

Amend the current policy to say that cost will be used as a factor for turning down flexible retirement requests. Managers would need to justify that the capital costs of flexible retirement were disproportionately high.

**3.2 Revision 2**

Amend the current policy by introducing 're-employment earnings' into the criteria. The policy should be updated to state that where the new salary + pension will exceed former salary, employees have to take a bigger reduction, i.e. employees would have to reduce their hours by more than 20% or move to an associated role that is more than 2 grades below the substantive role.

The policy has been updated provisionally with these changes – please see **Appendix B pages 2 and 5**. (changes shown in red on the electronic version and included as point 12 text compared to the surrounding point 11 text to help it stand out)

**4. ALIGNMENT WITH PRIORITIES AND WAYS OF WORKING**

**4.1 Supporting and protecting vulnerable people when they need it most**

There are no significant implications for this priority.

**4.2 Helping people live healthy and independent lives in their communities**

There are no significant implications for this priority.

**4.3 Developing the local economy for the benefit of all**

There are no significant implications for this priority.

**4.4 Ways of Working**

As the Flexible Retirement Policy is an employment policy, there are no significant implications under any of the four ways of working listed below:

- Being a genuinely local Council
- Making sure the right services are provided in the right way
- Investing in prevention
- Working together

**5. SIGNIFICANT IMPLICATIONS**

**5.1 Resource and Performance Implications**

This revision will enable better control of costs.

**5.2 Statutory, Risk and Legal Implications**

The legal implications of these proposals are addressed in paragraph 2.2.1

and 2.2.2 above.

### **5.3 Equality and Diversity Implications**

All eligible employees have fair and equal access to the Flexible Retirement Scheme.

### **5.4 Engagement and Consultation**

The recognised Trade Unions have been consulted upon the proposed changes to the Flexible Retirement scheme and whilst in agreement, have raised some concerns about introducing cost as a criteria for declining requests.

<b>Source Documents</b>	<b>Location</b>
Flexible Retirement Policy	HR Policy Team, Rm 206/207, Shire Hall
Local Government Pension Scheme (Administration) Regulation 2008	(Also available on CCC intranet)  Pensions Service, Octagon, Shire Hall.