

# **Cherwell District Council**

## **Personnel Committee**

**2 July 2014**

<b>LGPS 2014 Discretions Policy</b>
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### **Report of Head of Transformation**

This report is public

#### **Purpose of report**

The purpose of this report is to inform the Committee of the changes following the implementation of the Local Government Pension Scheme (LGPS) 2014, and to request approval to the proposed additional discretions as a result of this change as detailed later in the report. The Chairman has agreed to accept this item as urgent business given the requirement to have the necessary policies in place as soon as possible after 30 June 2014.

#### **1.0 Recommendations**

The meeting is recommended:

- 1.1 Support and approve the discretions as detailed within this report.

#### **2.0 Introduction**

- 2.1 The Local Government Pension Scheme (LGPS) regulations require all employers to publish and keep under review a written policy statement on how they will apply their discretionary powers in relation to certain provisions of the scheme. The new LGPS regulations came into force on the 1 April 2014 and it is necessary to update the current policy in light of these regulations.
- 2.2 The council has a LGPS Policy which covers some of the previous discretions in the Appendix to the policy, and a second policy called Policy on Compensation For Early Termination of Employment that complies with the Local Government (Early Termination of Employment)(Discretionary Compensation) (England and Wales) Regulations 2006 (as amended). These will be updated once the Committee has considered its decision, and published formally.
- 2.3 Following the Government's fundamental review of the public sector pension provision, it was agreed that changes were required to all schemes, in summary this included:

- All public sector pensions schemes change from a final salary pension scheme to career average re-valued earning schemes (CARE).
- Scheme retirement ages should be the same as state retirement pension ages for all post 2014 benefits.
- A new definition of Pensionable Pay, based on actual pay, including non-contractual overtime.
- Tiered pension contributions for scheme members as at present although revised with higher paid members paying a higher contribution with average contribution is expected to remain at 6.5%.
- Early retirement being available from the age of 55 on an actuarially reduced basis.
- A 50/50 scheme is included, allowing accrual of 50% of main benefits in return for 50% of normal contribution rate.
- Scheme members and employers share the increasing costs of providing public sector pension schemes.
- Existing rights of current scheme members being protected.

2.4 The new LGPS scheme accommodates all of these requirements and as such still allow for local flexibility in the management of the scheme via discretions to be applied by the individual employing authority. Previous LGPS will still apply and remain, but there are some discretions which are additional to the previous schemes, some are changed and some removed.

### 3.0 Report Details

3.1 The following table shows the key discretions not only for the new scheme (2014) but for those of previous schemes that are still applicable, and the Councils position. For any new discretions from the 2014 rules, consideration is required by the Committee as to the Councils position (these are shaded in grey) and the table states the recommended position based on current information in the right hand box.

#### 3.2 ***LGPS Regulations 2013 and the LGPS (Transitional Provisions and Savings) Regulations 2014***

DISCRETION & REGULATION	POLICY ON INDIVIDUAL DISCRETIONS
1). <i>Reg 16(2)e &amp; Reg 16(4)d</i> : Whether, how much and in what circumstances to contribute to a shared cost Additional Pension Contribution (APC) scheme.	<p><b><i>Cherwell District Council will not exercise this discretion.</i></b></p> <p><b><i>Note this discretion is amended for the 2014 regulations with an increase in contribution from £5,000 to £6,500 and was not previously exercised.</i></b></p>
2). <i>Reg 30(6) &amp; TP11(2)</i> Whether all or some pension benefits can be paid if a member aged 55 or over reduces their hours/grade and continues to work (“Flexible Retirement”)	<p><b><i>Cherwell District Council will not exercise this discretion.</i></b></p> <p><b><i>Note this discretion is amended for the 2014 regulations but only to incorporate the difference in the period of pension that applies both before and after the 31 March 2014 due to the difference in the two schemes. This discretion was not previously exercised.</i></b></p>

<p>3). <i>Reg 30(8)</i> Whether to waive in whole or in part actuarial reduction on benefits paid on flexible retirement.</p>	<p><b><i>Cherwell District Council will not exercise this discretion.</i></b></p> <p><b><i>Note this discretion is amended for the 2014 regulations but only to incorporate the difference in the period of pension that applies both before and after the 31 March 2014 due to the difference in the two schemes. This discretion was not previously exercised.</i></b></p>
<p>4). <i>Reg 30(8)</i> Whether to waive in whole or in part actuarial reduction on benefits which a member voluntarily draws before normal pension age.</p>	<p><b><i>Cherwell District Council will not exercise this discretion.</i></b></p> <p><b><i>This is a new discretion as scheme members can now retire voluntarily at age 55 or over rather than previously at 60, although the pension is actuarially reduced if this happens. The Council could decide to exercise discretion to pay the difference in the reduction and what would have been paid out at normal retirement age, but the cost would be to the Council and as this is a voluntary decision by the employee it is deemed appropriate this discretion not be exercised.</i></b></p>
<p>5). <i>TP Regs 1(1)(c) para 2:</i> Whether to “switch on” the 85 Year Rule for a member voluntarily drawing benefits on or after age 55 and before age 60</p>	<p><b><i>Cherwell District Council will not exercise this discretion.</i></b></p> <p><b><i>This is a new discretion This is a new discretion as scheme members can now retire voluntarily at age 55 or over rather than previously at 60, although the pension is actuarially reduced if this happens. The Council could decide to exercise discretion to pay the difference in the reduction and what would have been paid out at normal retirement age, but the cost would be to the Council and as this is a voluntary decision by the employee it is deemed appropriate this discretion not be exercised.</i></b></p>
<p>6). <i>TP Regs 1(1)(c) para 2:</i> Whether to waive, on compassionate grounds, the actuarial reduction applied to benefits from pre 1/4/2014 membership where the employer has “switched on” the 85 Year Rule for a member voluntarily drawing benefits on or after age 55 and before age 60</p>	<p><b><i>Cherwell District Council has not exercised the discretion to “switch on” the 85 year rule for members between 55 and 60, therefore this discretion does not apply. (see above)</i></b></p> <p><b><i>Note - The exception to an actuarially reduced pension between age 60 and 65 has previously been by way of the ‘85 year rule’. Should the Council decide to agree to allow use of the ‘85 year rule’ between the ages of 55 and 59 then any cost would be met by the Council. As</i></b></p>

	<b><i>this discretion is linked to the above discretion the discretion would have to be applied in the same way i.e. either to apply or not for both.</i></b>
7). <i>Reg 31:</i> Whether to grant additional pension to an active member or within 6 months of ceasing to be an active member by reason of redundancy or business efficiency (up to £6,500pa).	<b><i>Cherwell District Council will not exercise this discretion.</i></b>  <b><i>Note this discretion is amended for the 2014 regulations with an increase in contribution from £5,000 to £6,500 and was not previously exercised.</i></b>
8). <i>Regs 22(8 &amp; 9)</i> Whether to extend the 12-month period to allow the transfer in of separate previous LG service.	<b><i>Cherwell District Council will not allow an extension to the 12-month period to separate previous LG service.</i></b>  <b><i>Note :This is the same as a previous discretion which was not applied.</i></b>
9). <i>Reg 100(6)</i> Whether to extend the 12-month period to allow a transfer-in of non-LG pension rights.	<b><i>South Northamptonshire Council will not allow an extension to the 12-month period to combine previous non-LG service.</i></b>  <b><i>Note :This is the same as a previous discretion which was not applied.</i></b>
10). <i>Reg 9(3)</i> Determine rate of employees' contributions.	<b><i>Cherwell District Council will set employee contribution rates at the 1 April each year and will not make any changes during the year, unless there is a material change which affects the scheme member's pensionable pay during the course of the financial year. The scheme employer may determine that a contribution rate from a different band should be applied. If this is the case then the scheme employer will inform the scheme member of the revised contribution rate and the date from which it is to be applied.</i></b>
11). <i>Reg 74(1)</i> Each Scheme employer and administering authority must appoint a person ("the adjudicator") to consider applications from any person whose rights or liabilities under the scheme are affected by: a) a decision under Reg 72 (first instance decisions) b) any act or omission by a scheme employer or administering authority and to make a decision on such applications	<b><i>The Council designates the Director of Resources/Section 151 Officer as the Adjudicator.</i></b>

## Discretions under the LGPS Regulations 2007

DISCRETION & REGULATION	POLICY ON INDIVIDUAL DISCRETIONS
1). <i>Reg 12</i> Whether, for a member leaving on the grounds of redundancy or business efficiency on or before 31/3/2014, to augment membership of the LGPS.	<b><i>Cherwell District Council did not augment membership under the previous policy. This has now been removed under the new policy and is not a feature of the LGPS 2014.</i></b>
2). <i>Regs 30(2)</i> Whether to grant application for early payment of deferred benefits on or after age 55 and before age 60.	<b><i>Cherwell District Council will not exercise this discretion to release deferred benefits before age 60.</i></b>
3). <i>Regs 30(5)</i> Whether to waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early under <i>Reg 30(2)</i> .	<b><i>Cherwell District Council will not exercise this discretion.</i></b>
4). <i>Regs 30A(3)</i> Whether to grant an application for early payment of a suspended tier 3 ill health pension on or after age 55 and before age 60.	<b><i>Cherwell District Council will not exercise this discretion to release early payment of pension benefits before age 60.</i></b>
5). <i>Regs 30(5)</i> Whether to waive, on compassionate grounds, the actuarial reduction applied to deferred benefits paid early under <i>Reg 30A</i> .	<b><i>Cherwell District Council will not exercise this discretion.</i></b>

### 4.0 Conclusion and Reasons for Recommendations

4.1 Each Council is required to agree and publish a policy on the LGPS discretions in light of the changes to the legislation with effect from the 1 April 2014. There are few changes to the legislation in relation to LGPS discretions, some have been updated or removed and there are only a few new discretions that require a decision in relation to how these might be applied going forward. Consideration has been given to policies that already exist in making recommendations for how these discretions might be applied. Even if a discretion is potentially open for application each request will be considered in accordance with the appropriate policy at the time and the individual circumstance including cost. However Council officers and employees need to be given a clear steer in terms of what potential discretions are available should the circumstance arrive, as well as the County Council who administer pensions for the employing Council.

### 5.0 Consultation

Formal consultation with staff and trade unions is not considered appropriate for decisions relating to LGPS discretions, however the Committee is asked to consider the recommendations given any future requests for discretions will be determined by Members at this Committee.

## 6.0 Alternative Options and Reasons for Rejection

The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: Do not agree to any of the discretions listed and continue with the current policies. This will not comply with the new legislation.

Option 2: Agree to all of the discretions listed as opposed to not allowing discretions to be applied. This was rejected on the basis there is a need to manage employee and manager expectations and to manage cost appropriately where possible. Therefore discretions should only be considered as being available where there might be serious consideration to these being applied in the future.

## 7.0 Implications

### Financial and Resource Implications

7.1 There are no financial implications in adopting the recommendations within this report, however where discretions are requested by and approved the financial considerations will be based on a case by case basis and would have to be considered and agreed by Appointments and Personnel Committee for each request.

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### Legal Implications

7.2 The Council is required to agree to and publish such a policy for LGPS Discretions and would be in breach of legislation if this was not undertaken, agreed, published and reviewed regularly. Any requests by scheme members for discretion to be exercised contrary to the established policy would be referred to this Committee for consideration. The policies should not be set in stone as that would act as an unlawful fetter on the Council's statutory discretion and there may be circumstances applying in individual cases that justify a departure from the policy

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## Document Information

Appendix No	Title
None	
<b>Background Papers</b>	
None	
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