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| PENSIONS COMMITTEE 23 September 2014 | |

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| Subject Heading: | Local Government Pension Scheme London Borough of Havering Employer Discretions Statement of Policy and discretion decisions |
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| Policy context: | The Council's Discretionary Policies covered by the Local Government Pension Regulations |
| Financial summary: | 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

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| 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 10th March 2014), Scheme employers participating in the LGPS in England and Wales had 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 was required to send a copy of its statement to the relevant administering authority before the 1st July 2014 and also had to publish its statement. Scheme employers were also required to (or where there was no requirement, were 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.

At the Pension Committee of the 24 June 2014 the Committee delegated 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. Following the setting of the discretion decisions and Policy Statement, the final discretion decisions and Policy Statement would be brought back to Committee for information.

RECOMMENDATIONS

It is recommended that the Pensions Committee:

- 1 Note the final employer discretion decisions and Policy Statement for the London Borough of Havering have been brought back to Committee for information.

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 (10th March 2014), and awaiting the new scheme detailed guidance from the Government and the Government Actuary it was not possible to bring a final report to Committee until September 2014.

2 Review of Discretions

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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 1st July 2014. It is also understood that where the 1st July was not achievable the Pension Regulator would only seek assurance that the employer was working towards completing the review of the Policy Statement and discretions.

2.2 An in-depth review of the previous 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 Robertson LLP. This review informed 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 when they met on the 26 July 2014. Following this the Policy Statement was published through various communication channels, including the Havering Pensions website, as well as being shared with other scheme employers. The jointly agreed and reviewed Policy Statement and discretion decisions are attached at Appendix A.

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 The discretions will be reviewed every three years in line with the triennial valuation, to coincide and take account of the results of the valuation. Where there are regulatory and legislative changes that impact on discretions, a review would be carried out on those between valuations under delegation to the Pension Panel.

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 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 retirement 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 retirement.

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. 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:

There is no direct impact on the pension or pension entitlement for individuals or groups with protected characteristics arising from this report.

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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 impact assessment 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.

Local Government Pension Scheme Employer Discretions report, Pensions Committee, 24 June 2014 (<http://www.havering.gov.uk/Pages/Category/Council-and-democracy.aspx>).

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'