

## WILTSHIRE COUNCIL

STAFFING POLICY COMMITTEE

9<sup>th</sup> February 2011

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### 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.

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The following unpublished documents have been relied on in the preparation of this Report: None