



<b>PENSIONS COMMITTEE</b> 24 June 2014	<b>REPORT</b>

<b>Subject Heading:</b>	Local Government Pension Scheme Employer Discretions
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<b>Policy context:</b>	The Council's Discretionary Policies covered by the Local Government Pension Regulations
<b>Financial summary:</b>	There may be some savings, and avoidance of costs, for the Council as an employer and the fund as a result of these changes but they are not quantifiable and likely to be minimal

**The subject matter of this report deals with the following Council Objectives**

Clean, safe and green borough	<input type="checkbox"/>
Excellence in education and learning	<input type="checkbox"/>
Opportunities for all through economic, social and cultural activity	<input type="checkbox"/>
Value and enhance the life of every individual	<input checked="" type="checkbox"/>
High customer satisfaction and a stable council tax	<input checked="" type="checkbox"/>

**SUMMARY**

As a result of the changes in the Local Government Pension Scheme Regulations (LGPS) 2013 and the Local Government Pension Scheme (Transitional Provisions and Savings) Regulations 2014 (the latter published on 10<sup>th</sup> March 2014), Scheme employers participating in the LGPS in England and Wales will have to formulate, publish and keep under review a Statement of Policy on certain discretions which they have the power to exercise in relation to members of the Career Average Revalued Earnings (CARE) Scheme. The Scheme employer must send a copy of its statement

to the relevant administering authority before the 1<sup>st</sup> July 2014 and must publish its statement. Scheme employers are also required to (or where there is no requirement, are recommended to) formulate, publish and keep under review a Statement of Policy on certain other discretions they may exercise in relation to members of the LGPS arising from the 2013 Regulations, 2014 Transitional Regulations and prior Local Government Pension Scheme Regulations.

## **RECOMMENDATIONS**

It is recommended that the Pensions Committee:

- 1 Note the changes to the Pensions Regulations with effect from 1<sup>st</sup> April 2014.
- 2 Delegate to the Group Director of Resources, the Director of Human Resources and Organisational Development, and the Council's Monitoring Officer, acting jointly, the setting of the discretion decisions and Policy Statement.
- 3 Note that the final discretion decisions and Policy Statement will be brought back to Committee for information.
- 4 Delegate to the Pension Panel the powers to review and make the necessary discretion changes between valuations in response to regulatory change as they arise.
- 5 Note that any major discretionary decisions made by the delegated persons will be reported to the Committee for information on a regular basis.
- 6 The discretions will be brought to Committee for review following the next triennial valuation.

## **REPORT DETAIL**

### **1 Introduction**

1.1 The Local Government Pension Scheme Regulations define the details of the scheme for members, employing authorities and the administering authority (Havering Pension Fund, as part of the London Borough of Havering). The LGPS Regulations do allow both Havering Pension Fund and the employing authorities' discretion over various elements of the pension scheme. In formulating and reviewing its policy, the Scheme employer must have regard to the extent to which the exercise of its discretionary powers could lead to a serious loss of confidence in the public service.

1.2 Due to the Local Government Elections 2014, the lateness of the publication of the Transitional Regulations 2014 (10<sup>th</sup> March 2014), and awaiting the new scheme

detailed guidance from the Government and the Government Actuary it has not been possible to bring a report to Committee until June 2014.

## **2 Review of Discretions**

2.1 The new scheme has been operational from 1 April 2014 and there is a regulatory requirement under the LGPS 2013 (Regulation 60) and Transitional Regulations 2014 (Schedule 2, Paragraph 2) to agree the new and revised discretion decisions and a Policy Statement before the 1<sup>st</sup> July 2014.

2.2 An in-depth review of the current employer discretions, together with the new required discretions as a result of the LGPS Regulations 2013 and Transitional Regulations 2014, has been carried out by the Fund Actuaries Hymans Roberston LLP. This review will inform the Group Director of Resources, the Director of Human Resources and Organisational Development, and the Council's Monitoring Officer, acting jointly, in the setting of the discretion decisions and Policy Statement.

2.3 In reviewing the discretions and making recommendations for the application of the discretions by the Council as an employer, Hymans have ensured that each discretion is exercised in a manner that does not 'fetter' the Council's discretion, and ensures decisions taken would review the individual circumstances of each particular case as necessary.

2.4 The recommendations also ensure that the discretions are carried out:

- In a fair and reasonable manner;
- Without knee jerk reactions;
- With consistency;
- With flexibility for any peculiar circumstances;
- With potential for review to allow consideration of changes (such as the financial status of the Council).

2.5 It is good practice to review discretions on a regular basis and it is suggested that this is in line with the triennial valuation, every three years, to coincide and take account of the results of the valuation. Where there is regulatory and legislative changes that impact on discretions, a review would be carried out on those between valuations. Where reviews are required between valuations it is recommended that powers are delegated to the Pensions Panel to make the necessary review or introduce any relevant discretion.

## **IMPLICATIONS AND RISKS**

### **Financial implications and risks:**

Employer decisions on the application of discretions can give rise to strain costs being payable by the employer to the fund. Strain costs are the capitalised financial value of

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the impact on the fund when a member draws their pension benefits before their Normal or State Pension Age (for whatever reason).

Factors that influence the strain costs are the members' age, length of service, gender and marital status. The impact on the fund is the loss of future contribution streams from the employee and the member, and paying out benefits earlier than anticipated. The following employer decisions and circumstances will give rise to a strain cost:

Generally where a strain costs arises due to an employer decision, such as waiving actuarial reductions or sharing the cost of buying additional pension, the strain costs will be met by the employer and not the Pension Fund.

Ill-health retiral at any age is not an employer discretion and generally may not give rise to strain costs being payable by an employer **but** this is dependent upon the ill-health retirements assumed by the Fund actuary. Employer strain cost balance and increase in future contributions may arise. New scheme employers and admitted bodies are made aware by the Administration team of the potential significant level of strain costs of tier 1 ill-health retiral.

If an LGPS member dies in service a death grant of three times the member's final pay is paid, subject to them being under 75 at the date of death, together with a survivor's pension, as well as a survivor's pension. These costs would normally be met by the Fund but will ultimately be reflected in future contribution rates.

### **Legal implications and risks:**

The ambit of the areas of discretion is relatively limited, the major elements of the LGPS being fixed by legislation. In determining the policy on individual discretions a key element will be the possible impact on the pension fund from any particular discretion.

The setting of a policy on discretions creates the starting point or 'standard' response to a decision on the exercise of a discretion, but on each occasion there is the possibility that the particular circumstances of the case will justify a departure from the policy. However in practice it will probably be comparatively rare that there is evidence that justifies a departure from the policy.

### **Human Resources implications and risks:**

There are no direct Human Resource implications arising from this report.

### **Equalities implications and risks:**

The report provides information on the changes on Pensions Regulations with effect from 1<sup>st</sup> April 2014 and asks for Pensions Committee approval for the delegation of decision making of the above listed pension discretions. There is no direct impact on the pension or pension entitlement for individuals or groups with protected characteristics arising from this report.

However, in drafting any policy, whether it be an "each case on its merits" policy, one that applies a standard approach, or even one that utilises either approach depending on the circumstances, Employers will need to have due regard to the Employment Equality (Age) Regulations 2006 and the Public Sector Equality Duty, as set out in the Equality Act 2010.

The policy should be informed by an equality analysis assessing the impact on affected staff groups with protected characteristics. If any age-related criteria or criteria that could be directly or indirectly age discriminatory are applied, the Employer must be able to demonstrate that their decision is based on objective justification and that it is a 'proportionate' means of achieving a 'legitimate' aim.

The benefits payable from the London Borough of Havering Pension Fund are almost exclusively determined by the Department for Communities and Local Government (through the Local Government Pension Scheme Regulations) or in a small number of cases, by the scheme member's employer. The benefits package is rarely, if ever, within the control of the Fund to adjust. All eligible employees working for employers in the pension scheme are automatically admitted as a member of the Scheme unless they choose to opt-out. Each employer is responsible for informing the London Borough of Havering of new eligible employees joining the Scheme and those who later decide to leave.

DCLG has published an equality statement, assessing the [equality impact of the Local Government Pension Scheme reforms \(2014 Scheme\)](#) using the current, 2008 Scheme as a baseline. The equality statement considers the impacts, both positive and negative, of the reforms on groups with protected characteristics. Decision-makers are advised to refer to the above equality analysis for further information of the impact on people with protected characteristics.

## **BACKGROUND PAPERS**

The Local Government Pension Scheme Regulations (various) and the Guidance notes issued with them.

Previous reports to the Pensions Committee regarding the changes to the Local Government Pension Scheme can be viewed on the Council's website (<http://www.havering.gov.uk/Pages/Category/Council-and-democracy.aspx>).

Hymans Robertson LLP detailed review 'Employing Authority Discretions in the Local Government Pension Scheme Regulations'