

<b>EMPLOYMENT COMMITTEE</b>	AGENDA ITEM No. 4
<b>Thursday 18<sup>th</sup> September 2008</b>	<b>PUBLIC REPORT</b>

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## HR POLICIES

### RECOMMENDATIONS

#### FROM: the Joint Consultative Forum

Members are asked to note the following policy changes as a result of recent legislative amendments to:

1. the Local Government Pension Scheme
  - 1.1. the Retirement policy paragraph 4.2 below
  - 1.2. the Grievance procedure paragraph 4.3 below
  - 1.3. the Attendance policy paragraph 4.4 below.
2. Changes to the Adoption and Maternity policies as a result of changes to the Sex Discrimination Act – see paragraph 5 below.
3. Changes to the Code of Conduct to ensure it is clear regarding the registered status of Qualified Social Workers and Qualified Teachers – see paragraph 6 below.

Members are asked to consider and agree:

4. Changes to the Criminal Records & Employment of Ex-Offenders Policy. This revision is the result of ongoing work to ensure the employment practices within the council follow best practice and legislation - see paragraph 7 below.
5. Changes to the Managing Change policy to include; additional statutory information as a result of the changes to the Local Government Pension Scheme, clarification on discretionary compensations.
6. To establish a sub committee of Employment Committee, to be known as the Discretions sub committee, to hear applications in relation to the discretions that can be exercised in relation to enhancements to redundancy pay, as set out in paragraph 8 below, and other cases where the Council is required to exercise its discretion based on the merits of the individual case.

#### 1. ORIGIN OF REPORT

- 1.1 This report is submitted to the Committee following the Joint Consultative Forum meetings on 8<sup>th</sup> May, 22<sup>nd</sup> July, and 4<sup>th</sup> September 2008 to consult, negotiate and inform the human resources policies contained within this report

## 2. PURPOSE AND REASON FOR REPORT

- 2.1 Employment Committee has delegated authority to agree terms and conditions of employment.
- 2.2 This report is for the Committee to consider under its Terms of Reference No 2.3.1.4.

## 3. TIMESCALE

Is this a Major Policy Item/Statutory Plan?	NO	If Yes, date for relevant Cabinet Meeting	
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## 4. CHANGES TO THE LOCAL GOVERNMENT PENSION SCHEME

- 4.1 A report was submitted to Employment Committee in March 2008 highlighting the changes made to the Local Government Pension Scheme which would be effective from April 2008. As a consequence of these legislative changes an audit of the council's employment policies was carried out resulting in changes to three policies.
- 4.2 **The Retirement policy** has been amended to state that the age at which flexible retirement benefits are payable changes to age 55 years from age 50 years (there is some protection in place for those in the scheme on 31<sup>st</sup> March 2008 which applies until 1<sup>st</sup> April 2010).
- 4.3 **The Grievance procedure** has been amended to state that it is not the relevant procedure to use for appeals against pension decisions. There is a separate pension appeals procedure in place within the council which must be followed to ensure compliance with the Internal Disputes Resolutions Procedures.
- 4.4 **The Attendance policy** has been amended to take account of the revised ill health retirement rules for those employees who are members of the local government pension scheme. The approach to ill health retirement has been changed significantly. The employee must now satisfy three criteria (i) that their ill health or infirmity renders them permanently incapable of discharging efficiently the duties of their current employment (ii) that there is a reduced likelihood of obtaining any gainful employment before the normal retirement age (65 years) and (iii) that they have a total scheme membership of at least three months or a credited transfer value. Further details are attached at Appendix A.

## 5. CHANGES TO THE SEX DISCRIMINATION ACT

- 5.1 The Adoption policy and the Maternity policy have been amended as a result of changes to the Sex Discrimination Act. The employee is now entitled to receive all the contractual benefits (excluding salary) throughout the entire Adoption leave and Maternity leave periods respectively.

## 6. CHANGES TO THE CODE OF CONDUCT

- 6.1 The amendment to the employee code of conduct reinforces the legal position whereby employees who are Qualified Social Workers must be registered with the General Social Care Council (Care Standards Act 2000) and that teachers / those with Qualified Teacher Status must be registered with the General Teaching Council for England (Teaching and Higher Education Act 1998). The code now states "Where an employee is a member of a professional body they must ensure that they adhere to any professional code/s of conduct in place, in addition to this corporate code of conduct."

## **7. CHANGES TO THE CRIMINAL RECORDS & EMPLOYMENT OF EX OFFENDERS POLICY**

7.1 Further work within HR and also at the corporate Safer Employment group has identified some areas where our process and practice when managing CRB disclosure checks could be improved even further. The policy has also been audited by the internal legal department. The main changes are:-

- 7.1.1 Introduction of a formal risk assessment process to be followed in the event that a person commences work pending return of their CRB disclosure results.
- 7.1.2 Further explanation regarding offences which are declared as high risk for employment with children and vulnerable adults.
- 7.1.3. Further confirmation of the role of the manager in ensuring the correct level of check is undertaken and the forms completed correctly.
- 7.1.4. Definition of volunteer stated to ensure compliance with the Police Act 1997 (Criminal Records) (Fees) Order 2004.

The revised policy document is attached at Appendix B.

## **8. CHANGES TO MANAGING CHANGE POLICY**

8.1 To state that the age at which redundancy benefits are payable changes to age 55 years from age 50 years (there is some protection in place for those in the scheme on 31<sup>st</sup> March 2008 which applies until 1<sup>st</sup> April 2010)

8.2 A review of the current discretionary compensation payments in place has resulted in the proposal that there should be no change to our existing position. However, an additional statement has been included to explain the statutory position explicitly where previously the policy is silent, ensuring compliance with the law.

The Council has an agreed policy position in relation to discretionary payments in the area of termination of employment on the grounds of efficiency (which was published on 27 March 2007) and states:-

*'PCC should be avoiding efficiency dismissals but where there is no alternative then each case should be considered on its own merits and the Council does have the discretion to award up to 104 weeks' pay in extreme circumstances'*

However, the policy was silent on the same discretionary powers in the case of redundancy where the law also allows an employee to submit a request for additional enhancements, up to a maximum of 104 weeks pay. Any statutory redundancy pay must be off set against the 104 weeks' pay and each case has to be decided on its own merits.

This change will allow clarity and consistency in the application of the policy and includes a robust process where approval of these discretions is either at director level for levels below heads of service and Employment Committee for Directors, Assistant Directors, and Heads of Service.

### **How this policy will be applied**

1. Redundancy is established as the reason for dismissal
2. Redundancy payment is due in accordance with the Council's Managing Change policy
3. The employee to submit a request for additional discretionary compensation to their line manager.
4. In the case of Directors, Assistant Directors and Heads of Service, the decision maker is the Discretions sub committee, a sub committee of Employment Committee. Below this level, the decision is delegated to the relevant Director in consultation with the Director of Strategic Resources (constitution para 2.3.3.8). Guidance and support can be sought from Heads of Legal, Finance, and HR.
5. Each application will be considered on its own merits and the Council does have the discretion to award up to 104 weeks' pay in extreme circumstances'

6. The decision will be made within 30 days of the request and may involve the sub committee meeting at short notice, however, where possible a minimum of 7 days will be given to the sub committee members
7. An appeal in the case of a Director, Assistant Director and Head of Service will be to the full Employment Committee (not to include any member who was part of the Discretions sub committee which heard the case). Below this level to the Assistant Chief Executive or the Chief Executive with support from the Head of HR.
8. This is the final decision within the Authority

## **9. CONSULTATION**

- 9.1 This report is presented as part of the council's consultation mechanism. It was discussed and agreed at the Joint Consultative Forum which is made up of representatives from the four main Trade Unions (Unison, Unite-AMICUS, Unite-T&G, and GMB) on 8<sup>th</sup> May, 22<sup>nd</sup> July, 4<sup>th</sup> September 2008 and at previous meetings.

## **10. ANTICIPATED OUTCOMES**

- 10.1 The statements contained within this report are to allow the council to maintain accurate and clear employment policies on issues which are of great importance to employees, and will allow the council to move forward with its efficiency agenda.

## **11. ALTERNATIVE OPTIONS CONSIDERED/FINANCIAL IMPLICATIONS**

- 11.1 None. These are predominantly statutory changes which the council is obliged to implement.

## **12. BACKGROUND DOCUMENTS**

- 12.1 Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985)
  - Local Government Pension Scheme (Amendment) No 2. No 3 Regulations 2007
  - Local Government Pension Scheme (Benefits, Membership & Contributions) Regulations 2007
  - Local Government Pension Scheme (Transitional Provisions) Regulations 2007
  - The Occupational Pension Schemes (Internal Dispute Resolution Procedure) Regulations 1996
  - The Local Government (Early Termination of Employment) Discretionary Compensation (England & Wales) Regulations 2006
  - Police Act 1997 (Criminal Records) (Fees) Order 2004.
  - Care Standards Act 2000
  - Teaching and Higher Education Act 1998

### Appendix A - What do the Ill Health tiers mean?

	Tier 1	Tier 2	Tier 3
<b>ELIGIBILITY Criteria One</b>	Employer must agree to:- Terminate employment on grounds that ill health or infirmity renders the employee permanently incapable of discharging efficiently the duties of their current employment		
<b>ELIGIBILITY Criteria Two</b>	The employee has:- A reduced likelihood of obtaining any gainful employment before his normal retirement age (65)		
<b>ELIGIBILITY Criteria Three</b>	Qualifying Service:- Total membership of at least 3 months or a credited transfer value		
<b>WHICH TIER WILL APPLY</b>	When it is determined that there is no reasonable prospect of obtaining gainful employment before age 65	When gainful employment would not be possible within 3 years of leaving but it is likely that it could be obtained before age 65	When gainful employment could be obtained within 3 years of leaving employment
<b>BENEFITS</b>	Benefits will be increased to take account of 100% of the further membership that would have counted up to age 65	Benefits will be increased to take account of 25% of the further membership that would have counted up to age 65	Temporary unenhanced benefits will be paid for a period of no more than 3 years
<b>ENHANCEMENT TO BENEFITS IS BASED ON</b>	The hours they were working on the last day of employment. The number of weeks they were working on last day of employment*		There is normally no enhancement (**see note below regarding transitional protection for those who leave before 1 <sup>st</sup> October 2008)
<b>BENEFITS ARE BASED ON</b>	The hours they were working on the last day of employment. The number of weeks they were working on the last day of employment		

	<b>Tier 1</b>	<b>Tier 2</b>	<b>Tier 3</b>
<b>DECISION REGARDING ILL HEALTH STATUS</b>	May only be taken by an independent Occupational Health Practitioner approved by the Pensions Administrator		
<b>DURATION</b>	Permanent – paid for life. However, the member would be subject to the re-employment earnings test if further employment which allows entry to the LGPS is obtained, i.e. if the total of their rate of annual pension and annual salary on commencement exceeds their pay on retirement (plus an uplift based on pensions increase between leaving and re-employment) the rate of annual pension would be reduced by the amount of the excess.		Paid for no more than three years. Reviewed after 18 months or Pension suspended if gainful employment is obtained. Employer and IOHP will review after 18 months or at the end of the 3 year period. Employer can be advised to stop payment at any point. Employer/IOHP has powers to determine that member should move to Tier 2 status. If following suspension of pension the deferred pension is put into payment before age 65 it may be at actuarially reduced rate.
<b>RESPONSIBILITY OF EX-EMPLOYEE</b>	Must notify Pensions of any change in circumstances		Must notify previous employer if any employment is found. Must attend meeting/s, and supply information as requested to previous employer.
<b>ADDITIONAL INFORMATION</b>	For those who were members, and aged 45 before 1 <sup>st</sup> April 2008, if the period of enhancement provided by the LGPS regulations 1997 would have been greater than that provided under the current regulations that greater period shall be used.  If leaving before 1 <sup>st</sup> October 2008 and the period of enhancement provided by the LGPS regulations 1997 would have been greater than that provided under the current regulations that greater period shall be used.		1. Once payments are suspended they will not be payable until the deferred pension becomes payable, either at age 65 or at an earlier date on election if permitted by the legislation. 2. Employer can recover payment if gainful employment is found but payments have continued. 3. **If leaving before 1 <sup>st</sup> October 2008 the pension will be permanent – paid for life. The benefits will be enhanced if a period of enhancement would have been provided by the LGPS regulations 1997.

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### Definitions

Gainful Employment - employment for not less than 30 hours in each week for a period of not less than 12 months

Normal Retirement date - Date one day before the 65<sup>th</sup> birthday

Normal Retirement age - 65 years

Accrued Pension rights - The pension built up by a member based on salary level, working hours and service, plus any funds accepted into the LGPS at an earlier point.

\*If the member was wholly or mainly in part time service as a result of the condition that has rendered him incapable of discharging efficiently the duties of their current employment, the hours/weeks worked before the reduction will be used.

The payments and rules referred to in this section do not confer any legal rights and may be subject to variation in the future arising from changes to statute, to pension regulations or to council policy.

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