

REPORT OF THE HEAD OF PAID SERVICE

JOINT STAFF CONSULTATIVE FORUM – 16 JUNE 2010
GENERAL PURPOSES COMMITTEE – 21 JUNE 2010

DISCRETIONARY PAYMENT OF ADDED YEARS

Recommendation

The General Purposes Committee adopts the revised Schedule of DDC employer policy decisions in relation to the discretionary payment of added years.

Contact Officer: Jane Hemingway/Juli Oliver-Smith, extension 2799/2762.

Reasons why a decision is required

1. Dover District Council currently has, within its statement *Employer Pension Policy Decisions* and *Early Retirement Policy*, the option to award 3 added years to eligible staff (i.e. those that satisfy the criteria under the Local Government Pension Scheme) on termination of employment through redundancy, allowing early release of pension rights.
2. It is stated in the Policy Decisions that it is the Council's "general policy to grant 3 added years" to eligible staff when requested. However, the Policy Decisions also state that any employer costs must be capable of recovery within a period of 5 years, or by the normal retirement age of 65, whichever is the sooner. Although this payment is discretionary, and is not prescribed by the Local Government Pension Scheme, Regulation 12, it has been common practice to pay added years, where applicable, regardless of the recovery period.
3. This has culminated in a pension capital cost total of £3,727,393 payable for 101 employees since 1999/2000. This equates to an average of in excess of £310,000 per financial year, as a result of augmentation of early release of pension rights. The biggest costs incurred fell between 2002-4, with Pension Capital Costs of over £2,000,000. Only 6 of the 12 years have seen costs of below £100,000. For the financial year 2010/2011, the Council has already incurred costs of £11,920 and continuing to pay added years without measure is a potential long-term cost for the Council at a time when significant cost savings need to be made.
4. Due to the demographic of the Council's workforce and the significant budget pressures faced, the Council can no longer sustain significant ongoing costs due to the early release of pensions.
5. In addition, the Council's current arrangement of allowing for discretionary application of the added years may be discriminatory on the grounds of age, where an older member of the workforce is likely to cost the Council more. The penalty for a successful age discrimination claim at Employment Tribunal could result in an unlimited award against the Council, with average awards for 2008-9 age discrimination claims being in the region of £8,869.

Options available to the Council

Option 1

6. To retain the provision within the Pension Policy Decisions in its current format and retain the discretion to augment early release of pension.
7. The Council would need to demonstrate that application of this option was fair and free from discrimination. It is possible that costs incurred through augmenting the pension of an older worker with long service could not be recovered within 5 years. It is likely that reasons for refusal to pay the augmentation therefore could be directly linked to age and length of service and could be seen as discriminatory on the grounds of age.
8. This option is therefore not recommended.

Option 2

9. To retain the current provision within the Policy Decisions, but add a clause to ensure each case is assessed on its own merits.
10. Again this option is open to challenges on the grounds of discrimination and the Council would need to be able to provide robust evidence as to why augmentation was allowed only in certain cases. Higher costs are likely to be linked to older workers with longer service histories and therefore declining applications for added years on the basis of cost would be discriminatory.
11. This option is therefore not recommended.

Option 3

12. To remove the discretion to pay added years on early release of pension, thereby ensuring continuity, reducing unsustainable expenditure and mitigating against discrimination.
13. This option is recommended.

Information to be considered in taking the decision

14. The payment of added years is entirely discretionary and non-contractual, therefore, consultation is not required. However, the Council must ensure it publishes its Pensions Policy Decisions.
15. The Council, as part of the East Kent Cluster, is looking to review its benefits offering and it should be noted that neither Thanet, nor Shepway District Councils offer discretionary augmentation on early release of pension. The review of the four Councils' policies and procedures will look to harmonise discretionary arrangements and ensure parity and fairness.

Background Papers

Dover District Council Employer Pension Policy Decisions, Conditions of Service.

The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulation 2006 and amendments 2008.

Resource Implications

None.

Consultation Statement

As outlined in paragraph 14, consultation is not required. However, to ensure maximum transparency this report is being routed through the Joint Staff Consultative Forum, before the General Purposes Committee take their final decision.

Attachments

Appendix – Appendix 33 & 34 of the Conditions of Service (amended)

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Head of Paid Service

EARLY RETIREMENT COUNCIL POLICY

Introduction

This policy outlines Dover District Council's approach to early retirement and has been agreed between the Council and the recognised trade unions. The policy covers all staff working for the authority.

Anyone seeking further guidance on matters referred to in this policy should contact the Human Resources Section.

Scope of Policy

The normal age at which retirement benefits become payable is 65. Any employee can voluntarily exercise the right to retire over the age of 60, subject to reduction of pension benefits due to early payment.

Any retirement which does not meet the criteria outlined above should be regarded as an early retirement and is therefore covered by this policy. Typically, early retirement will be caused by one of the following –

- Redundancy
- Dismissal on the grounds of efficiency of the service
- At the employee's request
- Ill health

Compulsory redundancy and dismissal on the grounds of efficiency of the service are regarded by the Council as a last resort. Therefore, prior to early retirement being agreed on the basis of these, all other alternatives such as redeployment or retraining must have been explored.

Early retirement should not be regarded by employees as a right. Any application for voluntary early retirement made under the regulations will be considered in the context of, whether it is in the interest of the Council, the employee's personal circumstances, if appropriate, and the financial consequences of granting any such request.

It is the policy of the Council to ensure that there is a full appraisal of the costs and benefits of early retirement, both financial and non-financial, in each individual case, and that early retirements are granted only where there can be shown to be a clear benefit to the District Council. Any employer costs must be capable of recovery within a period of 5 years, or by normal retirement age of 65, whichever is sooner.

Redundancy

In cases of redundancy the Council will implement the Employment Stability Policy which forms part of the Council's Terms and Conditions of Employment. This policy is attached as Appendix 31.

Interest of Efficiency Dismissals

The use of interests of efficiency early retirements are, as with redundancy, only used as a last resort and where other efforts to maintain an employee in the service of the Council have failed.

In an attempt to seek alternative solutions the Council will

- (a) not fill vacancies in any one or more of the occupations in the affected areas and at the level and grade affected or if appropriate in the whole Council.
- (b) use its best endeavours to arrange transfers to other areas of work in the same Division and if necessary to other Divisions.
- (c) provide retraining if appropriate to aid their absorption into vacancies.

Where no alternative to termination of employment can be identified and subject to:

- (i) the employee agreeing that his/her termination entitlement is in full and final settlement of any potential claims against the Council in respect of the termination;
- (ii) Members agreeing that the proposed termination settlement is reasonable in all the circumstances of the case and particular service provision;

The Council will pay pension benefits to the employee as allowed by the Pensions Regulations in force at the date of the termination, based upon accrued benefits and with no additional discretionary added pension benefits or discretionary compensation.

III Health Retirements

The Local Government Pension Scheme Regulations provide for mandatory enhancement of membership where employment is terminated due to permanent ill health. A minimum of 3 months membership of the Pension Scheme is required and benefits are calculated in accordance with the regulations.

Ill Health retirements are implemented by the Head of East Kent HR Partnership only after receipt of a certificate from the Council's Medical Advisor (who satisfies all the requirements of qualifications specified by the Pension Fund). This certificate must confirm that the employee is permanently incapable of discharging efficiently the duties of their employment because of ill health or infirmity of mind or body. The Council maintains a separate policy relating to ill health, which should be read in conjunction with this policy.

Information to be provided for Members

Decisions to terminate the employment of an individual on the basis of compulsory or voluntary redundancy or the interests of the efficiency of the service or at an employee's request are generally made by the Chief Executive (delegated to the Deputy Chief Executive). Where it is proposed to exercise discretions under the Local Government Pension Scheme the level of discretion is a non-Executive Function and the Council will be provided with full details of the level of discretion, together with the cost of the discretion to the District Council, the early release of pension and other costs of actuarial strain to be made by the Pension Fund to the District Council.

DOVER DISTRICT COUNCIL'S EARLY RETIREMENT POLICY (PENSIONS, REDUNDANCY AND EFFICIENCY)

The following is a summary of policy decisions on the Employing Authority discretionary elements in relation to the main Pension Regulations and the Discretionary Compensation Regulations.

Regulation

Dover District Council's Policy

The Local Government Pension Scheme (Administration) Regulations 2007

LGPS 2007 Reg 16(4)(ii) If a scheme member wishes to aggregate the most recent of their periods of previous scheme membership with their current membership, it is the policy of Dover District Council that the election must be made within 12 months of the Pension Section being notified that the employee has again become an active member.

LGPS 2007 Reg 22(2) Employees who have the option to pay contributions in respect of a period of unpaid absence must elect to do so within 30 days of the date of the notice issued to them by the payroll Section, stating the amount of the contributions to be paid. The Head of East Kent HR Partnership may extend this time limit if the employee can demonstrate exceptional circumstances so as to justify an extension of time.

LGPS 2007 Reg 25(3) It is not Dover District Council's policy to operate a shared cost AVC scheme for employees. However, this policy will be reviewed regularly by the Head of East Kent HR Partnership in conjunction with the Head of Finance & ICT.

LGPS 2007 Reg 83(8) If a scheme member wishes to transfer any pension benefits they have built up in other schemes to the Local Government Pension Scheme, it is Dover District Council's policy that this election must be made within 12 months of the Pension Section being notified that the employee has become an active member of the Kent Scheme.

The Local Government Pension Scheme (Benefits Membership and Contributions) Regulations 2007

LGPS 2007 Reg 11(2) Where a scheme member's pensionable pay consists of fees it is Dover District Council's policy that, if this produced a higher figure, an average of all such fees for any 3 consecutive years ending 31 March within the period of 10 years ending with the last date of active membership may be used in the calculation of benefits.

LGPS 2007 Reg 12 It is not Dover District Council's policy to grant added years scheme membership to scheme members under this regulation. However, this policy will be reviewed regularly by

the Head of East Kent HR Partnership in conjunction with the Head of Finance.

LGPS 2007 Reg 13

It is not Dover District Council's policy to grant additional pension to scheme members under this regulation. However, this policy will be reviewed regularly by the Head of East Kent HR Partnership in conjunction with the Head of Finance & ICT.

LGPS 2007 Reg 18(1)

It is Dover District Council's policy to only provide consent for flexible retirement and the immediate payment of benefits where there is no detrimental effect on the service. Any such consent requires the agreement of the Head of East Kent HR Partnership, Head of Finance and the relevant Head of Service.

LGPS 2007 Reg 18(3)

If consent has been given under Regulation 18(1), it is not Dover District Council's policy to waive, in whole or part, any actuarial reduction to the scheme member's benefits. In addition any employer costs must be capable of recovery within a period of 5 years or by normal retirement age of 65 whichever is sooner.

Additional service will not be granted in respect of pre April 1972 service, which at the point of retirement has not yet been up-rated.

LGPS 2007 Reg 30(2)

It is not the policy of Dover District Council to give consent under this regulation to the immediate payment of benefits to a scheme member who voluntarily retires unless there is a demonstrable benefit to the organisation which would take full account of any extra costs to be borne by the authority. Any such consent shall be agreed by the Head of East Kent HR Partnership, Head of Finance and the relevant Head of Service.

Where a scheme member has previously been awarded a preserved benefit, it is not generally the policy of Dover District Council to give consent under this regulation to the early payment of benefit, however each case could be considered upon its merits. However each request will be considered and full account taken of any costs to be borne by the authority. Any consent shall be agreed by the Head of East Kent HR Partnership, Head of Finance and the relevant Head of Service.

LGPS 2007 Reg 30(5)

Where a request has been made for the early payment of benefits for compassionate reasons, full consideration must be given to the Kent County Council guidelines*. Payment may only be made after agreement between the Head of East Kent HR Partnership, Head of Finance and the relevant Head of Service. Dover District Council will be responsible for any additional costs deriving from the decision to release benefits prematurely in compassionate circumstances.

*These guidelines state that the circumstances must be exceptional and would not reasonably be expected to prevail, i.e. the occurrence of a disaster or accident etc. Financial hardship alone would not normally be deemed sufficient.

Discretionary Compensation Regulations (2006)

1. It is Dover District Council's policy to base redundancy pay calculations on the actual weeks' pay as opposed to the statutory ceiling, as permitted by the Local Government (Early Termination of Employment) (Discretionary Compensation) England and Wales) Regulations 2006 Regulation 5.
2. Discretionary levels of compensation, provided under Regulation 6 of the revised regulations will be agreed only in cases of redundancy. The level of compensation will be calculated using the statutory formula, on the basis of actual weeks pay and in accordance with the government ready reckoner, but with the resultant number of weeks increased by a factor of 2.5.
3. In determining the appropriate level of discretionary compensation to be paid to an individual, the Council will have regard to this policy and to:
 - (a) the individual circumstances of the affected employee, including likely re-employability and level of remuneration
 - (b) the employee relations policies of the Council
 - (c) the need to treat all employees fairly and to avoid any unlawful discrimination.
4. Where discretionary compensation is paid on this basis (at the option of the employee) the Council will not increase the employee's membership of the Pension Scheme under Regulation 12 of the Local Authorities Pension Scheme (Benefits, Membership and Contributions) Regulations 2007.

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