

Report of the Chief Operating Officer

Local Government Pension Scheme 2021 Discretions Policy Summary

1. This report informs the Committee of a consolidation and re-drafting of the Council's Discretionary Policy Statement in order to comply with The Local Government Pension Scheme Regulations 2013 (the "**LGPS Regulations**") and the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 (the "**Discretionary Compensation Regulations**").
2. Further amendments may be necessary in light of £95,000 exit payments cap introduced by The Restriction of Public Sector Exit Payments Regulations 2020 once the draft Local Government Pension Scheme (Restriction of Exit Payments) (Early Termination of Employment) (Discretionary Compensation and Exit Payments Payments) (England and Wales) Regulations 2021 (the "**Draft Regulations**") are finalised and in force (although this may not be for several months). Further amendments to the Discretionary Policy Statement will be brought back to SMU for approval in due course.

Background

3. The LGPS Regulations require the Council to prepare a written statement of its policy in relation to the exercise of its discretions under regulations 16(2)(e) and 16(4)(d) (funding of additional pension), 30(6) (flexible retirement), 30(8) (waiving of actuarial reduction) and 31 (award of additional pension) of the LGPS Regulations as well as paragraph 1(1)(c) of Schedule 2 to The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (Rule of 85).
4. The Council also exercises many other employer discretions under the LGPS Regulations although these do not have to be included in the Discretionary Policy Statement.

5. The Council must also keep its Discretionary Statement under review and make such revisions as are appropriate following a change in its policy in accordance with the Discretionary Compensation Regulations.
6. When formulating and reviewing its Discretionary Policy Statement under the Discretionary Compensation Regulations, the Council must:
 - a have regard to the extent to which the exercise of its discretions in accordance with its policy, unless properly limited, could lead to a serious loss of confidence in the public service; and
 - b be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs.
7. The Council have commissioned Eversheds Sutherland to review its LGPS employer materials, including its Discretionary Policy Statement. Eversheds Sutherland have recommended that a fresh Discretionary Policy Statement should be produced to ensure compliance with both the LGPS Regulations and the Discretionary Payments Regulations (as well as the Draft Regulations in due course). This will replace the Discretionary Policy Statement from 2002 (as amended).
8. Whilst the LGPS Regulations only require the Statement to cover the specific discretions mentioned at paragraph 3 above, Eversheds Sutherland have recommended a comprehensive Discretionary Policy Statement to cover both mandatory and optional discretions to ensure that all of the Council's discretions are documented in a single place, including those discretions under historic LGPS regulations relating to former employees, as well as the discretions under the Discretionary Payments Regulations. This will ensure that the Council's discretions are all documented in one place making them easier to access and update in the future.
9. Eversheds Sutherland have also recommended that the policies should be documented in a way to avoid fettering the Council's discretions by adopting blanking policies. Therefore, rather than saying the Council will not exercise a particular discretion in any circumstance Eversheds Sutherland have suggested more flexible wording.

Analysis

10. The new Policy Statement is attached at Appendix 1. As this now is a comprehensive policy is not easy to compare to any previous versions, however the document has been colour coded to show the status of each of the discretions as follows:
 - red – material change
 - amber – minor change
 - green – same
 - no colour means the policy is new/not covered by the last (2014) Policy

11. The main changes which could have a material impact on scheme members and the Council are summarised in the following paragraphs:

Contributions to Shared Cost Additional Pension Contributions (SCAPCs)

The Council can apply its discretion to award a scheme member with additional pension by entering into a SCAPC contract.

This discretion is separate to when a scheme member is buying an APC to buy back lost pension following a period of unpaid leave. In such cases, the Council is must contribute 2/3 of the cost to a shared cost APC.

Current Policy - The Council will not pay employer funded Additional Pension contributions at all, and will not enter Shared Cost Additional Pension contribution Arrangements in any other circumstances other than those to enable employees to buy back lost pension as required by the legislation.

New Policy - The Council will contribute to Shared Cost APC schemes only when an employee has opted to buy back 'lost' pension due to a period of authorised unpaid leave (including sickness and child related leave) within 30 days of returning to work from that leave. In these circumstances, the employee will pay one third of the cost of the Shared Cost APC and the employer will pay two thirds of the cost. Other than the circumstances above, the Council not enter into any Shared Cost APC scheme.

The reason for the change is to clarify when the Council will contribute to a SCAPC, but does not change actual current policy.

Extending the time period for aggregation of LGPS benefits

When a scheme member leaves the LGPS and rejoins at a later date their deferred benefits will normally be automatically aggregated with their new pension record. Scheme members can choose to keep their deferred benefits separate within the first 12 months of rejoining the scheme. The Council can exercise its discretionary powers to extend the 12 month window for aggregation of LGPS benefits.

Current Policy - CYC will permit aggregation beyond 12 months.

New Policy - The Council will only extend the 12 month option period for the member's election beyond 12 months in exceptional circumstances and/or if there is evidence of administrative shortcomings.

The reason for the change is to provide flexibility to allow limitation of extension time frames and bring in line with other policy relating to transfers.

Extending the time period for transfers into the scheme (non-LGPS)

Scheme members only have 12 months from joining the LGPS to opt to transfer in previous pension rights from a non-LGPS source. The Council has the discretion to extend the 12 month window.

Current Policy - CYC will allow members to opt to transfer pension rights beyond the 12 month period only if there is evidence of administrative shortcomings.

New Policy - The Council will only allow members to opt to transfer pension rights beyond the 12 month period in exceptional circumstances and/or if there is evidence of administrative shortcomings.

The reason for the change is to clarify the wording of the discretion on when we will allow transfers in beyond the 12 month window.

Employee Contribution Rate

The Council is required to assess the relevant contribution band for employees on 1st April annually and to determine any other circumstances where this will be reassessed.

Current policy - CYC will allocate the appropriate band for all members' pensionable pay (to include casuals) based on each monthly pensionable salary pay figure. The percentage could potentially change on a monthly basis. The relevant banding rate at the end of the year will correspond with the annual pensionable pay figure. CYC have agreed to review the pensionable pay earnings quarterly for members to ensure the correct banding rate is allocated.

New Policy - On 1st April each year, the Council will allocate the appropriate band for all members' pensionable pay based on the previous years' pensionable pay and include incremental progression and cost of living increases where known as at 1 April . This will not change during the financial year unless there is a post change or cessation of salary protection arising from that change, or a pay award which cannot be applied on 1 April. This would include a pay award which is being applied retrospectively to 1 April or a pay award which applies from a date other than 1 April. For new posts commencing during the year, their band will depend on starting salary. Only permanent changes to pensionable pay will result in re banding.

If members have variable or nil hours contracts, the relevant band will be based on an assessment of the total pensionable pay received in the previous year. For new variable or nil hours posts, banding will be based on the whole time equivalent salary, and reviewed 6 months after appointment to ensure the correct band has been allocated (based on total pensionable pay in their first 6 months).

The reason for the change is to streamline the review of contribution banding and to reduce administrative burden.

Injury Allowances

Under Regulation 14 of the Injury Allowances Regulations, each LGPS employer (other than an Admitted Body) is required to formulate, publish and keep under review the policy that it will apply in the exercise of its discretionary powers to make any award under the Injury Allowances Regulations in respect of leavers, deaths and reductions in pay that occurred post 15 January 2012.

Any award of an injury allowance would come at a cost to the Council.

Current Policy - CYC will not grant any awards

New Policy – The Council will consider on a case by case basis.

The reason for the change is to provide flexibility to avoid fettering.

12. The Council is satisfied that the exercise of its discretions in accordance with the proposed Discretionary Policy Statement:
 - a. would not lead to a serious loss of confidence in the public service; and
 - b. in the case of the exercise of the discretions under the Discretionary Compensation Regulations, would be workable, affordable and reasonable having regard to the foreseeable costs.
13. There are no financial implications resulting from this report. Any financial implications would arise as a result of agreeing to exercise certain discretions within the Policy and would be subject to existing approval processes relevant to the particular situation.

Consultation

14. Consultation has taken place with key members of staff across the organisation, Trade Unions and North Yorkshire Pension fund.

Council Plan

15. This report contributes to the overall effectiveness of the Council's governance and assurance arrangements contributing to an 'open and effective council'

Implications

16.
 - (a) **Financial** – These are detailed in the body of the report.

- (b) **Human Resources (HR)** – It is important that the Council has the ability to use local discretions to effectively and efficiently manage within the organisation. Any discretions the Council uses will operate under a framework to ensure a consistent application to reduce the chance of claims of unfairness.
- (c) **Equalities** – The Equality Act 2010 impacts on the Discretionary Policy Statement, with regard to Age Discrimination in that the ‘Rule of 85’ only affects those who are older, so the Council needs to guard against the risk of treating this group of employees differently from others. The proposal not to switch on the ‘Rule of 85’ or waive any actuarial reduction ensures all employees who are members of the LGPS are treated in the same way. The way in which any decision making process is carried out regarding any early retirements (including redundancy, efficiency, or voluntary early retirements) will also be transparent and not differentiate between age groups.
- (d) **Legal** – The LGPS Regulations and the Discretionary Compensation Regulations both makes it clear that the Council must formulate, publish and keep under review a Discretionary Policy Statement and any failure to do so would be a breach of those Regulations.
- (e) **Crime and Disorder** - There are no implications
- (f) **Information Technology (IT)** - There are no implications
- (g) **Property** - There are no implications

Risk Management

17. Any failure to formulate, publish and keep under review a Discretionary Policy Statement in accordance with the LGPS Regulations and the Discretionary Compensation Regulations would be a breach of those Regulations and potentially an act of maladministration. This could also result in the Council exercising its discretions in an inconsistent manner and possible legal challenge.

Recommendation

18. The Staffing Matters and Urgency Committee is asked to approve the revised Discretionary Policy Statement.

Reason: To invite Members to consider changes to the Council's Discretionary Policy Statement to comply with the LGPS Regulations and Discretionary Compensation Regulations and approve the new Statement

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Specialist Implications Officers: Accounting Technician, Chief Finance Officer/Section 151, Director of Governance/Monitoring Officer

Wards Affected:

All

Background Papers:

None

Annex

The report is supported by the appendices listed below:

Appendix 1 – The proposed Employer Discretionary Policy Statement