

REPORT TO: Cabinet

MEETING DATE: 13 September 2016

BY: Depute Chief Executive (Resources and People Services)

SUBJECT: Annual Pensions Report - 2015/16 and Policy Statement on Application of Regulatory Pension Discretions

1 PURPOSE

- 1.1 To summarise the early retirement activity within the financial year 2015/16, in accordance with External Audit requirements and Council Policy.
- 1.2 The Local Government Pension Scheme contains various regulations where discretion has to be exercised by the Council. As an employer, the Council is required to formulate, publish and keep under review a policy statement on certain discretions. This report sets out proposal in relation to the adoption of discretionary powers under the Local Government Pensions Scheme (Scotland) Regulations 2014 and seeks Cabinet approval for the Councils Policy Statement on the exercise of these discretions

2 RECOMMENDATIONS

- 2.1 That Cabinet note the content of the report with regard to the pension activity in the financial year 2015/16.
- 2.2 That Cabinet approve the revised Pension Discretion Policy Statement attached to this report replacing the existing version originally approved at Cabinet on 9 June 2009.

3 BACKGROUND ANNUAL PENSION REPORT

3.1 Council's Retirement Activity in Financial Year 2015/16

There are currently four types of pensionable retirements available to the Council for all employees excluding Teaching employees (see paragraph 3.2), they are:

- Due to Efficiency or Redundancy at the discretion of the Council**
 - This allows the individual, aged over 55 years (50 if in the Scheme

before 5 April 2006), at the discretion of the Council to retire early drawing their pension without any actuarial reduction being applied. In this case the strain costs relating to the early release of the pension are borne by the Council.

- **Ill-Health retirement** - This occurs where an employee is confirmed by Occupational Health as being permanently incapable of discharging efficiently their duties because of ill-health or infirmity of mind or body. The employee is permitted early access to an enhanced pension in accordance with the superannuation regulations and requires no exercise of Council discretion. The costs are fully borne by the pension fund.
- **Rule of 85** - This is where an individual aged between 50 and 60 can ask to be considered for voluntary retiral if their service and age combined comes to 85 or over. In this instance there is no enhancement to the pension the individual receives, however there are costs to the Council for the early release of the pension if the employee is below age 60, and the employee in this circumstance requires Council approval. The Council bears the strain costs to the pension fund for the early payment of the benefits. Under the 2014 Regulations the Council can now choose in certain circumstances to either turn these provisions on or off, therefore not bearing strain costs for those below age 60 who meet the criteria.
- **Flexible Retirement** – This is a discretionary element of the pension regulations which allows employees who meet certain criteria to draw their pension and continue working on a reduced hour's basis. To qualify the employee must be over 55 years old and have a minimum of 2 years pensionable service and they must reduce their working hours by a minimum of 40%. They must however have the Council's agreement as there can be cost to the Council for the early release of the individual's pension. If agreed the employee then continues working on the reduced hours and may opt to rejoin the pension fund while drawing the pension benefits they have already accrued.

3.2 A summary of the pension retirements in the financial year 2015/16 is as follows:

- **Compulsory/Voluntary Early Retirement/Severance** – There were 8 Compulsory/Voluntary Early Retirement/Severances in the financial year 2015/16.

Department	Total	Compulsory	Voluntary
Health & Social Care	4	-	4
Resources & People	-	-	-
Partnership & Communities	4	4	-

- **Medical Retirement** – There were 18 superannuated medical retirements in the financial year 2015/16 including 3 teaching posts, across the Council departments.

Department	Total
Health & Social Care	3
Resources & People	4
Partnership & Communities	11

- **Rule of 85** – There were no Rule of 85 retirements in the financial year 2015/16.
- **Flexible Retirement** – There were 12 flexible retirements approved in the financial year 2015/16.
- **Teaching Retirement Policy** – in the financial year 2015/2016 there were no voluntary early retirals under the teacher’s retirement policy.

- 3.3 Details of the Council’s financial commitments relating to pensions are included in the 2015/16 Financial Statements. As a result of ongoing pension costs arising from decisions taken in earlier years, in addition to the “up-front” strain costs now due in the year they accrue, during 2015/16 the Council spent £1.065 million (£1.097 m in 2014/15) on early retirements for Local Government Workers and £298,000 (£295,000 in 2014/15) for teachers.
- 3.4 The Council has a liability to pay pension costs in the future. At 31 March 2016 this liability has decreased and was actuarially assessed at £114.995 million (and in 2014/15 at £172.028 million). This liability is reviewed through an actuarial valuation which takes place every 3 years. A stability mechanism is currently in place with the Lothian Pension Fund based on the current valuation results, which takes into consideration the Lothian Pension Fund performance and assessed liabilities, and means in practice the employer pension contributions the Council makes will be fixed until 2017/18, however future years will be subject to the outcome of actuarial valuations.
- 3.5 In addition to the above figures, the Council also makes ‘ex gratia’ pension payments to 118 former employees who worked less than 16 hours per week and were aged under 50 at 31 December 1993 and were unable to join the LGSS pension scheme under the statutory rules at the time. The value of these payments during 2015/2016 was £66,664 (and in 2014/15 it was £69,442). The Council took the decision to remove this discretion at Cabinet on 9 June 2009. No new ex gratia pension payments will arise and the existing estimated value of future liabilities based on the actuarial mortality estimate is £0.727m and will therefore reduce over time.

BACKGROUND PENSION DISCRETIONS POLICY

- 3.6 The Council is required under Regulation 58 of the Local Government Pensions Scheme (Scotland) Regulations 2014 to formulate, publish and keep under review its policy in relation to certain discretions contained within the regulations.
- 3.7 In exercising its discretionary powers the Council is mindful of the need to maintain public confidence therefore the areas where discretion is to be applied has been limited with a view to minimising the potential impact upon the public purse.
- 3.8 A copy of the policy statement is attached and applies to current and former employees of the Council who are either active or deferred members of Lothian Pension Fund.
- 3.9 Any application to the Council to exercise discretionary powers will be considered in line with the approved policy, taking account of the financial impact on both the Council and the pension scheme.

4 POLICY IMPLICATIONS

- 4.1 The Council is required to report its pension activity annually to elected members in accordance with the Audit Scotland requirements in the “Bye now Pay Later” report published in December 1997.
- 4.2 The Pension Discretion Policy statement replaces the previous version agreed at Cabinet on 9 June 2009 reflecting the changes to the available Council Discretions in the Local Government Pension Scheme (Scotland) Regulation 2014. The revised Policy will be lodged with Lothian Pension Fund and made available to all employees on Elnet, the staff intranet

5 INTEGRATED IMPACT ASSESSMENT

- 5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

6 RESOURCE IMPLICATIONS

6.1 Financial

- 6.1.1 Early retirement decisions taken in earlier years have created a significant liability for current and future Council Tax payers. There are no immediate budgetary implications associated with this report.
- 6.1.2 The exercise of the Discretions in the manner proposed within the policy means there would be little or no financial impact from their application. Any proposals made under the policy that give rise to a financial cost

e.g., Flexible Retirement would be subject to appropriate Council Policy and agreement processes

6.2 **Human Resources**

6.2.1 Finance and Human Resources continue to ensure that any retirements are in accordance with Council Policy and within the Standing Orders and the supporting Scheme of Delegation and also that managers are aware that any pensionable retirement meets the strict efficiency or redundancy requirements and generates the necessary savings.

6.2.2 The Pension Discretion Policy has been shared with the Trades Unions and no concerns were identified and if approved by Cabinet will be published on Elnet and a copy lodged with Lothian Pension Fund

6.3 **Other** - none

7 **BACKGROUND PAPERS**

7.1 Future Application of Discretionary Policies relating to Early Retirement and/or Severance – East Lothian Council 7 December 2010.

7.2 Policy on Enhanced Compensation for early Retirement on Grounds of Redundancy and Efficiency– December 2010

7.3 Lothian Pension Fund Website: www/lpf.org.uk

7.4 Local Government Pensions Scheme (Scotland) Regulations 2014

7.5 Policy Statement on Application of Regulatory Discretions approved at Cabinet on 9 June 2009.

7.6 Flexible Retirement Policy – December 2013

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This policy applies to all employees except Teachers

Section

- 1 Introduction
- 2 Key Principles
- 3 Discretions
- 4 Policy Review

This policy details the discretions the Council apply with regard to the pension's regulation and replaces the previous Policy agreed at Cabinet on 9 June 2009.

Policy Statement on Application of Regulatory
Pensions Discretions Local Government Pension
Scheme (Scotland) Regulations 2014

**August
2016**

1 Introduction

- 1.1 Regulation 58 of the Local Government Pension Scheme (Scotland) Regulations 2014 states that each employer participating in the Scheme is required to formulate a policy, concerning the exercise of certain discretions contained within the regulations.
- 1.2 East Lothian Council after careful consideration and having due regard to the potential impact upon the public purse, has decided to exercise the discretions as set out in this policy statement.
- 1.3 The policy is applicable to all East Lothian Council employees who are eligible members of the Local Government Pension Scheme. The Policy excludes teachers who are covered by the Scottish Public Pensions Agency (Teachers Superannuation Scheme).
- 1.4 This Policy replaces the previous Policy Statement on Application of Regulatory Pensions Discretions agreed at Cabinet on 9 June 2009.

2 Key Principles

- 2.1 East Lothian Council does not have a general early release policy, but will consider individual applications on their merits and in relation to the efficient operation of the services of the Council.
- 2.2 This Policy describes the range of discretions available to the Council. All decisions in relation to the use of these discretions will take account of the short, medium and long-term financial implications to the Council.
- 2.3 In applying its discretions, the Council will always seek to ensure consistent and equitable application.
- 2.4 The Council will ensure this Policy is reviewed and updated to comply with any future amendments to the statutory redundancy provisions and Pension Regulations.

3 Discretions

3.1 Regulation 16 (2)(e) & 16(4)(d) of the Local Government Pension Scheme (Scotland) Regulations 2014: (Additional Pension Contributions)

- 3.1.1 This regulation allows the Council to voluntarily enter into an Additional Pension Contributions (APC) contract with a scheme member who is contributing to the main scheme in order to purchase additional pension to a level not exceeding the additional pension limit. The Council may choose to fund in whole, or in part, any arrangement entered into by an active scheme member to pay additional pension contributions by way of regular contributions in accordance with Regulation 16(2)(e), or by way of a lump sum in accordance with regulation 16(4)(d).
- 3.1.2 The Council will not exercise this discretion.

3.2 Regulation 29(5) of the Local Government Pension Scheme (Scotland) Regulations 2014: (Retirement Benefits: Early payment of benefits on or after age 55 and before age 60)

3.2.2 Members age 55 or over may elect to receive immediate payment of retirement benefits (provided they have left Local Government employment). Such benefits may be reduced for early payment. In order to avoid the member suffering the full reduction to their benefits the Council can elect to “switch on” the 85 year rule protections thereby allowing the member to receive fully or partly unreduced benefits but subject to the scheme employer paying a strain cost to the pension Fund.

3.2.3 The Council will not have a general policy of granting early payment of benefits on or after age 55 and before age 60 but will consider request on a case by case basis. The Council may exercise this discretion where a sound business case can be made for doing so or where exceptional circumstances arise that make payment of those benefits justifiable.

3.3 Regulation 29(6) - of the Local Government Pension Scheme (Scotland) Regulations 2014 – (Flexible Retirement)

3.3.1 This regulation, subject to certain conditions allows members to draw some or all of their scheme benefits while still in employment.

3.3.2 The Council will not have a general policy of agreeing to requests for flexible retirement (i.e. early payment of retirement benefits to a member who has attained age 55 and who, with the Council’s consent, reduces his/her hours or grade). However, such requests will be considered where it can be demonstrated to be to the Council’s advantage or in its operational interests.

3.3.3 Should the Council agree to early payment of benefits under this regulation, it will not exercise the discretion of waiving any reduction, which would normally be applied to the benefits.

3.3.4 Further detail of the Councils application can be found in the Application of the Council’s Policy on Flexible Retirement available on Elnet.

3.4 Regulation 29(8) of the Local Government Pension Scheme (Scotland) Regulations 2014: (Waiving Actuarial Reduction on Early retirement between 55 and 60)

3.4.2 Any Scheme member aged 55 or over, providing they have left employment can ask for the early payment of pension benefits, but these benefits may be reduced for early payment.

3.4.3 The Council will not have a general policy of agreeing to request for early payment of retirement benefits from a member who has attained age 55 or over and is under age 60. However, where the Council considers it can be demonstrated as being to the Council advantage or operational interest, it will consider such requests.

3.5 Schedule 2 – paragraphs 2&3 of The Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014

3.5.2 This section deals with the transitional provisions of the Rule of 85 and the discretionary element for the Council to turn on the Rule of 85 protections.

3.5.3 The Council will not have a general policy of agreeing requests for early payment of retirement benefits from a member who has attained age 55 and is under age 60. However, where the Council considers it can be demonstrated as being to their advantage or in their operational interests, it will consider such requests.

3.5.4 Should the Council agree to the early payment of benefits under this regulation in any case, the Council will not have a general policy of applying Rule of 85, nor will the Council waive any reduction which would normally be applied to the benefits.

3.6 Regulation 30 of The Local Government Pension Scheme(Scotland) Regulations 2014 – (Award of Additional Pension)

3.6.1 The Council may award a member additional pension which would become payable from the same date as the member's normal pension. The maximum extra pension which can be awarded is £5,000. Such awards can be made to active members, or within 6 months of leaving to members whose employment was terminated on the grounds of redundancy or the interest of efficiency. The Council would be required to make an appropriate payment into the fund within one month of making a resolution.

3.6.2 The Council will not exercise this discretion.

3.7 Regulation 30 of the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 – (Voluntary Early Retirement between the ages of 50 and 60)

3.7.2 Any scheme member aged 50 or over, providing he has left his employment, can ask for the early payment of pension benefits. Where the member is under age 60, it is at the employer's discretion to agree to early payment. This discretion may also apply to former members with deferred pension rights when they attain age 50.

3.7.3 The Council will not have a general early release policy, but will consider applications on their merits. The Council may consent to voluntary early release under regulation 30 of the benefits regulations where it can be demonstrated as being in the Council financial or operational interests.

3.8 Regulation 17(1) of the Local Government Pension Scheme (Scotland) Regulations 2014: (Shared Cost AVC's)

3.8.1 This regulation allows the Council to set up an additional voluntary contributions (AVC) scheme requiring a contribution from the Council. Scheme members already have access to AVC arrangements which accept member-only contributions.

3.8.2 The policy of the Council is not to establish a shared cost AVC scheme.

3.9 Regulation 89 of the Local Government Pension Scheme (Scotland) Regulations 2014: (Forfeiture of pension rights after conviction for employment-related offences)

3.9.1 Under this regulation, the Council may apply to the Scottish Ministers to forfeit all or part of a scheme member's pension benefits. This would apply in a case of conviction for a serious offence which were either 'gravely injurious to the State or 'liable to lead to a serious loss of confidence in the public service'.

3.9.2 In the interests of maintaining confidence in the public service, the Council reserves the right to exercise this discretion should the need arise.

3.10 Regulation 90 of the Local Government Pension Scheme ((Scotland) Regulations 2014: (Recovery or retention where former member has misconduct obligation)

3.10.1 Under this regulation, the Council may recover from his pension benefits any loss arising from a criminal, negligent or fraudulent act by a former employee. Providing that all other efforts to recover monetary obligations have been exhausted.

3.10.2 In the interest of maintaining confidence in the public service, the Council reserves the right to exercise this discretion should the need arise.

3.11 Regulation 98 of the Local Government Pension Scheme (Scotland) Regulations 2014: (Inward Transfer of Pension Rights)

3.11.1 The Scheme Regulations allow members to transfer previous pension rights into the Local Government Pension Scheme. The Regulations state that transfers must be requested within 12 months of the member joining the Scheme. However the Council and administering authority have discretion to allow transfer to proceed after this time limit has expired.

3.11.2 The Council will not have a general policy of allowing a late transfer to proceed. Instead it will consider individual requests on their merits and may, in agreement with Lothian pension Fund exercise the discretion to allow a late transfer to proceed where there is no financial impact on the Council and Lothian Pension Fund.

3.12 Regulation 9(4) of the Local Government Pension Scheme (Scotland) Regulations 2014: (Member Contributions)

3.12.1 Under this regulation, the Council may adjust a member's pension contribution rate should a change in pay move them into a different band during the financial year.

3.12.2 The Council reserves the right to exercise this discretion should the need arise.

3.13 Regulation 16(16) of the Local Government Pension Scheme (Scotland) Regulations 2014: (Additional Pension Contributions)

3.13.1 Under this regulation, where a member enters into an additional pension contract to which employer contributions may be made (Shared Cost Additional Pension Contract), an application to enter into the contract must be made within 30 days of returning to work.

3.13.2 The Council will not exercise this discretion

3.14 The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998 and the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulations 2008

3.14.1 The Councils policy in terms of the discretion it applies in relation to the above regulations is detailed in its Policy on Enhanced Compensation for Early retirement on the Grounds of Redundancy and Efficiency approved at Cabinet on 7 December 2010.

4 Policy Review

4.3.2 In developing this policy, East Lothian Council has referred to both the relevant statutory provisions and also advice from the City of Edinburgh Council as the Pension Scheme Administering Authority.

4.3.3 This policy will be kept under review and will be revised as and when necessary to reflect any changes in relevant regulations or policy. Any changes to this policy will be advised to both the administering pension authority and scheme members.

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