CITY OF YORK COUNCIL

Public Executive **19 December 2006**

Report of the Director of Resources

LOCAL GOVERNMENT PENSION SCHEME – SCHEME CHANGES AND LOCAL DISCRETIONS

Summary

1. Under the rules of the Local Government Pension Scheme (LGPS) the Council, as the employer, has the discretion to adopt a number of local policies dictating how it will implement certain regulations of the Scheme. The Council must have a written policy statement for some of these discretions, which is lodged with the North Yorkshire Pension Fund (NYPF).

2. This written policy statement was last updated in December 2002, after the major review of the Council's early retirement and redundancy arrangements which resulted in a new, uniform policy across the Council. This policy was approved by Urgency Committee on 22 August 2002.

3. The purpose of this report is to review the Council's current arrangements for early retirement and redundancy in the light of changes to the LGPS introduced by government between April and October 2006 and the introduction of age discrimination legislation on 1 October 2006. Details of the current policy are given in Paras 5 – 11 and the changes to the LGPS are discussed in Para 12.

4. This report invites the Executive to make recommendations to Council on changes to the Council's early retirement and redundancy policy which are detailed in Paras 17 – 25 and Para 31, to recommend new policies discussed in Paras 24 - 30 as a result of new options within the LGPS and a review of existing Council practice, and to agree to give the Director of Resources, in consultation with Corporate HR, the delegated authority to approve the written statement of local discretions which must be lodged with the NYPF.

Background

The Council's Current Policy - Background/reasons for review

5. The framework for the Council's current policy on early retirement and redundancy was set by the outcome of a review of previous practice

undertaken by Management Team between 2000 – 2002. Key issues considered were: -

a) the funding position of the NYPF. In addition to contributing to the pension benefits of current employees, York also has to fund a deficit in the Fund. This deficit is the result of a number of factors:-

   i) adverse investment conditions and the abolition of tax credits on dividend income

   ii) the “funding holiday” taken in the early 1990’s to alleviate the cost of Poll Tax, which resulted in lower employer contributions

   iii) York’s past practice in terms of the number of early retirements, which exceeded the actuarial assumptions on which the employer’s contributions were based

   iv) the historic practice of awarding added years on early retirement which were not funded at the time

b) the Audit Commission report *“Retiring Nature”*, which criticised the way in which many councils used early retirement as a means to resolve management issues

c) the Council’s inconsistent treatment of different sections of its workforce, primarily a distinction between teaching and non-teaching staff and those made redundant before and after age 50.

Redundancy Pay Policy

6. Redundancy pay is calculated using a formula which calculates a number of weeks paid compensation based on an employee’s age and length of service and the value of their weekly pay. Weekly pay can either be either actual weekly pay or a statutory earnings limit set annually by the government, which is currently £290 (2006/07).

7. The Employment Rights Act (1996) sets out the regulations for statutory redundancy payments, based on a maximum of 20 year service and 30 weeks redundancy pay. A revised, mandatory scheme was introduced for Local Government Reorganisation which allowed redundancy payments to be based on up to 66 weeks of pay.

8. The Council adopted one uniform policy for all of its staff in August 2002. Redundancy payments are currently based on actual weekly pay with a maximum of 30 weeks compensation, calculated using Statutory Redundancy Tables. Employees aged between 40 – 49 receive an additional 5 weeks of pay (subject to statutory maximums). This is to reflect that it is often harder for this age group to find alternative employment and that they are not entitled to draw their pension benefits.

Early Retirement

9. The Normal Retirement Age in the LGPS is age 65 but Scheme members are entitled to retire from age 60, without requiring their employer's permission. The Normal Retirement Age in the TPS is age 60, but Scheme members are entitled to retire from age 55, without requiring their employer's permission. Both Schemes allow early retirement before the Normal Retirement Age in certain circumstances. The 2002 review addressed the Council's practice in the following circumstances:

a) **Early retirement due to redundancy** – Employees who are members of the NYPF have an automatic right to receive unreduced pension benefits if they are made redundant at age 50 or more. Members of the Teachers' Pension Scheme (TPS) are not automatically entitled to receive their pension benefits on redundancy.

There is a cost to the Council from such early retirements because unreduced pension benefits are being paid out early and for a longer period. The Council must pay a one-off lump sum payment to the NYPF, whilst the costs for teachers' redundancy retirements is paid by a proportionate annual split between the Council and the TPS. This is paid monthly, via payroll, to the pensioner for the duration of the pension. The level of the costs is influenced by the value of the pension benefits and the number of years to the employee's normal retirement date. The earlier the retirement the higher the cost.

In order to ensure equality across the workforce, the Council adopted a policy entitling all employees to access unreduced pension benefits from age 50 on redundancy. The historic cost of this is detailed below:-

£000's	Non-Teachers	Teachers	**Total**
2003/04	237.5	65.6	**303.1**
2004/05	75.1	91.6	**166.7**
2005/06	84.5	84.1	**168.6**

b) **Early retirement in the efficiency of service** – This type of early retirement is likely to be either for compassionate reasons or where a redundancy situation does not exist but it is deemed in the Council's best interests for an employee to vacate an established post. This is an expensive option since pension benefits are paid on an unreduced basis so the Council must bear the cost and no savings are made because the established post remains and must be filled.

Although it was not used extensively the Council had approved a number of cases since 1996. However, it was felt that the introduction of employment policies designed to address issues related to the individual, such as absence management, capability and redeployment, placed a greater emphasis on preventative processes and lessened the need to use the pension fund as a management tool.

The Council's current policy is that it will not normally consider retirement on the grounds of efficiency or service. However, it retained its discretion to allow exceptions to this policy, with individual cases being considered and approved by Members. There have been 3 such early retirements since August 2002.

c) **Voluntary early retirement** – Previously the Council had no specific provisions for voluntary early retirement. Although the normal retirement age in the LGPS is age 65, members of the NYPF can voluntarily retire from age 60, but their pension benefits are actuarially reduced if they do not meet the 85 year rule. The 85 year rule allows pension benefits to be paid on an unreduced basis when the age of an employee plus their pensionable service add up to 85 or more. NYPF members aged 50 – 59 require their employer's permission to retire and, again, pension benefits will be reduced if the 85 year rule is not met.

Teachers can voluntarily elect to retire from age 55 (their normal retirement age is 60) but their pension benefits will be actuarially reduced because the 85 year rule does not exist within the TPS. The employer has the discretion to waive this reduction.

When considering the introduction of a voluntary early retirement policy the Council had to consider not only the potential cost (since the cost of an early retirement of a non-teaching employee meeting the 85 year rule has to be borne by the employer) but also uniform criteria to ensure fairness and equality for all employees. Therefore, it was decided that rather than having a range of criteria under which requests for voluntary retirement could be considered a scheme would be put in place allowed individual employees to make the decision within a defined framework.

The policy adopted allows both teaching and non-teaching staff to elect to retire from age 58 provided their age plus pensionable service add up to 85 or more (and they have 5 years current continuous service with York). Employees in the NYPF automatically receive unreduced pension benefits and the Council waives the actuarial reduction for employees in the TPS. Employees can give up to 6 months, or 2 terms, notice of their intention to retire in this way.

The historic cost of this policy is detailed below:-

£000's	Non-Teachers	Teachers	**Total**
2003/04	43.0	18.9	**61.9**
2004/05	23.8	28.5	**52.3**
2005/06	13.5	63.3	**77.1**

The cost of an early retirement in the LGPS is paid in the year of retirement, whilst the cost of a teacher's early retirement is paid for annually over the remaining lifespan.

Added Years / Augmentation

10. Under the rules of both pension schemes, employers can award employees added years of pension benefits on early retirement due to redundancy or efficiency. This is an expensive way in which to enhance an employee's pension benefits since the pension must be funded in full at the time of the award. York's current policy is to not normally award added years at retirement. Any exception to this policy must be approved by Members and the costs will be borne by the sponsoring department. Since 2002 there has only been one exception to this policy which resulted in the award of 1 added year for operational reasons.

11. The LGPS allows the augmentation of an employee's pensionable service. This is effectively the same as awarding added years but it is not triggered by a redundancy situation. The Council will not normally grant additional pensionable service through augmentation and any exceptions require the approval of Members. There have been no instances of augmentation since the policy was introduced.

2006 Changes to the Local Government Pension Scheme

12. The government introduced new legislation effective from 1 April 2006 which resulted in a number of changes to the provisions of the LGPS. The context for these changes is the government's ongoing "stocktake" of the LGPS, which arose from the December 2002 green paper *"Simplicity, security and choice: working and saving for retirement"*, new Inland Revenue tax rules, effective from 4 April 2006 and the advent of the new age discrimination legislation in October 2006. These changes are detailed below:

a) The Removal of the 85 Year Rule

The Normal Retirement Age in the Scheme is age 65, i.e. that is the age at which accrued pension benefits will normally be paid on an unreduced basis. However, all members of the Scheme have the option to access their pension benefits from age 60, but these benefits will be reduced (using actuarial reduction factors which reflect the fact that benefits are being paid early) if they are taken before age 65.

Prior to 1 October 2006 certain Scheme members were entitled to retire between age 60 and 65 with unreduced pension benefits because they met the 85 year rule. The 85 year rule was calculated by adding a Scheme member's age plus length of pensionable service. Where this equalled 85 or more the member qualified for early retirement on unreduced benefits.

When the removal of the 85-year rule was first proposed there was considerable opposition from trade unions, representing the employees, since it meant that all employees would have to remain in employment till age 65 or take an actuarially reduced pension (subject to the protections detailed below). This resulted in a one-day strike and a delay in implementation from 1 April 2005 to 1 October 2006. The unions also instigated a judicial review, challenging the government's argument that the 85 year rule was incompatible with age discrimination legislation. This review failed in September 2006 but the government did agree to extend the transitional arrangements put in place to protect existing members of the Scheme:-

(i) All existing Scheme members at 30 September 2006 are protected up to 31 March 2008. This means that all pensionable service up to 31 March 2008 will accrue unreduced pension benefits if a Scheme member would have met the 85 year rule before age 65 and chooses to retire. All service accrued after 31 March 2008 will attract reduced pension benefits if paid out before age 65.

(ii) Full protection of benefits is given to all existing Scheme members at 30 September 2006 who will be age 60 or over by 31 March 2016, i.e. all of the accrued pension benefits will be paid on an unreduced basis if the member meets the 85 year rule at retirement. This fully protects the pension benefits of all Scheme members who were age 50 by 31 March 2006.

(iii) A new level of tapered transitional protection has been added for existing members at 30 September 2006. Where a Scheme member will be age 60 or over and would have met the 85 year rule between 1 April 2016 and 31 March 2020, full protection will be given to service accrued up to 31 March 2008 and tapered protection (using tapered reduction factors) will be given on service up to 31 March 2020.

(iv) Scheme members joining on or after 1 October 2006 will receive no protection and their Normal Retirement Age will be age 65.

b) No Limit on the Length of Pensionable Service

Prior to the 2006 changes the maximum amount of pensionable service that a Scheme member could accrue was 40 years. Because each year of service accrues 1/80th of final salary as pension, the maximum amount of pension payable was 40/80th, or 50%, of final salary. This limit has now been removed.

c) Increase in the age at which employees can join and remain in the Scheme

Previously, employees could not join the Scheme after age 64, nor remain in it after age 65. This has now changed to allow membership to continue until the day before their 75th birthday. Should a Scheme member decide to defer drawing their pension benefits beyond age 65, these benefits will be actuarially increased to reflect the fact that they will be in payment for a shorter period of time.

d) Increase in the annual level of employees' pension contributions

Previously, there was a maximum limit to the amount of annual employee pension contributions attracting tax relief of 15% of salary. This has been removed and replaced with a maximum of 100% of pensionable pay. Scheme members currently pay 6% of salary towards their LGPS pension benefits (with some manual workers still protected under a previous scheme paying 5%) and they can opt to enhance their benefits through the purchase of Added Years, or Additional Voluntary Contributions (AVC's).

The ability to increase annual contributions above 15% with regard to AVC's may be an attractive option for some Scheme members because, at the moment, the full value of the AVC fund can be taken as a tax-free lump sum on retirement, rather than being used to buy an additional annuity.

The maximum number of added years available has been reduced from 10 to 6 2/3rd years. An employee opting to purchase the maximum number of added years at the beginning of their local government service, assuming a reasonably young age, would not have hit the 15% maximum limit, but this change does allow older employees to maximise their pensionable service, whereas previously they may have been hit by the 15% limit. This is because the purchase of added years is more expensive the closer the member is to retirement.

e) Commutation of pension into tax-free lump sum

Previously, a Scheme member would receive a tax-free lump sum on retirement of 3 times their annual pension, which is roughly equivalent to 15% of the capital value[1] of the total benefits. This remains the case but members now have the option to "commute" (i.e. swap) some of their annual pension benefit into an additional tax-free lump sum. Up to 25% of the capital value of benefits can be taken as a lump sum based on a swap ratio of £1 of annual pension benefits foregone earning an additional £12 of lump sum.

f) Lifetime Allowance

Previously there was a limit on the salary on which an employee could pay pension contributions on and on which pension benefits could be calculated. This was called the "earnings cap" and was set at £105,600 in 2005/06. This was abolished with effect from 1 April 2006 and replaced with the lifetime allowance.

The lifetime allowance is the total value of all of the pension benefits an employee can have (excluding state pension benefits) without triggering an excess benefit tax charge. The lifetime allowance for 2006/07 is £1.5 million. The lifetime allowance is calculated by multiplying the annual pension by 20 and adding on the lump sum (this is the same as the capital value of the pension pot). For example, an employee earning £120,000 pa with 40 year service would receive pension benefits of £60,000 (i.e. 40/80

[1] The Capital Value of benefits is calculated by multiplying annual pension benefits by 20 and adding the value of the lump sum payment.

= 50%) and a lump sum of £180,000. The capital value of this pension equals £1.38 million and so falls under the lifetime allowance.

g) Flexible Retirement

As an aid towards addressing the transition between working and retirement the Scheme now allows employees to access their pension benefits from age 50 whilst still remaining in employment. This will only be permitted if there is a reduction in grade or hours worked *and* with the agreement of the employer. The employer has the option to waive, in whole or part, any actuarial reduction which may apply to the early payment of pension benefits. However, where the member's benefits are protected by the transitional protections given under the removal of the 85 year rule, there may be a cost to the employer because these protected benefits cannot be paid on a reduced basis and the employer must pay this cost to the pension fund.

Under the rules of the LGPS the Council must have a policy under which it can exercise its discretion in the granting of flexible retirement. This is discussed in more detail in Paras 27 - 29.

Proposed Changes to the Scheme from April 2008

13. The government completed a further consultation on changes to the LGPS in September 2006, with the intention of introducing further changes to the structure of the Scheme from 1 April 2008. Draft legislation is expected in December 2006 and the government have indicated that the following changes will be made, although full details are not available at the time of writing:-

a) a continuation of the final salary scheme (as opposed to a move to a career-average scheme). This will be based on an accrual rate of 1/60th, i.e. for each year of service a scheme member will accrue 1/60th of their final salary as annual pension. There will be no automatic right to a tax-free lump sum but members will be able to commute (swap) £1 of annual pension for £12 of tax-free lump sum, up to a maximum of 25% of the capital value of their pension.

b) the introduction of partners' pensions for cohabitees. The Scheme already provides pension benefits for married partners and those in a Civil Partnership.

c) an increase in the lump sum death benefit from 2 to 3 times salary.

d) the introduction of two-tier ill-health benefits. Currently, a Scheme member must be certified as being permanently unable to do their current job, or any comparable job with their employer, in order to receive ill-health retirement benefits. The two-tier system is designed to reflect different levels of ill-health and permanence.

e) the introduction of tiered contribution rates for employees, based on 5.5% of salary on the first £12,000 of salary and 7.5% on earnings from £12,001.

f) the confirmation of the removal of the 85-year rule, with the Normal Pension Age being 65.

g) further extensions to flexible retirement.

h) the facility to purchase up to £5,000 of added pension benefits.

i) augmentation (i.e. increase) of membership on an objectively justified basis. This is an employer discretion.

j) actuarial enhancement of benefits for those employees working beyond age 65 and not accessing their pension benefits at that point.

k) the earliest retirement age for *new* members from 1 April 2008 will be age 55, excluding ill-health retirements.

Full details of the consultation are available in the report to Corporate Services EMAP, *"2008 Pension Reforms – Government Proposals for Changes to the Local Government Pension Scheme"*, on 12 September 2006.

Further Changes to the Scheme

14. The government is committed to raising the earliest retirement age within the public sector from age 50 to 55 by 2010 (excluding ill-health retirements) and in all occupational schemes by 2020. The first draft of the 2006 changes included this proposal but it was dropped in the final legislation. The 2008 consultation simply states that the earliest retirement age for current members will be increased to age 55 by 2010, with the exception of ill-health retirements.

15. This will affect Scheme members who are made redundant in future because they are currently entitled to the payment of unreduced pension benefits on redundancy from age 50. It is not known whether existing members will be given any transitional protections.

Consultation

16. The recommendations made in this report are a result of discussion and consultation between the Pensions Officer, Director of Resources, Corporate Human Resources and Legal Services. The proposals have been made with regard to both the Human Resources and cost implications and the legal framework set out by the LGPS regulations.

Consultations with the trades unions took place during November and they were invited to comment on the proposals made in this report. The GMB have commented that they broadly support all the main proposals. However, they do maintain that pensions are exempt from age discrimination legislation and therefore early retirement using the 85-year rule as a criteria as a local discretion might be allowable. This position is clearly contrary to the advice the Council has received on the outcome of the judicial review of the 85-year rule. The GMB have also accepted the need for a formula for dealing equally with individual requests to retire.

Consultation with the Teachers' Panel was positive and they accepted that the early retirement option at age 58 would have to be removed. They clearly stated a preference for a transitional arrangement allowing all employees who are age 57 at 31 December 2006 to retire early up to 31 August 2009 if they meet the 85 year rule by that date, since this would possibly prevent a more rapid exodus of skilled teachers if a shorter transition was chosen.

The local representative of "Aspect" (the trade union for senior professionals in education and Children's Trusts) support all of the Council's proposals apart from the revocation of the 85-year rule.

No response from Unison or other unions who were sent the proposals for change had been received at the time of writing.

Options and Analysis

Redundancy Pay

17. The Council's current policy of awarding an additional 5 weeks of redundancy pay (subject to statutory maximums) to all employees between age 40 – 49 falls foul of the new age discrimination legislation and must therefore be discontinued. Options for replacement policy could include:-

    a) award all employees an additional number of weeks redundancy pay (subject to the 30 week maximum). For example, this could be in the range of 1 – 4 weeks.

    b) calculate redundancy pay using the statutory tables, with a 30 week maximum.

18. Analysis shows that the majority of redundancies since 2002 fall outside of the age bracket 40 – 49 so, whilst an attractive benefit, this policy has been little used. The award of additional weeks of compensation for <u>all</u> employees would clearly add to the strain on the early retirement and redundancy budget and so it is recommended that future redundancy pay is calculated using the statutory tables with a 30 week maximum.

19. Any change to the Council's policies must be communicated to staff and so it is suggested that any new policy is introduced from 1 April 2007. It is also recommended that any employee who is formally at risk and has been given an enhanced redundancy quote under the previous scheme but will be made redundant after 1 April 2007 receives a redundancy payment equal to the original quote.

Early Retirement under the 85 year rule

20. Because the Council's current policy is based on age and length of service it is not compatible with the new age discrimination legislation. To continue with the existing policy may leave the Council open to legal challenge in the future and the Council must therefore revisit its early retirement policy. There are various options to replace the current policy:-

a) allow all employees the option to elect to retire early and receive actuarially reduced pension benefits. Members of the NYPF can elect to this from age 50, whilst members of the TPS can retire this way from age 55. However, there would be drawbacks to such an approach:-

i) members of the NYPF have been given various protections under the removal of the 85 year rule. This means that if they would have met the 85 year rule on retirement then some or all of their pension benefits may be paid on an unreduced basis. The cost of this early payment would be charged to the Council. The main driver of these costs is the age of the retiree – the closer to age 50, the more expensive the retirement.

ii) a blanket permission to retire at will could be detrimental to the needs of the Council as it could disrupt service areas, increase staff turnover and reduce experience and skills, and potentially create recruitment problems.

b) adopt a range of formal criteria under which requests for early retirement could be considered. Any such criteria would probably have to exclude age or length of service but could include factors such as "compassionate" grounds, financial hardship and cost to the Council. The problem with such an approach is achieving objectivity to ensure that all employees are treated fairly. It could also open the Council to challenge under the LGPS Internal Dispute Resolution Procedures where requests are refused. Once again, there would be a cost to the Council when an employee meets the 85 year rule.

c) remove the option allowing employees to retire at age 58, since this is now discriminatory, and align the Council's early retirement policy with the provisions of the NYPF and the TPS. This would enable members of the NYPF to voluntarily elect to retire from age 60. Pension benefits would be paid on a reduced basis unless the 85 year rule would have been met. If so, benefits would be paid in line with the protections described in Para 12a). Teachers would be entitled to retire from age 55 on reduced pension benefits. This would create a budget saving since the Council is not charged for early retirements from age 60.

21. It is recommended that the Council removes the automatic right given to employees aged over 58 to retire early when the 85 year rule is met since this

is now deemed discriminatory. It is also recommended that the Council take the opportunity to realign its policy with the regulations contained within the NYPF and TPS. This would allow non-teaching staff to retire from age 60 and teachers from age 55.

22. The Council would retain its legal discretion to allow exceptions to this, but such exceptions would require a business case to be presented and, if there was a cost due to pension benefits being paid on an unreduced basis, this cost would be borne by the sponsoring department. It is recommended that Council give delegated authority to an Appeals Board consisting of the Pensions Officer, Head of Human Resources, Director of Resources and a senior representative from the sponsoring directorate (or suitable delegates).

23. If the option detailed in Para 21 is approved, the Council will need to adopt some transitional arrangement because employees are currently allowed to give either 6 months or 2 terms notice of their intention to retire early. Obviously, we would need to honour early retirements where notice has already been given and permission granted. However, there is likely to be a body of employees who have already made decisions on the expectation of early retirement at some point in the future. In addition, the Council has an obligation to inform its employees about the change to its policy before it becomes effective. A number of options are available for transitional arrangements:-

   a) one option would be to remove the current early retirement policy with effect from 1 March 2007, which would allow time for staff communication, whilst permitting those who had already given notice to go on their given date.

   b) an alternative would be to have a longer transition rather than such an abrupt cut-off and to allow early retirements up to 31 August 2007, for example, which falls at the end of the school year and would give employees an additional 6 months of protection.

   c) the problem of an abrupt cut-off is that it could lead to a flood of early retirements in the first half of 2007 if employees who may have waited a year or more to retire saw the opportunity to do so vanishing. This would perhaps be a particular problem in schools were the numbers of senior and experienced teachers in their late 50's is quite high. A way around this would be to have a longer transitional period which would allow for more orderly manpower planning. For example,

      i) all employees who are age 57 at 31 August 2006 would be entitled to elect to retire early should they reach the 85 year rule by 31 August 2009, at which point they would be 60 anyway and so could retire, or

      ii) all employees who are age 57 at 31 August 2006 would be entitled to elect to retire early should they reach the 85 year rule by 31 August 2008. This is a shorter transition period but would allow some spread in early retirements.

iii) all employees who are age 57 at 31 December 2006 would be entitled to elect to retire should they reach the 85-year rule by 31 August 2009. This would allow a slightly longer transition in the sense that the qualifying period would increase by 4 months from August to December 2006, but the final cut-off would not be extended beyond August 2009.

24. Although all of the transitional arrangements discussed in Para 23 c) above involve a qualification based on age and length of service it is anticipated that this will be allowable in the pursuit of fairness. Whilst we are aware that the policy must be removed an abrupt cut-off will penalise those employees who already qualify or soon will do so and who may have already made decisions in the expectation of retiring early. Analysis of the options shows that even by extending the cut-off to 31 December 2006 and the final date of retirement to 31 August to 31 August 2009 only an additional 15 employees qualify for early retirement and there is obviously no certainty that each would leave.

25. It is recommended that the Council adopts Para 23 c) iii) as a transitional arrangement , i.e. all employees who are age 57 at 31 December 2006 would be entitled to elect to retire should they reach the 85-year rule by 31 August 2009. This would seem to be the fairest option for both those employees who currently qualify to leave and for those who are fast approaching qualification.

Ill-Health Retirements

26. Under the rules of both schemes, employees are entitled to retire on grounds of ill-health and receive enhanced pension benefits when they are certified as being permanently incapable of doing their job or any comparable job with their employer. The Council employs an independent medical practitioner who examines each case and issues a certificate of ill-health if appropriate. Referral to the medical practitioner is usually instigated by the Council and there is a charge for this which the Council pays.

27. Under the schemes' rules, deferred members (i.e. pension fund members who have left the Council's employ but have not retired) are also entitled to apply for ill-health retirement benefits. In such cases, the former employee contacts the Council and requests a referral to the independent medical practitioner – the Council does not have the right to refuse. Previously the Council has had no policy/procedure for dealing with multiple requests from one employee over time, nor has it had experience of such. However, it is felt that it would be prudent to adopt a formal policy so that the Council can act consistently in such circumstances.

28. It is recommended that the Council adopt a policy whereby the Council will pay for the cost of the first referral, whilst the former employee will pay for any subsequent referral unless it proves successful.

Flexible Retirement

29. Flexible retirement was introduced into the LGPS with effect from 1 April 2006. It is designed to allow employees to take a structured step-down from employment towards retirement whilst avoiding the cliff-edge which exists for many. Put simply, flexible retirement allows an employee to remain in employment whilst accessing their pension benefits. The regulations are incredibly vague as to what constitutes flexible retirement, simply stating that it will be permitted if there is a reduction in grade or hours worked and the agreement of the employer. There are no guidelines from government as to the necessary level of reduction, it is simply a matter for the discretion of the employer. Under the rules of the LGPS the Council, as the employer, is obliged to have a policy under which it can exercise its discretion in this area. Flexible retirement is not yet available to teachers.

30. In general the Council should be supportive of flexible retirement since it could prove a valuable tool in managing workforce expectations and could allow the retention of valuable skills and experience whilst at the same time allowing staff to reduce the level of either their responsibility or workload. However, there are a number of issues to consider:-

   a) *Does the Council have to offer flexible retirement?* – No, under the rules of the LGPS it is simply a discretion which the Council may or may not decide to use.

   b) *What is meant by a reduction in either grade or hours?* - The government has made no attempt to define what is acceptable, it is up to the individual employer to decide. NYCC use the phrase "significant and permanent" but have not defined what this means. In any case, permanency cannot be enforced. A considerable amount of thought would need to go into deciding how to define this and what to allow/disallow.

   c) What will it cost? And who will pay? – The assumption is that employees applying for flexible retirement will receive actuarially reduced pensions because they are being paid early. However, all existing members of the LGPS as at 30 September 2006 have some element of protection under the removal of the 85 year rule. Therefore, any employee applying for flexible retirement who would have met the 85 year rule will cost the Council. The Council would need to decide whether this cost would be met from individual directorates or from a corporate cost.

   d) Where should control rest? – Should the Council allow individual directorates the discretion to allow flexible retirements or should there be an element of central control to ensure that any policy is applied consistently across all directorates?

31. Because of the complexities surrounding the introduction of any flexible retirement scheme it is suggested that, in the short term, the Council does not adopt a flexible retirement scheme, although it would reserve its discretion to act outside this policy. It is suggested that the whole issue of flexible retirement is reviewed in line with the attendance management initiative

currently be worked on by Human Resources. This is looking at work life balance and flexible working issues.

Added Years / Augmentation

32. Previously, employers were permitted to award employees up to 10 added years of pensionable service on retirement. York's current policy is that it will not normally award added years, with exceptions requiring the approval of the Executive. This was allowed under discretionary compensation regulations. This discretion was revoked on 1 October 2006. In its place, employers now have the discretion to award a one-off lump sum payment of up to 104 weeks of pay (i.e. 2 years) . It is recommended that the Council adopt a similar policy in that this compensatory award will not normally be given and exceptions will require the approval of the Appeals Board. Consideration will need to be given on identifying criteria to set the level of any such award made.

33. Augmentation, i.e. the award of extra service to an employee who is still in employment, is still available under the Scheme and the Council's policy remains that this is not normally used.

Corporate Priorities

34. This report has no impact on the Council's corporate priorities.

Implications

35.

- **Financial**

  Any early retirement and redundancy policy review must take place in the wider context of the Council's overall pension fund liabilities. An interim valuation of the NYPF as a whole, undertaken as at 31 March 2006, showed and overall deficit of £523m, giving the Fund a 69% funding level (i.e. only 69% of future liabilities can be paid for). Although a specific calculation of CYC's liabilities was not undertaken it is estimated that, as at 31 March 2006, the liabilities were about £100m. The Council is currently paying 17.6% of non-teaching pensionable payroll per annum in the expectation that this deficit can be recovered over the next 20 years or so.

  The Council's 2006/07 budget for redundancy pay and early retirement is £1.2 million and it is currently forecast that there will be an overspend in the region of £300 – £350k. £100k of contingency has already been earmarked to cover this. It is obviously essential that the Council balances the need to treat its employees in a fair and equitable manner with the financial constraints under which it operates. The Council will face continuing costs if it decides to maintain a policy under which employees can retire before age 60. This cost would be likely to be higher than at present because employees would be allowed to retire at an earlier age, which costs more.

Further cost pressures could arise dependent on if, and how, the Council adopts a policy on flexible retirement. Because of the protections afforded under the removal of the 85 year rule the Council could face a considerable financial charge.

- **Human Resources (HR)**

  There are significant HR implications associated with the options are contained in this report. Whilst the need for the Council to review it's local discretions undeniable, it is essential the Council retains the ability to use its local discretions to effectively and efficiently manage within the organisation. This does not mean using the pensions discretions inappropriately, rather ensuring they are available to facilitate and manage change in appropriate situations. As such the development of a range of discretions, operating under a corporate policy framework is supported, as this would give the benefit of maximum choice for the employee whilst also providing the Council with the ability to manage the cost of change.

  Any discretions the Council uses should operate under a corporate framework to ensure equality and to reduce the chance of claims of unfairness in their application. It is recognised that any increase in the employer discretions also increases the potential for employer costs and as such each case should be supported by a business case and should considered on its merits under the corporate framework.

  As has already been demonstrated, any changes to the way the Council operates its pension arrangements may be met with some hostility by staff and trade unions who remain fundamentally opposed to any detrimental changes to Local Government pension arrangements. However, the results of the local consultation show that in the main the unions accept the reasons for change. It is understood that the trade unions are currently preparing to ballot their members on further action against the changes already made to the LGPS and it is therefore essential that the Council avoids replicating the national issues and dispute at a local level. Any proposed changes should therefore be subject to full, timely and meaningful consultation with the rationale for any changes being fully explored.

  Given the planning horizon associated with changes to pensions it is also critical that the Council agrees transitional implementation arrangements which are both lawful and understandable to employees. It is therefore proposed that a communication strategy is adopted and implemented to support this issue.

- **Equalities** –The Council's early retirement and redundancy payment policies have been developed to ensure that the policies are employed fairly and equally across all of the Council's employees. The 85-year rule has been confirmed by judicial review as being incompatible with age discrimination legislation and has been removed. The Council must remove similar provisions from its local provisions to comply with the law.

The proposed transitional arrangements are therefore key to successful implementation in a potentially difficult employee relations climate. These arrangements may be open to possible legal challenge as they maintain an element of differentiation according to age but it is believed this can be objectively justified in the meaning of the statutory definition on workforce planning grounds.

- **Legal** –

  Redundancy Pay – The current Council practice of awarding 5 additional weeks redundancy pay for employees aged between 40 and 49 is a clear breach of the age discrimination regulations. The benefit is directly related to age and is not available to either younger or older employees. Although justification of breaches of the regulations is possible, it is likely that this practice would be hard to justify objectively and may leave the Council at risk of challenge from employees who do not receive the additional 5 weeks pay. Both proposals put forward in paragraph 17 of the report would remedy this breach.

  Transitional Arrangements for the 85-year rule - As stated in the body of the report, the 85-year rule is regarded by the Government as discriminatory as its benefits are directly dependent on age and on length of service (which is also associated with age). The Employment Equality (Age) Regulations 2006 are therefore breached by the continued operation of this rule. Such discrimination has been unlawful since 1 October 2006. Removing the right to retire at 58 under the 85-year rule from the local discretions, as recommended in paragraph 21, would remedy this breach.

  The proposal to exercise local discretions to allow employees to retire early if the 85 year rule is satisfied up to 31 August 2009 would mean that the Council continued to be in breach of the age discrimination regulations until that date. However, the risk associated with this breach is likely to be low. The reasons put forward in the report for a transitional period are likely to make the transitional policy lawful on the grounds that the discriminatory impact is justified by the legitimate objective of avoiding hardship for those employees who have taken decisions or are very close to qualifying now and have a legitimate expectation that the rule will apply to them. Additionally, the small number of employees affected makes the likelihood of legal challenge more remote.

- **Crime and Disorder –** There are no implications

- **Information Technology (IT) -** There are no implications

- **Property** - There are no implications

- **Other** - There are no implications

Risk Management

36. There are no implications.

Recommendations

37. The Executive are asked to recommend to Council the following:

1) A revised policy for redundancy payments, based on the award of up to 30 weeks of actual pay calculated using the Statutory Redundancy tables (Para 18).

   Reason: The current policy of awarding 5 additional weeks of compensation to those aged 40 – 49 fall foul of age discrimination legislation.

2) That the new policy for redundancy payments become effective from 1 April 2007 and that any enhanced quotes given under the current policy be honoured for redundancies occurring after 1 April 2007 (Para 19).

   Reason: The current policy of awarding 5 additional weeks of compensation to those aged 40 – 49 falls foul of age discrimination legislation.

3) a) The removal of the current policy allowing any employee aged 58 or more to retire before age 60 when their age and service totalled 85 or more (Para 21). This will realign employee's early retirement options with the provisions of their Schemes: - age 60 fro members of the LGPS and age 55 for members of the TPS.

   b) The adoption of transitional arrangements which will allow all those employees who are age 57 by 31 December 2006 and would have met the "85-year" rule by 31st August 2009 to retire early on unreduced pension benefits in the period up to 31st August 2009 (Para 23c)iii)).

   c) Exceptions to this policy will be considered by an Appeals Board consisting of the Pensions Officer, Head of Human resources, Director of Resources and relevant directorate representative (or suitable delegates).

   Reason: The 85 year rule has been deemed to be age discriminatory and has been removed from the LGPS.

4) The introduction of a formal policy for processing ill-health retirement requests from deferred members (i.e. ex-employees) limiting the number of occupational health referrals paid for by the Council (Para 26).

   Reason: the Council has no formal policy in this area.

5) That flexible retirement, offered under the terms of the LGPS, be refused in the short-term, whilst further research and analysis is undertaken as part of the review of work-life balance to be undertaken by Corporate Human Resources. The Council would reserve its discretion to act outside this policy, with exceptions being considered by the Appeals Board.

Reason: under the terms of the LGPS the Council is obliged to have a policy under which it can exercise its discretion in this area, even if its discretion will be used to not adopt a policy. Flexible retirement is a complex area and considerable work will need to be undertaken before further proposals can be put before Council.

6) That the Council will not normally give a compensatory award of up to 104 weeks pay on retirement and exceptions must be considered by the Appeals Board. Any costs arising from an exception will be borne by the sponsoring department.

   Reason: The award of compensatory added years has been replaced by the discretion to award up to 104 weeks of pay.

7) That the Council gives the Director of Resources, in consultation with Corporate Human Resources and the Pensions Officer, the delegated authority to approve the written statement of local discretions which must be lodged with the North Yorkshire Pension Fund.

   Reason: The Council is required to have a written statement of how it will exercise certain discretions under the rules of the Local Government Pension Scheme.

Contact Details

Author:
Louise Dixon
Pensions Officer
Strategic Finance
Tel No. 551177

Chief Officer Responsible for the report:
Simon Wiles
Director of Resources

Report Approved *tick* **Date** *7 December 2006*

Simon Wiles
Director of Resources

Report Approved *tick* **Date** *7 December 2006*

Specialist Implications Officer(s) *List information for all*

Human Resources
Chris Tissiman/Jamie Sims
HR Corporate Advisor/ HR Corp.Dev.Manager
Tel. Extn. No.No.1715

Legal
Matthew Waterworth
Senior Asst Solicitor
Tel. Extn. No.1095

Wards Affected: **All** *tick*

For further information please contact the author of the report