

REPORT TO: Cabinet

MEETING DATE: 19 January 2021

BY: Executive Director for Council Resources

SUBJECT: Annual Pensions Report - 2019/20 and Policy Statement on the Application of Regulatory Pension Discretions

1 PURPOSE

- 1.1 To summarise the early retirement activity within the financial year 2019/20, 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
- 1.3 For Cabinet to determine whether East Lothian Council should exercise its discretion to have Lothian Pension Fund pay some or all of the annual tax charge on behalf of members of staff whose pension contributions exceed the tapered annual tax allowance in respect of the tax year 2019 to 2020.

2 RECOMMENDATIONS

- 2.1 That Cabinet note the content of the report with regard to the pension activity in the financial year 2019/20.
- 2.2 That Cabinet approve the revised Pension Discretion Policy Statement attached to this report replacing the existing version approved at Cabinet on 13 September 2016.
- 2.3 That Cabinet considers the options at Paragraph 3.7 and decides which of these to adopt and authorises officers to communicate that decision to the Lothian Pension Fund.

3 BACKGROUND ANNUAL PENSION REPORT

3.1 Council's Retirement Activity in Financial Year 2019/20

There are currently three 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.

- **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%. Generally there are no costs to the Council as the employee would have their pension actuarially reduced. However, in some circumstances if the employee meets the Rule of 85 there can be costs therefore they must have the Council's agreement for the early release of the individual's pension. If agreed the employee then continues working on the reduced hours and will automatically be re-enrolled into the pension fund while drawing the pension benefits they have already accrued (if they did not wish to join the scheme then they would need to opt out).

3.2 A summary of the pension activity in the financial year 2019/20 is as follows:

Department	Health & Social Care	Resources & People	Partnership & Communities	Totals
Compulsory Severance (pensionable)	-	-	-	-
Voluntary Severance (pensionable)	-	-	6	6

Medical Retirement (Lothian Pension Fund)	5	1	10	16
Medical Retirement (Teachers Scheme)		-		
Flexible Retirements	2	8	13	23

3.3 Details of the Council's financial commitments relating to pensions are included in the 2019/20 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 2019/20 the Council spent £0.751 million (£0.773 million in 2018/19) on early retirements for Local Government Workers and £0.504 million (£0.505 million in 2018/19) for teachers.

3.4 The Council has a liability to pay pension costs in the future. At 31 March 2020 this liability has decreased and was actuarially assessed at £146.708 million (and in March 2019 at £177.775 million). This liability is reviewed through an actuarial valuation which takes place every three years. The most recent valuation date was 31 March 2020. The contribution stability mechanism remains 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. Contribution rates from 1 April 2021 will be frozen for 4 years and then increase or decrease by a maximum of 0.5% per annum.

3.5 In addition to the above figures, the Council also makes 'ex gratia' pension payments to 100 former employees who worked less than 16 hours per week, 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 2019/2020 was £57,645 (and in 2018/19 it was £59,968). 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 £0.444m and will therefore reduce over time.

3.6 Background Pension Discretions Policy

3.6.1 The Council is required under Regulation 58 of the Local Government Pensions Scheme (Scotland) Regulations 2018 to formulate, publish and keep under review its policy in relation to certain discretions contained within the regulations.

3.6.2 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.

3.6.3 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.

- 3.6.4 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
- 3.7 The Council has received the Special Bulletin (appendix A) from Lothian Pension Fund asking the Council whether it agrees that the “Voluntary Scheme Pays” (VSP) option should be allowed. The Bulletin explains the impact of VSP and the potential risk to the Council were it to agree to the option. In the normal course of events officers would present Cabinet with a recommendation but that it not appropriate in this case as all Chief Officers have a potential conflict of interest. This conflict arises as participation in VSP generally only affects those earning higher salaries and they could therefore be perceived to be compromised.

3.7.1 **Background**

The Local Government Pension Scheme obliges employers to pay an employer’s pension contribution of circa 20% of salary in addition to an employee’s own pension contribution from salary. The current annual tax free allowance for pension contributions is £40,000. Employees who exceed the standard allowance can opt for the Pension Fund to pay the tax due by way of a “Mandatory Scheme Pays” election. However those earning in excess of £110,000 could be subject to a tapered annual allowance and therefore can face considerable personal tax liability in respect of their pension contributions. This liability can be alleviated by the Pension Fund meeting the tax due and later recouping that by making a reduction in the pension paid to the individual once they retire. This is only possible if Cabinet were to agree to VSP. Agreement will be sought annually relating to the past tax year. This report relates to tax year 2019 to 2020. It was announced in the Budget last year that the threshold income for the tapered allowance will rise from £110,000 to £200,000. East Lothian Council has no employees earning more than £200,000 but a number of employees may be impacted for tax year 2019 to 2020.

3.7.2 **Option one**

Agree to VSP:-

This will mean that individuals can elect not to pay the tax due themselves and instead have the Fund pay it for them by agreeing to receive a reduced pension when that is due. This would have the benefit of assisting members of staff who might find themselves in financial difficulty in meeting tax obligations. It could aid staff retention and avoid a situation where staff are disinclined to apply for promoted posts. The Council often asks members of staff to “act up” to cover vacant posts and it would be iniquitous were the employee to face financial disadvantage as a result. Without VSP members of staff might be disinclined to assist in this way.

There is a risk to the Council. Should a member of staff die before drawing down their pension or before the whole tax is recouped, the Pension Fund would require the Council to bear the cost of the tax paid on behalf of that member of staff. East Lothian Council has very few members of staff that might seek to access VSP and the threshold income is to increase this year so the risk is relatively small. Of course the Council has no control over changes to tax

allowance limits and the resultant impact on risk, therefore the decision as to whether to participate in VSP will be revisited annually.

3.7.3 Option two

Do not participate in VSP:-

This would remove all financial risk to the Council but it could create personal financial difficulty for some of our most senior members of staff leading to lowered morale and even disaffection that could affect staff retention at the most senior level.

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.

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.

6.2 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.

6.3 Other - none

7 BACKGROUND PAPERS

- 7.1 Policy on Enhanced Compensation for early Retirement on Grounds of Redundancy and Efficiency– December 2010
- 7.2 Lothian Pension Fund Website: www/lpf.org.uk
- 7.3 Local Government Pensions Scheme (Scotland) Regulations 2014

7.4 Policy Statement on Application of Regulatory Discretions approved at Cabinet on 13 September 2016.

7.5 Flexible Retirement Policy – December 2013

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DATE	14 December 2020

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 13 September 2016.

Policy Statement on Application of Regulatory
Pensions Discretions Local Government Pension
Scheme (Scotland) Regulations 2018

**Draft July
2020**

1 Introduction

- 1.1 Regulation 58 of the Local Government Pension Scheme (Scotland) Regulations 2018 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 regard to the extent to which the exercise of the functions could lead to a serious loss of confidence in the public service, 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 13 September 2016.

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 2018: (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 section of the 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.

3.3 Regulation 29(7) - of the Local Government Pension Scheme (Scotland) Regulations 2018 – (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 and/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 Council's application can be found in the Application of the Council's Policy on Flexible Retirement available on Elnet.

3.4 Regulation 29(9) of the Local Government Pension Scheme (Scotland) Regulations 2018: (Waiving Actuarial Reduction on Early retirement between 55 and 60)

3.4.2 Any active scheme member who has not attained normal pension age, but has attained age 55 may elect to receive immediate payment of their benefits, providing they have left employment, but these benefits may be reduced for early payment.

3.4.3 The Council will not have a general policy of agreeing to waive any reduction which would normally be applied to the members benefits.

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 to apply the rule of 85 from a member who has attained age 55 and has elected for early payment. 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 The Council will not have a general policy of applying Rule of 85.

3.6 Regulation 30 of The Local Government Pension Scheme(Scotland) Regulations 2018 – 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 former scheme member who left prior to 1 April 2015 and is aged 55 or over, providing they are no longer in local government employment, may request unreduced payment of their deferred benefits on compassionate grounds.

3.7.3 The Council will only exercise its discretion to waive the actuarial reduction in exceptional cases of hardship.

3.8 Regulation 17(1) of the Local Government Pension Scheme (Scotland) Regulations 2018: 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 86 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 87 of the Local Government Pension Scheme ((Scotland) Regulations 2018: 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 95 of the Local Government Pension Scheme (Scotland) Regulations 2018: 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 2018: 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 2018: 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 Council's 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.

A McCrorie

Depute Chief Executive Resources & People

July 2020

Voluntary Scheme Pays

Lothian Pension Fund checks members' pension savings against the annual allowance limits every year. If pension savings exceeds the annual allowance and there is no carry-forward allowance from the previous three years, then the member will be liable to pay tax on the excess savings over the annual allowance. We must inform members who have exceeded the annual allowance by 6 October each year in line with HMRC legislation.

If a member has a tax charge because they have exceeded the standard allowance they can make a 'Mandatory Scheme Pays Election'. The Fund and the employer have no discretion over this i.e. we must accept the member's election and pay the tax charge in exchange for a debit to the members pension. The debit is applied when the member retires or leaves the Fund.

However, members who earn more than £110,000 ('threshold income') have to assess their tax liability to see if they are also affected by the additional tapered annual allowance – Lothian Pension do not carry out these calculations. The 'taper' reduces the Standard Annual Allowance to a minimum of £10,000. In the March 2020 budget, however, the Chancellor increased the "threshold income" to £200,000 with effect from 6 April 2020. This means that for the annual allowance test for the 2020/21 year the new threshold will apply so the taper will affect fewer members. However, the lower amount of £110,000 will still apply for the annual allowance for the 2019/20 year which we will run this year (by 6 October 2020).

There is discretion for administering authorities to pay some or all of an annual allowance charge on a member's behalf in circumstances where their pension savings are not in excess of the standard Annual Allowance but are in excess of the tapered Annual Allowance. This is known as 'Voluntary Scheme Pays'. Pensions Committee has previously agreed that 'Voluntary Scheme Pays' can be an option for members, on the condition that the member's employer agrees to this.

Use of the voluntary scheme pays option does present some risk to both the employer and the Fund. This is because the tax charge payable is paid in full by the Fund and a debit is applied to the member's pension. This means that the member's pension will be permanently reduced. The risk arises if the member dies before the tax charge paid is recouped - the debit would not be applied to any survivor's pension payable in the event of the member's death.

Under the current regime, given the scheme has no discretion over the mandatory scheme pays, for any member who is affected by the taper the maximum annual risk for an employer would be a member's additional tax charge of £13,800 based on someone in the 46% tax bracket.

For example, if a member has a pension input of £100,000 (and assuming they have no carry forward to offset this), they are over the standard annual allowance by £60,000 and this is the taxable amount. Say they were on a 46% tax rate they would have a tax charge of £27,600.

If they were subject to the Tapered Allowance, and their allowance has been reduced by the maximum to £10,000, their chargeable amount would be £90,000. The tax charge at 46% would be £41,400. As we would have to accept a mandatory scheme pays for the £27,600 charge, the amount relating to the taper is an additional £13,800 (£27,600 + £13,800 = £41,400).

If the election goes ahead, the scheme would pay the £41,400 and the members annual pension would have a debit applied. The debit amount is calculated based on factors by the Government Actuary's Department and depends on how far away the member is from State Pension Age. For example, for a member aged 50 whose normal pension age is 67, the current actuarial factor to be used would be 10.96.

Using the above example, the scheme debit would be £41,4000 / 10.96 which is £3777.37. This would be deducted from the members annual pension amount when they retire. The reduced pension amount is payable for life. The member could decide however to settle the tax charge directly with HMRC and it would not affect their pension.

Next steps

If you agree to the 'Voluntary Scheme Pays' option to be allowed in respect of your members, please confirm this to us in writing.

The time limit for the Fund to pay the voluntary scheme pays charge is 31 January 2021. Therefore, we need you to reply by no later than **27 November 2020** to allow us confirm to carry out the required calculations and advise members. Your response should be on headed paper and signed by a Director/other authorised signatory. Your decision on voluntary scheme pays can be amended at any time and as an employer you can decide whether to apply this to some or all members affected. Please send your response to employer.pensions@edinburgh.gov.uk.