

**REVIEW OF EARLY RETIREMENT AND EMPLOYMENT STABILITY POLICIES AND PROCEDURES**

Accountable Officer: Bev Bithell (Head of Human Resources)

Authors: Gill Drew/Cindy Stanton (Senior Human Resources Officer (Employee Relations) - MK253847

**1. Purpose**

1.1 In order for early retirement to be used as an effective change management tool the Local Government Pension Scheme (LGPS) regulations provide local authorities with the discretion to grant early retirement and enhance benefits. This report sets out proposals for the use of these discretions and reviews all forms of early retirement.

1.2 This report should be read in conjunction with the report 'Early Retirement and Voluntary Redundancy' (Minute P7/00 Refers) submitted to this Committee in June this year, when it was noted that this Committee's comments would be submitted along with the recommendation of the Scrutiny Commission for consideration and adoption by the Policy and Resources Committee.

1.3 The policies covered by this report are:

(a) Early Retirement

- (i) Voluntary early retirement and the '85 year rule'
- (ii) Early retirement on the grounds of redundancy
- (iii) Early retirement on the grounds of efficiency
- (iv) Early retirement on the grounds of ill health
- (v) Payment of benefits on compassionate grounds

(b) Employment Stability

- (i) Human Resource Planning
- (ii) Redeployment
- (iii) Compulsory redundancy
- (iv) Voluntary redundancy
- (v) Salary Protection arrangements

## 2. **Summary**

- 2.1 In order for early retirement to be used as an effective management tool within this Authority, clear policies and procedures need to be agreed to ensure that both managers and employees know what options are appropriate and that each case is given proper consideration, taking account of the needs of the service. School based employees who are members of the LGPS are eligible for the benefits of the pension scheme, but are subject to policies and procedures agreed locally with their Governors. A summary of the issues and recommendations are set out at **Annex A** to the report.

## 3. **Recommendations**

- 3.1 That the comments of this Committee regarding the procedure and decision making process reported to its meeting on 29 June 1999 (Minute P7/00 refers), be submitted, along with the recommendation of the Scrutiny Commission, for consideration and adoption by the Policy and Resources Committee. Formal consultation has taken place with the Trade Unions on the revised policies and procedures, recommended by the Scrutiny Commission. A concern has been raised verbally, by Unison, in relation to the consistency of decisions if made by different Service Committees, and is also covered under paragraph 6.2 of the written response (attached at **Annex D**). This concern is addressed by the requirement that each request for early retirement, prior to submission to the Service Committee, be put to the Treasurer and Head of Human Resources, who must confirm that all staffing and financial implications have been included in the report and that the application meets the criteria laid out in the Council's policy (Recommendation 3.2(a)(viii) refers).

### 3.2 That the Committee:

- (a) agrees the attached policy on Early Retirement (attached at **Annex B**), and the following recommendations:
- (i) that the Authority's current practice of considering early retirement cases from 50 years of age continues, with no further age restriction imposed;
  - (ii) that further investigation be undertaken regarding the feasibility and implications of a voluntary reduction in hours for employees nearing retirement age and using this as a management option;
  - (iii) that no change be made to the policy adopted in October 1998 of awarding up to 6 2/3 added years, dependent upon length of service, in cases of early retirement on grounds of efficiency or redundancy (up to 10 years in exceptional cases);
  - (iv) that a maximum payback period for the cost of pension strain of 5 years or the period to the retiree's normal retirement age, whichever is the lower, be adopted;
  - (v) that the criteria for the payment of benefits on compassionate grounds be adopted;

- (vi) that an Exceptions Panel be set up to consider any individual case which falls outside the proposed policy or when exceptional circumstances are deemed to apply, replacing the existing Special Circumstances Panel;
- (vii) that the early referral of employees after 4 weeks sickness absence to the Council's Occupational Health Physician is noted for implementation; and
- (viii) that prior to submission to the Service Committee, the Head of Human Resources and Treasurer must confirm that all staffing and financial implications are included in the report and that the application meets the criteria laid out in the Council's policy.

3.3 That the Committee agrees the attached Employment Stability Policy (attached at **Annex C**), and the following recommendations:

- (a) to note the existing protection arrangements, subject to review at a later date;
- (b) in line with proposed legislation, now taken on board, when a fixed term contract of one year or more comes to an end the employee be given prior consideration for vacant posts within the Council along with any permanent employees who are deemed to be in a redundancy situation;
- (c) to continue to base redundancy payments on actual weekly pay as opposed to the Statutory maximum weekly pay; and
- (d) to note that no protection of salary is currently proposed in cases of ill-health redeployment. This will be reviewed with salary protection at a later date.

#### 4. **Background**

- 4.1 In October 1997, the Audit Commission published 'Retiring Nature', a management handbook on early retirement in local government. In 1997/98 District Audit reviewed Milton Keynes Council's approach to early retirement in the shorter and longer term to:
- (a) assess the approach adopted for dealing with early retirement arising from local government reorganisation; and
  - (b) help develop a robust approach to early retirement over the longer term.
- 4.2 In particular, the audit focused on:
- (a) the impact of early retirement on the pension fund;
  - (b) the early retirement policy framework;
  - (c) managing the costs of early retirement; and
  - (d) making early retirement decisions.
- 4.3 The District Audit Report concluded that this Authority, on the whole, manages early retirement decisions effectively. However there was a general need to enhance and tighten up procedures and provide clearer and more detailed evidence in support of early retirement decisions.
- 4.4 The Audit Commission recognises that an early retirement policy is an important element of an authority's people management strategy. It recommends that the Council's policy on early retirement should be agreed by the Council as a whole or by the Policy and Resources Committee (or its equivalent), as it has wide implications for staffing and finance. It should not be a decision made solely by finance, or personnel, or service committees as all need to be confident that the policy is workable, affordable and produces the desired benefits. The United Kingdom Steering Committee\* recommends that the policy be reconsidered regularly, and as and when circumstances, including the funding situation change (\*UKSC Circular 58, October 1997). Therefore the Personnel Committee is asked to agree the attached policies in principle, prior to ratification by Policy and Resources Committee.
- 4.5 In January 1999, Internal Audit carried out a review to identify and evaluate the controls over the granting of early retirement and voluntary redundancy for salaried staff. The report found that system and procedures were clear and well documented with satisfactory controls in place, and that early retirement and voluntary redundancy was satisfactorily controlled and executed. Two weaknesses were found, both of these have been addressed in the revised policy (these relate to birth certificates and the reporting back to committee of any subsequent change in cost of retirement).
- 4.6 Under the LGPS there are a number of discretions that the Council can choose to exercise when considering early retirement. These are looked at in detail under paragraph 5, Issues

and Choices.

- 4.7 The report to this Committee in June stated that full details of the criteria to be met for each form of early retirement, together with management guidelines and checklists, would form part of the review of early retirement. These form part of the revised policies **Annexed** to this report.
- 4.8 Given the cost of early retirements, alternatives should always be fully explored and considered. These alternatives are set in the revised Employment Stability Policy, **Annexed** to this report.
- 4.9 Consultation has taken place with the trade unions on both the report considered by Personnel in June and this report and accompanying policies. Comments from UNISON are attached at **Annex D**. Comments from Buckinghamshire County Council's Pension Unit have been sought and these will be presented to Members as soon as they are received.

## 5. **Issues and Choices**

### **Minimising the Potential Cost of Early Retirement**

- 5.1 In all cases where an employee receives the early payment of retirement benefits, there will be a cost incurred by the Council due to the effect on the Pension Fund. This is also true even when benefits are abated under the '85 year rule'. Therefore consideration must be given to ways in which to minimise these costs. As outlined in the report submitted in June, this Council does not employ a designated pensions 'expert'. This situation should be kept under review as more in-house expertise would lead to a better understanding of the LGPS and the way it can be used to its full advantage. In the meantime ways in which costs can be minimised include:

#### Age Restriction

- 5.2 Raising the age at which the Council will exercise its discretion to allow employees to take early retirement, for example, adopting a policy whereby no employee would be considered for early retirement, whether voluntary or on grounds of efficiency, under the age of, for example, 55 years old. (The Council's current practice is to consider early retirement from the age of 50.) This would restrict the number of employees eligible and reduce the costs, particularly the strain on the pension fund. However, this may have a negative effect on the motivation of staff who would have been eligible for consideration.
- 5.3 The attached Early Retirement policy reflects the Council's current practice of considering early retirement cases from 50 years of age. This policy is in line with the provisions of the LGPS and allows each individual case to be considered on its own merits, giving the Council more scope and flexibility to use Early Retirement as an effective management tool for change.

#### Flexible Working

- 5.4 Having a more flexible approach to early retirement, by allowing employees to voluntarily reduce their hours, with agreement from their Head of Service. This would enable the

Council to achieve reductions in overall employment costs, if the balance of hours is not to be covered by an additional employee. It also reduces the strain on the Pension Fund by delaying the payment of benefits and improves the income/benefit position of employees (compared to straightforward early retirement). This approach would enable the Council to retain the latent skills of the employees concerned, by using current features of the LGPS regarding part-time employment, 'certificates of protection' and 'Augmentation' of service. Individuals would need expert advice as to the effect on their ultimate retirement benefits of any reduction in hours.

- 5.5 Further investigation into the use of these measures and the effects of such measures on the Pension Fund is needed, as well as consideration of a comprehensive guidance note on flexible working arrangements to incorporate such measures.

#### Reduction of Added Years

- 5.6 Further reducing the award of added years in cases of efficiency and redundancy. Following the District Audit Report of August 1998 the current policy on added years was adopted by the Council in October 1998, following extensive consultation. That policy reduced the number of added years awarded by this Council from a maximum of up to 10 years, to a maximum of up to 6 2/3 years. Given the recent approval of this policy, it is not proposed to review this further in the immediate future. Any further reduction would need to be considered in the light of the effect it could have on the Council's ability to use Early Retirement as an effective tool for change.

#### Pay Back Period

- 5.7 The Report on Early Retirement and Voluntary Redundancy submitted to this Committee in June 1999, recommended that agreement only be given to a request for early retirement, (excluding those on ill health grounds) where the pay back period including pension is five years or the period to the retiree's normal retirement age, whichever is the lower. The attached policy on Early Retirement incorporates this provision, although it is dependent on the recommendation being approved by the Council.

#### Compassionate Grounds

- 5.8 Under the LGPS, the Council has the discretion to waive any actuarial reduction made under the '85 year rule' on compassionate grounds. It also gives the Council discretion to allow the early payment of deferred benefits on compassionate grounds. The attached Early Retirement policy incorporates this provision and sets out the criteria which need to be met, in line with criteria previously adopted by this Council. This discretion allows an employee, over the age of 50, to give up full time employment to provide care for a close relative and receive their LGPS benefits.
- 5.9 The criteria, previously adopted, all of which have to be met are:

- (a) when the employee has at least 10 years service;
- (b) when the relative is a spouse, son or daughter, mother or father;
- (c) when the illness is confirmed as permanent by the Council's Medical Adviser; and

- (d) where no other appropriate care arrangements exist.

It is proposed that the following criteria be added in order to clarify the reason for exercising this discretion:

- (e) where the employee ceases full time employment to care for the close relative concerned.

- 5.10 Currently, decisions on the early payment of deferred pension benefits on compassionate grounds, taking account of the agreed criteria, are delegated to the Treasurer and Head of Human Resources, in consultation with the Chair of Personnel. It is proposed that this is dealt with by an Exceptions Panel, as detailed below.

#### Exceptions Panel

- 5.11 It is proposed that an officer based panel be set up to consider any case relating to early retirement which falls outside the proposed policy, or where exceptional circumstances are deemed to apply by the appropriate Strategic Director or by the employee. This may be in respect of added years, compassionate grounds, payback period or other issue. This Panel would replace the existing Special Circumstances Panel that considers the award of added years. It is proposed that the Panel consists of an independent Strategic Director, Head of Human Resources and Treasurer, in consultation with the Strategic Director within whose service the employee concerned works/worked. This Panel would make its recommendation to the relevant Service Committee.

#### Consistency

- 5.12 In order to ensure that the policy is applied consistently across the Authority, each report submitted to the relevant Service Committee must contain confirmation from the Head of Human Resources and Treasurer that all staffing and financial issues are included in the report and that the request is in line with the agreed criteria of the policy, or give detail of any exceptional circumstances that are deemed to apply.

### **Employment Stability**

#### Human Resource Planning

- 5.13 Following the recommendations of the District Audit Report, the Council's Employment Stability policy has been widened to include guidance on human resource planning as a means of avoiding job losses and easing the process of change.

#### Salary Protection

- 5.14 There are currently two forms of salary protection in place within this Authority.
- (a) The Council's interim Employment Stability policy following LGR set out salary protection arrangements, in the event of downgrading as a result of redundancy, in accordance with the following rules:
    - (i) salary in the redundant post is to be fully protected for a minimum of three years, effective from the date of appointment in the redeployed post. The

protected salary is to be increased in line with the cost of living award annually. Incremental progression must not be taken into account, as protection applies only to the actual spinal column point as at the commencement of protection; and

- (ii) Years 4, 5 and 6 percentage increases only to be applied. Increases 75%, 50% and 33% respectively to be applied. In year 7 no increase to be applied to the protected salary to bring both salaries into line.
- (b) As part of the single status agreement reached in April 1998, the protection arrangements in the event of downgrading as a result of the job evaluation scheme, were introduced as follows:
- (i) Salary protection will be on a mark time basis only. On transfer to the lower grade, the employee's salary will be frozen at its current level. The salary will remain at this level without an annual pay award or incremental progression until the salary is brought in line with the post grade, at which time the employee will transfer onto the new pay scheme. There will be a review of all those on protected salaries after a period of three years to assess what further assistance may be given.

The existence of two separate sets of protection arrangements, one in the event of redundancy, the other in the event of a job evaluation downgrading, is inconsistent and raises issues of equalities. This issue will be reviewed at a later date.

#### Fixed Term Contracts

- 5.15 It is noted in the revised policy that the Employment Relations Act introduces restrictions in the use of fixed term contracts, in particular, fixed term contracts of one year or more can no longer contain a waiver clause in relation to unfair dismissal, though the employee would not be entitled to a redundancy payment until they had two years service. An employer is required to look at alternative suitable employment before a fixed term contract of one year or more is terminated in order to avoid a claim of unfair dismissal. It is good practice to look for suitable alternative employment at the end of any fixed term contract and the policy includes this requirement. Prior consideration would only apply when a fixed term contract of one year or more is due to end. A fixed term contract can be fairly terminated where there is no suitable alternative employment in accordance with the job profile and person specification.

#### Redundancy Pay

- 5.16 In instances of both compulsory and voluntary redundancy an employee who is dismissed for redundancy will be entitled to redundancy payment providing they are over the age of 18 and have two years or more continuous service with recognised bodies. Service before the age of 18 does not count. Payments are based on an individual's age and length of continuous service, up to the maximum of 20 years' service.
- 5.17 It has been the practice for both this Council and BCC to exercise their discretion and vary the maximum statutory limit for the amount of a week's pay that may be reckoned for redundancy payment purposes (£220 per week as at 1 April 1999) and pay redundancy



sums based on the employee's actual weekly earnings, but not to exercise the discretion to award an enhanced payment of up to 66 weeks pay.

- 5.18 This policy was agreed by the Personnel Committee on 6 October 1998. It is proposed that this remains in place in order to assist the use of voluntary redundancy as a change management tool.

### **Ill Health**

- 5.19 Where the Council's Occupational Health Physician confirms that the employee is unfit to resume duties, the Council must consider alternative employment. The Council has an obligation to avoid early retirement on ill-health grounds where reasonably possible due to the potential cost on the Pension Fund. Furthermore, there is an obligation under the Disability Discrimination Act 1995 to make reasonable adjustments. Therefore, the attached policy on Early Retirement sets out the requirement to give such employees prior consideration for any suitable vacancies that arise.
- 5.20 It has not been Council policy to adopt salary protection in the event of redeployment to a lower graded post as a result of ill health. Where alternative work is considered an alternative to retirement or dismissal, the Council is not expected to create a special job for the employee. The Disability Discrimination Act provides for reasonable adjustments to be made to the workplace or the way the work is carried out. There is no onus on the employer to protect salary in the event of downgrading. The attached policy on Early Retirement reflects current practice. However, the Council will need to review this practice, in the light of equalities, to determine whether or not this should be brought into line with the provisions for salary protection in the event of redundancy.
- 5.21 The Council's current Sickness Monitoring Guidelines provide for early referral to Occupational Health in certain circumstances, before the half sick pay period is reached. Such circumstances include where there may be work related factors affecting health, where there is legitimate concern about short frequent absences and where there is a possibility of an underlying medical problem. The Occupational Health Physician has emphasised the need for early referral in order to prevent more serious problems arising. The attached Early Retirement policy clarifies the process and encourages managers to refer after four weeks of absence. Such a referral would be in writing, giving the manager the opportunity to comment on the requirements of the job and working environment. It would be for Occupational Health to assess whether the next step should be referral to the employee's General Practitioner. Details of the assessment from Occupational Health would be in writing to the manager.

## 6. **Implications**

### 6.1 Environmental

None.

### 6.2 Equalities

All policies relating to the planning and control of early retirement must comply with the Council's Equalities Policy. Regular monitoring reports of early retiree's will be submitted to the Personnel Committee on a regular basis.

### 6.3 Financial

Pension strain arises when the Pension Fund releases pensions before the expected retirement age. The Pension Fund is valued, by an independent actuary, on the assumption that employees will retire at the later of:

- (a) where age and service totals 85; or
- (b) where the employee is 60.

(subject to the normal maximum of age 65)

A rigorous assessment of the financial implications of any potential early retirement must be made prior to the decision.

### 6.4 Legal

All decisions relating to early retirements must be both lawful and reasonable. There must be consistent application of the Council's adopted policies relating to early retirements across the Authority.

### 6.5 Staff and Accommodation

None.

## 7. **Conclusions**

- 7.1 Clear procedures must be followed for each different early retirement route, including probity checks for officers to follow prior to submitting a report for decision are attached. These clarify the criteria that must be met for agreement to be given, together with the steps that officers and Members must follow in each case.

Background Papers: Retiring Nature – a management handbook on early retirement in local government by the Audit Commission

Planning and Control of Early Retirement – Milton Keynes Council by District Audit

Pensions – Award of Added Years Policy

Report to Scrutiny Commission of 8 June 1999 and subsequently to

Personnel Committee on 29 June 1999.