Finance and Resources Committee

10.00am, Thursday 20 May 2021

Local Government Pension Scheme - Employer Discretions Policy Statement

Executive/routine	**Executive**
Wards	
Council Commitments	

1. Recommendations

1.1 It is recommended that the Finance and Resources Committee:

1.1.1 Approves the Employer Discretions Policy Statement within this report

1.1.2 Note the inclusion of Regulation 17(1), TP15(1)(d) and A25(3), Shared Cost Additional Voluntary Contributions.

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Report

Local Government Pension Scheme – Employer Discretions Policy Statement

2. Executive Summary

2.1 The employer discretions have all been updated as per the Local Government Pension Scheme (Scotland) Regulations 2018.

2.4 In addition to the regulations being updated, the Council will include the Non-Compulsory Discretion, Regulation 17(1), TP15(1)(d) and A25(3), Shared Cost Additional Voluntary Contributions.

3. Background

3.1 Under Regulation 58 of the Local Government Pension Scheme (Scotland) Regulations 2018, each employer that is a member of the Local Government Pension Scheme is required to have an employer discretions policy statement covering the various discretions that are contained in the regulations.

4. Main report

4.1 The Council's Employer Discretions Policy Statement has been updated following advice from the Local Government Pension Scheme, all discretions have been updated in accordance with legislation.

4.2 This Employer Discretions Policy Statement sets out which of the discretions the Council intends to adopt and how it will operate them.

4.3 All discretions, both compulsory and non-compulsory, have been updated to reflect the guidance from the Local Government Pension Scheme (Scotland) Regulations 2018.

4.4 Regulation 17(1) allows for a Shared Cost Additional Voluntary Contribution (AVC) scheme to be implemented and the Council will now include this regulation.

4.5 This regulation is only available to colleagues who are part of the Local Government Pension Scheme as a result of a change in Local Government Scheme Regulations to promote pension savings in Scotland.

4.6 The main advantage of Shared Cost AVCs over a standard AVC option is that as well as receiving full Income Tax savings, colleagues will not pay National Insurance Contributions (NICs) on the amount of pay that they have sacrificed.

4.7 The Council will also benefit from National Insurance Contribution (NIC) savings and Apprenticeship Levy savings (where applicable) on the total amount of salary sacrifice.

5. Next Steps

5.1 Subject to committee approval, the Council will implement the Discretions Policy Statement.

6. Financial impact

6.1 There is no material impact of this Policy Statement being implemented.

7. Stakeholder/Community Impact

7.1 The Employer Discretions Policy Statement has been developed in conjunction with colleagues from HR and Lothian Pension Fund and with feedback from Trade Unions.

8. Background reading/external references

8.1 None

9. Appendices

9.1 Appendix 1 - Discretions Policy Statement

Employer Discretions Policy Statement

Under Regulation 58 of the Local Government Pension Scheme (Scotland) Regulations 2018, each employer who is a member of the Local Government Pension Scheme is required to have a discretions policy statement covering the various discretions that are contained in the regulations.

This Employer Discretions Policy Statement sets out which of the discretions the council intends to adopt and how it will operate them. When coming to a decision about the discretions that are available, the main consideration has been how the use of a discretion would look to the general public, in terms of whether it could lead to a serious loss of confidence in the council as a publicly funded body.

Author	**Scope**
Employee Relations, Human Resources, Resources Directorate	This policy applies to all Council colleagues who are members of the Local Government Pension Scheme.
Purpose	**Review**
Some of the statements are compulsory, in that every member of the Local Government Pensions Scheme must publish their intentions towards some discretions. Others are optional. The Employer Discretions Policy Statement groups the compulsory and non-compulsory discretions together under separate headings, for ease of reference.	In making this Employer Discretions Policy Statement, the Council has referred to the statutory provisions and to advice from the Council as the Pension Scheme administering authority. The employer discretions policy statement will be kept under review and will be revised as and when necessary to reflect any changes in regulations or policy. Any changes to this discretion policy will be advised to the administering authority and scheme members within one month of the change taking effect.

Contents

1. Compulsory Discretions

Additional Pension Contributions (APC's)

(Regulation 16(2)(e) & 16(4)(d) of the Local Government Pension Scheme (Scotland) Regulations 2018)

This regulation deals with employees buying **additional** pension contributions to increase their pension. Employees can choose to buy additional pension up to an agreed limit, which is subject to annual increase in line with the Pensions (Increase) Act 1971 (£7,040, figure correct as at 12 April 2021). Pension contributions like this are called Additional Pension Contributions (APCs).

The Regulations allow the Council to pay the associated employer costs, where an employee has chosen to buy additional pension. Given that this is an extra cost to the Council, and APCs are additional pension beyond the standard pension available to all employees, the Council's Policy is not to enter into Shared Cost APC's to increase employees' pensions.

How it works

The regulations allow employers to enter voluntarily into an APC contract with a pension member who is contributing to the main section of the scheme, in order to purchase additional pension of not more than the additional pension limit.

The scheme member can choose to make their additional pension contributions in regular instalments (in accordance with Regulation 16(2)(e) or as a lump sum in accordance with Regulation 16(4)(d).

Employees looking for more information about APC's should contact Lothian Pension Fund in the first instance.

Council Policy:

*The Council's policy on this is **not** to enter into Shared Cost APCs with employees who wish to increase their pension because of the additional employer costs.*

Flexible Retirement

(Regulation 29(7) of the Local Government Pension Scheme (Scotland) Regulations 2018)

Flexible retirement is where employees, who are pension members and are aged 55 or over, can ask the Council to allow them to access their pension benefits while agreeing to work either reduced hours and/or at a lower grade.

Approval will be subject to it being shown that the request is operationally beneficial, will result in a clear business benefit to the Council and the costs are affordable and can be met.

How it works

When pension members take flexible retirement, they must take all the pension benefits they have accrued in respect of membership before 1 April 2009.

For pension accrued from 1 April 2009, members can decide to:

- take all, part or none of the benefits in respect of membership from 1 April 2009 onwards;
- take any additional benefits such as added years contracts, additional pension contracts (APCs), additional voluntary contributions (AVC's) or additional pension or membership awarded by the employer.

Where they decide to take part or none of the pension they have accrued since 2009, they will get access to that once they retire.

If the rule of 85 applies, there may still be some actuarial reduction to the member's pension. This will depend on when the member joined the LGPS and other variables.

Where there is an actuarial reduction, the regulations give the Council the option to waive the reduction, but this would result in the Council having to meet that cost. The Council does **not** have a general policy of waiving any actuarial reductions.

Council Policy:

The Council has adopted this regulation and details of our flexible retirement scheme can be found in the Retirement Policy.

Waiving actuarial reduction on early retirement between aged 55 and 60.

(Regulation 29(9) of the Local Government Pension Scheme (Scotland) Regulations 2018)

Any scheme member can ask for the early payment of their pension benefits, providing they are aged between 55 and 60. However, the benefits may be reduced for early payment.

The Council allows employees to request early retirement under the Retirement Policy.

The Council does have the discretion to waive the reduction that would apply. However, doing so would mean the Council would be liable to cover the pension strain costs that would apply. Therefore, the Council **has not adopted** this discretion.

Council Policy:

The Council ***will not waive*** *any reduction which would normally be applied to the member's benefits.*

Choice of Early Payment of Pension

Schedule 2 (Paragraphs 2 & 3 of the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014.

This regulation deals with applying the rule of 85 to employees retiring early under Regulation 29 (5) between age 55 and 60.

The rule of 85 does not automatically apply to members who voluntarily retire and take their pension benefits on or after age 55 and before age 60 (except in cases of flexible retirement). As a result, the member's benefits may be actuarially reduced.

How it works

The new regulations allow the Council the discretion to apply the 85 year rule protections to avoid pension members having their benefits reduced. There is also the option of waiving part of the actuarial reduction. If the Council agreed to do this, the Council would then have to meet the pension strain costs. For this reason, the Council has chosen not to adopt this discretion.

Council Policy:

*The Council will **not** have a general policy of applying the Rule of 85 in cases where early retirement is agreed. Nor will the Council waive any reduction that would normally be applied to the benefits.*

Award of Additional Pension

(Regulation 30 of the Local Government Pension Scheme (Scotland) Regulations 2018.

This regulation allows employers to award current members up to £5,417 additional pension. Employers can also make an award to former employees whose employment was terminated on the grounds of redundancy or the interest of efficiency, provided they do this within 6 months of the employee leaving.

The Council may consider written requests on their individual merits, where there is a financial or operational advantage to the Council and will consider individual cases on their merits.

How it works

An employer 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 £5,417. Such awards can be made to current members or, within 6 months of leaving, to members whose employment was terminated on the grounds of redundancy or the interest of efficiency. The employer must make an appropriate payment into the fund within one month of making a decision.

The figure of £5,417 will be increased annually each April (figure correct as at 12 April 2021) under the Pension (Increase) Act 1971.

Council Policy:

*The Council will **not** have a general policy of awarding additional pension.*

Voluntary Early Retirement between the ages of 55 and 60

(Regulation 30 of the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008) – Former Employees

This regulation deals with <u>former employees</u> of the Council who were members of Lothian Pension Fund, who are covered by the 2008 regulations and who want to access their pension early.

It applies to former employees with deferred benefits who left the Scheme before 1 April 2015. The Scheme Regulations allows former members to obtain access to their deferred benefits early provided they are at least 55 years old. Benefits would be reduced for early payment of pension. They amount of the reduction depends on the extent of the protection applicable to the member in respect of the 'Rule of 85'. The reduction is calculated in accordance with guidance issued by the Government Actuary's department.

Decisions to award early payment of benefits under this regulation put a strain on the pension fund, which results in a pension strain cost being passed on to the Council. However, the Council has the discretion to agree where it could be demonstrated that there were financial or operational benefits in doing so.

How it works

Any scheme member aged 55 or over, who has left their employment, can ask for the early payment of pension benefits. If the member is under age 60, it is at the Council's discretion whether to agree to early payment. (This discretion may also apply to former members with deferred pension rights when they attain age 50, depending on when they originally joined Lothian Pension Fund).

If the Council does agree, it can then go on to consider whether any actuarial reduction should be made. Regulation 30(5), states that where compassionate grounds exist, the Council could agree that a scheme member's benefits should not be reduced. The Council will only waive any actuarial reduction applied to the member's benefits in exceptional cases of hardship.

Council Policy:

- *The Council will **not** have a general early release policy for former employees but will consider applications on their merits. The Council may agree, where it can be demonstrated as being in the Council's financial or operational interests.*
- *The Council will only waive any actuarial reduction applied to the member's benefits in exceptional cases of hardship.*

2. Non-Compulsory Discretions

Shared Cost AVC's

(Regulation R17(1) & TP15(1)(d) & A25(3) of the Local Government Pension Scheme (Scotland) Regulations 2018)

The Council will pay Shared Cost AVC contributions where an employee has elected to pay AVCs by salary sacrifice. The amount of these employer Shared Cost AVC contributions will not exceed the amount of salary sacrificed by the employee. This is an employer discretion which is subject to the employee meeting the conditions for acceptance into the salary sacrifice shared cost AVC scheme and may be withdrawn or changed at any time.

How it works

Shared Cost AVCs must be operated on a 'shared cost' basis. Employees will be required to contribute a minimum of £1 per month into their pension. This Income Tax-free contribution will be deducted from their salary and paid into their AVC fund. The Council will contribute the remaining via a salary sacrifice arrangement.

As an example, if an employee would like to contribute £50 per month into the Shared Cost AVC scheme, £49 would be contributed via salary sacrifice with £1 being their personal Shared Cost AVC contribution taken as a gross deduction.

The main advantage of Shared Cost AVCs over a standard AVC option is that as well as receiving full Income Tax savings, employees will not pay National Insurance Contributions (NICs) on the amount of pay that they have sacrificed.

The Council will also save on the National Insurance Contributions (NICs) that employees have sacrificed.

Council Policy:

The Council has adopted this regulation.

Forfeiture of pension rights after conviction for employment-related offences

(Regulation 86 of the Local Government Pension Scheme (Scotland) Regulations 2018)

This regulation deals with current employees, who are members of the Local Government Pension Scheme, and are convicted of serious offences. In these circumstances, the Council can apply to the Scottish Ministers to forfeit all or part of a scheme member's pension benefits. This would only apply in cases where the conviction was for a serious offence which was either '*gravely injurious to the State*' or '*liable to lead to serious loss of confidence in the public service*'.

It is recommended by Lothian Pension Fund that all employers adopt this provision.

Council Policy:

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

Recovery or retention where former member has misconduct obligation

(Regulation 87 of the Local Government Pension Scheme (Scotland) Regulations 2018)

This regulation deals with situations where the Council suffers a loss arising from a criminal, negligent or fraudulent act by an employee or a former employee. This provision allows the Council to recover funds to cover that loss from the former employee's pension benefits, providing that all other efforts to recover the loss have been exhausted.

How it works

This provision allows employers to recover monies from pension benefits in respect of acts of theft or fraud carried out by an employee. For example, the theft of a substantial sum of money could be recovered from a scheme member's pension benefits. This provision can also apply to former employees by deducting this amount from a member's pension, so they only receive the reduced pension when they retire. It is recommended by the Lothian Government Pension Scheme that all employers adopt this provision.

Council Policy:

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

Inward transfer of pension rights

(Regulation 95 of the Local Government Pension Scheme (Scotland) Regulations 2018)

This covers cases where new employees to the Council want to transfer service accrued with other pension funds to the Lothian Pension Fund. Lothian Pension Fund does not, and will not, permit the inward transfer of pension rights from private sector pension schemes or personal pension arrangements.

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

Allowing late transfers results in a cost to the Council. This will be a particular consideration if there is a possibility that early retirement may be considered in the future, as such an increase in liabilities could give rise to increased strain on Fund costs.

How it works

Employees can apply and the Council will consider individual applications for late transfers on their merits and may, in agreement with Lothian Pension Fund, exercise discretion to allow a late transfer to proceed where there is no financial impact on either the Council or Lothian Pension Fund and/or if there are extenuating circumstances as to why the member did not request the transfer previously.

Council Policy:

*The Council will **not** have a general policy of allowing late transfers to proceed in respect of the inward transfer of pension rights from schemes that the Lothian Pension Fund recognises.*

Member Contributions

(Regulation 9(4) of the Local Government Pension Scheme (Scotland) Regulations 2018)

This regulation covers cases where employees move to a different pay band during the financial year,
which would result in a change to their pension contributions. Under this regulation, the Council may adjust a member's contribution rate during the financial year if their pay changes.

How it works

Employers have to allocate members into the appropriate contribution bands annually. If a member's pay moves into a different band during a financial year, the employer has discretion to implement the new band immediately but may prefer to wait until the next annual review.

Council Policy:

The Council reserves the right to exercise this discretion should the need arise providing that a consistent approach is taken, in the interest of maintaining confidence in the public service.

Additional pension contributions
(Regulation 16(16) of the Local Government Pension Scheme (Scotland) Regulation 2018)

This covers cases where employees have a gap in their contributions following an agreed period of absence from the Council.

Under this regulation employees must make a written request to the Council to buy back lost pension within 30 days of returning to work. If they decide to do so the cost of buying back the lost pension will be shared with the employer. The Regulations give the employer discretion to extend the 30-day time limit.

How it works

Where an employee decides to buy back missed pension contributions within 30 days of returning to work, the employer **MUST** pay the associated employer costs. There is no discretion around this. The Regulations are quite clear that the employer must meet the costs if the employee's request is made within the 30-day deadline. The mechanism for these payments is a Shared Cost Additional Pension Contract.

Council Policy:

*Employees who have gaps in their pension contributions due to agreed unpaid leave can choose to buy back the missing element. They must decide to do this within 30 days of returning to work. The Council will **not** generally agree to extend the 30-day time limit, but may do so exceptionally, where an employee provides evidence of extenuating circumstances.*

Discretionary Payments

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

The Discretionary Payments and Injury Benefits Regulations allow employers, such as the Council to make discretionary payments to employees, who may also get access to their pension at the same time, in relation to:

- Injury Allowances;
- Redundancy payments;
- Awarding compensatory added years; and
- Gratuities for non-pensionable service.

Under regulation 51A, the Council must formulate and publish a policy in relation to:

- **Regulation 4**: basing redundancy payments on an actual weeks pay where this exceeds the statutory weeks pay limit;
- **Regulation 35**: awarding compensation for redundancy payment of up to 104 weeks pay;
- **Regulation 8**: awarding compensatory added years; and
- **Regulation 49B**: ill-health gratuities.

It is up to each employer to consider how to deal with these discretions within the context of its own policies on severance, redundancy and early retirement.

In considering how it makes these payments, all employer members of the Local Government Pension Scheme must have regard to the extent to which the exercise of their discretionary powers, unless properly limited, could lead to a serious loss of confidence in the public service. All employer members are urged to ensure that they are satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs.

Calculation of Severance and Redundancy Payments

The Council's method of calculating severance and redundancy payments can be found in the Councils' Managing Change policy and user guide. Employees who do not have access to the internet should ask their line manager for a copy. Details of the process and the cost/savings test can also be found there.

Added Years with Early Access to Pension

The Council will **not** have a general policy of awarding compensatory added years (CAY) in redundancy cases where the employee is also getting access to their pension.

The Council will consider each individual case on its merits and have regard to the operational benefits, the affordability of the proposal and the extent to which the case meets the Council's cost/saving test and provides a financial benefit of 25% of basic annual pay.

Where added years are agreed, the employee's redundancy payment will not be enhanced i.e. it will be based on the statutory weeks' pay limit multiplied by the statutory number of weeks.

The level of added years to be awarded in each case is determined by the statutory conditions and the local conditions applied by the City of Edinburgh Council which:

i) limit added years to one added year for every two years of Pension Scheme service; and

ii) limit the maximum award of added years to 5 years.

Added years will be reduced where that is necessary to ensure the required financial benefit is provided.

These local conditions will apply to voluntary severance/ redundancies and compulsory redundancies. An employee does **not** have the right to have an application for added years considered or approved.

Ill-Health Gratuities

Regulation 49B allows the Council to make discretionary payments to employees who leave on the grounds capability but who do not meet the criteria for ill-health retiral, either in terms of length of pension membership or the medical criteria for ill-health retiral. In these circumstances, the Council has the discretion to make a payment of not more than the equivalent of 30 weeks pay.

Given the cost of this, the Council will not pay ill health gratuities in these circumstances.