

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Leader and Cabinet 8 February 2007
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LOCAL GOVERNMENT PENSION SCHEME DISCRETIONARY COMPENSATION REGULATIONS 2006

Purpose

1. The purpose of the report is to seek Cabinet's agreement to recommend to Council changes in the way the Council applies its discretionary compensation policy in respect of the Local Government Pension Scheme ("LGPS").

Executive Summary

2. The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 ("the 2006 regulations") came into force on 29 November 2006. As a consequence of this regulatory change and age equality legislation, which came into force on 1 October 2006, the Council's discretionary compensation policy needs to be amended.
3. The 2006 regulations state that, in formulating and reviewing its policy, the Council must:
 - (a) have regard to the extent to which the exercise of its discretionary powers in accordance with the policy, unless properly limited, could lead to a serious loss of public confidence;
 - (b) be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs.
4. The Council usually adopts its discretionary compensation policy in line with Cambridgeshire County Council, the Administering Authority of the Cambridgeshire LGPS, of which this authority is a member. The County Council agreed policy revisions at its meeting on 12 December 2006; the recommendations in this report mirror those agreed by the County Council.

Background

5. The Council currently makes discretionary compensation payments to employees whose employment is terminated early by reason of redundancy, or in the interests of efficiency of the service ("PRIIEAF"), in accordance with its policy under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000 ("the 2000 regulations").
6. The Council's discretionary compensation policy includes the following clarifications:
 - (a) Staff with pre-1972 service, being made redundant or retired in the interests of service efficiency, who are over the age of 50 and have 5 or more years of pensionable service, will be awarded compensatory added years ("CAY") including pre-1972 service, where appropriate, whether or not the employee has made additional contributions in order to uprate their pre-1972 service, so long as this does not provide an employee with a greater benefit than they would have received at their expected date of retirement.

- (b) All local government service, even if broken, to count for the purposes of redundancy payment or CAY calculations; however, no period of employment to ever count twice, i.e. where the employee concerned has already received such enhanced compensation from a previous employer or employers, only the remaining, un-compensated, service shall be counted.
7. The 2000 regulations have now been replaced by the 2006 regulations, which came into force on 29 November 2006 and have retrospective effect from 1 October 2006.
8. The 2006 regulations:
- (a) provide local government employers with powers to consider making a one off lump sum payment to an employee that must not exceed 104 weeks' pay;
 - (b) no longer provide for the award of CAY, but local government employers may still exercise discretion to "augment" an LGPS member's pension by the application of regulation 52 of the LGPS Regulations 1997 (see paragraph 11. (a) below);
 - (c) contain transitional protection arrangements to the end of the current financial year, which means that an employer can choose to apply either the 2000 regulations, enabling the use of CAY, or the 2006 regulations, for a person whose employment with them commenced before 1 October 2006 and whose termination date is on or after 1 October 2006 and before 1 April 2007;

Considerations

9. The issues and principles to be considered are set out under a series of sub-headings below.

Proposed revised policy approach

10. In developing a revised approach to discretionary compensation, it is suggested that the Council should apply the following principles:
11. General:
- (a) Regulation 52 of the LGPS Regulations 1997 allows employers to award a member an additional period of membership at any time during active membership of the scheme; however, such augmentation of an LGPS pension creates a substantial strain on the pension fund as the resulting additional payments have to be made from it. The Council would have to pay the cost to the pension fund, calculated on actuarial assumptions about the longevity of the person concerned. The County Council is not aware of any other county council in the East of England that intends to use augmentation provisions as a consequence of the regulation changes. The Council should therefore continue not to seek to make use of the augmentation regulatory provisions due to the costs and complexities this entails.
 - (b) The Council should seek to develop a discretionary compensation policy that can be applied consistently to all, regardless of age.
12. Redundancy policy:
- (a) The Council should adopt a policy to replace the current CAY provisions in cases of redundancy. The County Council considered a number of options for this element of the proposed revised policy. The most sustainable of these, in terms of compliance with legislative requirements, equality of application, ease of administration and affordability, while maintaining an acceptable level of compensation for employees, are:

- (i) To award an overall lump sum of 1½ times the redundancy payment to all employees with 2 or more years' continuous employment within local government (or a public sector company recognised by Modification Order), regardless of LGPS membership. (Note: The overall lump sum so awarded would include the statutory redundancy payment due.)
 - (ii) To base the overall redundancy lump sum on actual week's pay.
 - (iii) Not to award CAY for redundancy cases, unless covered by the transitional protection arrangements up to 1 April 2007 (see paragraph 14. (a) below).
 - (iv) Employees aged 50 and over would still receive immediate payment of their pension benefits. (Note: The government is proposing the earliest age for release of pension to be 55 by 2010 for current members; the earliest age for release of pension to be 55 for new joiners from 1 April 2008; both, except on the grounds of ill health.)
- (b) The Council would continue with its clarification of all local government service, even if broken, to count for the purposes of redundancy payment calculations; however, no period of employment to ever count twice, i.e. where the employee concerned has already received compensation from a previous employer or employers, only the remaining, un-compensated, service shall be counted.
- (c) In proposing such a policy, the Council recognises that redundancies will be considered a last resort and that action will be taken to prevent these where possible, e.g. through the use of redeployment. However, where redundancies occur then compensation will be made in a manner that is appropriate, non-discriminatory and affordable to the authority.

13. PRIEEAF:

- (a) Similarly, the Council should adopt a policy to replace the current provisions in cases of PRIEEAF:
 - (i) PRIEEAF cases from 1 April 2007 will be treated on their individual merits, with flexibility to pay a lump sum of up to 104 weeks' pay (this recognises that there may be a need for some negotiation in such cases).
 - (ii) For PRIEEAF cases covered by the transitional protection arrangements up to 1 April 2007 (see paragraph 14. (a) below), CAY payments will only be awarded if approved in accordance with current Council policy.
 - (iii) Employees aged 50 and over will continue to receive the immediate release of their pension benefits when PRIEEAF is applied. (Note the government's proposed age changes, as under paragraph 12. (a) (iv) above.)

14. Transitional Protection Arrangements:

- (a) The Council should adopt and follow transitional protection arrangements afforded by the new regulations, as outlined in paragraphs 15 to 16 below.

Transitional protection arrangements

15. The 2006 regulations contain transitional protection arrangements to the end of the current financial year, which means that an employer can choose to apply either the 2000 regulations, enabling the use of CAY, or the 2006 regulations, for a person whose employment with them commenced before 1 October 2006 and whose termination date is on or after 1st October 2006 and before 1 April 2007.

16. In order both to ease the administrative changeover and also to enable current Council restructuring activities to be effectively dealt with, it is proposed that for those employees who commenced employment with the Council before 1 October 2006 and leave the organisation as a consequence of redundancy or PRIEEAF, then the Council's existing policy remains in operation until 31 March 2007. If approved, this will enable the Council to award CAY in cases where relevant authorisation is provided. From 1 April 2007, all employees will be covered by the revised policy arrangements outlined in paragraphs 11 to 13 above.
17. There are two cases resulting from the 2nd tier review that occur during the period of the transitional protection arrangements, one of which will have been settled under the current 2000 regulations by the time this report is presented to Members:
- (a) In this first case, an award of 1½ times the redundancy payment proposed under the 2006 regulations would have resulted in a lump sum only slightly higher than the combined current redundancy payment plus CAY lump sum available under the 2000 regulations; the person concerned also receives a CAY annual payment under the 2000 regulations.
- (b) In the second case, the person concerned is not eligible for CAY under the 2000 regulations, so it is not possible to make a similar comparison.

Summary

18. These proposals are summarised in the table below:

	Redundancy	PRIEEAF
Transitional arrangements, 1 October 2006 to 31 March 2007	Redundancy – standard payment, calculated on actual remuneration Pension, including CAY, if applicable	Redundancy – standard payment, calculated on actual remuneration Pension, including CAY, if applicable
Policy from 1 April 2007	Redundancy – 1½ times standard payment, calculated on actual remuneration Pension, if applicable	Lump sum of up to 104 weeks' pay, calculated on actual remuneration Pension, if applicable

Exception

19. Any employment contracts which specifically mention termination arrangements, including redundancy and pension enhancements, will need to be honoured to ensure that the Council does not breach terms of the contract. There appears to be only one such arrangement in force at the present time that relates to the termination package. In this case, in order to preserve the agreed termination package, the Council will need to augment the person's pension by awarding an additional period of membership of the pension scheme. This will be a lower cost option in view of the small number of days of service that this officer would require to achieve full pension. It would clearly be to the advantage of the authority to augment, rather than award an enhanced redundancy payment in accordance with paragraph 12. (a) (i) above.

Options

20. Cabinet could decide to recommend the adoption of a discretionary compensation policy as outlined above.
21. On the other hand, Cabinet could decide to recommend the adoption of an alternative discretionary compensation policy; however, the Council's policy would not then mirror that of the County Council and, in addition, any "improved" policy would not be as affordable.
22. A third option would be to restrict the calculation of a redundancy payment to the basic statutory redundancy payment formula. This would mean that the multiplier applied to the number of weeks (paragraph 12. (a) (i) above) would not be used. The result would mean the implementation of a policy much less favourable in terms and would be highly likely to meet with resistance from staff and unions alike.
23. Another option would be not to count periods of qualifying employment where the employee had had a break in service from local government, i.e. not to count previous local government service, where broken. However, counting all local government service recognises the value of such service to the whole sector and acknowledges the renewal of commitment to local government by those returning, perhaps with new or enhanced skills.

Implications

24. Financial - While the proposed policy amendments ensure a consistent approach to the management of redundancy and PRIIEAF issues, the cost of implementing the proposed revised proposals cannot be fully quantified, as this is based upon the demography of the workforce affected by the application of the policy and the nature and extent of further workforce re-organisations. While an employee aged over 50 may, comparatively, receive a reduction in the level of payment made as a consequence of adopting the new policy proposals, those employees aged less than 50 will potentially receive an enhanced redundancy entitlement, regardless of their membership of the LGPS. There is however, an anticipated reduction in costs associated with CAY annual pension costs that the Council has previously had to pay in the cases of redundancy and PRIIEAF.
25. Legal - Failure to amend its discretionary compensation policy as an employing authority would leave the Council open to statutory challenge and enforcement activity. The proposed policy amendments are considered sufficient to satisfy the requirements of the recent age equality legislation, given that an exception in regulation 33 of this legislation enables employers to pay enhanced redundancy payments. However, as case law in respect of this legislation is expected to develop, it is considered prudent that this policy be reviewed following a 6-month period of operation.
26. Staffing - Any reduction in the benefits available to staff could have serious impacts, both on existing staff in terms of morale and retention.
27. Risk Management - The following potential risk issues have been identified, with proposed mitigating actions:
 - (a) The Council is unable to effectively meet statutory requirements in respect of the LGPS regulations and age equality legislation - The proposals have been assessed in respect of the LGPS regulations and age equality legislation and are considered to be compliant with these statutory requirements; the

recommendation to review this policy after a period of 6 months in operation will further enable legal compliance to be assured.

- (b) The cost of managing redundancy and early retirement in the interests of efficiency increases as a consequence of the revised policy arrangements - The recommendation that the revised discretionary policy be reviewed after a period of 6 months in operation will ensure that the financial implications of these revisions can be fully assessed.
- (c) The Council is not able to make the best use of discretionary provisions of the LGPS to enable the efficient and effective management of the workforce - The proposals are considered to provide sufficient flexibility to enable the Council to use these discretions to manage workforce efficiency and effectiveness.

- 28. Equal Opportunities - Awarding an overall lump sum of 1½ times the redundancy payment would not be age discriminatory, as regulation 33 of the 2006 regulations enables employers to pay enhanced redundancy payments. However, the Council will need to ensure that lump sum payments in any future PRIIEAF cases are provided on a non age discriminatory basis.

Consultations

- 29. The Council has consulted with the unions over the proposed changes. Unison has advised its acceptance of the changes proposed in the report.

Effect on Annual Priorities and Corporate Objectives

29.	Affordable Homes	Redundancy and retirement benefits are key elements of the Council’s recruitment and retention policy, through which it aims to attract and retain the quality staff necessary to provide services, achieve its priorities and meet its objectives.
	Customer Service	
	Northstowe and other growth areas	
	Quality, Accessible Services	
	Village Life	
	Sustainability	
	Partnership	

Conclusions/Summary

- 30. This report sets out the issues and principles to be considered in order to ensure that the Council meets the statutory requirements, while in addition both maintaining flexibility as an employer and also preventing any additional financial pressures as a consequence of adopting a new policy.
- 31. In adopting the proposed revised policy as set out above, the authority will have acted reasonably by limiting the extent to which it has chosen to exercise the powers available to it under the new regulations. The proposed revised policy is workable, affordable to the authority and will maintain a reasonable level of compensation for employees, having regard to the foreseeable costs.

Recommendations

32. Cabinet is requested to recommend the following proposed revised discretionary compensation policy for final determination by Council:
- (a) General policy
 - (i) The revised policy should seek to minimise any adverse impact on the terms and conditions of employment for Council employees.
 - (ii) The Council should continue not to seek to use the LGPS augmentation provisions due to the costs and complexities this would entail.
 - (iii) The revised policy should be applied consistently to all, regardless of age.
 - (iv) The revised policy should be reviewed after 6 months of operation in order to manage any potential risks and issues arising.
 - (b) Transitional protection
 - (i) The Council should continue to use the discretions it currently applies under the 2000 regulations to award CAY for any protected employees made redundant/subject to PRIEEAF before 1 April 2007.
 - (c) Redundancy policy
 - (i) Redundancy should remain calculated on actual week's pay, rather than statutory redundancy provisions.
 - (ii) All local government service, even if broken, should continue to count for the purposes of redundancy payment calculations; however, no period of employment should count twice, i.e. where the employee concerned has previously received compensation, only the remaining, un-compensated, service should be counted.
 - (iii) The revised redundancy policy for all employees should be to award an overall lump sum of 1½ times the redundancy payment to employees with 2 or more years' continuous employment within local government (or a public sector company recognised by Modification Order), regardless of their membership of the LGPS, with effect from 1 April 2007. (Note: The overall lump sum so awarded would include the statutory redundancy payment due.)
 - (d) PRIEEAF policy
 - (i) The revised PRIEEAF policy for the Council should be a flexible approach to award a lump sum of up to 104 weeks' pay.

Background Papers: the following background papers were used in the preparation of this report:

Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (SI 2914)

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