

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