

AGENDA

Meeting: STAFFING POLICY COMMITTEE
Place: Committee Room III - County Hall, Trowbridge
Date: Wednesday 9 February 2011
Time: 10.30 am

Please direct any enquiries on this Agenda to Roger Bishton, of Democratic and Members' Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 713035 or email roger.bishton@wiltshire.gov.uk

Press enquiries to Communications on direct lines (01225) 713114/713115.

This Agenda and all the documents referred to within it are available on the Council's website at www.wiltshire.gov.uk

Membership:

Cllr Allison Bucknell
Cllr Rod Eaton
Cllr Mike Hewitt
Cllr David Jenkins
Cllr Francis Morland

Cllr John Noeken
Cllr Mark Packard
Cllr Jane Scott OBE
Cllr John Smale

Substitutes:

Cllr Ernie Clark
Cllr Peter Colmer
Cllr Mary Douglas
Cllr George Jeans

Cllr Howard Marshall
Cllr Bill Moss
Cllr Christopher Newbury
Cllr Jonathon Seed

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PART I

Items to be considered while the meeting is open to the public

1. **Apologies for absence**

2. **Minutes of Previous Meeting** *(Pages 1 - 4)*

To confirm the minutes of the meeting held on 16 December 2010. (Copy attached)

3. **Declarations of Interest**

To receive any declarations of personal or prejudicial interests or dispensations granted by the Standards Committee.

4. **Chairman's Announcements**

5. **Public Participation**

The Council welcomes contributions from members of the public.

If you would like to make a statement at this meeting on any item on this agenda, please register to do so at least 10 minutes prior to the meeting. Up to 3 speakers are permitted to speak for up to 3 minutes each on any agenda item. Please contact the officer named above for any further clarification.

Members of the public wishing to ask a question should give written notice (including details of any question) to the officer named above by **12.00noon on Monday 7 February 2011**.

6. **Local Government Pension Scheme (LGPS) Employer Discretions Policy Revision** *(Pages 5 - 12)*

A report by the Service Director HR & OD is attached.

7. **Wiltshire Pension Fund Admission for Clerks to Governors to be Eligible to join the Local Government Pension Scheme** *(Pages 13 - 16)*

A report by the Service Director HR & OD is attached.

8. **Redundancy Policy & Procedure for Chief Officers**

A report by the Service Director HR & OD will be circulated.

Following the updates to the redundancy policy and procedure in October 2010, HR have now, in consultation with the legal team, produced a procedure to follow when carrying out a redundancy involving chief officers.

This is largely the same as the redundancy policy and procedure agreed for other staff but the procedure includes the requirement to involve member committees in line with the constitution - namely:

- The Senior Officers Employment Sub-committee will be make the final decision in any voluntary and compulsory redundancy decisions, followed by ratification by Cabinet.
- Any appeal against the decision not to allow voluntary redundancy, or against the decision to terminate employment on grounds of compulsory redundancy, will be heard by the Staffing Appeals Sub-committee.
- The Officers Employment Sub-committee will conduct selection interviews as part of the ringfencing ownership process.
- The Appeals Committee will hear any appeals relating to the ownership/ringfencing process.

9. **Appointments Policy & Procedure for Chief Officers**

A report by the Service Director HR & OD will be circulated.

Following the updates to the appointments policy and procedure in October 2010, HR have now, in consultation with the legal team, produced a procedure to follow when appointing to chief and senior officer posts.

This is largely the same as the appointments policy and procedure agreed for other staff but the procedure includes the requirement to involve member committees in line with the constitution. These requirements include:

- The Officer Appointments Committee will be make the appointment decision (including the ownership and ring-fencing process) followed by ratification by Cabinet (and full Council for the post of chief executive).
- Any appeal against the appointment decision will be heard by the Appeals Committee.
- Any redundancy situation that occurs as a result of the ownership/ringfence/redeployment process will follow the redundancy policy and procedure where the final decision will be made by the Senior Officers Employment Sub-committee followed by ratification by Cabinet.

10. **Improving Work Performance Policy**

A report by the Service Director HR & OD will be circulated.

This is a re-write of an existing policy. This policy has been put into the new standard HR policy format. It has also been updated following consultation within HR and with the Legal Department. The main changes are:

- A change in the policy name from the Capability Policy to the Improving Work Performance Policy. It is felt that the name needed modernising and that it should have a greater emphasis on the focus being making relevant changes in the employee's performance to bring this up to an acceptable level.
- Roles and responsibilities within the policy have been made clearer.
- The timescales for achieving an acceptable performance have been identified.
- There is a greater emphasis on the manager's role in setting clear and achievable objectives with employees.
- It is now clearer that the policy should only be implemented when the normal processes of 1-1 meetings with the employee have failed. This procedure should not be a complete surprise to the employee.

11. **Recovery of Overpayments Policy**

A report by the Service Director HR & OD will be circulated.

This is a re-write of an existing policy. This policy has been put into the new standard HR policy format. It has also been updated following consultation with HR, Michael Hudson (Finance Director / Section 151 officer) and the legal department and the main changes are:

- The policy states more clearly the intention of the Council to recover any overpayments made.
- There is more emphasis on the employee's manager taking responsibility for letting them know that an overpayment has occurred and to expect a letter.
- The appeal process has been simplified so rather than be heard by the Corporate Director who then had to seek approval from the Chief Finance officer/section 151 officer it just goes straight to the section 151 officer who makes the decision. There is also an overpayment dispute

form for the employee to complete rather than having to write a letter.

- It is more clearly explained what would constitute an "exceptional" circumstance which might lead to a decision not to recover the overpayment.

12. **Date of Next Meeting**

To note that the next meeting is due to be held on Wednesday 9 March 2011.

13. **Urgent Items**

Any other items of business which, in the opinion of the Chairman, should be considered as a matter of urgency. Urgent items of a confidential nature may be considered under Part II of this agenda.

14. **Exclusion of the Public**

To agree that in accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public from the meeting for the business specified in Item Number 15 because it is likely that if members of the public were present there would be disclosure to them of exempt information as defined in paragraph 1 of Part I of Schedule 12A to the Act and the public interest in withholding the information outweighs the public interest in disclosing the information to the public.

PART II

Items during whose consideration it is recommended that the public should be excluded because of the likelihood that exempt information would be disclosed

Members are reminded that Part II reports contain confidential information and should be treated accordingly. They should not be disclosed or passed to any other person(s). Members are also reminded of the need to dispose of such reports carefully and are urged to return them to the committee secretary at the end of the meeting for disposal.

15. **Local Government Pension Scheme (LGPS) - Employer Discretions - Payment of Deferred Benefits** (Pages 17 - 30)

A confidential report by the Service Director HR & OD is attached.

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STAFFING POLICY COMMITTEE

DRAFT MINUTES OF THE STAFFING POLICY COMMITTEE MEETING HELD ON 16 DECEMBER 2010 AT COMMITTEE ROOM III - COUNTY HALL, TROWBRIDGE.

Present:

Cllr Allison Bucknell (Chairman), Cllr Mike Hewitt, Cllr David Jenkins, Cllr Francis Morland, Cllr Mark Packard, Cllr Jane Scott OBE and Cllr John Smale

70. Apologies for absence

Apologies for absence were received from Cllr Rod Eaton and Cllr John Noeken.

71. Minutes of Previous Meeting

Resolved:

To confirm and sign the minutes of the Committee meeting held on 24 November 2010 as a correct record.

72. Declarations of Interest

There were no declarations of interest.

73. Chairman's Announcements

There were no Chairman's announcements.

74. Public Participation

There were no members of the public present.

75. Management Review - Update

The Committee received a report by the Service Director HR & OD which provided an update on the management review.

It was noted that revised management structures had been developed with the aim of achieving savings of £8m from salary budgets. This process had resulted in a number of management posts being deleted and some others

created or changed as a result. A total of 571 managers had been placed at risk of redundancy and following consultation meetings, managers at risk of redundancy had been given redundancy information packs which included an application form to apply for voluntary redundancy.

142 requests for voluntary redundancy had been received. In order to achieve the £8m savings, 200 redundancies were being sought. Once volunteers for redundancy had been accepted the remaining staff placed at risk would be subject to the appointments procedure after which any staff who remained displaced would be invited to volunteer for redundancy again. The deadline for these applications would be 21 January 2011.

Staff who did not volunteer, and were not redeployed by that date would be compulsory redundant and would be issued with their notice of dismissal on 11 February 2011.

Resolved:

To note the latest position.

76. **Trade Union Negotiations - Update**

The Committee received a report by the Service Director HR & OD which provided an update on the trade union negotiations.

It was noted that since July 2010 there had been a number of meetings with the trade unions recognised for negotiating changes to locally agreed terms and conditions of employment for staff subject to the National Joint Council terms and conditions, namely UNISON, UNITE and GMB.

The unions had been provided with detailed information about the savings required to be made from people costs by April 2011 and discussions were still ongoing. A further meeting had been scheduled to take place with the unions on 15 December but this had been postponed until the financial settlement had been clarified.

The Committee received the views of the UNISON Branch Secretary who explained that whilst understanding the need for the savings proposed, some of the proposed changes to terms and conditions were not acceptable and were likely to be the subject of a ballot of members. UNISON was prepared to negotiate but this could be a time consuming process.

Resolved:

To note the latest position.

77. **Closure of Lease Car Schemes**

On considering a report by the Service Director HR & OD,

Resolved:

- (1) To close the three suspended subsidised lease car schemes by 31 March 2012, with as many leases as possible ending between 1 July 2011 and 31 March 2012.
- (2) To authorise the issue of letters to all current lease car holders informing them that the schemes were being withdrawn and including:-
 - (a) arrangements for returning their car, and
 - (b) details of the Salary Sacrifice Scheme (subject to Staffing Policy Committee approval) as a way of providing a replacement vehicle.

78. **Introduction of Salary Sacrifice Scheme to Lease Cars**

Consideration was given to a report by the Service Director HR & OD which recommended the introduction of a salary sacrifice scheme to lease cars be introduced to staff.

Resolved: To agree:-

- (1) the introduction of a Salary Sacrifice Scheme for cars using the Pan Government Collaborative Framework Agreement operated by Tusker Direct, with the aim of implementing the scheme by the beginning of the next financial year (April 2011),
- (2) that national insurance savings be used, as needed, to offset the loss of employee pension contributions,
- (3) that a notional salary be kept for the same elements of pay that the Childcare Voucher Scheme keep a notional salary for, and
- (4) that the Salary Sacrifice Scheme for Cars is marketed as a 'Green Car Scheme'.

79. **Absence Management Policy and Procedure**

On considering a report by the Service Director HR & OD,

Resolved:

- (1) To approve the revised absence management policy.
- (2) To request an update report on how the revised policy is working after six months in operation.

80. **Employee Business Continuity Policy**

On considering a report by the Service Director HR & OD,

Resolved:

To approve the new business continuity report, subject to the following minor amendments to the policy document:-

- (1) the removal of 'strike action' from the section 'When does it apply?' because a separate procedure was being prepared on Strike Action Policy.
- (2) the repositioning of para 15 so as to be placed immediately after para 6.

81. **Death in Service Policy**

On considering a report by the Service Director HR & OD,

Resolved:

To approve the new death in service policy.

82. **Date of Next Meeting**

Resolved:

- (1) To cancel the meeting scheduled to be held on Wednesday 12 January 2011 due to lack of business.
- (2) To note, as a consequence, that the next two meetings be held as follows, each starting at 10.30am:-

Wednesday 9 February 2011

Wednesday 9 March 2011

83. **Urgent Items**

There were no urgent items.

(Duration of meeting: 10.30 am - 12.05 pm)

The Officer who has produced these minutes is Roger Bishton, of Democratic & Members' Services, direct line 01225 713035, e-mail roger.bishton@wiltshire.gov.uk

Press enquiries to Communications, direct line (01225) 713114/713115

WILTSHIRE COUNCIL

STAFFING POLICY COMMITTEE

9th February 2011

Local Government Pension Scheme (LGPS) Employers Discretions Policy - Revision

Purpose of Report

1. This report proposes amending the LGPS Employer Discretions Policy, to withdraw the discretion to allow late transfers-in of previous pensionable service. The Committee is asked to accept this recommendation.

Background

2. Most elements of LGPS are defined by Act of Parliament. However, there are some limited elements which employers have the freedom to decide. These are the 'Employer Discretions'.
3. The Staffing Policy Committee approved a statement of Employer Discretions for Wiltshire Council at its meeting on 24 November 2010. (See Appendix 1 attached.)
4. In the rationale, it is noted that there are 2 discretions that the Committee might wish to review in the light of current economic circumstances and employment legislation. These are the 2 Employer Discretions concerning requests to transfer-in previous pension benefits after the expiry of 12 months. (See highlighted sections of Appendix 1)

Main Considerations for the Council

5. LGPS regulations give new members of the pension scheme an automatic right to transfer-in previous pensionable service acquired either in LGPS or in other approved public or private pension schemes, provided that members exercise this right within 12 months of joining the Wiltshire Pension Fund.
6. If an employee applies to transfer in previous pension benefits after the expiry of 12 months, LGPS allows employers to exercise discretion on whether to permit the transfer in.
7. Wiltshire Council's current Employer Discretions policy states that :

*The Council will allow an option to combine previous Local Government or non- Local Government service **after the expiry of 12 months except in cases involving potential early retirement and consequent capital costs.** This discretion will be exercised by the appropriate Corporate Director advised by HR.*

- a) At the time of an employee's request, the potential for the employee being subject to early retirement may be unknown and the future capital costs will be unquantifiable. This makes it difficult for HR to offer sound advice and for Directors to make informed decisions.
 - b) Employees are not able to take a pension unless they have reached the age of 55 (with the exception of ill-health retirements). It is more likely that Directors will refuse requests from employees nearing, or who have already reached, the age of 55, because:
 - There will be an immediate capital cost to the Council in terms of early release of pension if an employee is made redundant at age 55 or over
 - It is perceived that an older employee would be more likely to have substantial service to transfer-in, potentially increasing costs to the Council if the employee is made redundant
 - It is perceived that the costs of allowing a late transfer-in of previous pension benefits will be negligible for younger employees because the risk of paying pension based on additional service is pushed well into the future. However, there will be cost implications if the employee is subsequently made redundant at age 55 or over. These costs – unknown at the time the decision is made - could arise decades later and be substantial.
8. Clearly, there is a risk of direct age discrimination if requests from older employees are refused and requests from younger employees allowed.
 9. Withdrawing the discretion to allow late transfers-in would avoid Directors making decisions without knowing what the future costs might be and would avoid the potential for age discrimination.
 10. All employees are made aware of the 12 month time limit for transferring in pension; this is publicised in the Wiltshire Pension Fund information pack sent to all new employees. Pension regulations consider that 12 months is sufficient time for an employee to make an informed decision on whether or not to transfer in previous pension benefits.
 11. This is an opportune time for the Committee to consider whether to amend the discretion. During the period 1 October 2010 to 30 September 2011 only, LGPS have temporarily suspended the discretion for employers to refuse transfer-in of previous LGPS pensionable service. This means that employees have a window of opportunity to transfer-in all previous LGPS service regardless of the normal 12 month limit. (The 12 month limit is still in force for transferring in non-LGPS service.) This one-off opportunity has been publicised by the Wiltshire Pension Fund through regular items on The Wire and through newsletters to active members of Wiltshire Pension Fund. Therefore, no-one should be in doubt of the limited period to transfer-in previous LGPS service. Therefore, from 1 October 2011, when the window of

opportunity ends, the Council could remove the discretion allowing late transfers-in having already publicised this change to employees.

12. If the Committee decides that the discretion on allowing late transfers should be withdrawn, it would make sense to implement this change for both LGPS and non-LGPS service at the same time. The date suggested for this change is 1 October 2011, when the temporary window of opportunity in respect of LGPS service ends. In the interim period, the current discretion for the transfer in of non-LGPS service would be exercised by Corporate Directors, advised by HR, on a case by case basis as at present.

Environmental Impact of the Proposal

13. None.

Equalities Impact of the Proposal

14. In reviewing the current discretions policy, it is apparent that there could potentially be direct age discrimination. This would be removed if the proposal is agreed.

Financial Implications

15. Under the current discretions policy, Directors are required to make a decision without knowing what the future costs might be. The proposal removes the potential for unknown and possibly substantial capital costs, to be imposed on the Council by decisions made years or decades earlier.

Risk Assessment

16. The proposal removes the risk of potential age discrimination claims being brought.
17. The proposal removes the potential for unknown and possibly substantial capital costs, to be imposed on the Council by decisions made years or decades earlier.

Options Considered

18. Leaving the policy as it stands: this would leave the Council open to risk of age discrimination and unquantifiable future costs.
19. Giving blanket consent to late requests for transfer-in of previous benefits: this would remove the risk of age discrimination but still leave the Council at risk of unknown future costs.

Recommendation

20. To recommend Council withdraws the discretion to transfer-in previous pensionable service after the expiry of 12 months from joining Wiltshire Pension Fund, with effect from 1 October 2011.

Barry Pirie
Service Director HR & OD

Report Authors: Susan Coleman & Diane Haines, Senior HR Advisers

The following unpublished documents have been relied on in the preparation of this Report: None

WILTSHIRE COUNCIL

WILTSHIRE PENSION FUND
POLICY STATEMENT ON EMPLOYING AUTHORITY DISCRETIONS

REGULATION	POLICY ON INDIVIDUAL DISCRETIONS	RATIONALE
BMC12: Augmentation of membership of an active member (up to 10 years) <i>(Required in Policy Statement)</i>	The Council will not exercise this option except in circumstances of redundancy or a termination of service in the interests of the authority's functions.	This is an enabling discretion, should the Council wish to augment pensions. Historically, WCC used this provision to compensate employees who were dismissed through no fault of their own. This enabled a Severance policy which included options on enhanced pension benefits to be approved by this Committee. (eg the One Council Severance policy.) The current Severance Policy (as agreed by this Committee in October 2010) does not make use of this provision to augment membership.
BMC 13: Whether to grant additional pension to a member (up to £5,000pa) <i>(Required in Policy Statement)</i>	The Council will not exercise this discretion.	This is an enabling discretion, should the Council wish to increase the cash value of pensions of current or former employees. Historically, WCC has not used this provision. In considering options for severance payments, the Council chose to augment service rather than cash.
BMC 18(1): Whether all or some benefits can be paid if an employee reduces hours/grade and continues to work ("flexible retirement")	The Council does not give blanket consent for staff in the LGPS aged 50 or over (55 or over from 1 April 2010) to flexibly retire and draw immediate payment of pension benefits. Requests will be considered by the relevant Service Director in	Following the introduction of the concept of Flexible Retirement into LGPS, ie with the consent of the Council, employees aged 55 or over may draw their benefits early while continuing to work for the Council on reduced hours and/or grade. A Flexible Retirement Policy, enabled by this discretion,

REGULATION	POLICY ON INDIVIDUAL DISCRETIONS	RATIONALE
<i>(Required in Policy Statement)</i>	in conjunction with the HR Service Director, and assessed on their merits taking into account such factors as cost and service delivery.	was agreed by this Committee in November 2008.
BMC (3): Waiving actuarial reduction on flexible retirement. <i>(Required in Policy Statement)</i>	The Council will not exercise this discretion.	This is an enabling discretion, should the Council wish to waive the actuarial reduction of pension for employees taking flexible retirement. The current Flexible Retirement Policy agreed by this Committee chose not to use this discretion in order to minimise the cost to the Council.
BMC30 (2): Whether to allow early payment of benefits at/after age 50 (55 from 2010). <i>(Required in Policy Statement)</i>	The Council does not give blanket consent for staff in the LGPS aged between 50 and 59 years to retire and draw immediate payment of pension benefits. Requests will be referred to the relevant Service Director in conjunction with the HR Service Director, and assessed on their merits taking into account such factors as cost and service delivery.	This is an enabling discretion, should the Council wish to approve applications from individuals for early retirement (ie between the ages of 55 to 59 inclusive) with early release of pension benefits.
BMC30 (3): Waiving actuarial reduction on early retirement. <i>(Required in Policy Statement)</i>	This will be exercised by the Staffing Sub-Committee in individual cases, on compassionate grounds only. Individual circumstances will be looked at according to the dictionary definition of compassion – “inclined to pity or mercy”.	LGPS regulations only permit an actuarial reduction to be waived on the grounds of “compassion”. It was previously agreed that decisions relating to individual cases should be taken by this Committee, rather than individual service directors.
Admin 16(4)(b)(ii): Whether to extend 12-month period to combine previous LG service.	The Council will allow an option to combine previous Local Government service except in cases involving potential early retirement and consequent capital costs. This discretion will be exercised by	LGPS regulations give employees an automatic right to combine previous LGPS service with their current pensionable service, within 12 months of rejoining the pension scheme. Beyond this, employees normally require the consent of their Corporate Director.

REGULATION	POLICY ON INDIVIDUAL DISCRETIONS	RATIONALE
	the appropriate Corporate Director advised by HR.	However, between October 2010 and October 2011, LGPS regulations will allow all employees an automatic right to link previous LGPS service, in excess of the normal 12 month limit. After October 2011, it may be appropriate for this Committee to reconsider its options in relation to this discretion, in the light of economic circumstances.
BMC 3 Determine rate of employees' contributions	The Council allocated employees to the relevant contribution band on 31 March 2008 or at the commencement of their employment with the Council if later. From 1 April 2009, reassessment will be made for all salary changes as they occur during the year.	This is essentially an administrative requirement, which ensures that employees and employer make contributions to the pension fund on a correct & consistent basis. This arrangement ensures that the payroll systems make the correct deductions from salary on a concurrent basis.
Admin 22(2): Whether to extend the period for a member to elect to pay contributions to cover unpaid leave of absence, maternity, paternity, or adoption leave beyond 30 days after returning to work or leaving.	The Council will allow the extension of the period in cases where the member was not notified of the right to pay contributions.	The Council ensures that staff are notified of their rights in relation to LGPS contributions, so that they can make informed decisions in a timely manner.
Admin 83(8): Whether to extend 12-month period to allow a transfer-in of non-LG pension rights.	The Council will allow an option to combine previous non-Local Government service except in cases involving potential early retirement and consequent capital costs. This discretion will be exercised by	LGPS regulations give employees an automatic right to transfer in non-LGPS pension benefits, within 12 months of joining LGPS. Beyond this, employees require the consent of their Corporate Director. It is impossible to predict future costs to the Council of

REGULATION	POLICY ON INDIVIDUAL DISCRETIONS	RATIONALE
	the relevant Corporate Director advised by HR.	allowing late transfers in individual cases, so Staffing Policy Committee may wish to review this discretion in conjunction with Admin 16(4)(b)(ii) above from October 2011.

Abbreviations

- LGPS** Local Government Pension Scheme
- BMC** Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007
- Admin** Local Government Pension Scheme (Administration) Regulations 2008

WILTSHIRE COUNCIL

STAFFING POLICY COMMITTEE

9th February 2011

Wiltshire Pension Fund Admission for Clerks to Governors to be eligible to join the Local Government Pension Scheme (LGPS)

Purpose of the Report

1. The purpose of this report is to seek consent for all Clerks to Governors working in Wiltshire Schools to become eligible to join the Local Government Pension Scheme (LGPS) with effect from 01 April 2011

Background

2. Employees of the governing body of a Voluntary Aided School, a Foundation School or a Foundation Special School maintained by the Local Authority (LA) can only be a member of the LGPS if the LA has, with the consent of the employer, (the governing body) designated the employee or class of employees to which he/she belongs as being eligible for membership. Clerks to Governors working in Community or Voluntary Controlled Schools can be designated as being eligible for membership of the LGPS directly by the LA as they, like other staff in such schools, are legally employed by the LA. It is advisable under the delegation of powers to schools however to still seek the consent of the relevant governing body.
3. Clerks to Governors in Wiltshire have not been previously been eligible to join the LGPS. In the past the relationship of a Clerk to the Governing Body was not considered to be that of an employee and any services provided were rewarded through honorarium payments of approx £800 per annum. This fee was therefore not seen as compensation for employment but as a non-pensionable fee for services provided. Such posts were also not previously evaluated or graded as they were not considered to be employees except for a small minority who had been given formal contracts of employment by their school and were then evaluated under Pay Reform in their own right in 2007. A nominal grade of 'E' has also been attached to Clerks to Governor posts which equates to the set honorarium level.
4. Clerk to Governors were previously considered to be self-employed workers earning fees for their occasional services. The legal interpretation of whether a Clerk to Governors should be considered to be an employee or self-employed was based both on employment law test cases and Her Majesty's Revenue and Customs (HMRC) assessment of what was considered as being paid employment. The current position of the HMRC is clear that work undertaken by Clerks to Governors is as 'an employee' with both parties having a 'mutuality of obligation' to provide and undertake work on a continuing basis. Legal advice confirms this position.

5. In light of HMRC and legal advice Human Resources (HR) have made provisional arrangements to issue every Clerk to Governors with Statement of Particulars which set out the annual hours a Clerk is required to work and the duration of the contract. It is essential that the position regarding eligibility to join the LGPS is resolved before any Statements of Particulars are issued to our Clerks to Governors.
6. In addition to this HMRC position a new traded service has been set up by Governor Services. This provides a clerking service to those schools that cannot afford or cannot attract a permanent Clerk to Governors. These Clerks to Governors in the clerking service are directly employed by Governor Services (the LA) and are therefore automatically members of the scheme subject to qualifying conditions. They can however be considered to be direct comparators for the Clerks employed in our schools for grade, pay and employment status.
7. All other support staff working in Wiltshire schools are eligible to join the LGPS provided they have a contract of over 3 months, have not opted out of the scheme and are under 75 years of age. Only clerks are excluded as direct employees of the Governing Body.
8. Some individual Clerks to Governors have recently challenged the long standing position of the LA not to permit them to become members of the LGPS scheme.
9. In order to rectify this position it is recommended that Wiltshire Council observes the same practices of other LAs, and the advice of the Local Government Employer (LGE), and admits Clerks to Governors in Wiltshire schools as eligible to join the LGPS. Once consent is given for Clerks to Governors to be admitted to the Local Government Pension Scheme HR will ask each school's Governing Body to make a local resolution to admit their Clerk to the pension scheme.

Considerations for the Committee

10. Consent is being sought for Clerks to Governors to be made eligible to join the pension scheme with effect from 01 April 2011.
11. On confirmation of consent the Schools HR Advisory Service will then contact all Wiltshire Schools seeking their resolutions to agree that their Clerk should be eligible to become a member of the Local Government Pension Scheme.
12. The Shared Services Team will then maintain a list of schools passing resolutions for Clerks to become members of the scheme going forward. Only Clerks to Governors in whose schools have passed such resolutions will automatically be entered into the scheme from 01 April 2011 subject to the usual qualifying conditions.

Environmental Impact of the Proposal

13. None known

Risk Assessment

14. The decision to admit Clerks to Governors to the LGPS will bring no significant additional risk to the fund. There are no plans to allow applications for retrospective membership.
15. Permitting Clerks to join the scheme will help to promote equality of treatment between all support members of staff working in our schools and those directly employed Clerks within the LA's own Clerking Service.
16. The LGE are considering an amendment to the pension regulations in future such that the LA will no longer have to seek the consent of the individual school's Governing Body to pass a resolution to admit the staff of Foundation and Voluntary Aided schools to the pension scheme. However as the situation we have in hand in respect of Clerks to Governors is inequitable and unjustifiable, HR do not recommend it is left unaddressed pending the planned amendment due to the recent challenges by our existing Clerks and the potential for equal pay claims.

Reasons for Proposals

17. To achieve compliance with current employment legislation and HMRC regulations.
18. To treat all employees working in Wiltshire schools equally in respect of their eligibility to join the scheme (subject to the usual qualifying conditions).
19. To manage the risk of legal challenges from existing Clerks to Governors seeking equal treatment.

Proposals

20. That the Staffing Policy Committee grant consent for Clerks to Governors in schools to join the LGPS with effect from 01 April 2011 subject to the consent of the governing body and usual qualifying conditions

Barry Pirie
Service Director, HR & OD

Report Author: Lorraine Nowlan, HR Business Partner Children & Education
The following unpublished documents have been relied on in the preparation of this report: None

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