

Introduction

1. In agreeing its initial policy on the adoption and exercise of discretionary powers in early retirement cases in 2010, (HR Sub Committee, 26 October 2010) the Authority indicated, in its discussions, a number of underlying principles that informed its approach, namely:

- it wished to be fair and reasonable in its decisions affecting the benefits of employees leaving their employment early;
- any discretionary benefits conferred should be free from unfair discrimination; it was aware of the exemptions, that still apply, in respect of some age based decisions
- it would seek wherever possible to achieve changes to workforce structure and numbers by voluntary means
- it also needed to have due regard to its duty of prudent management of public money.

2. These underlying principles underpin the existing policy and have been observed in developing the proposals in the attached revised pension's discretions policy statement which has been developed in the light of the introduction of the Local Government Pension Scheme (LGPS) 2014.

3. A further factor that has been considered in determining the proposed approach is business need. Whilst the Authority is reshaping and reducing its workforce in line with the need to reduce overall expenditure it is seeking to do this where possible through voluntary measures and natural wastage, retraining and redeployment and voluntary redundancy/early retirement. In developing the proposed revised policy some regard has been given to the reality that opportunities for retraining and redeployment contract with a reducing workforce and therefore the authority may wish to have powers to make voluntary redundancy/early retirement more attractive an option going forward. In the following table each continuing and new discretion is assessed and a recommendation made which is then reflected in the attached formal statement of policy on the available discretions. The new mandatory discretions are in shaded text.

Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 – Regulation 5

Power of employing authority to use actual weekly pay to calculate redundancy payments

Recommendation

The Authority has already adopted this discretion and it is not proposed to change the current policy of using actual pay for redundancy payment calculations.

Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 – Regulation 6

Power of employing authority to make an additional compensatory payment

Recommendation

The Authority did not previously adopt this discretion but it is now considered that it would be advantageous to have the added flexibility offered by this discretion to augment the number of weeks of statutory redundancy entitlement by being able to pay up to a maximum of 52 weeks' pay including any statutory entitlement. This discretion would only be exercised where a structured business case could demonstrate that it would be in the Authority's interests to do this and that it would be affordable so to do.

Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 – Regulation 12

Power of employing authority to increase total membership of active members

Recommendation

This discretion is no longer available under the 2014 Scheme and does not apply to leavers between 1st April 2008 and 31st March 2014 and therefore does not appear in the proposed revised policy statement (Appendix 1)

Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 – Regulation 13

Power of employing authority to increase total membership of active members

The Authority did not adopt this discretion which has now been replaced by:

Regulation 31 of LGPS Regulations 2013

Power of employing authority to grant additional pension of up to £6,500 annual pension

Analysis

Regulation 31 gives a Scheme employer the power to award an active member of the Scheme, or a member who was active but dismissed by reason of redundancy or business efficiency, additional pension up to a value of the additional pension to maximum of £6,500 from 1 April 2014 subject to re-valuation each subsequent 1 April in line with the Pensions (Increase) Act 1971. In the case of an active member (one who is currently contributing to the Scheme) a Scheme employer can award the additional pension at any time with the amount being credited to the relevant active member pension account in the Scheme year in which the resolution to award the additional pension is made. In the case of a member who was an active member but has been dismissed due to redundancy or business efficiency, the resolution to award additional

pension must be made within the period of 6 months of the date that the member's employment was terminated. The amount awarded is treated as being credited to the relevant active member pension account on the day before the date of termination of employment.

By awarding extra pension to a Scheme member there is potential for that Scheme member's benefits to exceed the permitted Annual or Lifetime Allowances resulting in a tax charge being made to the Scheme member. This is, however, solely the responsibility of the Scheme member to ascertain.

The cost of providing additional pension is to be determined in accordance with actuarial guidance issued by the Secretary of State and is based on the age and gender of the member and therefore can only be determined on a case by case basis but could be significant.

The suggested benefits of adopting this discretion are that this discretion could be a useful management tool when used as a recruitment or retention incentive. It could even perhaps be used as a reward system for exceptional performance.

Recommendation

It is not considered that the exercise of this discretion would be of benefit to the Authority and does not fit with its pay policy for support services staff, not all of whom may be in membership of the LGPS, and therefore unlikely to deliver any business benefit. Therefore it is recommended that the Authority does not adopt this discretion.

Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 – Regulation 18

Power of the Authority to grant flexible retirement

The Authority did not adopt this discretion. However it has now been replaced by:

Regulation 30(6) and 30 (8) of LGPS Regulations 2013

Power for the Authority to grant Flexible retirement and to waive any actuarial reduction to which an employer might be subject in respect of early payment of benefits.

Analysis

Flexible retirement is the situation in which an employee can agree a substantial change in their current contract in terms of hours and or salary and in return receive all part of their pension benefit entitlement early. The current judgment is that with a retracting workforce it could be in the interests of the Authority's resilience and workforce planning to have this discretion available to it. The potential benefits include:

- providing an opportunity to phase change ensuring the structured transfer of accumulated skills and organisational knowledge
- an alternative means to reduce capacity whilst helping to avoid redundancies and be cheaper than early retirement on the grounds of redundancy or business efficiency because of the actuarial reduction.
- retention of a balanced age profile within the workforce; and
- an acceptable solution to staff who are a blockage to promotion or reorganisation.

If adopted such a discretion would only be exercised where it is both affordable and in its interests to so do as demonstrated by a structured business case.

It is important with this discretion to ensure that a request is not granted purely to facilitate an employee gaining early access to their benefits which, understandably, is the main motive for the employee. Consequently it is considered that typically a request should involve a substantial reduction (at least 40% to 50%) in salary either through reduced hours or level of responsibility.

If the Authority is minded to adopt the flexible retirement discretion then it would be sensible to also adopt the discretion to waive the actuarial reduction that could accompany such a retirement and accept the pension strain that would arise from such a retirement. (Where the Authority makes an employee redundant or retires them in the interests of the service then it must automatically take the pension strain of early payment of benefits.) This would only be exercised if the business case demonstrated that it was affordable.

Recommendation

The Authority is recommended to adopt the available discretions under Regulation 30 (6) and 30 (80)

Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 – Regulation 30

Power of employer to consent to an employee retiring early, at their request, between the ages of 55 and 59

The Authority did not adopt this discretion which is no longer applicable as employees can now retire from age 55 without their employers consent however there will be an actuarial reduction to pay for the pension strain unless the employer adopts the discretion to 'turn back on the 85 Year rule', which is dealt with below.

LGPS (Transitional etc.) Regulations 2014 Schedule 2 Transitional Regulations - Paragraphs 2 and 1 (1)(c)

Power of the employer to 'switch' back on the 85-year rule for employees

retiring between ages 55 and 60

Analysis

Previously, under Regulation 30 of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 employees could retire early with the consent of the Authority between the ages of 55 and 59. However the Authority did not adopt this discretion as it would have been required to pay the pension strain arising from the early payment of benefits.

Employees are now able to voluntarily retire between ages 55 and 60, post-31 March 2014 and onwards. The 85-year rule does not automatically apply to members retiring between 55 and 60 as the facility to retire voluntarily between 55 and 60 is a new facility. However the employer has the discretion to 'switch' back on the 85-year rule for employees leaving between 55 and 60, thus allowing employees to not have reductions (or have lesser reductions). In these cases the employer would have associated strain costs that would have to be paid by the organisation instead.

Recommendation

It is not recommended that the Authority should adopt this discretion to fund additional cost applicable to the 85 Year rule for 55 to 60 year olds. Employees choosing to retire early will therefore need to fund the pension strain cost themselves through an actuarial reduction in their benefits.

LGPS (Transitional etc.) Regulations 2014 Schedule 2 Transitional Regulations Paragraphs 2(2) and (1)(1)(a)

Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 – Regulation 30A

Discretion to Grant an Application for Reinstatement of a Suspended Tier 3 Ill Health Pension on or After Age 55 and before Age 60 and, if granted, to waive, on compassionate grounds, the actuarial reduction

Recommendation

This is a continuing discretion which the Authority has not adopted and it is recommended that this remains its policy.

LGPS (Benefits etc.) Regs 2007 & LGPS (Admin) Regs 2008 - REGULATION 3

Contributions payable by active members

Recommendation

This is a continuing regulation and the Authority is recommended to maintain its

current policy of changing the employee's contribution rate when there is a material change in their contractual terms.

LGPS (Benefits etc.) Regs 2007 & LGPS (Admin) Regs 2008 - REGULATION 16 (4) (b) (ii) (LGPS (Admin) Regs 2008)

Facility to extend time limits for active members to aggregate deferred periods of LGPS membership

Recommendation

This is a continuing regulation offering a discretion which the Authority has not adopted and it is recommended that this position is maintained

LGPS (Benefits etc.) Regs 2007 & LGPS (Admin) Regs 2008 - REGULATION 83 (8) (LGPS (Admin) Regs 2008) - Facility to extend time limits for active members to request a transfer of previous pension rights into the LGPS

This is a continuing regulation offering a discretion which the Authority has not adopted and it is recommended that this position is maintained

The Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011 S.I. 2011/2954 (This does not apply to firefighters for whom there is already provision under the Firefighters' Compensation Scheme (England) Order 2006)

Power to make an injury allowance award

Recommendation

This is a continuing regulation offering a discretion which the Authority has not adopted and it is recommended that this position is maintained

LGPS Regulations 2013

REGULATION 16(2)(e) and 16(4)(d)

Discretion of employing authority to decide to pay towards the cost of Additional Pension Contributions (APCs)

Recommendation

This is new discretion under which the employer can resolve to voluntarily contribute towards the cost of an active scheme member's decision to make Additional Pension Contributions (APCs) to purchase extra pension benefits (up to £6,500 per annum. It is not envisaged that there would be a situation in which it would be in the interests of the Authority to do this and therefore the Authority is recommended not to adopt this discretion.

Appendix 1- Local Government Pension Scheme 2014 - Employer Discretions

4. The revised draft LGPS Employer Discretions Policy Statement, which is attached at Appendix 1 reflects the above recommendations. When approved the policy statement must be published for one month, on the Authority Web Site, before it becomes effective.